

LOUISIANA CODE OF EVIDENCE

== 2020 ==



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Extract

The goal of this 2020 edition of the Louisiana Code of Evidence¹ is to provide the practitioner with a convenient copy to bring to court or the office. It contains all articles as amended through the 2019 Regular Legislative Session. Other titles such as Louisiana Civil Code, Louisiana Code of Civil Procedure, Louisiana Code of Criminal Procedure, and Federal Rules of Evidence and Civil Procedure are available at www.gulfcoastlegalpublishing.com. For bulk and academic discount inquiries, email info@gulfcoastlegalpublishing.com.

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CHAPTER 1. GENERAL PROVISIONS

Art. 101. Scope

This Code governs proceedings in the courts of Louisiana to the extent and with the exceptions stated in Article 1101.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 102. Purpose and construction

These articles shall be construed to secure fairness and efficiency in administration of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 103. Rulings on evidence

A. Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Ruling admitting evidence. When the ruling is one admitting evidence, a timely objection or motion to admonish the jury to limit or disregard appears of record, stating the specific ground of objection; or

(2) Ruling excluding evidence. When the ruling is one excluding evidence, the substance of the evidence was made known to the court by counsel.

B. Record of ruling. The court shall make a further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon.

C. Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or asking questions in the hearing of the jury.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 104. Preliminary questions

NOTE: SEE C.E. ART. 1103.

A. Questions of admissibility generally. Preliminary questions concerning the competency or qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of Paragraph B. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

B. Relevancy conditioned on fact. Subject to other provisions of this Code, when the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

C. Hearing of jury. Hearings on matters to be decided by the judge alone shall be conducted out of the hearing of the jury when the interests of justice require. Hearings on the admissibility of confessions or admissions by the accused or evidence allegedly unlawfully

CHAPTER 4. RELEVANCY AND ITS LIMITS

Art. 401. Definition of "relevant evidence"

"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 probable or less probable than it would be without the evidence.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 402. Relevant evidence generally admissible; irrelevant evidence inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of Louisiana, this Code of Evidence, or other legislation. Evidence which is not relevant is not admissible.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 404. Character evidence generally not admissible in civil or criminal trial to prove conduct; exceptions; other criminal acts

A. Character evidence generally. Evidence of a person's character or a trait of his character, such as a moral quality, is not admissible in a civil or criminal proceeding for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of his character, such as a moral quality, offered by an accused, or by the prosecution to rebut the character evidence; provided that such evidence shall be restricted to showing those moral qualities pertinent to the crime with which he is charged, and that character evidence cannot destroy conclusive evidence of guilt.

(2) Character of victim. (a) Except as provided in Article 412, evidence of a pertinent trait of character, such as a moral quality, of the victim of the crime offered by an accused, or by the prosecution to rebut the character evidence; provided that in the absence of evidence of a hostile demonstration or an overt act on the part of the victim at the time of the offense charged, evidence of his dangerous character is not admissible; provided further that when the accused pleads self-defense and there is a history of assaultive behavior between the victim and the accused and the accused lived in a familial or intimate relationship such as, but not limited to, the husband-wife, parent-child, or concubinage relationship, it shall not be necessary to first show a hostile demonstration or overt act on the part of the victim in order to introduce evidence of the dangerous character of the victim, including specific instances of conduct and domestic violence; and further

CHAPTER 5. TESTIMONIAL PRIVILEGES

Art. 501. Scope of privileges

Privileges as recognized in this Chapter are evidentiary in nature, do not of themselves create causes of action or other substantive rights, and are applicable to proceedings enumerated in Article 1101. Nothing in this Chapter is intended to regulate the content or waiver of constitutional rights, nor inferences to be drawn from their invocation.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993.

Art. 502. Waiver of privilege

A. Waiver. A person upon whom the law confers a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

B. Disclosure under compulsion or without opportunity to claim. A claim of privilege is not defeated by a disclosure which was compelled or made without opportunity to claim the privilege.

C. Joint holders. Where two or more persons are joint holders of a privilege, a waiver of the right of one joint holder to claim the privilege does not affect the right of another joint holder to claim the privilege.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993.

Art. 503. Comment on or inference from claim of privilege; instructions; exception

A. Comment, inference, and instructions.

(1) The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inferences may be drawn therefrom.

(2) In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(3) Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

B. Exception in non-criminal proceedings. In non-criminal proceedings, under exceptional circumstances in the interest of justice, if a claim of privilege is sustained counsel may comment thereon, and, upon request, the court shall instruct the trier of fact that it may draw all reasonable inferences therefrom.

Acts 1992, No. 376, §1, eff. Jan. 1, 1993.

Art. 504. Spousal confidential communications privilege

A. Definition. A communication is "confidential" if it is made privately and is not intended for further disclosure unless such disclosure is itself privileged.

CHAPTER 7. OPINIONS AND EXPERT TESTIMONY

Art. 701. Opinion testimony by lay witnesses

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

- (1) Rationally based on the perception of the witness; and
- (2) Helpful to a clear understanding of his testimony or the determination of a fact in issue.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 702. Testimony by experts

A. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (2) The testimony is based on sufficient facts or data;
- (3) The testimony is the product of reliable principles and methods; and
- (4) The expert has reliably applied the principles and methods to the facts of the case.

B. This Article shall also govern expert witnesses on the issue of memory and eyewitness identification. In a criminal case, if a party seeks to offer the testimony of a memory and eyewitness identification expert under this Article, such expert testimony may be considered for admission only if all provisions of Subparagraph A of this Article are satisfied. A memory and eyewitness identification expert's testimony may not be admitted under this Article if there is physical or scientific evidence that corroborates the eyewitness identification of the defendant. An expert's testimony admitted under this paragraph shall not offer an opinion as to whether a witness's memory or eyewitness identification is accurate.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989; Acts 2014, No. 630, §1; Acts 2019, No. 115.

NOTE: No changes in law or result in a ruling on evidence admissibility shall be presumed or is intended by the Legislature of Louisiana by the passage of Acts 2014, No. 630.

Art. 703. Bases of opinion testimony by experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 704. Opinion on ultimate issue

Testimony in the form of an opinion or inference otherwise admissible is not to be excluded solely because it embraces an ultimate issue to be decided by the trier of fact. However, in a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 705. Disclosure of facts or data underlying expert opinion; foundation

A. Civil cases. In a civil case, the expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

B. Criminal cases. In a criminal case, every expert witness must state the facts upon which his opinion is based, provided, however, that with respect to evidence which would otherwise be inadmissible such basis shall only be elicited on cross-examination.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 706. Court appointed experts

A. Civil cases. In a civil case, the court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party.

B. Disclosure of appointment. In a civil case, in the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

C. Parties' experts of own selection. Nothing in this Article limits the parties in calling expert witnesses of their own selection.

D. Criminal cases. In a criminal case, the court may appoint an expert witness only when specifically authorized by statute, or as constitutionally required.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

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CHAPTER 8. HEARSAY

Art. 801. Definitions

The following definitions apply under this Chapter:

A. Statement. A "statement" is:

- (1) An oral or written assertion; or
- (2) Nonverbal conduct of a person, if it is intended by him as an assertion.

B. Declarant. A "declarant" is a person who makes a statement.

C. Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted.

D. Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(a) In a criminal case, inconsistent with his testimony, provided that the proponent has first fairly directed the witness' attention to the statement and the witness has been given the opportunity to admit the fact and where there exists any additional evidence to corroborate the matter asserted by the prior inconsistent statement;

(b) Consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive;

(c) One of a series of similar statements made after perceiving the person

(d) Consistent with the declarant's testimony and is one of initial complaint of sexually assaultive behavior

(e) A statement made by the victim of a sexually oriented criminal offense to a healthcare provider during the course of a forensic medical examination as defined in S. 15:622 and the healthcare provider has documented that statement in writing during the course of the forensic medical examination.

(2) Personal, adoptive, and authorized admissions. The statement is offered against a party and is:

(a) His own statement, in either his individual or a representative capacity;

(b) A statement of which he has manifested his adoption or belief in its truth; or

(c) A statement by a person authorized by him to make a statement concerning the subject.

(3) Relational and privity admissions. The statement is offered against a party, and the statement is:

(a) A statement by an agent or employee of the party against whom it is offered, concerning a matter within the scope of his agency or employment, made during the existence of the relationship;

(b) A statement by a declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of the conspiracy, provided that a prima facie case of conspiracy is established;

(c) In a civil case, a statement by a declarant when the liability, obligation, or duty of the party against whom it is offered is derivatively based in whole or in part upon a liability, obligation, or duty of the declarant, or when the claim or right asserted by that party is barred or diminished by a breach of duty by the declarant, and when the statement would be admissible if offered against the declarant as a party in an action involving that liability, obligation, or breach of duty;

CHAPTER 10. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Art. 1001. Definitions

For purposes of this Chapter the following definitions are applicable:

(1) Writings and recordings. "Writings" and "recordings" consist of letters, words, numbers, sounds, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. "Photographs" include still photographs, X-ray films, video tapes, motion pictures, and their equivalents.

(3) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in or copied onto a computer or similar device, including any portable or hand-held computer or electronic storage device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

(4) Optical disk imaging system. An "optical disk imaging system" is a storage system that utilizes non-erasable Write-Once Read-Many (WORM) optical storage technology to record information on an optical disk with the use of laser technology, and that utilizes laser technology to retrieve and read previously stored information.

(5) Duplicate. A "duplicate" is a counterpart created by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or electronic imaging, or by chemical reproduction, or by an optical disk imaging system, or by other equivalent techniques, which accurately reproduces the original.

(6) Electronic imaging. "Electronic imaging" is the process of storing and retrieving any record, document, data, or other information through the use of electronic data processing, or computerized, digital, or optical scanning, or other electronic imaging system.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989; Acts 1995, No. 346, §1; Acts 2001, No. 941, §1; Acts 2003, No. 1135, §1, eff. July 2, 2003.

Art. 1002. Requirement of original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by this Code or other legislation.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989.

Art. 1003. Admissibility of duplicates

A duplicate is admissible to the same extent as an original unless:

(1) A genuine question is raised as to the authenticity of the original;

(2) In the circumstances it would be unfair to admit the duplicate in lieu of the original; or

CHAPTER 11. MISCELLANEOUS RULES

Art. 1101. Applicability

A. Proceedings generally; rule of privilege.

(1) Except as otherwise provided by legislation, the provisions of this Code shall be applicable to the determination of questions of fact in all contradictory judicial proceedings and in proceedings to confirm a default judgment. Juvenile adjudication hearings in delinquency proceedings shall be governed by the provisions of this Code applicable to civil cases. Juvenile adjudication hearings in delinquency proceedings shall be governed by the provisions of this Code applicable to criminal cases.

(2) Furthermore, except as otherwise provided by legislation, Chapter 5 of this Code with respect to testimonial privileges applies to all stages of all actions, cases, and proceedings where there is power to subpoena witnesses, including administrative, juvenile, legislative, military courts-martial, grand jury, arbitration, medical review panel, and judicial proceedings, and the proceedings enumerated in Paragraphs B and C of this Article.

B. Limited applicability. Except as otherwise provided by Article 1101(A)(2) and other legislation, in the following proceedings, the principles underlying this Code shall serve as guides to the admissibility of evidence. The specific exclusionary rules and other provisions, however, shall be applied only to the extent that they tend to promote the purposes of the proceeding.

(1) Workers compensation cases.
(2) Child custody cases.
(3) Revocation of probation hearings.
(4) Preliminary examinations in criminal cases, and the court may consider evidence that would otherwise be barred by the hearsay rule.

(5) All proceedings before mayors' courts and justice of the peace courts.

(6) Peace bond hearings.

(7) Extradition hearings.

(8) Hearings on motions and other summary proceedings involving questions of fact not dispositive of or central to the disposition of the case on the merits, or to the dismissal of the case, excluding in criminal cases hearings on motions to suppress evidence and hearings to determine mental capacity to proceed.

C. Rules inapplicable. Except as otherwise provided by Article 1101(A)(2) and other legislation, the provisions of this Code shall not apply to the following:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Article 104.

(2) Proceedings with respect to release on bail.

(3) Disposition hearings in juvenile cases.

(4) Sentencing hearings except as provided in Code of Criminal Procedure Article 905.2 in capital cases.

(5) Small claims court proceedings except as provided in R.S. 13:5203 and 13:5207.

(6) Proceedings before grand juries except as provided by Code of Criminal Procedure Article 442.