

The Construction of Character Evidence Rules for Defendants in Child Sexual Abuse Cases in China

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Abstract: This paper begins by examining the current application of defendant's character evidence in child sexual abuse cases within China's judicial system and identifies the issues arising from its use. By analyzing the specific provisions on character evidence in the U.S. *Federal Rules of Evidence* in such cases, the study summarizes its core features, which include broad judicial discretion, a wide scope regarding prior similar acts, and a strong focus on the comparison of behavioral similarities. The feasibility of adapting these principles to the Chinese legal context is then carefully evaluated. Based on this analysis, the paper proposes a framework for establishing a systematic set of rules governing the use of character evidence in child sexual abuse cases in China. This framework advocates for strictly limiting the admissibility criteria and scope of such evidence, introducing rigorous standards to assess its substantive probative value, and implementing procedural safeguards to protect defendants' rights. The goal is to achieve a balanced approach that effectively combats criminal conduct while safeguarding the legitimate rights of the defendant, thereby enhancing the accuracy and fairness of judicial proceedings in these cases.

Keywords: Child Sexual Abuse Cases; Character Evidence; Federal Rules of Evidence

1. Introduction

According to the *White Paper on Juvenile Prosecution Work (2024)* issued by the Supreme People's Procuratorate on June 16, 2025, the number of prosecutions nationwide for crimes involving sexual offenses against minors includes 25,558 cases of rape, 11,650 cases of child molestation, and 3,627 cases of coerced molestation and insult, collectively accounting for 54.8% of the total prosecutions for offenses against minors. [1] It is evident that child sexual

abuse cases remain a focal point of criminal justice enforcement. Given the persistent scarcity of evidence in such cases, the question of whether defendants' sexual character evidence may be introduced as a basis for establishing criminal propensity has become a highly contentious and unresolved issue in judicial practice. China's current legal framework lacks explicit provisions guiding the use of such evidence, and its application in practice is marked by inconsistency and disorder. This not only undermines the accuracy of fact-finding but also risks infringing upon defendants' rights to a fair trial. Therefore, there is an urgent need to develop a set of character evidence rules aligned with China's national conditions.

2. The Application of Character Evidence Regarding Defendants in Child Sexual Abuse Cases in China

2.1 Current Status of the Application of Character Evidence in Child Sexual Abuse Cases in China

From a legal normative perspective, China has yet to establish a formal set of rules governing character evidence, leaving unresolved whether judges may admit evidence of a defendant's immoral character to prove the facts in dispute. The prevailing academic view cautions that the use of unfavorable character evidence risks prejudicing the judiciary and compromising trial fairness; however, child sexual abuse cases differ significantly from other crimes and arguably provide a legitimate space for the application of character evidence. On one hand, the core facts in sexual abuse cases frequently lack objective forensic evidence—physical traces such as semen, stains, blood, or wounds are seldom preserved. This is particularly evident in child molestation cases where, if a physical examination of the victim is not conducted in a timely manner, any related traces may gradually heal and ultimately vanish over

time. [2] In the absence of physical evidence, the abused minor, often the sole eyewitness, provides a statement that serves as—and will likely remain—the primary evidence in the case, though its probative force may be weakened by the child’s level of cognitive development. On the other hand, from an empirical standpoint, defendants who have previously committed sexual offenses are statistically more likely to reoffend sexually than those convicted of other ordinary crimes, thereby imbuing sexual character evidence with heightened probative significance in such cases. [3] As a consequence, although Chinese statutory law remains silent on character evidence, judicial practice has gradually relaxed evidentiary thresholds in child sexual abuse cases, permitting adverse character evidence to play a critical role in factual determinations. Research conducted via the Peking University Law Database, using keywords such as “prior conviction for rape” and “prior conviction for child molestation”, indicates that while character evidence seldom constitutes a direct basis for conviction, courts frequently consider a defendant’s prior bad character as a mitigating or aggravating factor during sentencing. This indicates that although character evidence rules remain an area yet to be codified in Chinese legislation, their embryonic forms have long been present in judicial practice.

2.2 Issues in the Application of Character Evidence in Child Sexual Abuse Cases in China

Despite the absence of formal legislation regulating character evidence, judicial practice is rife with disputes and has yet to establish a consistent set of adjudicative rules or rationales. [4] Presently, character evidence occupies an awkward middle ground wherein prosecutors are permitted to introduce such evidence, judges may admit it, yet defense arguments contesting its admissibility or relevance are largely disregarded. [5] Firstly, given the often limited scope of evidence the prosecuting authorities can furnish, prosecutors typically present defendants’ prior adverse character evidence to buttress their allegations, while neglecting to present evidence of good character. Secondly, in the absence of detailed procedural guidelines, judges rely heavily upon their personal value judgments and exercise broad discretion based on free evaluation of evidence when deciding

whether to admit character evidence. This lack of clear standards has led to inconsistent and sometimes erroneous applications of such evidence, thereby exposing the judicial process to the risk of divergent verdicts in analogous cases, notwithstanding generally acceptable conclusions reached through intuitive assessments. Furthermore, since the victims of sexual assault are mostly underage females, in the trial process, cases are mostly presided over by female judges. Based on the prosecution-oriented thinking that our courts have always adhered to and the perspective of female judges that they prioritize protecting women, it is easier to impose additional adverse effects on the defendants. Finally, when the defense attempts to challenge and refute the character evidence presented by the prosecution, the results are often ineffective. It is easier to produce evidence than to disprove it. The threshold for the prosecution to present character evidence is relatively low, while the defense needs to bear extremely high responsibility for proving or denying its relevance. Moreover, once the judge comes into contact with the adverse character evidence provided by the prosecution, they are inevitably biased against the defendant, thereby infringing upon the defendant’s fair trial rights.

In light of the foregoing, it is evident that the application of defendant’s character evidence in child sexual abuse cases in China is marked by disorder and a lack of unified standards, failing to meet the practical demands of contemporary judicial practice. Consequently, it is imperative to construct a comprehensive and coherent regulatory framework to address the existing challenges associated with character evidence use. Given the absence of an established institutional foundation for character evidence in Chinese law, reference may be drawn from the *United States Federal Rules of Evidence* to inform the development of a tailored set of rules governing the use of defendants’ character evidence in Chinese child sexual abuse cases.

3. The Reference to U.S. Legal Rules on Defendant’s Character Evidence in Child Sexual Abuse Cases

3.1 Provisions on Character Evidence in the U.S. Federal Rules of Evidence

To safeguard defendants’ right to a fair trial against prejudicial harm, Rule 404(a) of the

Federal Rules of Evidence enshrines a general prohibition on the use of character evidence to prove that a person acted in conformity therewith on a particular occasion. Nevertheless, in child sexual abuse cases, the frequent absence of physical evidence coupled with the typically private nature of the offense, and the diminished evidentiary weight of the victim's testimony due to their cognitive development, presents an evidentiary impasse. In response, Rules 413 and 414 of the *Federal Rules of Evidence* carve out a crucial exception, permitting the admissibility of a defendant's prior acts of sexual misconduct involving minors as character evidence to prove disputed facts. Specifically, in prosecutions alleging sexual offenses against minors, courts may admit evidence of the defendant's previous sexual abuse of other minors, which can be considered on any consequential matter. Such prior acts may be introduced regardless of whether they resulted in criminal charges or convictions. However, the scope of admissibility is confined to concrete similar acts rather than abstract character assessments, and the prosecution is required to disclose this evidence to the defendant in advance.

3.2 Characteristics of the U.S. Character Evidence Rules and Their Feasibility Analysis within the Chinese Judicial Context

Given the divergence between the litigation systems and judicial circumstances of China and the United States, the character evidence rules under U.S. law cannot be transplanted wholesale into China's judicial practice. It is therefore imperative to dissect the distinctive institutional features of the U.S. framework, identify inherent challenges, and evaluate its compatibility with China's fundamental procedural principles to ascertain the practicability of adopting specific elements within the Chinese judicial milieu.

3.2.1 Characteristics of U.S. character evidence rules

Firstly, judges possess considerable discretionary authority. In adjudicating child sexual abuse cases, U.S. law permits courts to accord defendant character evidence equal weight alongside other evidentiary materials without imposing additional prerequisites for its admission. This endows judges with a broad latitude to determine whether such evidence may serve as a basis for verdicts, relying substantially on personal judicial judgment. This latitude is largely attributable to the common

law tradition whereby precedent underpins judicial decision-making; notwithstanding statutory codification of the character evidence exception only in 1994, American courts had applied doctrines such as the "lustful disposition" exception for over a century, accumulating substantial jurisprudential experience. Moreover, judges in common law jurisdictions tend to exhibit advanced skills in precedent analysis and logical reasoning. [6] Consequently, within the U.S. judicial context, this approach is considered reasonably justified.

Secondly, the scope of prior similar acts recognized is expansive. The *Federal Rules of Evidence* impose no stringent limitations on prior sexual misconduct, admitting acts of sexual abuse against minors irrespective of whether they were formally charged or resulted in conviction. The decision to admit such evidence hinges on the prosecution's burden to prove the commission of these previous acts at trial. This expansive scope may induce several adverse effects: (1) establishing prior misconduct demands extensive time and resources, potentially protracting litigation and diminishing procedural efficiency; (2) defendants face increased burdens, as they must prepare defenses for conduct beyond the formal charges; (3) even absent convictions, admitted prior acts may exert pronounced prejudicial influence, fostering judicial inclination to penalize the defendant in the current case as retribution for unpunished prior wrongdoing.

Thirdly, the assessment of the proof value focuses on the comparison of similarities. When the US courts evaluate the proof value of character evidence, the factors they consider are the similarities between the alleged behavior and previous bad behaviors. The greater the similarity, the more it indicates that the defendant has a tendency to commit such behavior, thereby suggesting that the evidence has a higher proof value. However, emphasizing similarity excessively cannot fully reflect a person's tendency to sexually assault minors. For example, if A is accused of raping his 13-year-old daughter B, and his previous bad behavior was molesting a 5-year-old girl C and a 3-year-old boy D in the kindergarten where he worked on Monday afternoon, if the similarity standard is strictly adhered to and the factors such as the age of the victims, behavior patterns, relationship between the parties, place, and time are compared, it will be concluded that the

similarity between the two is low and the proof value of the evidence is low; but if the similarity standard is disregarded, the defendant does indeed have a tendency to sexually assault minors, and thus it can be concluded that the previous bad behavior has a greater proof value. Thus, it can be seen that being overly strict with the similarity standard seems inappropriate.

3.2.2 Feasibility analysis of U.S. character evidence rules in child sexual abuse cases within China's judicial context

On the whole, there exists fertile ground in China for introducing provisions analogous to *Federal Rules of Evidence* 413 and 414. This is due to the shared nature and characteristics of child sexual abuse cases and the common evidentiary challenges faced by both jurisdictions. The extensive American judicial experience with character evidence could, if suitably adapted, enhance indictment rates in child sexual abuse cases, protect victims' legitimate rights, and bolster public confidence in the judiciary. Nevertheless, institutional differences between the two countries and inherent deficiencies within American law itself preclude wholesale transplantation. Consequently, China must exercise circumspection with regard to three core facets: judicial discretion, the ambit of prior similar acts, and methods for assessing evidentiary probative value.

Firstly, the broad judicial discretion afforded American judges in admitting character evidence is not inherently applicable to China. As a civil law jurisdiction, China adheres to a codified legal system where precedent does not bind judicial determinations, and most judges lack established practices for rigorously reviewing exceptions to character evidence admissibility in child sexual abuse proceedings. Compared to the American system, China's judicial experience in this field remains nascent. Accordingly, even when emulating U.S. provisions at a systemic level, necessary constraints should be imposed on judges' discretion to admit character evidence, ensuring that application aligns harmoniously with China's judicial paradigm.

Secondly, the uncertainties and negative ramifications emanating from the vast scope of prior similar acts admissible under U.S. law warrant prudent consideration within China. While extensive American jurisprudence has mitigated these adverse effects to reasonable

levels, China's embryonic use of character evidence necessitates a cautious approach that minimizes unpredictable factors potentially disrupting judicial deliberations. Hence, even if relevant U.S. rules are adapted, appropriately narrowing the permissible range of prior acts is essential to maintaining coherence with China's judicial framework.

Thirdly, the excessive emphasis on similarity by the US courts fails to fully reflect an individual's propensity to sexually assault minors. Therefore, even if our country adopts the provisions from the US law at the institutional level, the courts should adopt more substantive judgment criteria when assessing the probative value. Specifically, the magnitude of the probative value cannot be determined solely by the superficial similarity between previous bad behavior and the alleged behavior. Instead, it should consider to what extent the previous bad behavior can support the substantive inference that the defendant has a tendency to sexually assault minors. Correspondingly, the risk of unfair bias also needs to be re-examined within this framework to prevent the inappropriate exclusion of character evidence with high substantive probative force due to excessive focus on form differences.

4. The Construction of Character Evidence Rules for Defendants in Child Sexual Abuse Cases in China

To address the prevailing chaos in judicial practice caused by the absence of a comprehensive set of rules governing character evidence in China, it is imperative to establish a systematic framework. The robust institutional foundations and abundant practical experience of the Anglo-American legal system aptly meet China's requirements. Accordingly, it should be unequivocally recognized that evidence of a defendant's sexual character is admissible in child sexual abuse cases. However, legal transplantation must be adapted to national realities. As previously discussed, although Articles 413 and 414 of the U.S. *Federal Rules of Evidence* have potential applicability within China's judicial practice, their inherent shortcomings and incompatibilities with China's judicial environment must be amended or reformed.

4.1 Restricting the Application of Character Evidence

While character evidence can mitigate evidentiary difficulties in child sexual abuse cases, its improper use risks grave injustice to the defendant; thus, its application demands careful limitation. First, the scope of prior similar acts should be confined to those criminally adjudicated, sentenced, or subject to administrative penalties confirmed by public authorities through lawful procedures, thereby enabling courts to ascertain their factual occurrence and preventing undue prolongation of litigation or diversion of trial focus. Second, the admissibility of defendant character evidence must be predicated upon necessity. Primarily, regarding procedural sequence, character evidence should be employed as a supplementary measure, admissible only when the case lacks more accurate, accessible, or superior alternative evidence. [7] If the contested facts can be established by other evidence of greater precision or probative value, character evidence becomes unnecessary. Furthermore, in the hierarchy of evidentiary values, character evidence should generally be used only when “its value in uncovering the truth outweighs its potential prejudicial effect.” [8] If it fails to demonstrate sufficient probative worth, the evidence must be excluded; criteria for assessing such value are elaborated subsequently.

4.2 Clarifying Substantive Standards for Evaluating Probative Value

As elucidated earlier, assessing probative value solely by the degree of similarity is scientifically inadequate, for an overemphasis on resemblance fails to fully capture an individual’s propensity to commit sexual offenses against minors. To discern such a propensity, one must abstract the typical behavioral patterns inherent in child sexual abuse crimes. Generally, these behavioral patterns manifest through three predominant modalities: the exploitation of personal authority, the utilization of the minor’s trust, and the employment of violence or threats [8] Within all instances of sexual offenses against minors, “contact” and “control” are indispensable elements: the perpetrator must first achieve physical or situational access to the minor and exert a certain degree of control to facilitate the crime. To attain contact and control, perpetrators habitually deploy one or more of the aforementioned modalities. According to the

2023 report *Ten-Year Observations on Child Sexual Abuse Prevention in China (2013–2023)—A Civil Perspective on Girl Protection*, approximately 70% to 80% of such offenses are committed by acquaintances. [9] For example, teachers may leverage their authority, or relatives and neighbors may take advantage of a minor’s trust, employing violence, threats, or other forms of coercion to establish control and perpetrate abuse. Therefore, a defendant’s repeated use of these modalities in prior similar acts strongly suggests conformity with the typical behavioral pattern of child sexual abuse and permits an inference of sexual predisposition toward minors. Consequently, exploiting personal authority, leveraging a minor’s trust, and employing violence or threats should serve as substantive criteria in evaluating the probative value of character evidence. Operationally, if the defendant’s prior acts admitted as character evidence fall within these behavioral patterns and the alleged conduct herein similarly conforms, the evidence possesses substantial probative value. Conversely, if the prior acts reflect these modalities but the current charges diverge entirely from them, the evidence’s probative significance is markedly diminished relative to its potential prejudicial impact, warranting exclusion from consideration.

4.3 Establish Procedural Safeguards for the Application of Character Evidence

A complete procedural mechanism can effectively ensure the standardized application of character evidence in cases involving sexual abuse of minors. Before the trial begins, in order to fully protect the rights of the defense and improve the efficiency of the trial, a pre-trial notification and objection procedure, a pre-trial investigation procedure, and a pre-trial conference review procedure should be established; during the trial, in order to curb the disorder where both the prosecution and the defense randomly present evidence, a cross-examination procedure for the defendant’s character evidence should be established.

4.3.1 Establishing pre-trial safeguard procedures
First, a pre-trial notice and objection mechanism should be instituted. To protect the rights of the defense, if the prosecution intends to introduce character evidence against the defendant during the presentation of evidence, it must serve a written notice to both the defense and the

presiding judge no less than fifteen days prior to trial. This notice must explicitly specify the purpose of the evidence, its detailed content, the facts it seeks to prove, and the rationale for its admissibility. Should the defense raise objections to the evidence, it must submit a written motion within seven days of receiving the notice, articulating the grounds for excluding such evidence. Following an initial review, the judge may either dismiss the objection if found unfounded or exclude the evidence if the objection is deemed valid.

Second, a pre-trial investigative procedure should be established. To ensure the veracity of the defendant's sexual character evidence submitted by the prosecution, the court shall appoint no fewer than two officials to conduct investigations both online and offline. The materials collected must be duly signed by the investigators and the persons interviewed or witnesses. These findings are to be submitted to the presiding judge at least five days before the trial for a preliminary review and determination as to whether the evidence should be admitted into the trial for subsequent comprehensive evaluation in conjunction with other evidentiary materials.

Third, a pre-trial conference review process should be implemented. To promote efficiency and orderliness in the courtroom, defendant character evidence in child sexual abuse cases should be subject to prior scrutiny during the pre-trial conference. Given the potentially diverse and substantial volume of character evidence submitted by the prosecution, this conference serves to filter out irrelevant information, retaining only material with a strong nexus to the case, thereby enhancing the efficacy of subsequent trial procedures.

4.3.2 Refining complementary evidence examination procedures

First, prosecutors must be prohibited from introducing character evidence in trial proceedings that has not undergone the pre-trial conference review. However, should newly discovered evidence arise post-conference that is of significant probative value concerning the case, the judge may permit its admission upon evaluation, while granting the defense reasonable time—which may be adjusted according to case complexity—to prepare a response.

Second, the defense should be empowered to present favorable character evidence pertinent to

the case to counterbalance adverse character evidence introduced by the prosecution. [10] For instance, in cases involving child molestation, the defense may submit evidence demonstrating an absence of pedophilic tendencies; in cases of rape involving minors aged fourteen or older, evidence that the sexual act was consensual may be admissible. Nevertheless, submission of evidence relating solely to general honesty or good character, or to the victim's character, must be strictly prohibited on the grounds that general character traits are overly abstract and irrelevant to the factual matrix of the case, and that another individual's lifestyle cannot serve as proof of the defendant's innocence. Therefore, such evidence should be excluded.

Thirdly, judges should conduct a rigorous review of the character evidence submitted by both the prosecution and the defense. The key points of the review include, but are not limited to: the relevance of the evidence to the facts to be proven, the probative value of the evidence, etc. Given that these points have been discussed previously, they will not be repeated here. The evidence that passes the review and is allowed to enter the trial should be regarded as the focus of the case dispute. The prosecution and the defense should debate on the admissibility and probative force of the evidence. The judge should, based on the particularity of the case, the probative value of the evidence, and the possible negative impacts, comprehensively decide whether to adopt this evidence as the basis for judgment.

5. Conclusion

To overcome the practical difficulties in evidence presentation, it is essential for China to establish a clear and systematic set of rules governing defendants' character evidence in child sexual abuse cases. While drawing valuable lessons from the American legal framework, these rules must be thoughtfully adapted to align with China's specific legal context. First, the admissibility of character evidence should be strictly limited in both scope and conditions to prevent misuse. Second, objective and substantive criteria must be developed to assess the evidentiary value and relevance of such character evidence. Finally, robust procedural safeguards should be instituted to ensure fairness and protect the rights of defendants throughout the judicial process. The development of these rules aims to

address the current inconsistencies and disorder in judicial practice, thereby achieving a balanced approach that effectively facilitates criminal prosecution while safeguarding the legitimate rights of defendants. In doing so, this framework will provide a solid institutional foundation to enhance the professionalism of trials in child sexual abuse cases and reinforce the authority and trustworthiness of the judiciary.

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