

CHAPTER 48 - ADMISSIBILITY GENERALLY

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SECTION 48.015 “Relevant evidence” defined. As used in this chapter, “relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

SECTION 48.025 Relevant evidence generally admissible; irrelevant evidence inadmissible.

1. All relevant evidence is admissible, except:
 - (a) As otherwise provided by this title;
 - (b) Where a statute limits the review of an administrative determination to the record made or evidence offered before that tribunal.
2. Evidence which is not relevant is not admissible.

SECTION 48.035 Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time.

1. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.
2. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time or needless presentation of cumulative evidence.
3. Evidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime shall not be excluded, but at the request of an interested party, a cautionary instruction shall be given explaining the reason for its admission.

SECTION 48.045 Evidence of character inadmissible to prove conduct; exceptions; other crimes.

1. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(a) Evidence of his character or a trait of his character offered by an accused, and similar evidence offered by the prosecution to rebut such evidence;

(b) Evidence of the character or a trait of character of the victim of the crime offered by an accused, subject to the procedural requirements of [SECTION 48.069](#) where applicable, and similar evidence offered by the prosecution to rebut such evidence; and

(c) Unless excluded by [SECTION 50.090](#), evidence of the character of a witness, offered to attack or support his credibility, within the limits provided by [SECTION 50.085](#).

2. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

SECTION 48.055 Methods of proving character.

1. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, inquiry may be made into specific instances of conduct.

2. In cases in which character or a trait of character of a person is an essential element of a charge, claim or defense, proof of specific instances of his conduct may be made on direct or cross-examination.

SECTION 48.059 Habit; routine practice.

1. Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

2. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

SECTION 48.061 Effects of domestic violence.

1. Except as otherwise provided in subsection 2, evidence of domestic violence and expert testimony concerning the effect of domestic violence, including, without limitation, the effect of physical, emotional or mental abuse, on the beliefs, behavior and perception of the alleged victim of the domestic violence that is offered by the prosecution or defense is admissible in a criminal proceeding for any relevant purpose, including, without limitation, when determining:

(a) Whether a defendant is excused from criminal liability pursuant to subsection 7 of [SECTION 194.010](#), to show the state of mind of the defendant.

(b) Whether a defendant in accordance with [SECTION 200.200](#) has killed another in self-defense, toward the establishment of the legal defense.

2. Expert testimony concerning the effect of domestic violence may not be offered against a defendant pursuant to subsection 1 to prove the occurrence of an act which forms the basis of a criminal charge against the defendant.

3. As used in this section, "domestic violence" means the commission of any act described in [SECTION 33.018](#).

SECTION 48.069 Previous sexual conduct of victim of sexual assault: Procedure for admission of evidence to prove victim's consent. In any prosecution for sexual assault or for attempt to commit or conspiracy to commit a sexual assault, if the accused desires to present evidence of any previous sexual conduct of the victim of the crime to prove the victim's consent:

1. The accused must first submit to the court a written offer of proof, accompanied by a sworn statement of the specific facts that he expects to prove and pointing out the relevance of the facts to the issue of the victim's consent.

2. If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the victim regarding the offer of proof.

3. At the conclusion of the hearing, if the court determines that the offered evidence:

(a) Is relevant to the issue of consent; and

(b) Is not required to be excluded under [SECTION 48.035](#),

↳ the court shall make an order stating what evidence may be introduced by the accused and the nature of the questions which he is permitted to ask. The accused may then present evidence or question the victim pursuant to the order.

SECTION 48.071 Exclusion of evidence of address and telephone number of victim of sexual assault.

1. In any prosecution for sexual assault, the tribal prosecuting attorney may, by written motion upon reasonable prior notice to the accused, move to exclude evidence of the victim's address and telephone number. The court may order that such evidence be excluded from the proceedings if the court finds that the probative value of the evidence is outweighed by the creation of substantial danger to the victim.

2. This section does not limit the defendant's right to discover or investigate such evidence.

SECTION 48.075 Transactions and conversations with or actions of deceased person. Evidence is not inadmissible solely because it is evidence of transactions or conversations with or the actions of a deceased person.

SECTION 48.077 Contents of lawfully intercepted communications. Except as limited by this section, in addition to the matters made admissible by [SECTION 179.465](#), the contents of any communication lawfully intercepted under the laws of the Ely Shoshone Tribe or of another jurisdiction before, on or after July 1, 1981, if the interception took place within that jurisdiction, and any evidence derived from such a communication, are admissible in any action or proceeding in a court. Matter otherwise privileged under this title does not lose its privileged character by reason of any interception.

SECTION 48.095 Subsequent remedial measures.

1. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event.

2. This section does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as proving ownership, control, feasibility of precautionary measures, or impeachment.

SECTION 48.105 Compromise; offers to compromise.

1. Evidence of:

(a) Furnishing or offering or promising to furnish; or

(b) Accepting or offering or promising to accept,

↳ a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

2. This section does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

SECTION 48.109 Closure of meeting held to further resolution of dispute; exclusion of admission, representation or statement made during mediation proceedings; confidentiality of matter discussed during mediation proceeding.

1. A meeting held to further the resolution of a dispute may be closed at the discretion of the mediator.
2. The proceedings of the mediation session must be regarded as settlement negotiations, and no admission, representation or statement made during the session, not otherwise discoverable or obtainable, is admissible as evidence or subject to discovery.
3. A mediator is not subject to civil process requiring the disclosure of any matter discussed during the mediation proceedings.

SECTION 48.115 Payment of medical and similar expenses. Evidence of furnishing or offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

SECTION 48.125 Withdrawn plea of guilty or guilty but mentally ill or offer to plead guilty or guilty but mentally ill not admissible; plea of nolo contendere or offer to plead nolo contendere not admissible.

1. Evidence of a plea of guilty or guilty but mentally ill, later withdrawn, or of an offer to plead guilty or guilty but mentally ill to the crime charged or any other crime is not admissible in a criminal proceeding involving the person who made the plea or offer.
2. Evidence of a plea of nolo contendere or of an offer to plead nolo contendere to the crime charged or any other crime is not admissible in a civil or criminal proceeding involving the person who made the plea or offer.

SECTION 48.135 Liability insurance.

1. Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully.
2. This section does not require the exclusion of evidence of insurance against liability when it is relevant for another purpose, such as proof of agency, ownership or control, or bias or prejudice of a witness.