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IMPEACHMENT OF THE CRIMINAL DEFENDANT
BY PRIOR CONVICTIONS

In the century since criminal defendants and ex-convicts became competent
witnesses, no distinction has been made between them in most states in establish-
ing criteria for the admissibility of their prior convictions to impeach their credi-
ability. As long as a prior conviction has some slight relevance to credibility,
most states will allow its admission. When the witness is the criminal defendant,
however, the prior conviction which shows the jury that his testimony is not en-
titled to belief will also characterize him as a lawbreaker. There is a risk that the
jury will then assume that he must be guilty of the present charge even though
the other evidence in the case may indicate his innocence. If a defendant is
convicted in this way, he has been denied the due process of law.

Separate laws are needed to govern the admissibility of a criminal defen-
dant's prior convictions in order to protect against this prejudicial effect. This
note will propose such a statute. To do this, however, requires an understanding
of the two criteria upon which such a statute must be based. Therefore, the first
section explores relevance and the second deals with due process.

I. Relevance

Since the purpose of impeachment is to test credibility, only convictions
indicating a lack of truthfulness should be relevant. Although this has been the
general position of the model codes, it has not been the traditional approach
taken by the states in isolating the relevant convictions; nor has it been the ap-
proach taken by the new Federal Rules of Evidence. This section will first con-
sider the traditional state approaches, then discuss the model codes, and con-

A. Traditional Approaches

In devising criteria for determining which convictions are relevant for im-
peachment, most states have either allowed all convictions to be used for this
purpose or have divided convictions into categories such as felonies, infamous
crimes, and crimes involving moral turpitude. They then allow the use of crimes
within the defined categories for impeachment and prohibit the use of all other
convictions.

One means of avoiding the difficult decisions involved in ascertaining which
convictions are relevant to truthfulness is to treat all convictions as relevant and,
therefore, admissible. Such an approach allows introduction of the fact that

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1 Each of the following state codes is applicable to all witnesses and has been interpreted
as applying to the defendant in a criminal case. IOWA CODE § 622.17 (1971); NEB. REV. STAT.
§ 25-1214 (1965); N.C. GEN. STAT. § 8-54 (1969); ORLA. STAT. tit. 12, § 381 (Supp. 1974);
2 A few states have enacted such laws. Pa. STAT. tit. 19, § 711 (1936); KAN. STAT. ANN.
3 The Minnesota statute on this subject does not restrict the convictions which are ad-
missible for impeachment purposes. MINN. STAT. § 595.07 (Supp. 1974). In a recent case
the defendant "slugged somebody in a bar 10 years ago" even though the conviction in no way reflects upon his credibility.  

1. The Felony-Misdemeanor Distinction

Through legislative action or judicial decision, most states have limited admissibility in an attempt to keep out irrelevant convictions. Some allow the introduction of all felony convictions and prohibit the introduction of misdemeanors. The merit of this approach is that it recognizes a distinction between relevant and irrelevant convictions, but it errs in its premise that the outrageous acts, called felonies, are indicative of a bad character which affects credibility. Not every felon is by the fact of being a felon untruthful, although he may obviously have a "bad" character. Likewise, every misdemeanant is not truthful and certain misdemeanor convictions may in fact indicate untruthfulness. The task of courts and legislatures should be to isolate the convictions, felony or misdemeanor, which do reflect untruthfulness and devise a standard which reflects that fact.

2. Infamous Crimes

A few states have attempted this by limiting impeachment to convictions of infamous crimes on the apparent theory that one who was so morally deadened as to commit such a crime would not hesitate to commit perjury. The problem with this standard is that there exists no consensus on what constitutes an infamous crime. It, therefore, provides only a limited guideline to common understanding and has consequently been followed in few states.

3. Moral Turpitude

A number of states have adopted a standard of impeachment by crimes involving moral turpitude. Some states have used moral turpitude as the sole

the Minnesota Supreme Court held that a misdemeanor not affecting credibility could be used to impeach. State v. Bond, 285 Minn. 291, 173 N.W.2d 347 (1969). A similar standard has been achieved in Louisiana. LA. REV. STAT. § 15:495 (Supp. 1952); State v. Rossi, 273 So. 2d 265 (La. 1973).

4 120 CONG. REC. H553 (daily ed. Feb. 6, 1974) (remarks of Congressman Dennis).


6 This premise was supported in the House debates in an attempt to persuade the House to adopt the felony standard. 120 CONG. REC. H552 (daily ed. Feb. 6, 1974) (remarks of Congressman Hogan).

7 A readily apparent example is a misdemeanor conviction for lying to a federal grand jury.

8 Illinois achieved this standard by judicial interpretation of its statute which on its face appears to allow the use of any conviction for impeachment purposes. ILL. REV. STAT. ch. 38, § 155-1 (1973); People v. Parks, 321 Ill. 143, 151 N.E. 563 (1926).

9 The United States Supreme Court defined it as a crime punishable by imprisonment in a penitentiary. Mackin v. United States, 117 U.S. 348 (1886). Illinois has solved the problem by passage of a statute defining infamous crimes as "arson, bigamy, bribery, burglary, deviate sexual assault, forgery, incest or aggravated incest, indecent liberties with a child, kidnapping or aggravated kidnapping, murder, perjury, rape, robbery, sale of narcotic drugs, subornation of perjury, and theft if the punishment imposed is imprisonment in the penitentiary." ILL. REV. STAT. ch. 38, § 124-1 (1973).
standard of admissibility,\textsuperscript{10} while others have used this standard for misdemeanors and allowed the use of all felony convictions to impeach.\textsuperscript{11} Since moral turpitude focuses on the character of the criminal more than on the seriousness of the offense, it is a better standard for determining admissibility than infamous crime. However, moral turpitude also needs more precise definition to be an acceptable standard. Indeed, state courts have failed to define it in a manner to make it a relevant limitation in practice.\textsuperscript{12}

\textbf{B. Modern Code Standards}

The primary failure of the traditional standards discussed in the previous section is that, even after all ambiguities and definitional problems are resolved, the standards do not draw a line between convictions relevant to credibility and those which are irrelevant. Instead they rest upon the presumption that any criminal conviction indicates lack of credibility.

The American Law Institute recognized this fact when it drafted Rule 106 of the Model Code of Evidence:

\begin{quote}
(1) Subject to Paragraphs (2) and (3), for the purpose of impairing or supporting the credibility of a witness, any party including the party calling him may examine him and introduce extrinsic evidence concerning any conduct by him and any other matter relevant upon the issue of his credibility as a witness... except that extrinsic evidence shall be inadmissible... (b) of his convictions of crime not involving dishonesty or false statement, . . . \textsuperscript{13}
\end{quote}

The Advisory Committee which actually drafted the rule recognized it as a departure from existing law but believed the departure was necessary to limit impeachment "to matters having to do rather directly with credibility, because evidence of bad character in other respects is of little weight and likely to be misused.\textsuperscript{14}

The Model Code failed to influence reform in the states until after the Commissioners on Uniform State Laws incorporated the same standard more succinctly and with more clarity into their Uniform Rules of Evidence. Rule 21 provides:

\begin{itemize}
  \item[10] Peck v. State, 86 Tenn. 259, 6 S.W. 389 (188); VT. STAT. ANN. tit. 12, § 1608 (1973); GA. CODE § 38-1804 (1972).
  \item[13] MODEL CODE OF EVIDENCE rule 106.
  \item[14] MODEL CODE OF EVIDENCE rule 106, Comment b.
\end{itemize}
Evidence of the conviction of a witness for a crime not involving dishonesty or false statement shall be inadmissible for the purpose of impairing his credibility. . . .\textsuperscript{15}

The drafters of the Uniform Rules gave no more justification for this rule than that it is a logical limitation on evidence of convictions for impeachment purposes.\textsuperscript{16}

Only Kansas and the Virgin Islands have enacted the Uniform Rules of Evidence as a substitute for their previous codes of evidence, while California and New Jersey have enacted codes based substantially on the Uniform Rules of Evidence.\textsuperscript{17} The effect of the Model Code and Uniform Rules has therefore been largely confined to legal thinking rather than practical reform.

C. The Federal Rules Standard

While the previous attempts to codify and reform the law of evidence have had limited impact on the states' codes of evidence, the Federal Rules of Evidence will probably have a much greater and longer lasting impact. There are two reasons to anticipate this widespread impact. One is that the rules apply to the United States District Courts sitting in every state. Thus, members of the bar in every state will quickly become familiar with the federal rules and will be influenced by them in pressing for change of their own state rules. The second reason is that the Federal Rules of Evidence have been in the process of formulation for nearly a decade and those proposals at greatest variance with existing state standards have been the subject of widespread debate. These policy debates will surely influence the courts or legislature of any state which contemplates changing its existing rules of evidence.\textsuperscript{18}

Because of the variety of state standards on impeachment by prior convictions, Rule 609 of the Federal Rules of Evidence, the impeachment rule, has been one of the rules most frequently amended in both the Advisory Committee and congressional stages of its formulation.

Rule 609 was first promulgated by the Advisory Committee in its March, 1969, draft in the following language:

Rule 609 (a) General Rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible but only if the crime, (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, or (2) involved dishonesty or false statement regardless of the punishment\textsuperscript{19} (emphasis added).

The Advisory Committee reasoned that a "demonstrated instance of willingness

\textsuperscript{15}\textsc{Uniform Rules of Evidence} rule 21.
\textsuperscript{16}\textsc{Uniform Rules of Evidence} rule 21, Comments.
\textsuperscript{17}\textsc{Handbook of the National Conference of Commissioners on Uniform State Laws} 369 (1973).
\textsuperscript{18}New Mexico has enacted the federal rules of evidence in the form they were drafted by the Advisory Committee. N.M. Stat. Ann. §§ 20-4-101 to 20-4-1102 (1973), see specifically § 20-4-609.
to engage in conduct in disregard of accepted patterns is translatable into willingness to give false testimony.\textsuperscript{20}

This standard was the one incorporated in the final Advisory Committee draft of 1971.\textsuperscript{21} By then, the Committee had an additional reason for adhering to the standard for it had been adopted by Congress in its 1970 amendments to the District of Columbia Code.\textsuperscript{22}

No substantive changes affecting the relevancy standard of Rule 609 were adopted until the House Judiciary Committee, which held no public hearings on the Federal Rules of Evidence, adopted a new formulation of Rule 609:

For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible only if the crime involved dishonesty or false statement.\textsuperscript{23}

Although the Committee was primarily motivated by the due process problems of unfair prejudice and deterrence to the defendant's willingness to take the stand, it recognized that its proposed standard limited admissibility "to those kinds of convictions bearing directly on credibility, \textit{i.e.}, crimes involving dishonesty or false statement."\textsuperscript{24} This standard in fact is that of the Model Code and Uniform Rules.\textsuperscript{25}

In debate on the floor of the House of Representatives, an attempt was made to return to the original Advisory Committee standard with the argument that:

\textit{[t]he character of a witness is material circumstantial evidence on the question of the veracity of the witness. Prior criminal conduct, including all prior felony convictions, is relevant evidence of such character, . . . This is not to say that people with criminal records necessarily lie, but it is to say that juries should weigh the criminal record in determining credibility.}\textsuperscript{26}

This recurring premise that all evidence of bad character as manifested through prior convictions is relevant to credibility was rebutted as it had been by the drafters of the Uniform Rules by a resort to logic:

What we have done in the committee is the logical thing. . . . We have said that, for the purpose of attacking credibility of a witness, evidence that he has been convicted of a crime is admissible only if the crime involved dishonesty or false statement. In other words, if it in fact did bear on his credibility.\textsuperscript{27}

During the House debate it became clear that the scope of the term "dishonesty"
was ambiguous and subject to different interpretations. However, the attempt to amend Rule 609 on the House floor failed and the House enacted the standard of relevance originated in the Model Code of Evidence.

The Senate Judiciary Committee formulated separate rules within Rule 609(a) for the criminal defendant and the nondefendant witness. For the defendant, it retained the House version which allowed use of convictions for crimes involving dishonesty and false statement alone, while it permitted impeachment of other witnesses by felony convictions if in the judge's discretion their probative value outweighed the prejudicial effect.

Senator McClellan proposed the following amendment to Rule 609 on the Senate floor:

General Rule—For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted or (2) involved dishonesty or false statement, regardless of the punishment.

The amendment was offered for the express purpose of returning Rule 609 to the form it had when it was formulated by the Advisory Committee and to conform the federal standard to the standard Congress enacted for the District of Columbia in 1970. The amendment was initially defeated by a tie vote of 35-35. However, after the Senate voted to reconsider its vote, the amendment was passed by a vote of 38-33. With this form of Rule 609, the rules passed the Senate without a dissenting vote.

Since the House and Senate had passed different versions of certain rules, including Rule 609, a Conference Committee devised the following compromise:

General Rule—For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant, or (2) involved dishonesty or false statement, regardless of the punishment.
This compromise passed the Senate and the House, and with the President's signature it became law on January 2, 1975. By its terms the rules of evidence are to become effective 180 days thereafter.

II. Due Process

Determining which convictions are relevant to credibility should only be the first step in determining admissibility when the witness is the criminal defendant. The Constitution guarantees an accused the right to a trial in accordance with due process of law. Due process has been held to include the right of an accused to testify in his own behalf and the right to be presumed innocent with the burden on the government to prove its case against him. Allowing the admission of even relevant convictions such as for filing a fraudulent income tax return can have one of two adverse effects on an accused's rights to due process. In the first instance, the accused may forego the right to testify, thereby keeping from the jury evidence favorable to his defense that only he can provide. On the other hand, if he does testify, the jury upon learning of his past conviction may conclude that he is a criminal and should therefore be convicted even though the evidence in the case could not of itself persuade the jury that the defendant was guilty beyond a reasonable doubt. That this does happen has been recognized by those seeking reform in this area:

[W]e take the position in this country that we are trying a man for the crime with which he is charged and that we have to have evidence of his guilt of that crime; that we do not convict him and send him to the penitentiary simply because he is a generally bad character. Yet, in most States we allow him to be asked about prior convictions if he has the hardihood to take the witness stand on the theory that this reflects upon his credibility ... [W]e get down to the place where we are really convicting the man because of bad character, which we say we do not do ...

The traditional approach to solving this conflict between the admission of relevant evidence and the dictates of due process has been the limiting instruction to the jury. However, this permits the jury to hear evidence damaging to the accused's presumption of innocence upon the specious theory that they will not consider the evidence at the time they finally determine the accused's guilt or innocence. Such objectivity is rarely attained by human nature. The only value of the limiting instruction is that it allows preservation of the form of due process after the substance has been destroyed. Between the use of a limiting instruction and a total ban on the use of prior conviction against a criminal defendant, the states have used at least three intermediate methods to control the admission of relevant convictions.

40 In re Oliver, 333 U.S. 257 (1948); Hovey v. Elliott, 167 U.S. 409 (1897).
A. Objective Limitations

Objective limitations are those which consider not the nature of the impeaching crime but an external feature, such as its age, in determining its admissibility. The premise is that although a conviction is relevant to honesty or truthfulness it should not be used to impeach because its use would be highly prejudicial or otherwise violative of public policy. Thus, a conviction for perjury which is 35 years old is relevant to the accused's credibility, but its remoteness is such that its relevance is outweighed by the risk that it will convict the defendant in violation of due process.

The remoteness limitation has been one of the most widely used. The chief difference between the states relying upon it has been the length of elapsed time which will bar admission and whether it is measured from the time of conviction or release from confinement. Although some states prohibit the use of juvenile convictions, other states permit their introduction, while still others allow their introduction in limited circumstances. Another objective limitation prohibits the use of convictions for which a pardon has been granted. Some states also forbid the use of convictions on which an appeal is pending, although in other states such convictions are admissible with the fact of the appeal introduced to affect the weight to be given the conviction.

Rule 609 of the Federal Rules of Evidence contains all these limitations.

46 Texas measures from the date of release from confinement and requires a ten-year period free from any incarceration to cut off any prior convictions. Stewart v. State, 503 S.W.2d 286 (Tex. Crim. App. 1973). In Texas a 1945 conviction could be used to impeach a defendant if he was released from custody on the conviction in 1956, was convicted on a second charge in 1965, and is standing trial on a third charge at the present time. The Vermont statute, however, appears to incorporate an absolute cutoff fifteen years after the conviction regardless of the defendant's subsequent conviction record. Vt. Stat. Ann. tit. 12, § 1608 (1973). The merit of this latter position is its recognition that the conviction not the sentence is the relevant factor and that keeping alive of old convictions for the purpose of impeachment has a cumulative effect more likely to prejudice the jury than would limiting impeachment to more recent convictions.
48 Tarrants v. State, 236 So. 2d 360 (Miss. 1970).
49 North Carolina permits the use of juvenile convictions to impeach only if the same conduct would be criminal in an adult. Thus, a juvenile adjudication for theft would be admissible, but a curfew violation would not. State v. Miller, 281 N.C. 70, 187 S.E.2d 729 (1972). Oklahoma and West Virginia permit the use of convictions as a juvenile if the conviction was in adult court after waiver by the juvenile authorities. Curtis v. State, 518 P.2d 1288 (Okla. Crim. App. 1974); State v. Thomas, — W. Va. —, 203 S.E.2d 445 (1974).
51 State v. Blevins, 425 S.W.2d 155 (Mo. 1968); Adkins v. Commonwealth, 309 S.W.2d 165 (Ky. App. 1958).
Rule 609 (b) prohibits the use of a conviction that is more than 10 years old unless the court determines in the interests of justice that the probative value of a conviction more than 10 years old outweighs its prejudicial effect. The 10 years is measured from the date of conviction or the date of release from confinement, whichever is later. A subsequent conviction does not keep a conviction admissible beyond the 10-year limit.\(^{58}\)

Rule 609 (c) prohibits the use of a conviction for which a person has been pardoned or for which rehabilitation is shown unless the person is subsequently convicted of another felony.\(^{64}\)

Rule 609 (d) prohibits the use of juvenile convictions to impeach a defendant although these adjudications may be used against a nondefendant witness in a criminal case.\(^{65}\)

On the use of convictions upon which appeal is pending, Rule 609 (e) permits their admission with the fact that appeal is pending presented to the jury in order that the jury may assess the weight to give the convictions.\(^{56}\)

Although the objective limitations protect an accused's due process rights, they do not go far enough. An adult conviction of recent origin could still be so prejudicial in its effect that the accused's right to a fair trial would be jeopardized if the conviction were to be offered into evidence.

### B. Judicial Discretion

Rather than relying merely on objective limitations which may not be entirely adequate, many states have relied upon judicial discretion to control the admissibility of relevant convictions which might be unduly prejudicial to the accused.\(^{67}\) In recent times, this doctrine has been known as the Luck doctrine after the District of Columbia case, *Luck v. United States*,\(^{68}\) which recognized its existence in the District of Columbia. Luck was convicted of burglary after his past convictions were admitted for impeachment purposes. In reversing the conviction, the Court of Appeals determined that admission of the prior convictions had been unduly prejudicial and that the trial judge could have excluded them from evidence since the statute governing their admission used the permissive "may be given in evidence" rather than the mandatory "shall."\(^{59}\)

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54 Id.
55 Id.
56 Id.
57 People v. Beagle, 6 Cal. 3d 441, 99 Cal. Rptr. 313, 422 P.2d 1 (1972); People v. Montgomery, 47 Ill. 2d 510, 268 N.E.2d 695 (1971); State v. Martin, 217 N.W.2d 536 (Iowa 1974); People v. Dye, 356 Mich. 271, 96 N.W.2d 768 (1959); State v. Mann, 112 N.H. 412, 297 A.2d 664 (1972); a few states have forbidden the judge to use his discretion to keep out convictions which are admissible under the statute or prior decisions. State v. Hawthorne, 49 N.J. 130, 228 A.2d 682 (1967); State v. Bitting, 162 Conn. 1, 291 A.2d 240 (1971). Minnesota has held that the discretion is in the prosecutor. Once he decides to use a conviction to impeach, the trial judge has no discretion to bar its admission. State v. West, 285 Minn. 188, 173 N.W.2d 468 (1969).
58 348 F.2d 763 (D.C. Cir. 1965).
59 Id. at 768, citing D.C. CODE ANN. § 14-305 (1961): "No person shall be incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of crime, but such fact may be given in evidence to affect his credit as a witness. . . ." (Emphasis added by court.)
Although the original draft of the Federal Rules did not include a judicial discretion standard, the second draft of Rule 609(a) did include such a standard precisely so that the federal rules would be in harmony with *Luck*. However, Congress in 1970 had already repealed the *Luck* doctrine through amendment of the District of Columbia Code. When the Advisory Committee learned of this, it returned Rule 609(a) to its previous form in order to comport with congressional intent.60

Although judicial discretion appears to be an attractive approach to the problem, its principal handicap is that it does not give an accused notice in advance whether his convictions will be used against him. Instead, it is only after running the risk by testifying that he learns the answer. Therefore, he cannot weigh wisely the advantages and disadvantages of taking the stand when reaching a decision on that question. "It leaves it all up to the discretion of the judge without any rule."61

C. Defendant Control

Rather than leaving the decision on admissibility up to the judge's determination, a small number of jurisdictions allow the defendant himself to determine whether he will be impeached or not by his prior convictions. The first such enactment occurred in England. The Criminal Evidence Act of 189862 allowed the admission of prior convictions of the accused only if he attempted to establish his own good character, sought to impugn the character of prosecution witnesses, or testified against any other person charged with the same offense.

The Model Code of Evidence Rule 106 and Uniform Rule of Evidence Rule 21 took an even more restricted approach. Prior convictions could not be used unless the accused introduced evidence for the sole purpose of supporting his credibility. The motivation for the drafters choosing this standard was compliance with the requirements of due process.63 Kansas adopted this standard by statute.64 More recently, the Supreme Court of Hawaii adopted this standard in *State v. Santiago*.65 The court perceived this approach as mandated by the due process requirement.66 The law at the time Santiago was tried permitted impeachment of all witnesses by prior convictions whenever they took the stand.67 This was held to be unconstitutional where the witness was also the accused. As a result, the Hawaii legislature passed a statute in 1972 which treats the accused differently than other witnesses and allows him to be impeached by prior convictions only if he introduces testimony solely to support his credibility.68

60 *Hearings on H.5463 Before the Special Subcomm. on Reform of Federal Criminal Laws of the House Comm. on the Judiciary, 93d Cong., 1st Sess., ser. 2, at 29 (1973).*
62 61 & 62 Vict., c. 36, § 1 (f).
63 *Model Code of Evidence* rule 106, Comment on para. 3.
66 *Id.* at 661.
67 "A witness may be questioned as to whether he has been convicted of any indictable or other offense; and upon being so questioned if he either denies the fact or refuses to answer it shall be lawful for the party questioning to prove the conviction." *Hawaii Rev. Stat.* § 222-22 (1955).
68 "... In a criminal case where the defendant takes the stand, the defendant may not
The approach taken by jurisdictions which allow the defendant to control by the substance his own testimony whether his prior convictions will be admitted against him ensures greater adherence to the substance of due process; it assures the defendant that he can testify in his own defense without running the risk that his prior convictions will convict him.

III. Conclusion

A variety of approaches have been undertaken in handling the problem of impeachment by prior convictions when the witness being impeached is the criminal defendant. However, none of these attempts to deal with the problem has attained the ideal standard of satisfying both relevancy and due process. Further reform in this matter should be along the lines of the following proposal:

§ 1 The testimony of the defendant in a criminal prosecution shall not be impeached by evidence of his prior convictions for crime unless he first introduces evidence for the sole purpose of supporting his credibility as a witness. Prior convictions which may be used to impeach under this section shall be limited to those for offenses involving theft, larceny, deceit, fraud, perjury, or false statement, whether denominated as felonies or misdemeanors.

§ 2 No conviction obtained more than ten years previous to trial shall be used to impeach, regardless of the length of time which has elapsed since the defendant’s release from custody on such prior conviction.

§ 3 No conviction obtained while the defendant was a juvenile shall be used to impeach him in a criminal prosecution.

§ 4 No conviction for which a pardon, annulment or certificate of rehabilitation has been issued shall be used to impeach the defendant in a criminal prosecution.

§ 5 No conviction shall be used to impeach the defendant in a criminal prosecution unless all direct appeals have first been exhausted or the time for direct appeal has elapsed.

Until such a standard is universally enacted, the uncertainties a criminal defendant faces when deciding whether to take the stand and the danger of extreme prejudice that follows once he does take the stand will remain. Although final enactment of the Federal Rules of Evidence may well bring further reform in this area to an end for the foreseeable future, there are aspects of impeachment by prior convictions which still require clarification. Hopefully, the next wave of law reform will address itself to these problems.

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be questioned or evidence introduced as to whether he has been convicted of any indictable or other offense unless the defendant has himself introduced testimony for the sole purpose of establishing his credibility as a witness. . . .” HAWAII REV. STAT. § 621-22 (1972).