> Evidence rules permit using past convictions to question witness credibility, with restrictions.

Using Criminal Convictions to Impeach Witnesses

Rule 609 allows evidence of prior criminal convictions to attack witness truthfulness, with specific limitations.



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Key Concepts of Rule 609

> Rule 609 governs how criminal convictions can be used to challenge witness credibility, with specific limitations on timing, relevance, and special protections.

Limited Purpose

Only to attack truthfulness

Special Treatment

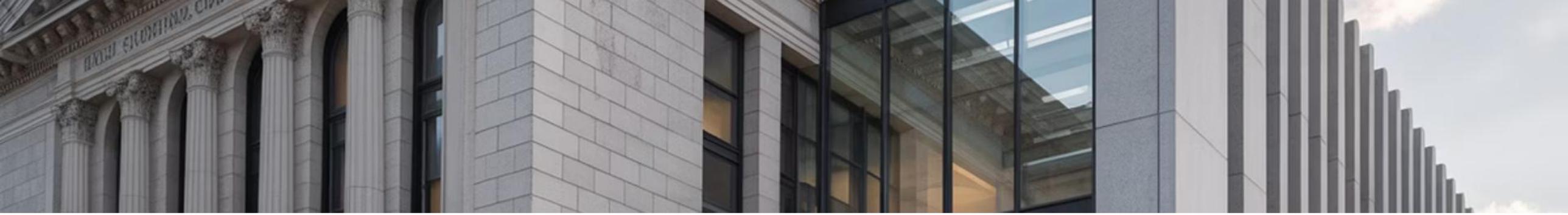
Criminal defendants get extra protection

Dishonesty Crimes

Always admissible regardless of punishment

Time Limits

Stricter test for convictions over 10 years old



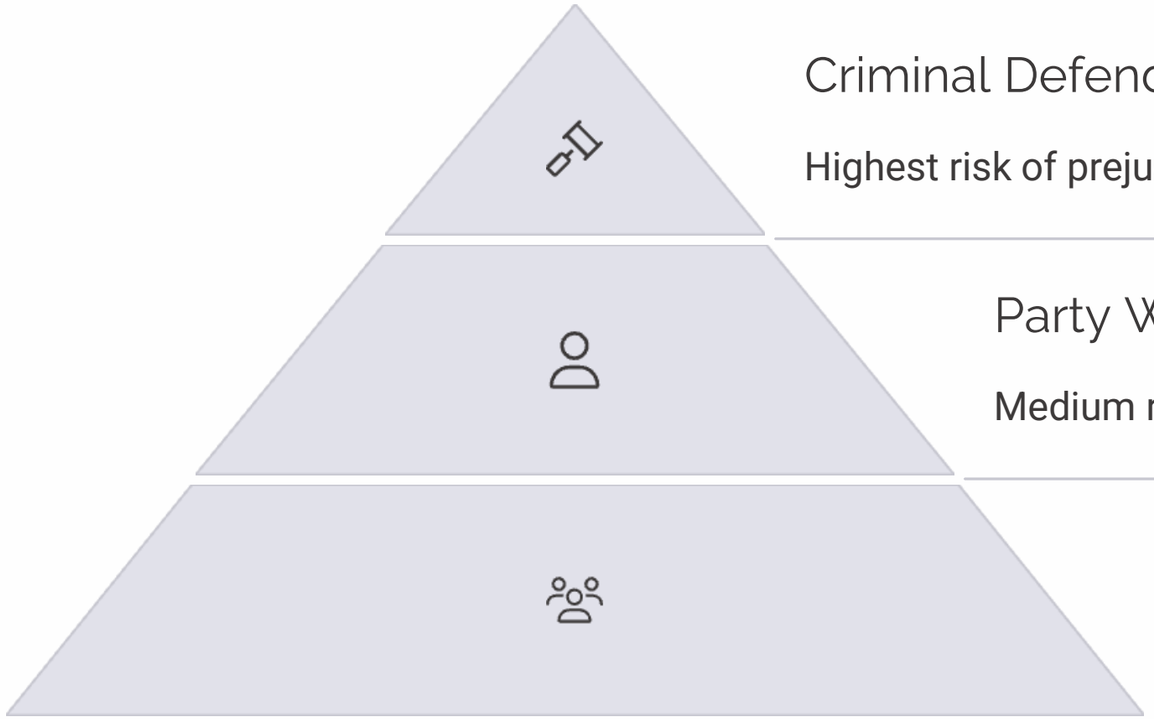
Historical Context

The rules on felon testimony have evolved from complete prohibition to a balanced approach weighing credibility against prejudice.

1. **Past Practice**
   Convicted felons barred from testifying
2. **Modern Approach**
   Felons can testify but convictions affect credibility
3. **Current Rule**
   Balances relevance against unfair prejudice

Risks of Unfair Prejudice

Prior convictions create varying levels of prejudice depending on witness type, with criminal defendants at highest risk.



Criminal Defendants

Highest risk of prejudice

Party Witnesses

Medium risk of prejudice

Non-Party Witnesses

Lower risk of prejudice

Rule 609's Three Categories

> Evidence rule governing how prior convictions can be used to impeach witness credibility, with different standards based on witness type and crime nature.

1

Felonies - Non-Defendants

Admitted subject to Rule 403

2

Felonies - Criminal Defendants

Admitted if probative value outweighs prejudice

3

Crimes of Dishonesty

Always admitted for any witness



Felony Convictions: Non-Defendants

> For non-defendant witnesses, felony convictions are generally admissible with limited exclusion under Rule 403's balancing test.

Definition

Crimes punishable by death or over one year imprisonment

Standard

Must be admitted, subject to Rule 403

Rule 403 Test

Excluded only if prejudice substantially outweighs probative value

Felony Convictions: Criminal Defendants

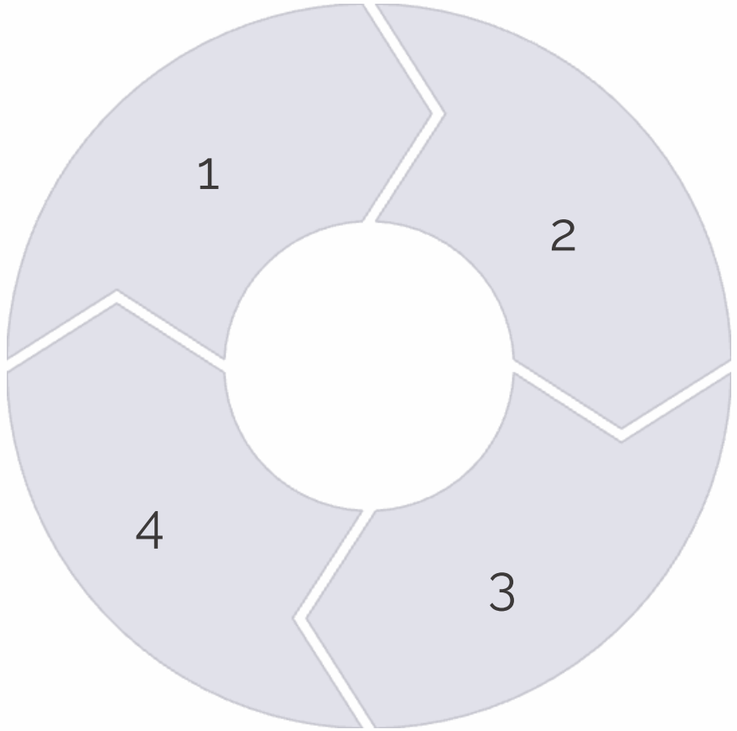
Criminal defendants receive greater protection when prior felony convictions are offered as evidence, with a more favorable balancing test and shifted burden of proof.

Higher Protection

Special balancing test favors exclusion

Burden Shift

Prosecutor must justify admission



Lower Threshold

Excluded when prejudice equals probative value

Limited Scope

Only considers prejudice to testifying defendant



Crimes of Dishonesty

Crimes involving intentional deception, false statements, or misrepresentation for personal benefit.

Perjury

False statements under oath

Fraud

Deception for financial gain

Embezzlement

Theft by misappropriation

False Pretense

Misrepresentation to obtain property

What Counts as "Dishonesty"?

> Crimes involving deception (like fraud or perjury) qualify as dishonesty, while crimes of theft or stealth without deception don't qualify.

Qualifies

- Perjury
- Criminal fraud
- Embezzlement
- False statements

Doesn't Qualify

- Burglary
- Shoplifting
- Theft
- Crimes of "stealth"



Evidence of prior convictions older than 10 years faces stricter admissibility requirements, including judicial findings, enhanced probative value, and notice to opposing counsel.

Time Limits: The 10-Year Rule

Timing

10 years since conviction or release from confinement

Stricter Test

Probative value must substantially outweigh prejudice

Notice Required

Written notice to opposing party

Specific Facts

Judge must find specific supporting circumstances

Special Circumstances

Certain legal situations create exceptions to standard admissibility rules, including pardons, juvenile records, and cases under appeal.



Pardons

Generally not admissible unless new felony committed



Juvenile Adjudications

Limited admissibility in criminal cases

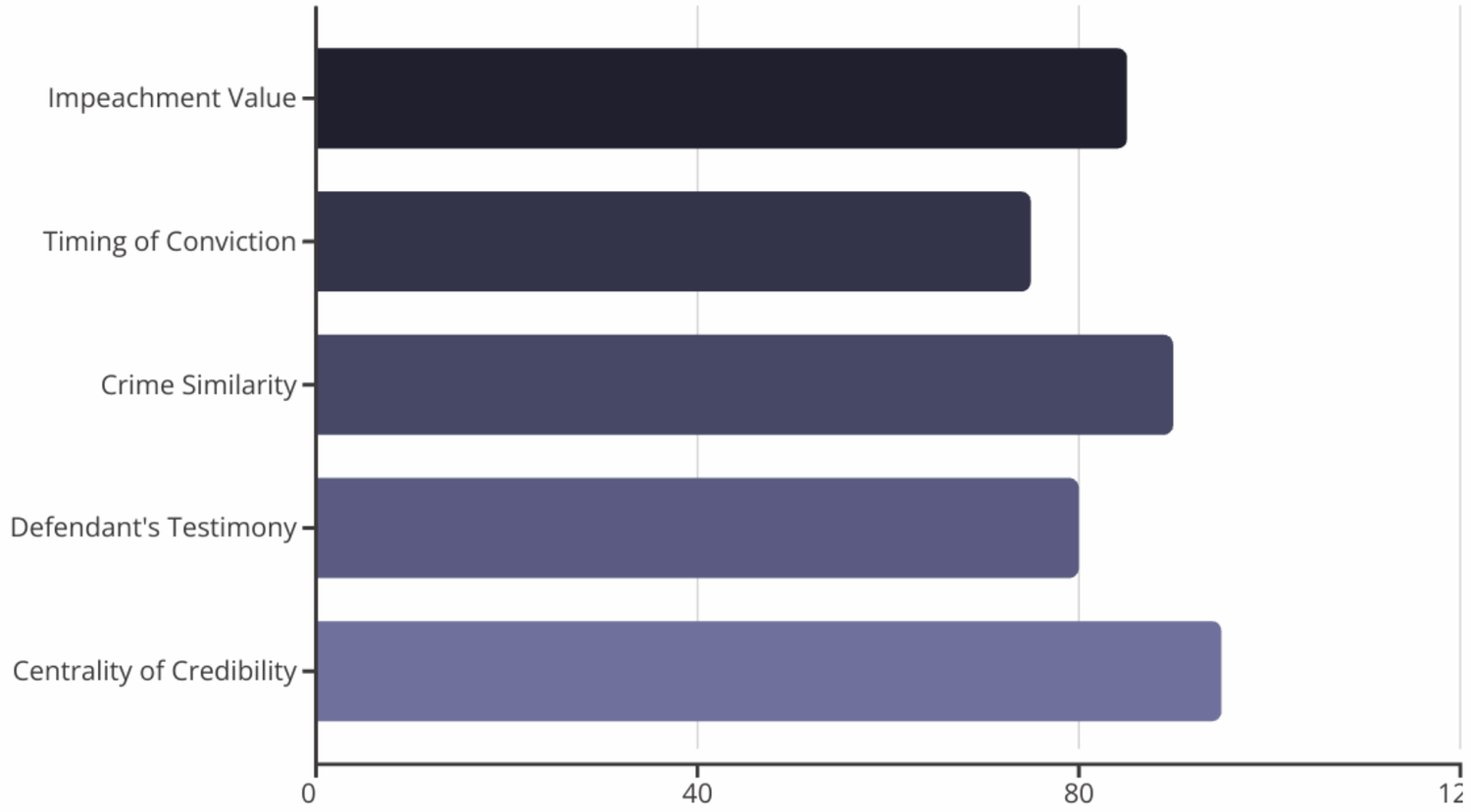


Pending Appeals

Conviction still admissible; appeal status also admissible

Factors Courts Consider

Courts evaluate multiple factors when admitting prior convictions, with credibility importance and crime similarity weighing most heavily in their decisions.



Courts weigh these factors when deciding whether to admit prior convictions, especially for criminal defendants.

Limiting Instructions

> Court guidance that restricts how jurors can use evidence of prior convictions.







Judges instruct juries to use conviction evidence only to evaluate truthfulness, not to determine guilt.



Criticisms of Rule 609

> Rule 609 faces criticism for its flawed assumptions about truthfulness, potential jury misapplication, and disproportionate effects on marginalized defendants.

Questionable Premise

No evidence convictions predict lying

Jury Misuse

Jurors may ignore limiting instructions

Disparate Impact

Disproportionately harms nonwhite and low-income defendants

Perpetuates Cycles

Makes future convictions easier to obtain

Rule 609 Summary

> Rule 609 governs the use of prior convictions to challenge witness credibility, with specific time limitations and relevance requirements.

3

Categories

Different rules for different witnesses and crimes

10

Year Limit

Stricter test for older convictions

1

Purpose

Only to attack truthfulness

