

SENATE JOINT RESOLUTION

No. 68

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Cancels proposed amendments to Rule of Evidence concerning the scope of cross-examination in criminal trials.

CURRENT VERSION OF TEXT

As introduced.



1 **A JOINT RESOLUTION** canceling certain proposed amendments to
2 the Rules of Evidence.
3
4 **BE IT RESOLVED** *by the Senate and General Assembly of the*
5 *State of New Jersey:*
6
7 **WHEREAS**, On September 16, 2019 the Supreme Court ordered certain
8 amendments to the New Jersey Rules of Evidence approved and
9 adopted effective July 1, 2020, subject to section 36 of P.L.1960,
10 c.52 (C.2A:84A-36) which permits cancellation of any such rules
11 by joint resolution; and
12 **WHEREAS**, The amendments, which concern Rule 608 of the New
13 Jersey Rules of Evidence, would expand the scope of permissible
14 cross-examination in criminal trials, permitting inquiry into specific
15 acts of a witness's conduct when probative of the witness's
16 character for truthfulness; and
17 **WHEREAS**, Under Rule 608 currently, such specific-act evidence is
18 permitted in only two situations: (1) where the witness was
19 previously convicted of a crime, as set forth in N.J.R.E. 609; or (2)
20 where the witness made a prior false accusation of a crime under
21 certain circumstances; and
22 **WHEREAS**, The Supreme Court's expansion of Rule 608 was
23 prompted by a concurring opinion in State v. Scott, 229 N.J. 469
24 (2017), in which the Supreme Court Committee on the Rules of
25 Evidence was called upon to examine whether Rule 608 should be
26 expanded to allow cross-examination into specific instances of
27 conduct that are probative of the witness's character for
28 truthfulness. The opinion noted that the federal courts and majority
29 of other state courts allow such cross-examination; and
30 **WHEREAS**, The Supreme Court Committee on the Rules of Evidence
31 examined the issue but was unable to reach a consensus. In the
32 Committee's 2017-2019 Report, issued January 15, 2019, four of
33 the committee's seven members recommended expanding the rule
34 to allow inquiry on cross-examination, in certain limited
35 circumstances, into a witness's specific instances of conduct on
36 cross-examination. The remaining three committee members issued
37 a Minority Report recommending no changes to the current Rule
38 608; and
39 **WHEREAS**, The committee's Minority Report argued that the
40 proposed amendments to Rule 608 risk causing jury confusion and
41 undue prejudice; will deter witnesses from testifying; and will
42 broadly expand pre-trial discovery without meaningfully advancing
43 the jury's search for truth; and
44 **WHEREAS**, The proposed amendments to Rule 608 have been opposed
45 on these grounds by the New Jersey State Bar Association, the
46 County Prosecutors Association of New Jersey, and the Trial
47 Attorneys of New Jersey, as well as a growing coalition of legal

1 organizations representing a wide cross-section of the legal
2 community, including both prosecution and defense attorneys; and
3 **WHEREAS**, The Supreme Court has adopted the position of the four-
4 member majority of the Committee on the Rules of Evidence, and
5 ordered that the amendments to Rule 608 be adopted effective July
6 1, 2020; and
7 **WHEREAS**, The New Jersey Legislature finds that the proposed
8 amendment to Rule 608 would create jury confusion; deter
9 witnesses from coming forward because of the ability to inquire
10 into prior bad acts; create prejudice; and expand litigation over the
11 admissibility of specific evidence of prior bad acts, leading to a
12 “trial within a trial” and causing delay without meaningfully
13 advancing the jury’s search for the truth; now, therefore,

14
15 **BE IT RESOLVED** *by the Senate and General Assembly of the*
16 *State of New Jersey:*

- 17
18 1. The proposed amendments to Rule 608 of the New Jersey
19 Rules of Evidence as set forth in the Supreme Court’s order of
20 September 16, 2019 shall be canceled.
21
22 2. This joint resolution shall take effect immediately.
23
24

25 STATEMENT

26
27 This joint resolution provides that the proposed amendments to
28 Rule 608 of the New Jersey Rules of Evidence as set forth in the
29 Supreme Court’s order of September 16, 2019 shall be canceled.

30 The proposed amendments, which were ordered by the Supreme
31 Court on September 16, 2019, and approved and adopted effective
32 July 1, 2020, would expand the scope of permissible cross-
33 examination in criminal trials, permitting inquiry into specific acts
34 of a witness’s conduct when probative of the witness’s character for
35 truthfulness.

36 Pursuant to section 36 of P.L.1960, c.52 (C.2A:84A-36), an
37 evidence rule may be canceled at any time up to the effective date
38 by joint resolution to that effect adopted by the Senate and General
39 Assembly and signed by the Governor.

40 Under Rule 608 currently, specific-act evidence is permitted in
41 only two situations: (1) where the witness was previously convicted
42 of a crime, as set forth in N.J.R.E. 609; or (2) where the witness
43 made a prior false accusation of a crime under certain
44 circumstances.

45 The Supreme Court’s expansion of Rule 608 was prompted by a
46 concurring opinion in State v. Scott, 229 N.J. 469 (2017), in which
47 the Supreme Court Committee on the Rules of Evidence was called
48 upon to examine whether Rule 608 should be expanded to allow

1 cross-examination into specific instances of conduct that are
 2 probative of the witness’s character for truthfulness. The opinion
 3 noted that the federal courts and majority of other state courts allow
 4 such cross-examination.

5 The Committee on the Rules of Evidence examined the issue but
 6 was unable to reach a consensus. In the Committee’s 2017-2019
 7 Report, issued January 15, 2019, four of the committee’s seven
 8 members recommended expanding the rule to allow inquiry on
 9 cross-examination, in certain limited circumstances, into a witness’s
 10 specific instances of conduct on cross-examination. The remaining
 11 three committee members issued a Minority Report recommending
 12 no changes to the current Rule 608.

13 The committee’s Minority Report argued that the proposed
 14 amendments to Rule 608 risk jury confusion and undue prejudice;
 15 will deter witnesses from testifying; and will broadly expand pre-
 16 trial discovery without meaningfully advancing the jury’s search for
 17 truth.

18 The proposed amendments to Rule 608 have been opposed by the
 19 New Jersey State Bar Association, the County Prosecutors
 20 Association of New Jersey, and the Trial Attorneys of New Jersey,
 21 on these grounds. A growing coalition of legal organizations
 22 continues to oppose the proposed amendments to Rule 608.

23 The Supreme Court has adopted the position of the four-member
 24 majority of the Committee on the Rules of Evidence, and ordered
 25 that the amendments to Rule 608 be adopted effective July 1, 2020.

26 The New Jersey Legislature finds that the proposed amendments
 27 to Rule 608 would create jury confusion; deter witnesses from
 28 coming forward because of the ability to inquire into prior bad acts;
 29 create prejudice; and expand litigation over the admissibility of
 30 specific evidence of prior bad acts, leading to a “trial within a trial”
 31 and causing delay without meaningfully advancing the jury’s search
 32 for the truth.