CELEBRITY, LEGAL REFORM, & PROPENSITY EVIDENCE: THE COST TO FAIR TRIALS & JUSTICE FOR ALL

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ABSTRACT

High-profile trials have long shaped the American public's perception of the criminal justice system, and few cases have had as much impact as those involving celebrities accused of sexual offenses. Following Harvey Weinstein's successful appeal in 2024, two bills proposed in New York, A4992 and S9276, seek to codify Federal Rule of Evidence 413 and allow prior alleged bad acts to be admitted in sexual offense cases for any matter deemed "relevant" by the court. While the bills aim to hold repeat offenders accountable and ensure public safety, this shift threatens criminal defendants' presumption of innocence and right to due process.

New York's century-old evidentiary rule regarding prior bad acts protects defendants' constitutional rights by limiting the use of propensity evidence to avoid undue prejudice. A4992 and S9276 disregard these constitutional safeguards, and their implementation may have dire effects, particularly on communities disproportionately affected by the criminal justice system. While legislative reform in New York evidentiary law may be necessary, it must not come at the expense of fundamental rights, for a justice system that erodes due process for some undermines fairness for all. Instead, legislators must implement statutory language that offers clear and explicit situations for which prior bad acts can be used.

INTRODUCTION

"No State shall . . . deprive any person of life, liberty, or property without due process of the law; not deny any person within its jurisdiction the equal protection of the laws."[1]

The rights to due process and a fair trial are fundamental constitutional rights in the American criminal justice system. Due process, in this context, ensures that criminal defendants are given a fair and impartial trial, including the rights to be informed of the charges against them, confront witnesses, and have evidence presented against

1. U.S. CONST. amend. XIV, § 1.

them under clear and established legal standards.[2] In the United States accusatorial system, the government bears the burden of proving every element of a criminal charge in a jury trial, all while following all relevant criminal procedure laws.

Over the past several decades, lawmakers have adopted a more permissive approach when creating and modifying laws affecting criminal defendants accused of sex crimes. Said laws allow for the criminal defendant to have evidence of prior uncharged sex crimes used against them during their trial. In 2024, New York lawmakers introduced legislation that follows this model. This Note will argue that the introduction of this legislation was not only hasty but, if enacted, would deprive criminal defendants in New York of their fundamental rights provided by both the United States and New York Constitutions.[3]

Part I of this Note will provide a general background of New York's current prior bad act evidence laws as well as describe the two bills that seek to modify that standard. Part II will discuss the origin of evidence laws allowing for uncharged sex crimes. This Section will also provide relevant context as to the public's feelings and reactions to an infamous sex crime case that was the driving force behind the introduction and passage of the original federal legislation, as well as a comparison to a notorious New York sex crime case and its governmental and cultural impact. Part III will explore the issues with New York's proposed legislation in the context of the right to due process and a fair trial. Specifically, this Section will explore concepts such as the presumption of innocence, the psychology of jurors, and communities disproportionately affected by the criminal justice system. Part IV will rebut the arguments made in support of the proposed legislation and argue that its enactment would undermine fundamental rights within the criminal justice system in New York. Part V will outline an alternative to the bills that do not result in the erosion or violation of fundamental constitutional rights. Lastly, this Note will discuss the importance of maintaining a criminal justice system that protects the accused's constitutional rights while also ensuring fairness for victims, along with highlighting the need for well-balanced legal reforms that improve the system and strengthen public trust.

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2. *See* Peter Strauss, *Due Process*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/due_process (on file with the Syracuse Law Review) (last visited Oct. 28, 2025).

3. *See* U.S. CONST. amend. XIV, § 1; N.Y. CONST. art. I, § 6.

I. NEW YORK'S STANCE ON PRIOR BAD ACTS & PROPENSITY EVIDENCE

A. Molineux

Historically, New York's rule for prior bad acts evidence has been based on case law rather than statutory authority. Relying on a Court of Appeals case, any prior bad acts allowed into evidence are described as Molineux evidence. In 1901, the court in *People v. Molineux* was asked to determine whether evidence of a defendant's conduct resulting in a previous, uncharged death was properly admitted in his homicide trial.[4] The court considered a case they previously decided on, which held that:

> The general rule is against receiving evidence of another offense. A person cannot be convicted of one offence upon proof that he committed another, however persuasive in a moral point of view such evidence may be. It would be easier to believe a person guilty of one crime if it was known that he had committed another of a similar character, or, indeed, of any character; but the injustice of such a rule in courts is apparent. It would lead to convictions, upon the particular charge made, by proof of other acts in no way connected with it, and to uniting evidence of several offences to produce a conviction for a single one.[5]

In sum, rationalizing that propensity evidence provides an unfair advantage against the criminal defendant.

The *Molineux* court's decision provided five exceptions to this rule against propensity evidence, so long as the evidence helps establish:

> (1) motive; (2) intent; (3) the absence of mistake of accident; (4) a common scheme of plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; [and] (5) the identity of the person charged with the commission of the crime on trial.[6]

4. *See* People v. Molineux, 61 N.E. 286, 289 (N.Y. 1901).
5. Coleman v. People, 55 N.Y. 81, 90 (1873).
6. *Molineux*, 61 N.E. at 294.

However, later Court of Appeals decisions have recognized this list as illustrative rather than exhaustive.[7] Therefore, prosecutors can introduce any reason for which they believe uncharged acts may be necessary to admit into evidence. For example, in *People v. Vails*, the court found that prior bad act evidence was necessary because it was inextricably woven with the crime charged and therefore, not prejudicial.[8] The precedent set by *Molineux* has been followed by New York courts since the pivotal decision nearly a century and a half ago.

B. A4992 & S9276

In recent years, the New York state legislature has put forth efforts to codify prior bad acts evidence regarding sexual offenses.[9] The two bills, one introduced by Assembly Member Amy Paul and the other by Senate Deputy Leader Michael Gianaris, seek to allow courts to admit evidence of prior bad acts in sex crime cases.[10] These bills would still allow the trial court judge, however, to exclude prior sex acts if they determine that the evidence's probative value is outweighed by its prejudicial effect on the defendant.[11] Additionally, these bills would codify Federal Rule of Evidence (FRE) 413, which allows similar crimes in cases where the defendant is charged with sexually based offenses.[12] The bills go against *Molineux*'s precedent, with the Senate's bill stating that evidence may be used "to prove that the defendant acted in conformity therewith or had a propensity to engage in similar wrongful acts."[13]

The push for the bills came largely in part due to the successful appeal of celebrity Harvey Weinstein. In 2020, Weinstein was convicted of one count each of criminal sex act in the first degree and rape in the third degree.[14] On appeal, Weinstein argued that the trial court's

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7. *See* People v. Vails, 372 N.E.2d 320, 323 (N.Y. 1977).

8. *See id.*

9. *See Assemblywoman Paulin & Senator Gianaris Introduce Legislation to Make Evidence of Prior Sexual Offenses Admissible at Trial*, N.Y. STATE ASSEMB.: AMY PAULIN (May 9, 2024), https://assembly.state.ny.us/mem/Amy-Paulin/story/110385 (on file with the Syracuse Law Review).

10. *See id.*; Assemb. B. 4992, 246th Sess. (N.Y. 2023); *see also* S.B. 9276, 247th Sess. (N.Y. 2024).

11. *See* Assemb. B. 4992, 246th Sess. (N.Y. 2023); S.B. 9276, 247th Sess. (2024).

12. *See* N.Y. STATE ASSEMB.: AMY PAULIN, *supra* note 9; FED. R. EVID. 413.

13. S.B. 9276, 247th Sess. (N.Y. 2024).

14. *See* Eric Levensen, Lauren del Valle & Sonia Moghe, *Harvey Weinstein Sentenced to 23 Years in Prison After Addressing his Accusers in Court*, CNN (Mar. 11, 2020, at 16:26 ET), https://www.cnn.com/2020/03/11/us/harvey-weinstein-sentence/index.html (on file with the Syracuse Law Review).

admission of three separate Molineux witnesses, whose testimony only indicated his propensity towards sexual criminality, deprived him of his constitutional right to a fair trial.[15] The case made its way to New York's highest court, which ruled in Weinstein's favor and subsequently overturned his conviction, ordering a new trial.[16] The court noted that it is their "solemn duty to diligently guard these rights regardless of the crime charged, the reputation of the accused, or the pressure to convict."[17]

The court's opinion, expectedly, was widely published by various media sources.[18] The decision was considered a step back for the #MeToo movement, which advocates for survivors of sexual harassment and assault and seeks to hold sexual offenders accountable, with supporters arguing that it was based simply on a "technicality."[19] The New York legislators appeared to agree with this sentiment, with Assemblywoman Paulin and Assemblyman Jeffrey Dinowitz stating that:

> Sex offense trials often rest on the testimony of the survivor, whose credibility is then attacked. That's why patterns of behavior must be allowed as evidence. Sexual assault survivors have already gone through enough trauma. Now that the Weinstein case has been overturned, it's more important than ever to pass this bill. By codifying FRE 413, we're not just making a legal adjustment; we're standing up for victims and ensuring their voices are heard in the pursuit of justice…Let us proceed with conviction, knowing we're strengthening our legal framework to serve survivors better and hold perpetrators accountable.[20]

The legal community's response to the bills' introductions has been mixed. However, this is unsurprising. History repeats itself, and

15. *See* People v. Weinstein, 248 N.E.3d 691, 704 (N.Y. 2024).

16. *See id.* at 716.

17. *Id.* at 697 (citing Boyd v. United States, 116 U.S. 616, 635 (1886)).

18. *See, e.g.*, Michael Wilson et al., *Harvey Weinstein Conviction Overturned by N.Y. Court of Appeals*, N.Y. TIMES (Apr. 25, 2024), https://www.nytimes.com/2024/04/25/nyregion/harvey-weinstein-conviction-appeal.html (on file with the Syracuse Law Review); Michael R. Sisak & Dave Collins, *Harvey Weinstein's Rape Conviction is Overturned by New York's Top Court*, A.P. NEWS (Apr. 25, 2024, at 20:12 ET), https://apnews.com/article/weinstein-metoo-appeal-ed29faeec862abf0c071e8bd3574c4a3 (on file with the Syracuse Law Review).

19. *See History & Inception*, ME TOO, https://metoomvmt.org/get-to-know-us/history-inception/ (on file with the Syracuse Law Review) (last visited Oct. 28, 2025); Sisak & Collins, *supra* note 18.

20. N.Y. STATE ASSEMB.: AMY PAULIN, *supra* note 9.

the implementation of A4992 and S9276 is reminiscent of the creation of FRE 413.

II. A HISTORY OF FRE 413 & A COMPARISON TO NEW YORK

Expanding on the discussion in Part I of the history and use of propensity evidence in sex offense cases, the impact of William Kennedy Smith's rape case served as a catalyst for the creation of FRE 413. It is comparable to Weinstein's trial, which highlights the role of Molineux evidence in his conviction and the public backlash that followed his successful appeal. Both cases, involving high-profile celebrities, contributed to the evolution of laws permitting the use of propensity evidence, with Smith's case directly influencing its passage.

A. FRE 413's Initial Enactment & William Kennedy Smith

FRE 413 states, in part, that "[i]n a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant."[21] David Karp, the author of the Rule, wrote that evidence showing that a defendant has committed prior sexual assaults is particularly probative, as it places that individual in "a small class of depraved criminals."[22] Despite overwhelming opposition from the legal community who stressed the extreme prejudicial effect this Rule, along with FRE 414 and 415, would have, Congress enacted the new Rules on July 9, 1995.[23]

When FRE 413 was enacted, the country was struggling with the outcome of William Kennedy Smith's criminal trial.[24] Smith held celebrity status as a member of the powerful and influential Kennedy family. In 1991, Smith was charged with one count each of sexual battery and battery in Palm Beach, Florida.[25] A twenty-nine-year-old woman had accused the senator's son of raping her on the Kennedy

21. FED. R. EVID. 413.

22. David J. Karp, *Evidence of Propensity and Probability in Sex Offense Cases and Other Cases*, 70 CHI.-KENT L. REV. 15, 24 (1994).

23. *See* Michael S. Ellis, *The Politics Behind Federal Rules of Evidence 413, 414, and 415*, 38 SANTA CLARA L. REV. 961, 961, 972 (1998).

24. *See* Karp, *supra* note 22, at 15.

25. *See* Miami Herald Archives, *The Day a Kennedy Was Accused of Rape at the Family's Palm Beach Mansion*, MIA. HERALD (Apr. 15, 2019, at 11:06 ET), https://www.miamiherald.com/news/local/article229264784.html/ (on file with the Syracuse Law Review).

mansion's lawn.[26] During the trial, the presiding judge ruled that the statements of three women who claimed that Smith had previously sexually assaulted them were inadmissible.[27] Following closing statements, the jury deliberated for only seventy-seven minutes before finding the young Kennedy not guilty on all charges.[28]

Though a Kennedy family member being charged with rape sent shockwaves through the nation by itself, the development of Court TV in the 1990s allowed for the public to witness the case unfold from the comfort of their own homes.[29] The case captivated the American public, becoming the first major Court TV broadcast, even before the notorious O.J. Simpson trial.[30] The televising of Smith's trial set a new standard—anyone could watch the evidentiary rulings and legal issues play out on the small screen. As such, people could form opinions as to what they believed fairness in the criminal justice system to be. The press and public reacted strongly to the judge's decision to exclude the testimonies of the three women. While the public was aware of the alleged assaults, the jury and courtroom did not hear the women's stories.[31]

B. Harvey Weinstein's Trial & Appeal

Similar to Smith's criminal trial, Harvey Weinstein was followed intently internationally, as he was something of American royalty in his own right. Weinstein, who grew up modestly, launched his career in the film industry in 1979 by co-founding his own independent film studio, Miramax, with his brother.[32] The Walt Disney Company purchased Miramax for roughly $60 million only fourteen years later, and the brothers continued to run the company themselves.[33] Miramax

26. *See id.*

27. *See id.*

28. *See id.*

29. *See* Angelique M. Paul, Note, *Turning the Camera on Court TV: Does Televising Trials Teach Us Anything About the Real Law?*, 58 OHIO ST. L.J. 655, 662 (1997).

30. *See id.* at 663.

31. *See* Dominick Dunne, *The Verdict*, VANITY FAIR (Sept. 15, 2008), https://www.vanityfair.com/magazine/1992/03/dunne199203?srsltid=AfmBOoqYgotx (on file with the Syracuse Law Review).

32. *See* Abby Jackson, Taylor Nicole Rogers & Lloyd Lee, *Harvey Weinstein Was Sentenced to 16 Additional Years in Prison for Rape and Criminal Sexual Assault. Here's How the Disgraced Producer Built the Hollywood Empire that Ended up Firing Him*., BUS. INSIDER (Feb 23, 2023), https://www.businessinsider.com/the-life-and-career-of-harvey-weinstein-disgraced-hollywood-mogul-2023-2 (on file with the Syracuse Law Review).

33. *See id.*

went on to produce cult classic films, including *Pulp Fiction* and *Good Will Hunting*.[34] As a lucrative Hollywood producer, Weinstein quickly became a household name. He rose to power as an untouchable and revered figure in the industry.

However, in 2017, Weinstein's image came crashing down. Within weeks, several women came forward with allegations in major publications, accusing Weinstein of sexually assaulting or harassing them during their time working together, and were subsequently paid off.[35] Notable figures included Angelina Jolie, Gwyneth Paltrow, and Ashley Judd.[36] In response to the allegations against the Hollywood producer, the #MeToo movement began to enter the cultural zeitgeist following actress Alyssa Milano's Twitter post, which encouraged fellow victims to reply "me too."[37] The movement exploded. In 2018, celebrities walking the red carpet at the Golden Globes wore black to declare "time's up" on abusers.[38]

In 2018, Weinstein was charged in New York with criminal sex act, rape, sexual misconduct, and sex abuse for incidents involving two individual women.[39] The case went to trial in Manhattan in 2020, where Weinstein was convicted of two counts of first-degree criminal sexual assault and third-degree rape.[40] Unlike Smith, during the trial, three Molineux witnesses testified in great detail about Weinstein's alleged prior sexually deviant acts.[41] The court sought to restrict the scope of this evidence in its final charge to the jury, emphasizing that the testimonies were only "offered for [their] consideration on the issues of forcible compulsion and lack of consent."[42] After being found

34. *See id.*

35. *See id.*

36. *See id.*

37. *See* Holly Corbett, *#MeToo Five Years Later: How The Movement Started And What Needs To Change*, FORBES (Oct. 27, 2022, at 15:49 ET), https://www.forbes.com/sites/hollycorbett/2022/10/27/metoo-five-years-later-how-the-movement-started-and-what-needs-to-change/ (on file with the Syracuse Law Review).

38. *See* Time Staff, *Why the Red Carpet Is Important in the #MeToo Era*, TIME (Jan. 9, 2018, at 16:14 ET), https://time.com/5095804/golden-globes-red-carpet-me-too/ (on file with the Syracuse Law Review).

39. *See Harvey Weinstein Charged with Rape Following New York Arrest*, BBC (May 25, 2018), https://www.bbc.com/news/world-us-canada-44257202 (on file with the Syracuse Law Review).

40. *See* Jay Ransom et al., *Full Coverage: Harvey Weinstein Is Found Guilty of Rape*, N.Y. TIMES (June 15, 2021), https://www.nytimes.com/2020/02/24/nyregion/harvey-weinstein-verdict.html (on file with the Syracuse Law Review).

41. *See* People v. Weinstein, 248 N.E.3d 691, 700–01 (N.Y. 2024).

42. *Id.* at 701.

guilty, Weinstein was sentenced to twenty-three years of incarceration followed by five years of post-release supervision.[43] Two years later, in 2022, Weinstein stood trial in Los Angeles for three charges of rape and sexual assault.[44] The jury again found Weinstein to be guilty, and he was sentenced to a sixteen-year prison sentence to run concurrently with his twenty-three-year sentence in New York.[45]

The public, as expected, was outraged when the New York Court of Appeals overturned Weinstein's conviction and ordered a new trial. It was viewed as "yet another political defeat for the cause of women's rights" by many.[46] People were disgusted with the judges' decision: how is it fair that Weinstein got off on a "technicality"? How is it fair to women that an accused rapist and sexual predator was able to successfully appeal his conviction because too many women came forward to testify at his trial?[47]

David Karp, when writing an article arguing for propensity evidence to be allowed in sex offense cases, opened his article by briefly mentioning Smith's acquittal.[48] He noted that although the issue of propensity evidence in sex offense cases was in the public eye at that time, he was driven to draft FRE 413, 414, and 415 because of two state court cases.[49] However, regardless of whether the Smith trial influenced Karp, the issue of using propensity evidence in sex crime trials was a prominent topic in the public's consciousness at the time, possibly more than ever before.

III. ISSUES WITH DUE PROCESS, FAIR TRIALS, & THE IMPACT OF PROPENSITY EVIDENCE

Building on the discussion in Part II regarding the impact of propensity evidence and its use or nonuse in high-profile cases, such evidence may influence jurors' psychology, create potential for implicit biases, and cause resulting harm to the presumption of innocence.

43. *See id.* at 702.

44. *See* Anastasia Tsiulcas, *Harvey Weinstein Will Likely Spend the Rest of His Life in Prison After LA Sentence*, NPR (Feb. 23, 2023, at 15:01 ET), https://www.npr.org/2023/02/23/1158207425/harvey-weinstein-los-angeles (on file with the Syracuse Law Review).

45. *See id.*

46. Moira Donegan, *The Overturning of Harvey Weinstein's Rape Conviction Is an Affront to Women*, GUARDIAN (Apr. 27, 2024, at 18:01 ET), https://www.theguardian.com/commentisfree/2024/apr/27/harvey-weinstein-conviction-overturned-me-too (on file with the Syracuse Law Review).

47. *See id.*

48. *See* Karp, *supra* note 22, at 15.

49. *See id.* at 15–16.

Specific to A4992 and S9276, these bills will likely disproportionately affect marginalized communities, further exacerbating inequality within the criminal justice system. Together, these issues demonstrate how the proposed legislation may have unintended negative consequences, significantly increasing the risks of undermining fairness and disproportionately burdening marginalized criminal defendants.

A. The Presumption of Innocence & Psychology of Jurors

Every person accused of a crime in the United States is presumed innocent until proven guilty.[50] Although this is common knowledge, and all jurors in New York are given these instructions prior to deliberations in a criminal trial, the true presumption of innocence may not always be the case due to jurors' implicit biases.[51] The jurors may not even be aware of these biases, but they may have an incredibly detrimental impact on the defendant's right to due process.[52]

Even today, most courts, including federal district and New York courts, ban the use of propensity evidence.[53] The reasoning is simple—jurors will likely rely on natural human instincts. Even outside of the criminal context, people generally believe that if someone has done something before, they are more likely to do it again. In day-to-day life, this belief may not be detrimental to someone, and they may even benefit from it. However, in the criminal context, this evidence is so highly prejudicial to the defendant that it undermines fundamental fairness and violates substantive due process.

Testimony about prior uncharged sex crimes can create significant emotional bias, distracting the jury from the facts of the case.[54] This emotional weight risks overshadowing the current charges and

50. *See* Coffin v. United States, 156 U.S. 432, 453 (1985).

51. *See generally* N.Y. CRIM. JURY INSTR. 2D. (N.Y. State Unified Court System CJI and MC Comm. 2025)

52. *See id.*

53. *See* FED. R. EVID. 404 (b) (stating that "evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character," with the evidence only being permitted "for another purpose, such as proving opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident."); *see generally* People v. Molineux, 168 N.Y. 264 (1901).

54. *See* Jason L. McCandless, *Prior Bad Acts and Two Bad Rules: The Fundamental Unfairness of Federal Rules of Evidence 413 and 414*, 5 WM. & MARY BILL RTS. J. 689, 714 (1997) (citing HARRY KALVEN, JR. & HANS ZEISEL, THE AMERICAN JURY (1966)).

undermines the defendant's right to a fair trial by clouding impartial judgment.[55]

Sex crimes are inarguably heinous. Hearing testimony about a sex crime being committed affects jurors emotionally.[56] The human reaction that comes from hearing such testimony can cause outrage and disgust. Even with efforts to mitigate the emotional impact of hearing testimony about sex crimes, jurors may still place undue weight on this "emotionally charged evidence" when deliberating and reaching a verdict.[57] As discussed in the *Weinstein* decision, it is difficult to imagine a situation in which the emotional testimony of alleged victims describing uncharged sex crimes committed against them would not affect the jury's view of the defendant and subsequent deliberations.[58] If the jury is to take the alleged victims of uncharged crimes' testimonies as true and accurate, it is simply bolstering the victims in the charged case's testimonies.[59] It is not irrational for a juror to draw the conclusion that if the defendant committed sex acts against the alleged victims of the uncharged acts, certainly they must have acted in the same way to the victim(s) in the charged case.

Psychology studies have shown that "the ambiguity of jury trials creates the perfect environment for cognitive bias to thrive."[60] In addition to the cognitive biases previously discussed, jurors, like all humans, are also prone to confirmation bias.[61] Jurors may enter the courtroom with preconceived notions about the defendant, believing that if the defendant is being tried for such a serious crime as a sex offense, there must be solid evidence of guilt. Hearing testimony from alleged victims of uncharged acts may reinforce these biases, leading jurors to view the defendant as more likely to have committed the crime, even without direct evidence. The jury may even give less weight to exculpatory evidence presented by the defendant, allowing the emotional

55. *See id.*

56. *See id.*

57. *See id.* at 706, 714.

58. *See* People v. Weinstein, 248 N.E.3d 691, 707–08 (N.Y. 2024).

59. *See id.* at 708–09.

60. Lee J. Curley. James Munro & Itiel E. Dror, *Cognitive and Human Factors in Legal Layperson Decision Making: Sources of Bias in Juror Decision Making*, 62 MED., SCI. & L. 206, 208 (2022).

61. *See* Bill Kanasky Jr., *Jury Confirmation Bias: Powerful, Perilous, Preventable*, COURTROOM SCI., INC., at 1–2, https://www.courtroomsciences.com/articles/juror-confirmation-bias-382 (on file with the Syracuse Law Review) (last visited Feb. 24, 2025) (discussing that jurors, like anyone else, look for a reason to confirm preconceptions, biases, and beliefs).

weight of the testimony and their biases to overshadow the facts.[62] Consequently, the defendant may be convicted not for the crime they are accused of, but for their perceived character or unadjudicated actions, leading to wrongful convictions based on bias rather than the evidence at hand.[63]

B. Disproportionately Affected Communities

Like any new legislation related to criminal procedure law, A4992 and S9276 implementation could have unintended consequences for communities that are already disproportionately affected by crime. As of December 1, 2023, Black individuals represented 49% of New York's prison population, despite making up only about 17.5% of the state's total population, according to the 2020 census.[64] In New York City, a 2023 American Community Survey from the U.S. Census Bureau showed that 21.7% of Black residents lived in poverty, compared to just 11.5% of white residents.[65] Additionally, as of April 2024, public defender organizations were handling between 80% to 90% of all criminal cases in New York City.[66] In fact, as of February 2016, 77% of Black individuals facing criminal charges in the United States relied on a public defender for legal representation.[67] These

62. *See* McCandless, *supra* note 54, at 713.

63. *See id.*; *see also* Tess M. Cohen, Carola Beeney & Anna G. Cominsky, *Statement on Legislation that Would Allow Evidence of a Defendant's Prior Sexual Offense to be Admissible in a Sexual Assault Proceeding*, N.Y.C. BAR ASS'N (June 7, 2024), https://www.nycbar.org/reports/statement-on-legislation-that-would-allow-evidence-of-a-defendants-prior-sexual-offense-to-be-admissible-in-a-sexual-assault-proceeding/ (on file with the Syracuse Law Review).

64. *See Prison: Snapshot of the New York State prison population (January 01, 2024)*, VERA INST. OF JUST., vera.org/ny-data-hub/prison (on file with the Syracuse Law Review) (last visited Feb. 15, 2025); *see also* America Counts Staff, *New York State Population Topped 20 Million in 2020*, U.S. CENSUS BUREAU (Aug. 25, 2021), https://www.census.gov/library/stories/state-by-state/new-york.html (on file with the Syracuse Law Review).

65. *See Latest Census Data Shows Poverty Remains Stubbornly High in New York City*, CMTY. SERV. SOC'Y (Sept. 12, 2024), https://www.cssny.org/news/entry/latest-census-data-shows-poverty-remains-stubbornly-high-in-new-york-city-analysis#:~:text=In%202023%2C%20racial%20disparities%20in,increased%20over%20the%20last%20year (on file with the Syracuse Law Review).

66. *See* Reuven Blau, *How Public Defenders Work in NYC, and Who's Eligible for a Free Attorney*, THE CITY (Apr. 8, 2024, at 5:01 ET), https://www.thecity.nyc/2024/04/08/how-public-defenders-work-eligible-free-attorney/#:~:text=The%20right%20to%20counsel%20has,can%20expect%20throughout%20the%20process: (on file with the Syracuse Law Review).

67. *See* Jeff Adachi, *Why Black History Month Matters to Public Defenders*, NAT'L ASS'N FOR PUB. DEFENSE (Feb. 29, 2016),

statistics demonstrate the systemic disparities in the criminal justice system and highlight the potential for the new legislation to affect disproportionately impacted communities, particularly those who are already overrepresented in the prison system and reliant on public defenders for legal representation.

While the Sixth Amendment of the United States Constitution guarantees a defendant the "[a]ssistance of Counsel for [their] defense," indigent defendants may not always receive the same level of representation as those who can afford private attorneys.[68] The United States criminal justice system effectively operates as a two-tiered system, where wealth determines the quality of legal representation a defendant receives. Wealthy defendants have the financial means to hire private practice attorneys and secure the other necessary means to contest their charges. In contrast, individuals who are disproportionately affected by the criminal justice system, whether due to race, social status, or economic status, are far more likely to be represented by overburdened public defenders.

In 2023, research revealed that the caseloads assigned to public defenders are excessively high, compromising their ability to represent clients effectively.[69] While public defenders can be among the most talented and skilled attorneys, excessive caseloads often hinder their ability to provide adequate time and attention to each client.[70] Unlike private practice attorneys, who can select the cases they take on, public defenders are burdened with overwhelming workloads that compromise their effectiveness, ultimately harming both the attorney and the defendant.[71] Furthermore, while the government wields immense power in criminal prosecution with unlimited resources and the discretion to pursue cases with varying levels of evidence, public defenders face significant resource limitations.[72] Their ability to represent clients is affected by these constraints.[73]

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https://publicdefenders.us/blogs/why-black-history-month-matters-to-public-defenders/ (on file with the Syracuse Law Review).

68. U.S. CONST. amend. VI.

69. *See* NICHOLAS M. PACE, ET AL., RAND CORPORATION, NATIONAL PUBLIC DEFENSE WORKLOAD STUDY 20 (2023), https://www.rand.org/content/dam/rand/pubs/research_reports/RRA2500/RRA2559-1/RAND_RRA2559-1.pdf (on file with the Syracuse Law Review).

70. *See id.* at 114.

71. *See id.*

72. *See* Aaron Gottlieb & Kelsey Arnold, *The Effect of Public Defender and Support Staff Caseloads on Incarceration Outcomes for Felony Defendants*, 12 J. SOC'Y FOR SOC. WORK & RSCH. 569, 570 (2021).

73. *See* PACE ET AL., *supra* note 69, at 114.

These systemic issues have resulted in a shockingly disproportionate number of wrongful convictions. Since 1989, twenty-four Black men have been exonerated in sexual assault cases in New York.[74] They accounted for 57% of all sexual assault exonerations, while eleven white men represented 26% of the total exonerations.[75] New York's exoneration data exemplifies not only flaws within the criminal justice system, but also how those without the resources to fund an effective defense are disproportionately affected by the system.

Weinstein and other criminal defendants in positions of wealth and influence have the means to secure fair trials due to their ability to afford high-quality legal representation, access to expert witnesses, and the resources necessary to challenge the prosecution at every turn, even with the potential new law.[76] In contrast, individuals disproportionately targeted by the criminal justice system do not have the same advantages. These individuals are more likely to be represented by overburdened public defenders, face limited access to resources, and struggle to mount an effective defense. As a result, the disparity between the wealthy and marginalized communities in terms of access to fair trials perpetuates systemic inequalities and undermines the principle of equal justice under the law.[77]

IV. DISPELLING CLAIMS SUPPORTING ADMISSION OF PRIOR SEXUAL ASSAULT EVIDENCE: PROTECTING DUE PROCESS & FAIR TRIALS

While proponents of A4992B and S9276 may advance arguments in favor of these bills, closer examination of procedural challenges, the protection of defendants' rights, and the potential consequences

74. *See Explore Exonerations (Map)*, THE NAT'L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/Exonerations-in-the-United-States-Map#crimeState (on file with the Syracuse Law Review) (last visited Oct. 28, 2025).

75. *See id.*

76. *See* LEGAL AID SOCIETY, ET AL., JOINT MEMO IN OPPOSITION 3 (May 9, 2024), https://cdn.ymaws.com/nysacdl.org/resource/resmgr/2024_events/jointmemooppa4992s9276.pdf (on file with the Syracuse Law review) (issuing a statement from multiple public defender organizations in New York). The organizations highlight how Weinstein, as a "rich movie mogul with unlimited resources, influence, and power" contrasts with marginalized communities who lack these advantages and are susceptible to being unfairly impacted by the criminal justice system. *Id.*

77. *See* BRYAN FURST, BRENNAN CTR. FOR JUST., A FAIR FIGHT: ACHIEVING INDIGENT DEFENSE RESOURCE PARITY 3 (Sept. 9, 2019), https://www.brennancenter.org/our-work/research-reports/fair-fight (on file with the Syracuse Law Review).

for both defendants and victims ultimately illustrate why these claims fail to preserve the integrity of the justice system.

A. Procedural Hurdles

When A4992B was introduced, New York Assemblyman Jeffrey Dinowitz stated:

> In pursuing justice, we cannot allow procedural hurdles to impede the truth. Bill A.4992 is not just about aligning New York's rules with many other states; it's about empowering prosecutors to present crucial evidence in sexual assault cases effectively. The absence of a statutory code of evidence in New York has left us relying on antiquated rules, like the Molineux Rule, which often provides inadequate in the face of heinous crimes like sexual assault.[78]

It is deeply concerning when legislators fail to recognize the importance of procedural rights in the criminal justice system. These rights are not mere formalities. Instead, they are as crucial as substantive law. Evidenced in the Constitution through the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments, procedural protections ensure the government upholds its responsibility to prove that the defendant is guilty of every element of a crime, as opposed to the defendant proving every element of their innocence.[79] The government must demonstrate proof beyond a reasonable doubt that the defendant has committed the alleged crime, and these rights guarantee that it does so fairly and transparently, preserving the concept of fundamental fairness.

Defendants like Weinstein who have successfully appealed their cases based on procedural issues are not let off on a legal "technicality."[80] These "technicalities" are, in fact, fundamental rights that safeguard fairness and due process. They prevent the government from overreaching or bypassing constitutional safeguards to pursue a conviction. Disregarding these protections allows the government to violate rights just for the sake of speed, which weakens the criminal justice system and increases the chance of wrongful convictions.[81] Upholding procedural protections ensures that the government proves

78. N.Y. STATE ASSEMB.: AMY PAULIN, *supra* note 9.

79. *See* U.S. CONST. amends. IV–VI, VIII, XIV (providing numerous explicit protections to criminal defendants).

80. *See* Sisak & Collins, *supra* note 18.

81. *See* Nat'l Inst. of Just., U.S. Dep't. of Just., Wrongful Convictions: The Literature, the Issues, and the Unheard Voices 3 (Dec. 2023).

its case correctly while maintaining fairness, accountability, and fundamental justice.

Of course, those charged with sex crimes are often looked down upon by the public. Most who are not familiar with the complexities of the criminal justice may not understand why these rights are so fundamentally important to all charged with a crime in the United States and seek to convict sexual offenders by any means necessary. However, these procedural rights protect everyone, not just those accused of crimes, from unfair treatment by the government. If procedural protections are weakened or ignored, it may lead to a system where the government holds too much unchecked power. This undermines public trust in the justice system and affects the rule of law, which benefits our society as a whole.[82] Legislators, whose responsibility it is to make laws that adhere to constitutional principles, should be fully aware of the importance of preserving these procedural safeguards.

While the swift response to Weinstein's appeal is concerning, it is just one example of a broader trend, not the end of the story. While high-profile cases or public outrage may act as the initial spark for legislative change, it should not drive decisions that affect the fairness of the justice system. Proponents of bills like A4992 and S9276 argue that the new law would not be implemented just because of one individual, but rather the need for broader reforms in New York evidence law.[83] However, the risk lies in allowing these emotional impulses to guide lawmaking, potentially undermining the rights of all defendants, not just those in high-profile cases. If lawmakers continue to act based on public outrage rather than a careful evaluation of constitutional protections, we risk developing a criminal justice system where decisions are shaped by tunnel vision on one person, allowing public sentiment to dictate the law and upending due process rather than ensuring justice for all parties.

B. Prior Bad Acts May Still be Excluded

1. The Defendant's Rights

Proponents of state legislation similar to A4992 and S9276 have argued that the law would protect defendants' rights.[84] These

82. *See, e.g.*, *Rule of Law*, U.N. GLOB. COMPACT, https://unglobalcompact.org/what-is-gc/our-work/governance/rule-law (on file with the Syracuse Law Review) (last visited Oct. 28, 2025).

83. *See* N.Y. STATE ASSEMB.: AMY PAULIN, *supra* note 9.

84. *See* Joan Huffman, *Proposed Sex Crimes Law Protects Defendants' Rights*, CHRON (Apr. 27, 2011), https://www.chron.com/opinion/outlook/article/proposed-

supporters note that multiple federal appellate courts have upheld the constitutionality of FRE 413, after which the state laws are modeled.[85] They argue that requiring the defendant to be notified of the witness and giving the judge the discretion to exclude overly prejudicial evidence ensures the protection of the defendant's rights.[86] However, this misguided perspective overlooks the dangers these laws pose to a genuinely fair trial, as they may allow unfairly prejudicial evidence to influence the outcome and undermine the integrity of a fair and impartial jury.

Any admission of a prior sex act can create undue prejudice to the defendant. A criminal trial should focus on the charged offenses. Introducing testimony regarding prior sex crimes shifts the focus to the defendant's history before the alleged act. This could lead jurors to the previously discussed position—if the defendant committed a similar crime before, they are more likely to be guilty of the charged crime. Even with limiting instructions issued by the judge, jurors may struggle to separate prior bad acts from the present charges, potentially leading them to make judgments based on the defendant's history rather than the facts of the case.

While the defense might attempt to "remove the sting" by introducing such evidence first, this strategy does not eliminate the prejudice. Once the jury hears about the alleged prior act, the risk remains that they will weigh it more heavily than the current charges, regardless of which party introduces it. This challenge highlights the need to exclude prior bad acts entirely, as they are often irrelevant to the current charges and can unfairly prejudice the defendant. Excluding this evidence ensures the trial remains focused on the facts and protects the defendant's right to a fair trial.[87]

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sex-crimes-law-protects-defendants-1355783.php (on file with the Syracuse Law Review) (arguing for a similar bill proposed in Texas).

85. *See id.*

86. *See id.*

87. *See, e.g.*, People v. Hudy, 535 N.E.2d 250, 259 (N.Y. 1988) (concluding that evidence of prior sexual misconduct was erroneously introduced when it only showed that if the defendant "did it once . . . he would do it again; therefore, he probably abused the other children"); *see also* People v. Vargas, 666 N.E.2d 1357, 1357 (N.Y. 1996) (holding that the trial court erred in allowing four women to testify about the defendant's prior sexual misconduct, as it only lent "credibility to the complainant by suggesting that, because defendant had engaged in sexual misconduct with others, he was likely to have committed the acts charged").

2. The Victim's Rights

As of February 2025, it is essential to note that every state, along with the Federal Rules of Evidence, has enacted some form of a rape shield law.[88] Rape shield laws protect victims by banning the introduction of propensity evidence in the form of the victim's prior sexual conduct unless said sexual conduct falls within a statutorily defined exception.[89] One of New York's rape shield laws, codified in 1975 for sex offense cases, prohibits the admission of evidence regarding a victim's sexual conduct, except for five statutory exceptions: (1) it proves or tends to prove specific instances of prior sexual conduct between the victim and the accused; (2) it shows that the victim has been convicted of an offense under section 230.00 of the Penal Law within three years prior to the alleged sex offense; (3) it rebuts evidence introduced by the prosecution regarding the victim's failure to engage in sexual contact during a given period; (4) it rebuts evidence that the accused is the cause of the victim's pregnancy, disease, or semen found on the victim; or (5) it is determined by the court, after an offer of proof by the accused, to be relevant and admissible in the interests of justice.[90]

Although we are not accusing victims of legal wrongdoings in trials, we have seen it necessary to create a protocol in the law to protect victims, while still explicitly stating situations where the victim's sexual history can be introduced into evidence. For defendants who are accused of having violated a victim's bodily rights and integrity, they face a different kind of fairness. While it is imperative to note that safeguards for victims and defendants differ in two ways—one seeking to safeguard the victim, and the other seeking accountability with sexual offenders—both hold important roles. Regardless of their incongruity, safeguards for victims and defendants both serve an equally worthy role, ultimately ensuring accountability for the sexual offender and justice for the victim.

Ensuring that defendants are not judged based on irrelevant past alleged conduct ensures the integrity of the trial process, ultimately ensuring justice for victims of sex crimes. When a defendant is tried fairly based on the facts of the case, it reduces the risk of a wrongful conviction or unfair bias influencing the outcome. This not only

88. *See* Megan Garvin, Alison Wilkinson & Sarah LeClair, *Excluding Evidence of Specific Sexual Acts Between the Victim and Defendant Under Rape Shield*, VIOLENCE AGAINST WOMEN BULL., Sept. 2010, at 2.

89. *See id.*

90. *See* N.Y. CRIM. PROC. LAW § 60.42(1)–(5) (McKinney 2025).

strengthens the legitimacy of the trial but also helps avoid appeals that may arise due to improper evidence being introduced. If cases are handled properly from the start, the likelihood of them being overturned on appeal is significantly reduced.[91] This ensures that justice is served, providing victims with their deserved closure while still safeguarding the integrity of the legal process.

C. Recidivism Rates

Although lawmakers have cited recidivism rates as a reason to codify FRE 413 into New York's evidence law urgently, the available data does not support the claim that sexual offenders are more likely to re-offend than other criminals.[92] A study by the U.S. Department of Justice's Bureau of Justice Statistics, which tracked a representative sample of 67,966 individuals from among 401,288 prisoners released from state prisons in 2005, found that 83% of those previously incarcerated were arrested within nine years of release.[93] However, sex offenders, at 67%, were less likely to re-offend compared to those convicted of robbery, assault, property crimes, drug offenses, or public-order offenses.[94]

Relying on recidivism data to justify the use of uncharged acts in court shifts jurors' focus away from the facts of the case at hand. Using recidivism rates to support the admissibility of prior bad acts implies that a defendant's history of reoffending makes them more likely to commit the current alleged crime.[95] This creates an implicit bias, as jurors may shift their judgment from the current facts to the defendant's past actions.[96] If lawmakers continue down this path, allowing recidivism rates to justify the allowance of prior bad act evidence, the fundamental principle of fairness could be eroded. Defendants might be judged not on the strength of the current evidence but on irrelevant past conduct, creating a system where prior allegations overshadow the pursuit of justice in individual cases. This could weaken the justice

91. *See* Meg Garvin, Alison Wilkinson & Sarah LeClair, *supra* note 88.

92. *See* N.Y. STATE ASSEMB.: AMY PAULIN, *supra* note 9. Assemblyman Dinowitz was quoted as saying, "By codifying FRE 413, we're not just making a legal adjustment; we're standing up for victims and ensuring their voices are heard in the pursuit of justice. Recidivism rates speak volumes, and we must act decisively." *Id.*

93. *See* Mariel Alper & Matthew R. Durose, U.S. Dep't. of Just., NCJ 251773, Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14) (May 2019).

94. *See id.*

95. *See* People v. Hudy, 535 N.E.2d 250, 259 (N.Y. 1988) (rejecting this approach, calling it "nothing more than a disguised 'propensity' argument").

96. *See, e.g.*, People v. Weinstein, 248 N.E.3d 691, 709 (N.Y. 2024).

system's integrity, diminish the presumption of innocence, and foster public distrust in a system that should prioritize impartiality and due process.

V. AN ALTERNATIVE SOLUTION TO A4992 & S9276

A. Clear & Predictable Standards

If the lawmakers remain intent on passing legislation regarding prior bad acts in sexual offense cases, it must not contain language as broad as what is found in A4992 and S9276. As previously discussed, current New York laws governing the admissibility of a victim's sexual conduct are tightly controlled, with said evidence allowed under only five specific exceptions within a defined statutory framework.[97] This ensures that the victim's privacy and dignity are protected and that their past conduct is not used unfairly to undermine their credibility as a witness or influence a jury's verdict.

In stark contrast, the new bills would allow courts to admit evidence in a sexual offense case that a defendant committed any other sexual offense "on any matter to which it is relevant."[98] This vague language poses significant risks to fairness, as the term "relevant" is loosely defined, leaving much to the trial court judge's discretion. Under the FRE and New York state law, relevance is broadly defined as evidence that makes a fact more or less likely to be true.[99] While this broad standard gives judges flexibility, it can lead to inconsistent rulings, as judges have broad discretion in determining what is relevant.

To avoid this risk, the statutory language should clearly specify when prior offenses can be presented to ensure defendants are not judged unfairly for unrelated actions. The language should express its relevance clearly and substantively. The term "similar" should be defined by the statute itself, creating a list of crimes or allegations that share sufficient overlap in critical elements with the charged offense.

Limiting the introduction of past alleged conduct to specific, narrowly defined exceptions ensures that such evidence is not used to prejudice the jury unfairly and that the trial remains focused on the facts of the case, rather than on the defendant's alleged past. New evidentiary laws must require that evidence of prior alleged bad acts share specific elements with the charged offenses.

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97. *See* N.Y. CRIM. PROC. LAW § 60.42(1)–(5) (McKinney 2025).

98. Assemb. B. 4992, 246th Sess. (N.Y. 2023).

99. *See* FED. R. EVID. 401; People v. Stevens, 559 N.E.2d 1278, 1279 (N.Y. 1990).

For example, if a defendant is charged with rape in the second degree, evidence of a prior conviction or allegation of rape in the first degree may be admissible because both crimes share essential elements—intent and lack of consent.[100] However, a prior conviction or allegation of sexual abuse in the first degree, which involves sexual contact without consent but does not require penetration, would not be admissible because the crimes differ significantly in both the nature of the conduct and the required elements.[101] Similarly, a prior conviction for or allegation of forcible touching would also be inadmissible, as it involves a much less severe level of contact than rape and does not involve the same degree of harm or criminal intent.[102] This demonstrates the need to ensure that only directly relevant prior offenses that share significant, comparable elements are allowed, thereby preventing the introduction of evidence that could unfairly influence the jury.

This approach would strike a balance by allowing the introduction of relevant evidence while still preserving the defendant's constitutional right to a fair trial. It offers clarity and predictability for both the prosecution and the defense, reducing the risk of arbitrary or biased decisions by trial court judges throughout the state. Clear legal standards would ensure that the rules governing the admissibility of alleged sex crimes are applied consistently across all cases, protecting the rights of all parties involved. Additionally, it reinforces the fundamental principle that every defendant is presumed innocent until proven guilty, thereby preserving the criminal justice system's integrity.

B. Applying Rape Shield Principles to Protect Defendants

If lawmakers allow the introduction of prior bad acts as evidence, defendants must be afforded the same protections as victims. Just as rape shield laws strictly limit the introduction of evidence regarding a victim's past sexual conduct, defendants should also be shielded from prejudicial evidence about their past unless an alleged act falls within

100. *See* N.Y. PENAL LAW §§ 130.30, 130.35 (McKinney 2025). Rape in the second degree and rape in the first degree differ. A defendant who is eighteen years old or older commits first-degree rape by "forcible compulsion" or when the victim is either incapable of consent or under the age of thirteen years old. N.Y. PENAL LAW § 130.35. In second-degree rape cases, the eighteen-year-old or older defendant's victim must be mentally incapacitated or disabled, or under the age of fifteen years old. N.Y. PENAL LAW § 130.30.

101. *See* N.Y. PENAL LAW § 130.65 (McKinney 2025).

102. *See* N.Y. PENAL LAW § 130.52 (McKinney 2025). To be charged with this offense, the defendant must be alleged to have, without consent, forcibly touched a victim for purposes of degradation or abuse, or made nonconsensual sexual contact for gratification when on public transport. *Id.*

a clear, explicit, and narrowly defined exception. These exceptions must be codified in law to ensure that only relevant and material evidence is admitted in court, preventing such evidence from being used to unfairly bias the jury.

Both victims and defendants are entitled to rights under the law. While rape shield laws have long protected victims from irrelevant and prejudicial evidence about their sexual history, defendants should be afforded similar protections to maintain fairness and equality within the criminal justice system. If victims are afforded clear, codified protections to safeguard their privacy and ensure fairness, it stands to reason that defendants should receive the same level of protection. After all, defendants, too, have constitutional rights—including the fundamental right to a fair trial. Just as we work to preserve the dignity and rights of victims, it is equally essential to ensure that defendants are not unfairly prejudiced by introducing irrelevant or harmful evidence from their past, which could undermine their right to be judged solely on the merits of the case at hand.

The codification of specific, narrow exceptions for the introduction of prior alleged bad acts ensures that defendants are not unfairly judged based on past actions that are unrelated to the crime they are being accused of. It provides a structured and predictable legal framework that upholds the presumption of innocence, ensuring that every defendant is judged based on the facts rather than unduly influenced by their alleged prior conduct. Ultimately, this approach ensures fairness for victims and defendants, preserves the justice system's integrity, and safeguards well-established constitutional rights.

CONCLUSION

While undoubtedly imperfect, the Framers established the American criminal justice system with inherent safeguards to protect individuals from unchecked and unbridled government power. It was born out of failed systems where anyone could be hailed to court and accused of crimes they did not commit. While, inherently, no system created and run by people can be flawless, the foundation of our justice system is deeply rooted in principles designed to limit the government's overreach and ensure fairness. These safeguards are essential to maintaining a lawful and just society.

We must protect the rights of the accused, no matter how heinous of a crime they are charged with or how the public perceives their case or person. The reputation of the accused and the desire for a swift and just conviction should not cloud our commitment to due process. The

court of public opinion, often driven by emotion or sensationalism, cannot be given the power to pick and choose who is entitled to the protections guaranteed by our Constitution. The integrity of the justice system relies on every individual being afforded a fair trial. A hasty rush to judgment or an erosion of constitutional protections in the name of expediency undermines the very essence of justice.

In cases involving severe offenses, like sex crimes, adhering to constitutional values becomes even more critical. While justice for victims is undeniably important, it is equally crucial that we ensure fairness for the accused. Proper justice for the victim and the accused can only be achieved when we uphold due process and the right to a fair trial, ensuring everyone is treated justly under the law. These principles ensure both the rights of the accused and the pursuit of genuine and honest justice for victims, allowing the criminal justice system to serve its intended purpose of fairness and accountability.

As aptly noted by Justice Harlan in *In re Winship*, "it is far worse to convict an innocent man than to let a guilty man go free."[103] This age-old sentiment emphasizes the need for careful and thoughtful consideration of legislative reforms. Laws and bills like A4992 and S9276 that seek to admit evidence of prior bad acts must be amended to afford defendants the same explicit, codified protections that victims receive under laws like rape shield statutes. Without these protections, introducing such evidence would open the door to unfair prejudice, making it much easier for the government to receive guilty verdicts based on irrelevant alleged past conduct rather than the facts of the case. Only through these amendments can we guarantee that the rights of the accused are appropriately safeguarded alongside the pursuit of justice for victims.

By ensuring explicit protections for defendants, we preserve the integrity of a system that, while imperfect, strives for fairness, accountability, and balance. Upholding these principles strengthens the justice system and affirms our commitment to a legal process where all individuals, regardless of their charges, are treated justly under the law. This is the foundation upon which true justice is built.

103. In re Winship, 397 U.S. 358, 372 (1970).