

Rules of Evidence Side-by-Side Comparison

Arizona Rules of Evidence	Federal Rules of Evidence
<p>Rule 609. Impeachment by Evidence of Conviction of Crime</p> <p>(a) General rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record, if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect, and if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted or (2) involved dishonesty or false statement, regardless of the punishment.</p> <p>(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.</p> <p>(c) Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.</p> <p>(d) Juvenile adjudications. Evidence of juvenile adjudication is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.</p>	<p>Rule 609. Impeachment by Evidence of Conviction of Crime</p> <p>(a) General rule.</p> <p>For the purpose of attacking the <u>character for truthfulness</u> of a witness,</p> <p>(1) 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 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</p> <p>(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, <u>if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.</u></p> <p>(b) Time limit.</p> <p>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 10 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.</p> <p>(c) Effect of pardon, annulment, or certificate of rehabilitation.</p> <p>Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person</p>

<p>(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.</p>	<p>has not been convicted of a subsequent crime <u>that</u> was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.</p> <p>(d) Juvenile adjudications.</p> <p>Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.</p> <p>(e) Pendency of appeal.</p> <p>The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.</p>
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Comments:

Subsection (a): 1. The federal rule utilizes different standards for different kinds of witnesses, essentially creating a separate standard for criminal defendants who testify on their own behalves. The Arizona rule applies the same standard to all witnesses. Under the federal rule, the determination of admissibility of prior convictions for witnesses other than a criminal defendant is made pursuant to Rule 403, which embodies a presumption of admissibility that does not apply to the "does the probative value outweigh the prejudicial effect?" inquiry.

The Rule 609 recommends that we retain Arizona's "one standard" rule because it is easier to apply.

2. In terms of impeachment with a crime that does not constitute a felony, the language of the federal rule seems to be more aligned with the *crimen falsi* principle in that it requires a clear indication that the conviction required actual proof of an act of dishonesty or false statement. Applying what appears to be a less rigorous standard, the Arizona rule talks in terms of non-felony convictions that simply "involve" dishonesty or false statement. To illustrate, assume that robbery is a misdemeanor rather than a felony. A has a conviction for robbery. Because neither dishonesty nor false statement is an element of robbery, the conviction would not be admissible for impeachment purposes under the federal rule. Under the Arizona rule, however, a very persuasive argument can be made that the crime of robbery "involves" dishonesty – some would suggest that common sense makes any other result impossible.

The workgroup recommends that we retain the Arizona version. As a practical matter, why should the party seeking permission to impeach have to prove that dishonesty or false statement is an element of the crime of which the witness was once convicted?

Subsection (b): The language appears to be identical, except that, in the last sentence, the federal rule inexplicably uses the Arabic "10" instead of the word "ten." This difference clearly has no substantive implications. The word "ten" should be used.

Subsection (c): Identical.

Subsection (d): Identical except that the first sentence of the federal rule says “adjudications” (plural) and the Arizona rule says “adjudication” (singular). One can argue that the difference has substantive significance, but that argument is not likely to get far. The singular term is preferable.

Subsection (e): Identical