

Research on Character Evidence in Cases of Sexual Assault on Minors

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Abstract

Character evidence refers to specific facts that demonstrate an individual's behavioral traits, including personal statements or testimonies and evaluations provided by others. In cases of sexual assault involving minors, due to the highly concealed nature of such crimes and the young age of the victims, evidence collection and fact-finding face significant challenges. As a result, character evidence plays a crucial role in these cases. When handling sexual offense cases against minors, judicial authorities can draw from U.S. legal practices to overcome these difficulties. This includes considering the defendant's prior similar offenses during conviction and sentencing, establishing clear standards for the admissibility of character evidence, and implementing procedural safeguards to ensure the fairness of the trial.

Keywords

Character evidence; Sexual assault of minors; Unfair prejudice; Relevance

1. Introduction

The Prosecutorial Work on Minors White Paper (2023), released on May 31, 2024, reveals that in 2023, national procuratorial organs approved the arrest of 53,286 individuals for crimes against minors and prosecuted 67,103 individuals, representing year-on-year increases of 35.3% and 14.9%, respectively. Among these cases, 16,972 juvenile suspects were prosecuted for crimes against minors, a 24.9% increase compared to the previous year, accounting for 25.3% of all crimes against minors. Notably, offenses against minors are highly concentrated in specific categories. Prosecutions for rape, child molestation, and forcible indecency or insult—three types of sexual offenses against minors—totaled 38,232 cases, a 3.45% increase, making up 71.75% of arrests and 56.98% of prosecutions for crimes against minors.

These statistics demonstrate a rising trend in both the frequency and severity of sexual offenses against minors. However, judicial authorities face significant evidentiary challenges when handling such cases. Common issues include insufficient evi-

dence, a lack of objective proof, questions regarding the testimonial competence of minor victims, inconsistent victim statements, and frequent instances of defendants refusing to confess (so-called "zero-confession" cases). In practice, many sexual assault cases involving minors present a unique evidentiary dilemma: the defendant's account directly contradicts the victim's testimony, creating a "one-on-one" evidentiary standoff that severely complicates efforts to protect minors' legal rights.

From an evidence law perspective, character evidence—including a defendant's prior similar misconduct—is generally inadmissible in criminal trials due to its lack of relevance to the current case. The U.S. Federal Rules of Evidence prohibit using a defendant's character as proof of guilt in principle, but they also establish exceptions for specific circumstances. One of the most notable exceptions permits the admission of a defendant's prior sexual offenses against children as evidence of guilt in child sexual assault cases, provided certain conditions are met.

Although China has yet to develop a systematic framework for character evidence rules (including exceptions), the sharp increase in sexual assault cases against minors has led to a recurring dilemma in judicial practice: cases with insufficient evidence often involve defendants with prior records of similar offenses. Against this backdrop, studying foreign legislative approaches—particularly the exceptional admissibility of character evidence in specific criminal cases—holds significant reference value for constructing a specialized evidence rule system for sexual offenses against minors in China.

2. An Overview of Basic Character Evidence

An Overview of Basic Character Evidence In the Modern Chinese Dictionary, the term character is defined as conduct and style. It is often used to evaluate an individual's personal qualities and to reflect a person's external moral standards. In China, the general explanation of character has a wide scope and strong subjectivity. According to some legal scholars in our country, from a broad perspective, character encompasses all qualities that an individual possesses, such as distinguishing between good and bad people; from a narrow perspective, character is a description of a specific aspect of a person's personality, for example, describing someone as honest or hypocritical.

British scholar Peter Murphy elaborated on the concept of "character" in *Murphy on Evidence*, pointing out that "character" encompasses three distinct dimensions. The first dimension refers to the reputation and evaluation an individual acquires within their social environment and community—essentially, how others perceive and judge the person. The second dimension involves the stable psychological tendencies displayed in an individual's conduct, representing relatively fixed patterns of psychological response in various situations. The third dimension specifically pertains to the factual records of an individual's past actions, particularly prior criminal convictions that have been adjudicated under the law. Murphy's multidimensional

definition of the concept of character has gained widespread recognition in academic circles.

American scholar McCormick further developed this theory by defining the essence of character as an individual's specific dispositional tendencies, including traits such as integrity, self-discipline, and a peaceful temperament. McCormick's definition particularly emphasizes the stability of character as a personality trait—that these qualities are not easily changed. Contemporary American scholars like Graham and others refined the theoretical framework by distinguishing between two key concepts: "habit" and "character." A "habit" refers to a fixed behavioral pattern formed in response to specific familiar situations, applicable only to particular contexts. In contrast, "character" manifests as a consistent behavioral style across different situations, reflecting stable personality traits. A habit is an automatic response in familiar circumstances, requiring little conscious thought, driven by behavioral inertia. Character, however, encompasses not only an individual's habits but also the underlying personality tendencies that shape them.

By synthesizing academic interpretations of "character," its core definition can be summarized as: a stable disposition formed through social interactions, consistently reflected in behavior. This stability and observability provide the theoretical basis for using character as evidence. Specifically, character evidence refers to proof demonstrating the character of legal parties (defendants or victims) and has three key features: 1. Behavioral consistency-reflecting enduring conduct tendencies; 2. Non-independent probative value-requiring corroboration with other evidence; 3. Moral evaluative nature-often involving ethical judgments about personality.

In the Anglo-American evidence law system, the character evidence rule stands as one of the most complex evidentiary doctrines. Developed over centuries of judicial practice and theoretical refinement, it has ultimately adopted a legislative model of "general prohibition with exceptional admissibility." This regulatory approach reflects both caution against the potential prejudice of character evidence and recognition of its unique probative value in specific circumstances. It fully embodies the Anglo-American evidence law's pursuit of a meticulous balance between uncovering the truth and ensuring procedural fairness.

3. The Current Application Status of Evidence on the Character of Defendants in China

At the legislative level, China's laws do not provide a clear definition of "character evidence", but there are three types of legal provisions involving the defendant's bad character. The first category regards criminal record acts as elements of a crime. For instance, the provision in the Criminal Law regarding "repeated theft" regards the criminal record act of repeated theft as one of the conditions for constituting the crime of theft. The second category takes the defendant's consistent performance as a sentencing factor, which is reflected in the recidivist system and the leniency sys-

tem for guilty pleas and acceptance of punishment. The recidivist system considers the defendant's previous criminal circumstances, while the leniency system for guilty pleas and acceptance of punishment takes into account the defendant's consistent performance such as attitude during the litigation process, thereby determining the sentence. The third category is to use criminal records to prove subjective intent. For instance, in smuggling cases, the determination of "knowing" is based on the defendant's previous related behaviors to infer whether they knew subjectively. However, unlike the "character evidence injunctions" and their exceptional circumstances stipulated in the Federal Rules of Evidence of the United States, Chinese law does not clearly state whether a defendant's bad character can be used to infer their criminal intent.

In judicial practice, the application of character evidence presents a rather chaotic state. Due to the lack of a unified application standard, the public prosecutor has the power to decide on its own whether to use character evidence during the litigation process, and judges can also discretionary whether to accept such evidence during the trial process. Relatively speaking, the defendant often finds it difficult to make effective rebuttals and defenses in such circumstances. This uncertainty leads to the fact that in judicial practice, different courts hold completely different attitudes towards the same type of character evidence. Some courts exclude the criminal record evidence of the defendant from the basis for the verdict, while others accept such criminal record evidence. There are also obvious differences when dealing with reputation evidence. Some courts hold that reputation evidence is irrelevant to the case and should not be accepted, while others use it as circumstantial evidence. More crucially, when judges are handling cases, they usually do not disclose the review process of character evidence. Instead, they often adopt the evidence merely on the grounds of "relevance", without conducting a thorough analysis and explanation of whether the evidence has the qualification to serve as a basis for a verdict and its effectiveness in proving the facts of the case.

Despite the above-mentioned problems of application confusion, there are still some breakthrough cases in judicial practice. In the trial of a certain case of indecency against a child, the court broke the norm and innovatively adopted the defendant's previous criminal record evidence, comparing and complementing it with the victim's statement, and ultimately determined the criminal facts. This judgment result has broken through the traditional concept that "character evidence has no relevance" in the past, providing new ideas and methods for the application of evidence in cases of sexual assault against minors in the future.

Overall, although the current legislation in our country has not yet clearly defined the value of the defendant's bad character in conviction, under the dual pressure of the difficulty in collecting evidence in criminal cases and strengthening the protection of minors, judicial practice has begun to attempt to utilize the defendant's criminal record evidence. The current urgent problem to be solved is the disconnect-

tion between theoretical research and judicial practice. It is necessary to formulate a systematic and complete set of rules for character evidence to change the current chaotic situation of the application of character evidence in judicial practice. Establishing such rules is not only related to the fairness and impartiality of judicial trials, but also an indispensable and important link in improving the judicial protection mechanism for minors in our country.

4. Application and Implications of Evidence on the Character of Defendants in Cases of Sexual Assault against Minors in the United States

The "Prohibition of Character Evidence", as a long-standing principle in the common law tradition, its core content is to prohibit one party in a lawsuit from using other bad behaviors of the other party as evidence to prove that the defendant committed the alleged crime. In the judicial practices of the United Kingdom and the United States, there are obvious differences in the implementation of this principle. In the early days of the British judiciary, the attitude towards character evidence was relatively lenient. At first, the application scope of this evidence was limited to civil forgery and fraud cases. It was not until the Regina case in 1849 that the British judiciary made a breakthrough in allowing character evidence to be adopted in murder cases, but at the same time set strict application conditions. Unlike the United Kingdom, the judicial practice in the United States has always adopted a cautious attitude towards evidence of the defendant's bad character and firmly excluded it. The main reason is the concern that the jury will make biased judgments based on the defendant's bad character.

In the trials of sexual assault cases involving minors in the United States, the application of the exception rule for character evidence presents three notable characteristics. The first characteristic is manifested in the attitude of judicial authorities, which show a positive tendency to exceptionally adopt character evidence in such special cases. This positive attitude not only reflects the value orientation of the current evidence rules in protecting public interests, but also effectively alleviates the common problem of evidence collection in such cases, enabling the prosecution of sexual assault crimes to be carried out more precisely. Meanwhile, by establishing a complete reasoning mechanism, American courts have eliminated the possible negative impact of character evidence on defendants and maintained judicial credibility.

In the judicial practice of the United States, when courts apply the exception rule of character evidence, they attach great importance to safeguarding the defendant's right to a fair trial. The judicial authorities are fully aware of the potential adverse effects that Articles 413 and 414 of the Federal Rules of Evidence may cause, and therefore strictly follow the balanced test standards in the process of judicial discretion. When assessing the eligibility of criminal record evidence, the court not only

elaborately explains the legislative purpose and the meaning of the provisions, but also meticulously examines historical practices and fully guarantees the defense's right to cross-examine. Actual cases show that the US courts strictly supervise the prosecution's fulfillment of the legal obligation to disclose evidence, requiring the prosecution to disclose the character evidence to be used and its purpose of proof to the defense within a reasonable period before the trial. If the prosecution fails to fulfill this obligation without justifiable reasons, the court will prohibit it from invoking the exception rule for character evidence. This kind of program design effectively avoids the occurrence of evidence raids and ensures the fairness and transparency of the judicial process.

In the operation of the judicial system in the United States, efforts have always been made to seek a value balance between the rights and interests of defendants and the protection of victims. This balance fundamentally reflects the dual value pursuit of punishing crimes and safeguarding human rights. Although the exception rule of character evidence is more inclined in institutional design to protect the victim and emphasize its role in punishing crimes, the US judicial system has not ignored the basic requirements for the protection of human rights. Since the relevant rules were legislated in 1994, with the gradual expansion of review elements and the continuous improvement of discretionary standards, this rule has gradually developed in a refined direction, aiming to achieve a reasonable balance of the interests of all parties in specific cases. This institutional design that takes into account multiple values has made the character evidence rules of the United States a model for reference by countries around the world.

5. Construct the basic ideas for the application of evidence on the defendant's character in cases of sexual assault against minors in China

5.1 Reflections on the Relevant regulations of the United States on the Application of evidence of the defendant's character in cases of sexual assault against Minors in China

There are differences in the judicial systems and litigation procedures between China and the United States. Such differences make it impossible for the defendant's character evidence exception rule applicable in cases of sexual assault against minors in the United States to be directly applied to judicial practice in China. When the US legislation established this exception rule, it granted judges greater discretion, stipulating that courts should treat similar criminal record evidence of the defendant equally with other evidence when hearing cases, without setting any additional application conditions. This institutional design is based on the specific judicial background of the United States. As a country with case law, judges in the United States are bound by precedents when handling cases. Moreover, before the formal legislation in the 20th century, the United States had accumulated nearly a hundred

years of judicial practice experience through the "lecher tendency" exception. In contrast, China is not a case law country, and the existing application cases of character evidence have no binding force on other courts. Although the Supreme People's Court has issued the "Work Procedures for the Construction and Operation of Case Libraries of People's Courts" to establish a case reference mechanism, the relevant judicial experience in China is still insufficient at present. From this, it can be seen that if China draws on Articles 413 and 414 of the Federal Rules of Evidence of the United States to establish exceptional rules for character evidence, necessary restrictions must be imposed on the discretionary power of judges.

When American courts assess the value of character evidence, they often overly focus on the similarity between the accused crime and previous bad behavior. This judgment criterion stems from Wigmore's "opportunity principle". However, the assessment method centered on similarity has significant flaws. For instance, a defendant was accused of sexually assaulting a 12-year-old daughter at night. His previous criminal record was sexually assaulting a 3-year-old boy and a 4-year-old girl respectively in a nursery, and the time, method and place of the crimes were all different. If strictly in accordance with the similarity criterion, such evidence is likely to be excluded due to insufficient probative force. However, from an essential analysis, these criminal records precisely reflect that the defendants have obvious tendencies of sexual assault against minors and have significant probative value. This contradiction fully exposes the limitations of the row evaluation method, that is, similarity can deduce correlation, but correlation does not necessarily premised on similarity. Therefore, when constructing the exception rules of character evidence, it is necessary to break through the formal similarity comparison and redefine the evaluation criteria of proof value starting from the essential feature of "tendency". This is not only the key to improving the rule of character evidence, but also a necessary condition to ensure that this rule plays a role in judicial practice.

5.2 Specific ideas for constructing evidence of the defendant's character in cases of sexual assault against minors in China

The academic circle in our country has long maintained a cautious attitude towards character evidence. The root cause lies in the simplification of the understanding of its connotation, that is, simply equating character evidence with the more subjective reputation evaluation. In fact, character evidence consists of three dimensions, namely reputation, opinion and specific behavioral examples. Among them, the two types of evidence, reputation and opinion, do have a strong subjectivity and a weak correlation with specific behaviors. However, the third type of specific behavioral examples have the characteristic of objectivity. The proof method of deriving behavioral tendencies through empirical rules conforms to logical requirements. According to statistical principles, when abnormal events repeatedly occur in similar forms, it is difficult to explain them by chance. It is more likely to be a manifestation

of the actor's specific tendencies. Based on the above viewpoints, China should clearly recognize that in cases of sexual assault against minors, the defendant's previous criminal record has the qualification of evidence and establish a systematic set of application rules. Specifically, it can be implemented from the following five aspects.

Establish a necessity review mechanism and strictly limit the scope of application of criminal record evidence

1) Establishing a necessity review mechanism and precisely defining the application boundaries of criminal record evidence are important measures to ensure judicial justice. The introduction of character evidence is mainly to solve the unique proof difficulties in cases of sexual assault against minors. Therefore, when the defendant has pleaded guilty and accepted punishment, or when the facts of the case are supported by sufficient evidence, the application of character evidence should be excluded to prevent the emergence of bias risks. At the same time, considering the special nature of acts that infringe upon minors, "criminal record acts" should be strictly limited to sexual abuse of minors that are homogeneous with the alleged acts, as well as acts confirmed by judicial or administrative procedures, such as criminal judgments, administrative penalty decisions or non-prosecution decisions, etc. Through such strict limitations, the reliability of the basic facts and the legality of the evidence can be ensured.

2) Build a multi-level correlation evaluation system

Constructing a multi-dimensional correlation evaluation system is the key to achieving the rational application of character evidence. When considering the adoption of criminal record evidence, judges need to follow a logical reasoning path, that is, to infer the criminal tendency of the defendant from his past behavior and further establish a connection between this tendency and the behavior in this case. This process requires judges to, on the one hand, ensure the logical rationality of the reasoning chain and, on the other hand, be vigilant against the potential bias risks that may arise from it. The core of relevance assessment should focus on two main aspects: Firstly, assess the intensity of the substantive association between the previous criminal record behavior and the facts of this case; Secondly, weigh the possible unjust effects that this evidence may bring. When there is no dispute over the identity of the actor in a case, confirming whether the defendant has a tendency to sexually assault minors often becomes a key factor in the judgment. Therefore, when judges apply character evidence, they need to carefully balance the probative value of the evidence and the potential risk of bias while ensuring relevance, in order to maintain the fairness of the judiciary.

3) Improve the procedural guarantee mechanism

Constructing a sound procedural guarantee mechanism is the key to achieving a balance of rights between the prosecution and the defense. To fully guarantee the defense rights of the defense side, it is necessary to establish a pretrial evidence dis-

closure system. Specifically, the prosecution should submit a written notice to the defense 15 days before the court session, which should detail the content of the evidence, the purpose of the proof and the reasons for adoption. The defense has the right to raise an objection within 7 days after receiving the notice and provide a detailed explanation of the reasons for the objection. After the initial review, if the judge determines that the relevant evidence does not meet the legal requirements, it may be directly excluded. However, given the significance of the principle of protecting minors, for disputed evidence, it is advisable to resolve it through substantive trial in a formal court hearing. This kind of program design can not only effectively avoid evidence surprise attacks, but also ensure the substantive fairness of case trials, thereby safeguarding judicial efficiency while maintaining judicial justice.

4) Strengthen the requirements for referees' reasoning

Strengthening the requirement of reasoning in judgments plays a crucial role in enhancing judicial transparency and credibility. In current judicial practice, the problem of brevity in evidence analysis is rather prominent and urgently needs to be improved. For this reason, judges should be required to provide detailed explanations in the judgment regarding the review process of criminal record evidence, the logical reasoning behind the formation of mental evidence, and the specific assessment of the probative force of the evidence. Through sufficient reasoning, on the one hand, it can effectively restrain the discretionary power of judges and avoid the arbitrariness of judicial decisions; On the other hand, it can enhance the social recognition of the judgment results, resolve the doubts of all sectors of society about the special evidence rules through the transparency of the procedure, and thereby improve the credibility and authority of the judiciary.

5) Establish a typed guidance case system

Constructing a typed guiding case system is of great significance for unifying the standards of judgment. The Supreme People's Court can provide exemplary guidance on core issues such as the adoption standards and probative force assessment methods of criminal record evidence by releasing typical cases. In this way, the unification of the standards of judgment can be gradually achieved, avoiding the injustice caused by the confusion in the application of standards in judicial practice.

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