

April 11, 2024

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposed Amendments to Federal Rule of Evidence 609(a)(1)

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

The American Association for Justice (AAJ) submits this comment to express general support for abrogating Rule 609(a)(1), which will be discussed by the Advisory Committee on Evidence Rules (Advisory Committee) on April 19, 2024. While not opining on specific drafting options at this time, AAJ supports amendments to Rule 609 that apply to *both* criminal *and* civil cases and publication of those amendments for public comment. With members in the United States, Canada, and abroad, AAJ is the world’s largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, civil rights cases, consumer cases, class actions, and other civil actions, and regularly use the Federal Rules of Evidence in their practice.

The Advisory Committee’s most recent agenda book states that “reported civil cases under Rule 609(a)(1) mostly involve excessive force or prison injuries.” In these particular cases, the impact of prior convictions negates the harm caused to the plaintiff in the pending litigation, and often deters the plaintiff from seeking redress in the first place. Not only is this unfair to the person who has suffered injury, but it also allows systemic harm to continue unchecked.

According to the Equal Justice Initiative¹, about half of all American adults have an immediate family member who was formerly or is currently incarcerated. Researchers found that incarceration rates are higher for communities of color and low-income families.² Yet, these families interact with and are harmed by negligent actors just like everyone else, regardless of

¹ The Equal Justice Initiative (EJI) is a nonprofit organization founded by Bryan Stevenson, a public interest lawyer and author of *Just Mercy*. <https://eji.org/news/half-of-americans-have-family-members-who-have-been-incarcerated/>

² According to the report, which included a survey of more than 4,000 people conducted by FWD.us and Cornell University, Black people are 50% more likely than white people to have a family member who is formerly or currently incarcerated. Family incarceration is more concentrated in poor communities. Adults with household incomes of less than \$25,000 per year are 61% more likely than adults with household incomes over \$100,000 per year to have had a family member incarcerated. Full report at <https://everysecond.fwd.us/#chapter1-12>

their carceral history. As written, the current rule deters people who have been harmed by negligent drivers, medical malpractice, defective products, or been witness to injuries sustained by others from coming forward. Even if the witness has served their time decades ago, and the civil case before the court is completely unrelated to the witness's previous crime, there is still shame and stigma attached to discussing a previously committed crime that may affect their willingness to provide testimony.

AAJ supports the Advisory Committee's review of FRE 609(a)(1) and supports amendments that broadly exclude prior convictions from both civil and criminal cases. Please direct any questions regarding these comments to Susan Steinman, Senior Director of Policy & Senior Counsel, at susan.steinman@justice.org.

Respectfully submitted,

A handwritten signature in black ink that reads "Sean C. Domnick". The signature is written in a cursive, slightly slanted style.

Sean Domnick
President
American Association for Justice