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## V. PROPOSED FEDERAL RULES OF EVIDENCE 413 TO 415

Congress broadened the scope of admissible evidence in sexual assault and child molestation cases by including three new evidentiary rules in the “Violent Crime Control and Law Enforcement Act of 1994.” Proposed Federal Rules of Evidence 413 and 414 permit prosecutors to introduce evidence that a criminal defendant accused of sexual assault or child molestation previously committed a similar offense. Proposed Federal Rule 415 permits civil plaintiffs to do the same.

Both Proposed Rule 413 (“Evidence of Similar Crimes in Sexual Assault Cases”) and Proposed Rule 414 (“Evidence of Similar Crimes in Child Molestation Cases”) allow the introduction of “evidence of the defendant’s commission of another offense or offenses of child molestation . . . .” Pursuant to both proposed rules, prosecutors may introduce such evidence “for its bearing on any matter to which it is relevant.” Neither rule requires that the defendant was convicted of the prior offense.

Proposed Rule 415 (“Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation”) offers a similar advantage to plaintiffs seeking damages or other relief. This Proposed Rule provides that when a claim depends upon the defendant’s alleged commission of a sexual assault or child molestation, evidence that the accused previously committed a similar offense is admissible.

Subsection (b) of each of the proposed rules requires that the party seeking to introduce such prior conduct evidence disclose its substance to the defendant at least fifteen days prior to the trial date. Alternatively, if the court permits, the prosecutor or civil plaintiff may disclose such evidence at a later date for good cause. The disclosure must include statements of witnesses or a summary of the testimony the proponent expects to offer.

Subsection (c) of each of these rules states that “[t]his rule shall not be construed to limit the admission or consideration of evidence under any other rule.” The proposed rules, however, significantly broaden the exceptions to Rule 404 (“Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes”), which generally prohibits the introduction of evidence of prior bad acts.

The proposed rules are not immediately effective. Rather, the “Violent Crime Control and Law Enforcement Act of 1994” requires the Judicial Conference of the United States to report recommendations for amending the new rules to Congress within 150 days of the law’s enactment. Congress then has 150 days to review the recommendations and repeal or modify the proposed rules. If Congress does not act within that period, the proposed rules automatically become effective.

To date, the Judicial Conference Advisory Committee has recommended

significant changes for the proposed rules. The Judicial Conference, however, has not yet formally reported to Congress.

Professor James S. Liebman opposes the Proposed Rules of Evidence which make admissible evidence of a defendant's propensity to commit sexual assault or molestation. Admitting such evidence, he asserts, could induce jurors to convict a defendant for being a bad person. It is further argued that these Proposed Rules, with possible constitutional infirmities and ambiguities due to poor drafting, are unnecessary. However, should these rules be adopted, Professor Liebman recommends that they be read in conjunction with Rule 609, and that only evidence of past convictions, as opposed to evidence of allegations that did not result in convictions, be admitted.