

February 16, 2026

Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, NE  
Washington, DC 20544  
[RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov)

**Re: Proposed Amendments to Federal Rule of Evidence 609**

Dear Members of the Committee on Rules of Practice and Procedure:

The American Association for Justice (“AAJ”) submits this comment in support of proposed amendments to Federal Rule of Evidence 609 (“FRE 609”). AAJ previously addressed FRE 609 in a letter (24-EV-C) to the Advisory Committee on Evidence Rules (“Evidence Committee”) dated April 11, 2024, in which AAJ expressed general support for abrogating Rule 609(a)(1).<sup>1</sup> The Advisory Committee concluded that abrogation went too far, deciding instead to proceed with a proposal to make the balancing test in Rule 609(a)(1) more protective of defendants.<sup>2</sup> With members in the United States and abroad, AAJ is the world’s largest plaintiff trial lawyer association. AAJ members primarily represent plaintiffs in personal injury actions, employment discrimination cases, civil rights cases, consumer protection cases, class actions, and other civil actions, and regularly use the Federal Rules of Evidence in their cases. AAJ respectfully submits this comment to recommend minor changes that promote clarity and consistency.

Most reported civil cases under Rule 609(a)(1) involve instances of excessive force or prisoner abuse. In these cases, the impact of a prior criminal conviction unfairly diminishes or negates the harm suffered by the plaintiff in the pending litigation.<sup>3</sup> A plaintiff’s prior convictions can prove highly prejudicial, “especially when pitted against the institution of law enforcement”<sup>4</sup> and can distract jurors from material facts in police brutality cases.<sup>5</sup> This has a chilling effect on a plaintiff’s desire to seek justice and allows systemic harm to continue unimpeded. It is for these reasons that AAJ supports the proposed amendments as a small step toward greater fairness and recommends two minor changes to the Committee Note for ease of understanding and consistency.

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<sup>1</sup> Am. Ass’n for Just. Rules Suggestion [24-EV-C](#) (Apr. 11, 2024).

<sup>2</sup> Memorandum from Professor Daniel J. Capra to Advisory Committee on Evidence Rules (Oct. 1, 2024), in [Advisory Committee on Evidence Rules Agenda Book](#) 103 (Nov. 2024).

<sup>3</sup> James Stone, [Past-Acts in Excessive Force Litigation](#), 100 WASH. U. L. REV. 569, 608-09 (2022) (discussing FRE 609’s impact on plaintiffs in excessive force litigation).

<sup>4</sup> *Id.* at 608-09.

<sup>5</sup> Tamara F. Lawson, [Powerless Against Police Brutality: A Felon’s Story](#), 25 ST. THOMAS L. J. 218, 220-21 (2013).

First, in the opening paragraph of the Committee Note, AAJ recommends adding the phrase “of defendants” after “protective.” This modest change will clarify for courts and parties that the shared goal of the original statute and this rule change is to provide heightened protection specifically for criminal defendants when prior convictions are offered for impeachment, reflecting Congress’s deliberate decision to depart from the ordinary Rule 403 balancing framework. Explicitly identifying that the reverse balancing test is “protective of defendants” will reduce ambiguity in application by ensuring courts recognize that the amendment is not merely procedural but embodies a substantive policy judgment grounded in constitutional concerns:

Rule 609(a)(1)(B) has been amended to provide that a non-falsity-based conviction should not be admissible to impeach a criminal defendant unless its probative value substantially outweighs the risk of unfair prejudice to the defendant. Congress allowed such impeachment with non-falsity-based convictions under Rule 609(a)(1), but imposed a reverse balancing test when the witness was the accused. That test is more protective **of defendants** so as not to infringe on the accused’s constitutional right to testify. The amendment underscores the importance of applying a protective balance. The amendment also makes the balancing test consistent with that in Rule 703. Courts are familiar with the formulation “substantially outweighs” as the same phrase is used throughout the rules of evidence to describe various balancing tests. Cf. Rule 403.

Second, in the fourth paragraph of the Committee Note, AAJ urges the Committee to replace the word “opportunity” with the phrase “information necessary” in order to clarify that Rule 609 contemplates informed evaluation by the jury, not mere exposure to impeachment evidence. Because convictions covered by Rule 609(a)(1) vary significantly in their probative value regarding credibility, admitting only the fact of a conviction without contextual information can distort the jury’s assessment and undermine the rule’s balancing framework. This change better reflects the rule’s purpose by emphasizing that jurors must receive sufficient information to properly weigh the conviction’s relevance to truthfulness:

A number of courts have, in a kind of compromise, admitted only the fact of a conviction to impeach a defendant in a criminal case. Thus the jury hears only that the defendant was convicted of a felony, not what the crime was. Absent agreement by the parties, that solution is problematic because convictions falling within Rule 609(a)(1) have varying probative value, and admitting only the fact of conviction deprives the jury of the ~~opportunity~~ **information necessary** to properly weigh the conviction’s effect on the witness’s character for truthfulness.

AAJ thanks the Evidence Committee for considering these clarifying edits. Please direct any questions regarding the above to Susan Steinman, Senior Director of Policy & Senior Counsel, at [susan.steinman@justice.org](mailto:susan.steinman@justice.org).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce Plaxen", with a long horizontal flourish extending to the right.

Bruce Plaxen  
*President*  
American Association for Justice