Rule 609. Impeachment by Evidence of Conviction of Crime

(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 only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect, or (2) 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, vacation 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, vacation or 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, vacation or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. Evidence of juvenile adjudications is not admissible under this rule unless permitted by statute or required by the state or federal constitution.

(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.

(Amended effective January 1, 1990.)

Committee Comment - 1989

Rule 609

The question of impeachment by past conviction has given rise to much controversy. Originally convicted felons were incompetent to give testimony in courts. It was later determined that they should be permitted to testify but that the prior conviction would be evidence which the jury could consider in assessing the credibility of the witness. However, not all convictions reflect on the individual's character for truthfulness. In cases where a conviction is not probative of truthfulness the admission of such evidence theoretically on the issue of credibility breeds prejudice. The potential for prejudice is greater when the accused in a criminal case is impeached by past crimes that only indirectly speak to character for truthfulness or untruthfulness. The rule represents a workable solution to the problem. Those crimes which involve dishonesty or false statement are admissible for impeachment purposes because they involve acts directly bearing on a person's character for truthfulness. Dishonesty in this rule refers only to those crimes involving untruthful conduct. When dealing with other serious crimes, which do not directly involve dishonesty or false statement the Court has some discretion to exclude the offer where the probative value is outweighed by prejudice. Convictions for lesser offenses not involving dishonesty or false statement are inadmissible.

The substantive amendment is designed to conform this rule to the accepted practice in Minnesota, which is to allow the accused to introduce evidence of past crimes in the direct examination of the accused.

Contrary to the practice in federal courts, the defendant can preserve the issue at a motion in limine and need not testify to litigate the issue in post trial motions and appeals. Compare State v. Jones, 271 N.W.2d 534 (Minn. 1978) with Luce v. United States, 469 U.S. 38, 105 S.Ct. 460, 83 L.Ed.2d 443 (1984). The trial judge should make explicit findings on the record as to the factors considered and the reasons for admitting or excluding the evidence. If the conviction is admitted, the court should give a limiting instruction to the jury whether or not one is requested. State v. Bissell, 368 N.W.2d 281 (Minn. 1985).

Subdivision (b)

The rule places a ten year limit on the admissibility of convictions. This limitation is based on the assumption that after such an extended period of time the conviction has lost its probative value on the issue of credibility. Provision is made for going beyond the ten year limitation in unusual cases where the general assumption does not apply.

The rule will supersede Minnesota Statutes 1974, section 595.07.

Subdivision (c)

The rule is predicated on the assumption that if the conviction has been "set aside" for reasons that suggest rehabilitation, the probative value of the conviction on the issue of credibility is diminished. For example, pardons pursuant to Minnesota Constitution, article 5, section 7 (restructured 1974), or Minnesota Statutes 1974, section 638.02, would operate to make a prior conviction inadmissible as would a vacation of the conviction or subsequent nullification pursuant to Minnesota Statutes 1974, sections 609.166 to 609.168, or Minnesota Statutes 1974, section 242.01 et seq. A restoration of civil rights, which does not reflect findings of rehabilitation would not qualify under the rule. See Minnesota Statutes 1974, section 609.165. If there is a later conviction, as defined in the rule, the assumption of rehabilitation is no longer valid. If otherwise relevant and competent both convictions may be used for impeachment purposes. Obviously, if the first conviction is "set aside" based on a finding of innocence, the conviction would have no more probative value under any circumstances. See Rules 401-403.

Subdivision (d)

The amendment is a change in style not substance. Minnesota Statutes 1988, section 260.211, subdivision 2, does permit the disclosure of juvenile records in limited circumstances. Pursuant to Minnesota Statutes 1988, section 260.211, subdivision 1, a juvenile adjudication is not to be considered a conviction nor is it to impose civil liabilities that accompany the conviction of a crime. Rule 609(d) reflects this policy by precluding impeachment by evidence of a prior juvenile adjudication. It is conceivable that the state policy protecting juveniles as embodied in the statute and the evidentiary rule might conflict with certain constitutional provisions, e.g., the Sixth Amendment confrontation clause. Under these circumstances the evidentiary rule becomes inoperative. See Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), construed in State v. Schilling, 270 N.W.2d 769 (Minn. 1978).

Committee Comment - 2016

Rule 609(a) does not prohibit impeachment through an unspecified felony conviction if the impeaching party makes a threshold showing that the underlying conviction falls into one of the two categories of admissible convictions under rule 609(a). However, a party need not always

impeach a witness with an unspecified felony conviction. Instead, "the decision about what details, if any, to disclose about the conviction at the time of impeachment is a decision that remains within the sound discretion of the district court," considering whether the probative value of admitting the evidence outweighs its prejudicial effect. "If a court finds that the prejudicial effect of disclosing the nature of the felony conviction outweighs its probative value, then it may still allow a party to impeach a witness with an unspecified felony conviction if the use of the unspecified conviction satisfies the balancing test of Rule 609(a)(1)." State v. Hill, 801 N.W.2d 646, 651-53 (Minn. 2011).