

Alabama Rules of Evidence

Article VI. Witnesses

Rule 609.

Impeachment by evidence of conviction of crime.

(a) *General rule.* For the purpose of attacking the credibility of a witness,

(1)(A) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and

(B) evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) *Time limit.* Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction, more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) *Effect of pardon, annulment, or equivalent procedure.* Evidence of a conviction is admissible under this rule even if the conviction has been the subject of a pardon, annulment, or equivalent procedure.

(d) *Juvenile or youthful offender adjudications.* Evidence of juvenile or youthful offender adjudications is not admissible under this rule.

(e) *Pendency of appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Advisory Committee's Notes

Alabama Rule of Evidence 404(a) recognizes the general exclusionary rule under which evidence of a person's character is inadmissible to prove action in conformity therewith on the particular occasion being litigated. Rule 404(a)(3), however, carves out an exception to this general rule excluding evidence of character. Whenever a witness takes the stand and offers testimony, evidence of the witness's character for untruthfulness may be admitted as a basis from which to infer that the witness is not telling the truth. This opens the door to any character evidence that is relevant to credibility. Rule 609 serves as an example of such impeachment.

Section (a). General rule. The preexisting Alabama statutory provision authorizing impeachment by evidence showing conviction for a crime involving moral turpitude, Ala. Code 1975, § 12-21-162(b), has been superseded by Rule 609.

Under Rule 609, there will be alternative tests: one based upon the seriousness of the crime, met only if the crime was punishable by death or imprisonment in excess of one year, and the other based upon whether the crime involved dishonesty or false statement. This rule is based upon Federal Rule of Evidence 609(a) as amended January 26, 1990, effective December 1, 1990. The special balancing test embodied in Rule 609(a)(1)(B) is to be applied only to the criminal defendant who testifies in the criminal case in which he or she is being prosecuted.

Crimes involving "dishonesty or false statement," as indicated in the report of the Senate Committee on the Judiciary during the process of adopting the corresponding Federal Rule 609, include crimes "such as perjury or subornation of perjury, false statement, criminal fraud, embezzlement or false pretense, or any other offense, in the nature of *crimen falsi* the commission of which involves some element of untruthfulness, deceit, or falsification bearing on the accused's propensity to testify truthfully." Senate Comm. on Judiciary, Fed. Rules of Evidence, S. Rep. No. 1277, 93d Cong., 2d Sess., 14 (1974).

This rule makes no distinction with regard to the court in which the conviction arises or with regard to the law that establishes the crime. Consequently, contrary to preexisting Alabama law, a conviction is usable even if it occurred in the municipal court or is for a crime that constitutes a violation of a municipal ordinance. *Contra Parker v. State*, 280 Ala. 685, 198 So.2d 261 (1967); *Muse v. State*, 27 Ala.App. 271, 196 So. 148, cert. denied, 239 Ala. 557, 196 So. 151 (1940).

Section (b). Time limit. As a general principle, Rule 609(b) recognizes that convictions over ten years old are too remote to be relevant on the question of a witness's current credibility. In rare circumstances, however, the trial judge may permit impeachment by a conviction more than ten years old, if two elements are met. First, the court must make a determination, in the interests of justice, that the probative value of the conviction, judged by specific facts and circumstances, substantially outweighs its prejudicial effect. Second, as a condition precedent to admissibility, the proponent must have given the adverse party sufficient advance written notice of the intent to use such evidence. Sufficiency of such notice is measured by whether it provides the adverse party a fair opportunity to contest the use of the conviction. Compare Ala.R.Evid. 404(b).

This rule constitutes a significant change in Alabama practice. Historically, remoteness has been determined on a case-by-case basis, with no arbitrary designation as to number of years or other length of time. *Harbin v. State*, 397 So.2d 143 (Ala.Crim.App.), cert. denied, 397 So.2d 145 (Ala.1981). Much has been left to the discretion of the trial court on this issue. See *Davenport v. State*, 50 Ala.App. 321, 278 So.2d 769 (1973). If the conviction is not more than ten years old, Rule 609 would leave no discretion in the trial judge to exclude for remoteness, so long as the conviction otherwise meets the requirements of Rule 609. That discretion traditionally vested in Alabama trial judges would continue in regard to the admission of convictions that are more than ten years old.

Section (c). Effect of pardon, annulment, or equivalent procedure. Rule 609(c) affirms the historic practice in Alabama under which a pardon has had no impact upon the admissibility of evidence of a conviction offered for impeachment. *Rush v. State*, 253 Ala. 537, 45 So.2d 761 (1950). See W. Schroeder, *Evidentiary Use in Criminal Cases of Collateral Crimes and Acts: A Comparison of the Federal Rules and Alabama Law*, 35 Ala.L.Rev. 241 (1984).

Section (d). Juvenile or youthful offender adjudications. Under Rule 609(d), if the prior crime was the subject of an adjudication in the juvenile court, then it may not be used to impeach. This rule of preclusion remains unchanged from preexisting Alabama law, as embodied in both a statute and the decisions interpreting that statute. See Ala. Code 1975, § 12-15-72(a) and (b) (providing that a disposition in the juvenile court is not a conviction and is not admissible as evidence against the child in any other proceeding in any other court); *Copeland v. State Farm Mut. Ins. Co.*, 536 So.2d 931 (Ala.1988); C. Gamble, *McElroy's Alabama Evidence* § 145.01(4) (4th ed. 1991).

Rule 609, unlike its federal counterpart, extends this impeachment preclusion to youthful offender adjudications. See Ala. Code 1975, § 12-15-72 (providing that youthful offender adjudications are not to be deemed convictions).

Juvenile adjudications or youthful offender adjudications may be used for impeachment, of course, if their exclusion would violate a litigant's constitutional rights, notwithstanding the language of Rule 609(d). See *Lynn v. State*, 477 So.2d 1365 (Ala.Crim.App.1984), rev'd, 477 So.2d 1385 (Ala.1985).

Section (e). Pendency of appeal. A conviction, otherwise usable for impeachment purposes, is not rendered inadmissible by the fact that it is on appeal. This principle is consistent with preexisting Alabama law. *Cups Coal Co. v. Tennessee River Pulp & Paper Co.*, 519 So.2d 932 (Ala.1988). Evidence of the fact that an appeal is pending is admissible.