

A defendant who is a doctor has been charged with sexual assault for allegedly touching a patient inappropriately during a routine examination. The defendant pleaded not guilty and denied that any inappropriate conduct occurred during the patient's examination. At trial, the prosecutor seeks to show the defendant's propensity to commit sexual assault. The prosecutor has therefore called three of the defendant's other patients to testify that the defendant touched them inappropriately during routine examinations.

Should the testimony be admitted?

- A. No, because character must be proved by reputation or opinion testimony.
- B. No, because evidence of a prior crime or bad act is inadmissible to prove propensity.
- C. Yes, because the defendant has been charged with sexual assault.
- D. Yes, provided that the court finds beyond a reasonable doubt that the other incidents occurred.

## Explanation:

Evidence of a **crime, wrong, or other act** is **generally not admissible** to prove a person's **character** by showing that the person acted in accordance with that character on the occasion being litigated. This ban on character evidence stems from concerns that a jury would give too much weight to this evidence and judge a person based on his/her bad record as opposed to the case at hand.

However, the Federal Rules of Evidence provide an **exception** for criminal and civil cases involving **sexual assault or child molestation**. In such cases, evidence that the accused committed any other sexual assault or child molestation is **admissible** for **any relevant purpose**—even to show the accused's **propensity** to commit the charged assault or molestation **(Choice B)**. Therefore, the testimony by the defendant's other patients should be admitted.

**(Choice A)** Character must generally be proved by **reputation or opinion testimony**. But when a party seeks to prove a defendant's propensity to commit sexual assault or child molestation, character can also be proved by introducing specific instances of conduct (eg, prior sexual assaults).\*

**(Choice D)** The testimony regarding the other incidents is admissible if there is sufficient evidence for a reasonable jury to find that the incidents occurred by a **preponderance of the evidence**—a lower standard than beyond a reasonable doubt.

\*Specific instances of conduct are also admissible when character is an essential element of the claim, charge, or defense.

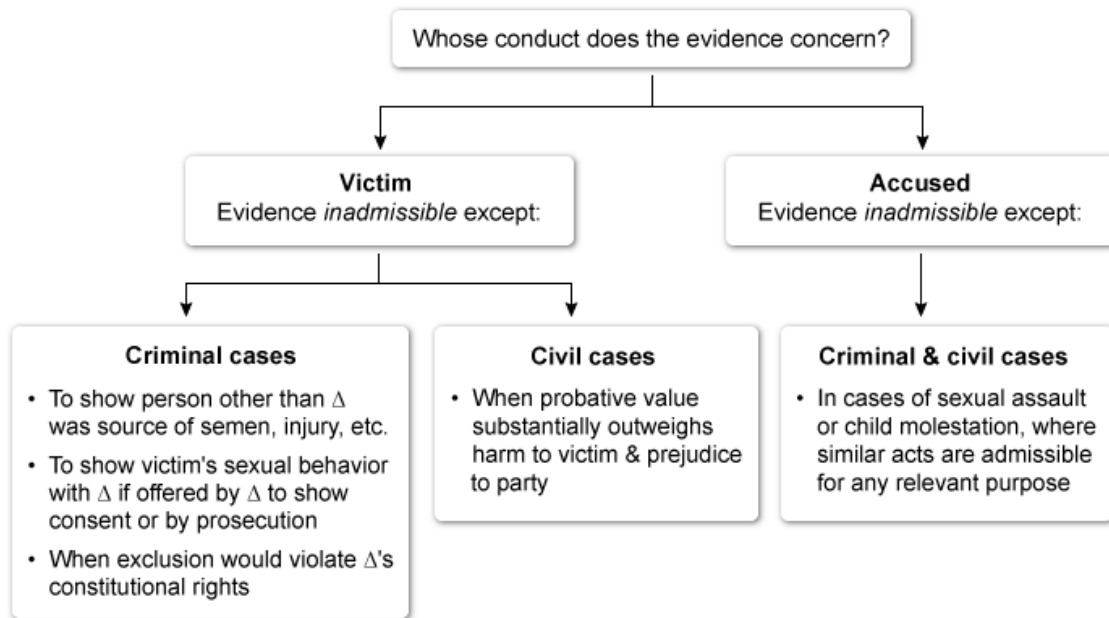
## Educational objective:

In criminal and civil cases involving sexual assault or child molestation, evidence that the accused committed any other sexual assault or child molestation is admissible for *any* relevant purpose—even to show the accused's propensity to commit the charged assault or molestation.

## References

Fed. R. Evid. 413–15 (similar acts in criminal and civil cases involving sexual assault or child molestation).

## Admissibility of other sexual behavior



Δ = Defendant

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