



1995 ASSEMBLY BILL 598

October 2, 1995 - Introduced by Representatives BELL, PLACHE, ROBSON, ALBERS, PLOMBON, NOTESTEIN, CARPENTER, BLACK, KRUG, LA FAVE, WILDER, WASSERMAN, BOYLE and BOCK, cosponsored by Senators ROSENZWEIG, BURKE, BUETTNER and PANZER. Referred to Committee on Judiciary.

1 **AN ACT to amend** 901.04 (1), 904.04 (1) (b), 904.06 (1) and 906.08 (1) and (2); and
2 **to create** 901.04 (3) (cg) and 904.15 of the statutes; **relating to:** admissibility
3 of evidence of sexual conduct in civil actions involving incest or sexual assault
4 or exploitation.

Analysis by the Legislative Reference Bureau

Under current law, in criminal cases involving sexual assault or incest, evidence of the sexual conduct of the complaining witness that is not related to the defendant is not admissible. This bill provides that, in a civil action to recover damages for injuries resulting from sexual exploitation, sexual assault or incest, evidence of the sexual conduct of the plaintiff that is not related to the defendant is not admissible.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 901.04 (1) of the statutes is amended to read:
6 **901.04 (1) QUESTIONS OF ADMISSIBILITY GENERALLY.** Preliminary questions
7 concerning the qualification of a person to be a witness, the existence of a privilege,
8 or the admissibility of evidence shall be determined by the judge, subject to sub. (2)
9 and ss. 904.15, 971.31 (11) and 972.11 (2). In making the determination the judge
10 is bound by the rules of evidence only with respect to privileges and as provided in
11 s. 901.05.

1 **SECTION 2.** 901.04 (3) (cg) of the statutes is created to read:

2 901.04 (3) (cg) In a civil action to recover damages for injuries under s. 895.70,
3 or for injuries caused by a violation of s. 940.22 (2), 940.225, 948.02, 948.05 or 948.06,
4 admissibility of any evidence concerning the plaintiff's prior sexual conduct or
5 opinions of the plaintiff's prior sexual conduct and reputation as to prior sexual
6 conduct.

7 **SECTION 3.** 904.04 (1) (b) of the statutes is amended to read:

8 904.04 (1) (b) *Character of victim.* Except as provided in ~~s.~~ ss. 904.15 and 972.11
9 (2), evidence of a pertinent trait of character of the victim of the crime offered by an
10 accused, or by the prosecution to rebut the same, or evidence of a character trait of
11 peacefulness of the victim offered by the prosecution in a homicide case to rebut
12 evidence that the victim was the first aggressor;

13 **SECTION 4.** 904.06 (1) of the statutes is amended to read:

14 904.06 (1) **ADMISSIBILITY.** Except as provided in ~~s.~~ ss. 904.15 and 972.11 (2),
15 evidence of the habit of a person or of the routine practice of an organization, whether
16 corroborated or not and regardless of the presence of eyewitnesses, is relevant to
17 prove that the conduct of the person or organization on a particular occasion was in
18 conformity with the habit or routine practice.

19 **SECTION 5.** 904.15 of the statutes is created to read:

20 **904.15 Information concerning sexual conduct. (1)** In this section:

21 (a) "Plaintiff" means a person seeking damages for injuries sustained as a
22 result of sexual assault, sexual exploitation or incest.

23 (b) "Sexual conduct" means any conduct or behavior relating to sexual activities
24 of the plaintiff, including but not limited to prior experience of sexual intercourse or
25 sexual contact, use of contraceptives, living arrangement and life-style.

1 **(2)** (a) In a civil action to recover damages for injuries under s. 895.70, or for
2 injuries caused by a violation of s. 940.22 (2), 940.225, 948.02, 948.05 or 948.06, any
3 evidence concerning the plaintiff's prior sexual conduct or opinions of the plaintiff's
4 prior sexual conduct and reputation as to prior sexual conduct shall not be admitted
5 into evidence during the course of the hearing or trial, nor shall any reference to such
6 conduct be made in the presence of the jury, except the following, subject to s. 971.31
7 (11):

8 1. Evidence of the plaintiff's past conduct with the defendant.

9 2. Evidence of specific instances of sexual conduct showing the source or origin
10 of semen, pregnancy or disease, for use in determining the extent of injury suffered.

11 3. Evidence of prior untruthful allegations of sexual assault, sexual
12 exploitation or incest made by the plaintiff.

13 (b) Notwithstanding s. 901.06, the limitation on the admission of evidence of
14 or reference to the prior sexual conduct of the plaintiff in par. (a) applies regardless
15 of the purpose of the admission or reference unless the admission is expressly
16 permitted under par. (a) 1., 2. or 3.

17 **SECTION 6.** 906.08 (1) and (2) of the statutes are amended to read:

18 906.08 **(1)** OPINION AND REPUTATION EVIDENCE OF CHARACTER. Except as provided
19 in ~~s.~~ ss. 904.15 and 972.11 (2), the credibility of a witness may be attacked or
20 supported by evidence in the form of reputation or opinion, but subject to these
21 limitations: a) the evidence may refer only to character for truthfulness or
22 untruthfulness, and b), except with respect to an accused who testifies in his or her
23 own behalf, evidence of truthful character is admissible only after the character of
24 the witness for truthfulness has been attacked by opinion or reputation evidence or
25 otherwise.

