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Impeaching the Accused with Prior Conviction(s) in Georgia and under Federal Rules of Evidence

John A. Alves
Georgia State University College of Law

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Research Guides

Impeaching the Accused with Prior Conviction(s) in Georgia and under Federal Rules of Evidence

Guide Information

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Scope

This research guide has been prepared to provide a primer or a starting point for the admissibility of prior convictions against the accused for impeachment purposes. This research guide should be used as an introduction to Georgia and Federal laws which govern the the use of the accused's prior convictions for impeachment purposes. The materials herein are provided as a starting point for legal research for comprehensive analysis of this issue. This research guide provides statutes, rules, case law, informative secondary sources, and other helpful materials on this issue.

Disclaimer

This is not and does not purport to be legal advice. You should always consult a lawyer. The purpose of this research guide is to provide law students and attorneys a starting point on the topic of impeachment of the accused with a prior conviction. This guide is not comprehensive and has not been updated since April 2011. If you have any questions, please consult the Georgia State University College of Law reference librarians.

Overview

Before deciding whether or not the accused should testify, the defense attorney should consider his/her client's prior criminal history. If the defendant decides to take the stand, the defendant may be impeached with his/her prior convictions. This research guide will analyze the relevant Georgia and Federal law in order to determine when the accused's prior convictions may be admissible in court. This research guide provides statutes, rules, case law, and informative secondary sources regarding impeachment of the accused with his/her prior convictions.

The accused, before taking the stand, should consider the possibility of impeachment by his/her prior convictions. For the accused with a criminal record, the decision to testify on his/her own behalf becomes even more precarious due to the possibility of impeachment of the accused based on his/her prior criminal convictions.

This research guide covers the relevant Georgia law on this issue. Specifically, this research guide analyzes O.C.G.A. § 24-9-84.1 and Georgia case law governing impeachment of the accused with his/her prior conviction. This research guide also provides helpful secondary sources, such as Professor Milich's Courtroom Handbook on Georgia Evidence and Georgia Handbook on Foundations and Objections by Neal W. Dickert.

This research guide also covers the relevant Federal law on this issue. Specifically, this research guide analyzes Federal Rule of Evidence (herein FRE) 609 and federal case law interpreting this rule of evidence.

New Development in Georgia Law

During the creation of this research guide, the Georgia Legislature passed House Bill 24. This research guide will not cover this new development. If the House Bill 24 is signed into law, the reader of this guide should make reference tot his new law.

A draft of House Bill 24 can be found here. The statutory provision covering impeachment of the accused with his/her prior conviction is O.C.G.A. § 24-6-609. House Bill 24 would do away with the higher balancing test O.C.G.A. § 24-9-84.1 places on impeaching a criminal defendant with his/her prior conviction and in fact adopts the FRE 609 balancing test. Additionally, House Bil 24 codifies some of the case law presented in this research guide, such as whether a nolo plea or whether a first offender record constitutes a "conviction."

In large part, House Bill 24 seems to be an adoption of the Federal Rules of Evidence. Given the substantial similarity between O.C.G.A. § 24-9-84.1 and Federal Rule of Evidence 609, this research guide will likely remain relevant even if House Bill 24 should be passed into law. However, reference to this new law, if passed, is highly recommended.

About the Author

John A. Alves will graduate from Georgia State University College of Law in May 2011. Before law school, John graduated summa cum laude from Georgia State University with a Bachelor of Arts degree in Political Science. For more information about this bibliography, please contact Professor Nancy Johnson via e-mail at njohnson@gsu.edu.

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Primary Sources

Georgia Statute

In Georgia, the prosecution's ability to impeach a criminally accused with his/her prior convictions is governed by statute. In 2005, the Georgia legislature enacted O.C.G.A. § 24-9-84.1 to establish guidelines for the use of criminal convictions to impeach defendants who testify at trial. Rather than codifying the then existing standard found in Georgia case law for crimes involving "moral turpitude," the Georgia legislature chose to use the language of the Federal Rules of Evidence Rule 609 (a) (2). Therefore, Georgia courts can and sometimes do turn to federal case law for guidance in its interpretation of the new statute.

- O.C.G.A. § 24-9-84.1 (link provided by Justia.com, a free legal website).
    - OCGA § 24-9-84.1(a) provides for two ways to impeach the credibility of the accused. First, OCGA § 24-9-84.1(a)(2) provides that the defendant may be impeached with his prior felony conviction IF "the court determines that the probative value of admitting the evidence ***substantially outweighs*** its prejudicial effect to the defendant." Second, OCGA § 24-9-84.1(a)(3) provides that the defendant may be impeach with his prior conviction IF "it involved dishonesty or making a false statement, regardless of the punishment that could be imposed for such offense."
    -
        - NOTE KEY DIFFERENCE WITH FEDERAL RULES: Georgia requires that the probative value for impeachment purposes of admitting the prior conviction "substantially outweighs it prejudicial effect" to the accused whereas the Federal Rules of Evidence require that probative value for impeachment purposes of admitting the prior conviction "outweighs it prejudicial effect" to the accused.
    - OCGA § 24-9-84.1(b) provides that the defendant's prior conviction is not admissible if it is more than 10 years old unless (1) "the court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect" and (2) "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."
    - OCGA § 24-9-84.1(c) provides that a conviction is not admissible if the conviction has been the subject of a pardon or annulment based on (1) "a finding of rehabilitation... and such person has not been convicted of a subsequent crime" or (2) "...a finding of innocence."
    - OCGA § 24-9-84.1(d) provides that juvenile convictions are "inadmissible against a defendant in a criminal case."
    - OCGA § 24-9-84.1(e) provides that "pendency of an appeal from a conviction does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal shall be admissible.

  Resort to case law, however, is always necessary. For example, the OCGA § 24-9-84.1 is silent on whether a plea of nolo contendre is a conviction or whether theft involves a crime of dishonesty or making a false statement. Therefore, a practicing attorney should always read the relevant case law which is provided below.

Georgia Case Law

What is not a "conviction?"

- Nolo pleas are inadmissible for general impeachment in any criminal case. Hooper v. State, 284 Ga. 824, 672 S.E.2d 638 (2009); Pitmon v. State, 265 Ga. App. 655, 595 S.E.2d 360 (2004).
- First offender pleas are inadmissible for general impeachment in any criminal case unless there has been an adjudication of guilt. Butler v. State, 285 Ga. 518, 678 S.E.2d 92 (2009).
- A mere indictment, accusation, or even a transcript of a trial is insufficient. Laukaitis v. Basadre, 287 Ga. App. 144, 650 S.E.2d 724 (2007).
- It is improper to allow impeachment for improper conduct (even though the conduct may constitute grounds for criminal liability) unless a conviction occurs. Reese v. State, 241 Ga. App. 350, 526 S.E.2d 867 (1999).

Limited Admissibility--The Limiting Instruction

- When a prior conviction is admitted to attack the credibility of a testifying defendant upon the determination of the trial court that the conviction's probative value substantially outweighs its prejudicial effect, the conviction's purpose is limited to an attack on the defendant's credibility and, unless the prior conviction also is admitted as a prior similar transaction, it is impermissible to use the prior conviction to establish the defendant as a bad person with a propensity for crime. Phillips v. State, 285 Ga. 213, 675 S.E.2d 1 (2009).

Details of Prior Conviction are Inadmissible by Proponent

- The impeaching party may not elicit testimony regarding the details of the defendant's prior conviction as they are irrelevant and inadmissible for impeachment purposes. Evidence is restricted to the name of the offense, the time and place of conviction, and the sentence imposed. Henderson v. State, 247 Ga. App. 31, 543 S.E.2d 95 (2000).

Explaining what crimes involve "dishonesty?"

- In Adams v. State, 248 Ga. App. 534, 644 S.E.2d 426 (2007), the Georgia Court of Appeals wrote that crimes involving "dishonesty or making false statement" was intended to include crimes "such as perjury or subordination 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 deceit, untruthfulness, or falsification bearing on the accused's propensity to testify truthfully." This is a seminal case on crimes involving dishonesty or making false statement.

- A misdemeanor conviction for giving false information to police is a crime involving dishonesty for impeachment purposes under O.C.G.A. § 24-9-84.1. Gibbs v. State, 288 Ga. 638, 706 S.E.2d 428 (2011); Habersham v. State, 289 Ga. App. 718, 658 S.E.2d 253 (2008).

- A felony conviction for misrepresentation of noncontrolled substance as a controlled substance is a crime involving dishonesty for impeachment purposes under O.C.G.A. § 24-9-84.1. Blach v. State, 293 Ga. App. 750, 667 S.E.2d 925 (2008).

Crimes not involving "dishonesty."

- Misdemeanor theft conviction is not a crime involving "dishonesty" within the meaning of O.C.G.A. § 24-9-84.1. Adams v. State, 284 Ga.App. 534, 644 S.E.2d 426 (2007).

- A misdemeanor shoplifting conviction is not a crime involving "dishonesty" within the meaning of O.C.G.A. § 24-9-84.1. Martin v. State, 300 Ga. App. 39, 684 S.E.2d 111 (2009).

- A misdemeanor convictions for criminal trespass and family violence battery are not crimes involving dishonesty. Fields v. State, 285 Ga.App. 345, 646 S.E.2d 326 (2007).

- A misdemeanor conviction of theft by conversion is not a crime involving dishonesty. Clements v. State, 299 Ga.App. 561, 683 S.E.2d 127 (2009).

When Is The Balancing Test Required

- The balancing test is required only when the prior conviction is a felony that does not involve dishonesty or false statements.

The Balancing Test

- The trial court is required to make express findings when balancing the probity of a prior felony conviction (not involving dishonesty or false statement) against its prejudicial effect. The factors to be considered include the kind of felony involved, the date of the conviction, and the importance of the witness's credibility. Quiroz v. State, 291 Ga. App. 423, 662 S.E.2d 235 (2008).

- The trial court's failure to make express finding regarding balancing was reversible error. Abercrombie v. State, 297 Ga. App. 522, 677 S.E.2d 719 (2009).

The Time Limit

- Trial court is vested with the discretion to admit, for impeachment purposes, evidence of a conviction older than ten years in the interest of justice if its probative value substantially outweighs its prejudicial effect and if the opposing party was given advance written notice of intent to use the prior conviction to impeach. Treadwell v. State, 285 Ga. 736, 684 S.E.2d 244 (2009).

The Manner of Proof: Proper Procedure

- In order to comply with Georgia's best evidence rule, a party should have a certified copy of the record of conviction to impeach a defendant. Kimbrough v. State, 254 Ga. 504, 330 S.E.2d 875 (1985).

Standard of Review

- The Court of Appeals will not disturb a trial court's determination regarding impeachment of a defendant with extraneous offense or prior crimes evidence unless the trial court has abused its discretion. Abercrombie v. State, 297 Ga.App. 522, 677 S.E.2d 719 (2009).

Federal Rules of Evidence

In federal courts, the prosecution's ability to impeach a criminally accused with his/her prior convictions is governed by the Federal Rule of Evidence 609.

- Federal Rule of Evidence 609 (link provided by Cornell Legal Information Institute, a free legal website).

- - FRE 609 (a) provides For the purpose of attacking the character for truthfulness of a witness, (1) "... evidence that an accused has been convicted of [a crime that was punishable as a felony] 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 regardless of the punishment, 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.

- FRE 609 (b) is the same as OCGA § 24-9-84.1(b).
- FRE 609 (c) is the same as OCGA § 24-9-84.1(c).
- FRE 609 (d) provides that the defendant's juvenile adjudications are "not admissible under this rule" against the accused.
- FRE 609 (e) is the same as OCGA § 24-9-84.1(e).
- Federal Rule of Evidence 609 Advisory Committee Notes (link provided by Cornell Legal Information Institute, a free legal website).
- The Advisory Committee Notes is provide insight to the legislative intent behind FRE 609. Many federal courts look for guidance in the advisory committee notes while interpreting the Federal Rules of Evidence.

Resort to case law, however, is always necessary. For example, the FRE 609 is silent on whether a plea of nolo contendre is a conviction or whether theft involves a crime of dishonesty or making a false statement. Therefore, a practicing attorney should always read the relevant case law which is provided below.

Federal Case Law

What is a "conviction"?

- Most federal courts allow the use of a nolo plea to impeach a witness in a criminal case. U.S. v. Williams, 642 F.2d 136 (5th Cir. 1981).

Details of Prior Conviction are Inadmissible by Proponent

- Details of the crime may not be explored by impeaching party. United states v. Albers, 93 F.3d 1469, 1479-80 (10th Cir. 1996). However, the impeaching party should be permitted to establish the nature, time, and place of, and the punishment for each conviction that qualifies for impeachment purposes. United States v. Estrada, 430 F.3d 606, 615-16 (2nd Cir. 2005).

Crimes involving "dishonesty or false statement?"

- A conviction for counterfeiting is a crime involving dishonesty or false statement under FRE 609(a)(2). United States v. Morrow, 977 F.2d 222, 228 (6th Cir. 1992).
- A conviction for tampering with an electric meter is a crime involving dishonesty or false statement under FRE 609(a)(2). Altobello v. Borden Confectionary Prod., Inc., 872 F.2d 215 (7th Cir. 1989).
- A conviction for knowingly passing a worthless check is a crime involving dishonesty or false statement under FRE 609(a)(2). United States v. Kane, 944 F.2d 1406, 1412 (7th Cir. 1991).
- A conviction for failure to file income tax return is a crime involving dishonesty or false statement under FRE 609(a)(2). Dean v. Trans World Airlines, Inc., 924 F.2d 805, 811 (9th Cir. 1991).
- A conviction of fraud is a crime involving dishonesty or false statement under FRE 609(a)(2). United States v. Ortega, 561 F.2d 803, 806 (9th Cir.1977).

Crimes not involving "dishonesty or false statement."

- A conviction for theft is not a crime involving dishonesty or false statement under FRE 609(a)(2). United States v. Johnson, 388 F.3d 96, 100 (3d Cir. 2004).
- A conviction for shoplifting is not a crime involving dishonesty or false statement under FRE 609(a)(2). United States v. Dunson, 142 F.3d 1213, 1215 (10th Cir. 1998).
- A conviction for robbery is not a crime involving dishonesty or false statement under FRE 609(a)(2). Walker v. Horn, 385 F.3d 321, 334 (3d Cir. 2004).
- A conviction for burglary is not a crime involving dishonesty or false statement under FRE 609(a)(2). United States v. Sellers, 906 F.2d 597, 603 (11th Cir. 1990).
- A conviction for drug use is not a crime involving dishonesty or false statement under FRE 609(a)(2). Medrano v. City of Los Angeles, 973 F.2d 1499, 1507 (9th Cir. 1992).

When Is The Balancing Test Required

- The balancing test is required only when the prior conviction is a felony that does not involve dishonesty or false statements.
- If the witness is the accused, he/she may be impeached under FRE 609(a)(1) only if the court finds that the probative value of the conviction as credibility evidence outweighs its prejudicial effect to the accused. United States v. Tse, 375 F.3d 148, 159-64 (1st Cir. 2004).
- If the witness is anyone other than the accused, he/she may be impeached unless the court determines that the probative value of theconviction as credibility evidence is substantially outweighed by the danger of unfair prejudice, confusion of issue or misleading the jury, or the other countervailing considerations listed in FRE 403. United States v. Cavender, 228 F.3d 792, 799 (7th Cir. 2000).

The Balancing Test

- Although some appellate courts have noted that an explicit on-the-record finding regarding the probative value and prejudicial effect balance would be helpful, as would some indication of the trial court's reasoning, neither is required under FRE 609(a)(1). United States v. Morrow, 977 F.2d 222, 228 (6th Cir. 1992).
- Most Courts of Appeal apply a five-factor test. United States v. Martinez-Martinez, 369 F.2d 1076, 1086 (9th Cir. 2004); United States v. Hernandez, 106 F.3d 737, 739-40 (7th Cir. 1997).
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  - The first factor is the impeachment value of the prior conviction. The more the crime goes to the accused's credibility, "the greater the probative value." United States v. Hayes, 553 F.2d 824, 827-28 (2nd Cir. 1997).
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  - The second factor is the point in time of the conviction and the witness's subsequent history. A conviction committed during youth or long ago may have less bearing on the witness's present character, but subsequent convictions may prove otherwise. United States v. Pritchard, 973 F.2d 905, 909 (11th Cir. 1992).
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  - The third factor is the similarity between the past crime and the charged crime. The greater the similarity between the prior crime and the charged crime, the greater the risk of prejudicial effect without enhancing its probative value as evidence of the defendant's truthfulness or untruthfulness. United States v. Sanders, 964 F.2d 295, 297-98 (4th Cir. 1992).
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  - The fourth factor is the importance of the defendant's testimony and the potential for deterring the defendant from testifying if he/she could be impeached with his prior conviction.
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  - The fifth factor is the centrality of the credibility issue. If the case involves a swearing match between witnesses, then the need for full exploration of credibility is necessary. United States v. Smith, 131 F.3d 685, 687 (7th Cir. 1997).
- Other Courts of Appeal apply some but not all of the above listed factors. For example, in American Home Assurance Co. v. American President Lines, Ltd., 44 F.3d 774, 779, the Ninth Circuit Court of Appeals rejected the centrality of credibility as a factor.

The Time Limit

- A remote conviction is admissible only if the court makes a finding, supported by specific facts and circumstances, that the probative value of the conviction substantially outweighs its prejudicial effect. United States v. Sloman, 909 F.2d 176, 181 (6th Cir. 1990). In effect, it creates a presumption against admissibility. United States v. Redditt, 381 F.3d 597, 601 (7th Cir. 2004).
- The time frame for measuring the ten years begins with the date of conviction or the date of the witness's release from any confinement imposed for that conviction, whichever is later. United States v. Watler, 461 F.3d 1005, 1008-09 (8th Cir. 2006). Time spend on probation or parole is not considered confinement. United states v. Daniel, 957 F.2d 162, 167-68 (5th Cir. 1992).
- The time frame ends on the date on which the witness testifies. United States v. Watler, 461 F.3d 1005, 1008-09 (8th Cir. 2006).

Manner of Proof

- Under the FRE, if a witness admits his prior conviction when asked, it is not necessary to offer the public record. Therefore, under the FRE, a witness may be impeached with a prior conviction by two ways: a public record of conviction or asking the question of cross-examination. United States v. Scott, 592 F.2d 1139 (1979).

Standard of Review

- Rule 609(a)(1) gives broad discretion to the trial court, and its exercise ought not be disturbed absent proof of abuse of discretion. United States v. Ortiz, 553 F.2d 782, 784 (2nd Cir.1977).
- Rule 609(a)(2), by contrast, clearly limits the discretion of the court by mandating the admission of crimes involving dishonesty or false statements. We review decisions under Rule 609(a)(2) for plain error. McHenry v. Chadwick, 896 F.2d 184, 189 (6th Cir.1990).

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Secondary Sources

Georgia Books, Treatises, and Trial Manuals

- Courtroom Handbook on Georgia Evidence by Paul S. Milich
  Call Number: KFG540 .M542 c.2
  ISBN: 978-0314905857

http://gilfind.gsu.edu/vufind/Record/50353This is the Georgia Evidence book by Georgia State University College of Law's own Paul Milich. It explains in great detail the Georgia Rules of evidence. Look under the table of contents for impeachment-Prior Convictions for material relevant to this research guide.

- Georgia Handbook on Foundations and Objections by Neal W. Dickert/Thomson West
  Call Number: KFG540 .D53
  http://gilfind.gsu.edu/vufind/Record/1444008This book provides the reader both the relevant law on the issue but also shows examples on how to impeach the accused with his prior conviction. A very useful trial book. The specific chapter dealing with impeachment with prior conviction is chapter 3.4.
- Daniel's Georgia Handbook on Criminal Evidence by Jack Goger/Thomson West
  Call Number: Online Resource (WLX Treatises)
  ISBN: 0314977201
  http://gilfind.gsu.edu/vufind/Record/1582792Another great trial resource for impeachment of the accused with a prior conviction. Chapter 6:22 Impeachment—Bad character—Conviction of a crime is the relevant chapter.
- Georgia Handbook on Criminal Evidence by William W. Daniel
  Call Number: KFG580 .D35
  ISBN: 1583360077
  http://gilfind.gsu.edu/vufind/Record/1148634
- Georgia Rules of Evidence by Paul Milich
  Call Number: KFG540 .M54 c.5
  http://gilfind.gsu.edu/vufind/Record/2148889A more in depth analysis of Georgia rules of evidence by Georgia State University College of Law's own Paul Milich. Refer to chapter 14.4 for impeachment of the accused with prior convictions.
- Agnor's Georgia evidence by William Harrison Agnor
  Call Number: KFG540 .A94 2008
  http://gilfind.gsu.edu/vufind/Record/1944597
- List Of Other Books That May Be Helpful
  http://gilfind.gsu.edu/vufind/Search/Results?lookfor=Georgia+Rules+of+Evidence&type=AllFields&submit=FindLinks to Georgia State University's Law Library Catalog (GIL-Find).

Georgia Law Review Articles

Marc T. Treadwell, Evidence, 61 Mercer L. Rev. 135, 150-52 (2009).

- This law review article provides an annual survey of Georgia law from June 1, 2008 to May 31, 2009. In section IV.(B), it covers impeachment of the accused with his/her prior conviction. It explains the newly issued cases as it related to O.C.G.A. § 24-9-84.1.

Marc T. Treadwell, Evidence, 60 Mercer L. Rev. 135, 153-56 (2008).

- This law review article provides an annual survey of Georgia law from June 1, 2007 to May 31, 2008. In section IV.(C), this article covers impeachment of the accused with his/her prior conviction. This article discuses the newly issued cases during the above time period as they related to O.C.G.A. § 24-9-84.1.

Franklin J. Hogue & Laura D. Hogue, Criminal Law, 59 Mercer L. Rev. 89, 113-115 (2007).

- This law review article provides an annual survey of Georgia law from June 1, 2006 to May 31, 2007, 2008. In section V.(A), this article covers impeachment of the accused with his/her prior conviction. This article discuses the newly issued cases during the above time period as they related to O.C.G.A. § 24-9-84.1. Specifically, this article discuses the seminal case of Adams v. State,284 Ga. App. 534, 644 S.E.2d 426 (2007) and the role that FRE 609 and federal appellate cases had in defining the Georgia standard of "dishonesty and false statement." This article does a fine job explaining Adams v. State.

Marc T. Treadwell, Evidence, 59 Mercer L. Rev. 157, 166-69 (2007).

- This law review article provides an annual survey of Georgia law from June 1, 2006 to May 31, 2007. In section III.(A), this article covers impeachment of the accused with his/her prior conviction. This article discuses the newly issued cases during the above time period as they related to O.C.G.A. § 24-9-84.1. Specifically, this article discusses the then newly enacted O.C.G.A. § 24-9-84.1. It also addresses the similarity this statute has with FRE 609 and the importance of federal appellate cases in developing Georgia law.

Federal Books, Treatises, and Trial Manuals

- Evidence: The Objection Method by Dennis D. Prater et al/LexisNexis
  Call Number: KF8934 .E945 2007 c.1
  ISBN: 9781422411773
  http://gilfind.gsu.edu/vufind/Record/1775237This textbook addresses impeachment of the accused with his/her prior convictions.
- Courtroom Evidence Handbook by Steven Goode & Olin Guy Wellborn III/Thomson West
  Call Number: KF8935.Z9 C6559
  ISBN: 978-0-314-19055-0
  http://gilfind.gsu.edu/vufind/Record/1370521?prtAvail=1This handbook provides the Federal Rules of Evidence, author's notes, important case law on the issue, objections, and sample foundation questions on FRE 609. A great trial tool.
- Federal Rules of Evidence with Objections by Anthony J. Bocchino
  Call Number: Online Resource (WLX Treatises)
  http://gilfind.gsu.edu/vufind/Record/1581384

- A practical guide to federal evidence : objections, responses, rules, and practice commentary by Anthony J.Bocchino
  Call Number: KF8935 .B62 2005
  http://gilfind.gsu.edu/vufind/Record/1498093
- Understanding evidence by Paul C. Giannelli
  Call Number: KF8935 .G52 2006 c.1
  http://gilfind.gsu.edu/vufind/Record/1625430This supplement explains in plain English FRE 609.
- Evidence : examples & explanations by Arthur Best
  Call Number: KF8935.Z9 B48 2009 c.1
  http://gilfind.gsu.edu/vufind/Record/1989249This supplement explains in plain English FRE 609.
- Federal Rules of Evidence in a Nutshell by Michael H. Graham
  Call Number: KF8935.Z9 G7 2007
  http://gilfind.gsu.edu/vufind/Record/1569193This supplement explains in plain English FRE 609.
- McCormick on Evidence by Charles Tilford McCormick,
  Call Number: KF8935 .M29 2006
  http://gilfind.gsu.edu/vufind/Record/1518406This hornbook addresses impeachment of the accused with his/her prior convictions. It explains both FRE 609 and the case law behind the rule.

Legal Encyclopedias

American Jurisprudence

Laura Dietz et el., Prior convictions, 81 Am. Jur. 2d Witnesses § 938 (updated March 2011).

- This legal encyclopedia article covers the general right to impeach the accused with his prior convictions. This article also provides a cumulative case supplement.

George Blumet el., FRE 403 Relation to other rules—In impeachment situations, 29 Am. Jur. 2d Evidence § 332 (updated March 2011).

- This legal encyclopedia article addresses the differences between FRE 403 balancing test versus the 609 balancing test. The two tests are not the same even though th e language is similar.

Laura Dietz, et al., Effect of appeal or motion, 81 Am. Jur. 2d Witnesses § 878 (updated March 2011).

- This legal encyclopedia article addresses the effect of the pendency of an appeal or motion for new trial on the prosecution's ability to impeach the accused. The pendency of the appeal or motion does not preclude impeachment of the accused with his prior conviction is most, but not all, jurisdictions.

American Jurisprudence Proof of Facts

William D. Farber, Impeachment of Witness By Prior Criminal Conviction, 6 Am. Jur. Proof of Facts 2d 747 (updated 2010).

- This legal encyclopedia article covers impeachment of a witness by prior criminal conviction. This articles provides an in depth analysis of this type of impeachment. In addition, this article also covers the elements of proof for this type of impeachment and a several sample impeachment examples. This article is a must read for any trial attorney.

Corpus Juris Secundum

John R. Kennel et al., Conviction of Crime, 98 C.J.S. Witnesses § 598 (updated March 2011).

- This legal encyclopedia article covers impeachment of a witness by prior criminal conviction. Specifically, this article covers many of the issues not expressly addressed in FRE 609. Furthermore, this article has a cumulative case supplement regarding how states use prior convictions to impeach the accused.

John R. Kennel, et al., Conviction of Crime—Federal Law, 98 C.J.S. Witnesses § 599 (updated March 2011).

- This legal encyclopedia article covers how courts have interpreted FRE 609.

John R. Kennel et al., Conviction of crime—Particular offenses, 98 C.J.S. Witnesses § 600 (updated March 2011).

- This legal encyclopedia article covers that particular offenses that qualify for impeachment purposes pursuant to FRE 609.

John R. Kennel et al., Conviction of crime—Effect of pardon or commutation of sentence, 98 C.J.S. Witnesses § 601 (updated March 2011).

- This legal encyclopedia article covers the effect of a pardon with regards to FRE 609.

John R. Kennel et al., Admissibility of evidence—Evidence of conviction of crime, 98 C.J.S. Witnesses § 613 (updated March 2011).

- This legal encyclopedia article covers what kind of proof is necessary in order to impeach the criminal defendant with his prior conviction. It also addresses what facts surrounding the prior conviction are admissible.

John R. Kennel et al., Effect of impeachment, 98 C.J.S. Witnesses § 614 (updated March 2011).

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- This ALR analyzes state cases in which courts have determined whether particular nonviolent crimes involve "dishonesty or false statements."

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- This note addresses how the courts have interpreted FRE 609 to be an admissible friendly rule contrary to the legislatures intent. Specifically, this note analyzes the Mahone 5 factor test to determine if admission of the prior conviction satisfies the rules balancing test.

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- This note analyzes our current legal system incentive structure with regards to the accused's decision whether or not to testify. Specifically, this note determines that while the accused has a constitutional right to testify our legal system encourages the accused to not testify by creating penalties to those who testify and benefits for the accused who do not testify. This note analyzes FRE 609, which the note calls the "most widely recognized and stark disincentive to taking the witness stand."

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- This note analyzes how different state Supreme Courts allow impeachment of the accused based on his/her prior convictions.

George Edward Spencer, Interpreting The New Rule 609(A)(2), 57 Case W. Res. L. Rev. 717 (2007).

- This note analyzes FRE 609(A)(2) and suggests an alternative interpretation of the rule.

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Interest Groups and Associations

Georgia Interest Groups and Associations

Georgia Bar Association

- All persons authorized to practice law in this state are required to be members.

Atlanta Bar Association: The Criminal Law Section

- This is an association of criminal lawyers (both prosecutors and criminal defense attorneys) specifically targeted at criminal law.

Georgia Association of Criminal Defense Lawyers

- A membership *association* of *attorneys* who represent persons charged with the violation of the *criminal* laws

National Interest Groups and Associations

American Bar Association

- A national association of attorneys.

American Bar Association Criminal Justice Section

- The Criminal Justice Section of the American Bar Association has over 20,000 members including prosecutors, private defense counsel, appellate and trial judges, law professors, correctional and law enforcement personnel, law students, public defenders, and other criminal justice professionals.

National Association of Criminal Defense Lawyers

- National Association of Criminal Defense Lawyers(NACDL) is the largest U.S. organization of defense attorneys. The NACDL is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct.

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