

[This is an entirely new rule.]

**Rule 413. Evidence of Immigration Status**

- (a) **Criminal or Delinquency Matters; Evidence Generally Inadmissible.** In any criminal or delinquency matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the offense, to show motive, or to show bias or prejudice of a witness pursuant to Rule 607. This paragraph shall not be construed to exclude evidence that would result in the violation of a defendant's or a juvenile's constitutional rights.
- (b) **Civil Matters; Evidence Generally Inadmissible.** In any civil matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the action, or to show bias or prejudice of a witness pursuant to Rule 607.
- (c) **Procedure.** Unless a party did not know, and with due diligence could not have known, that evidence of immigration status would be necessary, the following procedure shall apply prior to any such proposed use of immigration status evidence:
  - (1) The proponent shall file under seal and serve a written pretrial motion containing an offer of proof of the relevancy of the proposed evidence supported by an affidavit.
  - (2) If the court finds that the offer of proof is sufficient, the court shall order an *in camera* hearing.
  - (3) The court may admit evidence of immigration status pursuant to paragraph (a) or paragraph (b) if it finds the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.
- (d) **Voluntary Revelation.** This rule shall not prohibit a person, or the person's attorney, from voluntarily revealing his or her immigration status to the court.

**Comment**

Pa.R.E. 413 has no counterpart in the Federal Rules. This rule is modeled, in part, after Washington Rule of Evidence 413.

In practice, the introduction of immigration status has received heightened consideration in terms of relevancy and prejudice. See, e.g., *Commonwealth v. Sanchez*, 595 A.2d 617 (Pa. Super. 1991) (reference to defendant as an “illegal alien” was irrelevant and prejudicial). This consideration is warranted to avoid potential intimidation of witnesses for fear of deportation. See, e.g., 8 U.S.C. § 1227 (Deportable Aliens). This rule is intended to limit the admissibility of evidence of immigration status for purposes other than those stated in the rule. See, e.g., *Commonwealth v. Philistin*, 53 A.3d 1 (Pa. 2012) (discussing admissibility of immigration status for purpose of proving motive). Paragraphs (a) and (b) may serve as a basis for limiting discovery about immigration status.

This rule requires the proponent to seek pretrial approval prior to the introduction of evidence of immigration status. If evidence is admissible, the trial court may consider a cautionary jury instruction to ameliorate its prejudicial effect. See, e.g., *Commonwealth v. Hairston*, 84 A.3d 657 (Pa. 2014).

Nothing in this rule prohibits a court from unsealing a motion.

The procedure set forth in paragraph (c) is unnecessary for immigration status voluntarily revealed pursuant to paragraph (d). However, all other Rules of Evidence remain applicable. See, e.g., Pa.R.E. 402, 403.

**Note:** Adopted August 11, 2021, effective October 1, 2021.

*Committee Explanatory Report:*

Final Report explaining the August 11, 2021 adoption of Rule 413 published with the Court’s Order at 51 Pa.B. \_\_ (\_\_, 2021).