

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

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Action: Do Pass

Vote: 9 - 0 - 0

Yeas: Barker, Bonamici, Cameron, Flores, Komp, Krieger, Read, Whisnant, Macpherson

Nays: 0

Exc.: 0

Prepared By: Darian Stanford, Counsel

Meeting Dates: 1/31, 2/22

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**WHAT THE MEASURE DOES:** Amends ORS 40.355 to provide that defendant charged with sex crime who testifies may be impeached by evidence that defendant has been convicted of one or more sex crimes.

**ISSUES DISCUSSED:**

- Purpose of introducing prior conviction is impeachment/challenge of defendant's ability to be truthful; *not* that defendant was guilty in the past and is therefore guilty in the present
- Prior sex crimes are highly probative of a testifying defendant's truthfulness
- Specific circumstances of a defendant's prior conviction do not come into evidence unless defendant elects to expand on facts

**EFFECT OF COMMITTEE AMENDMENT:** No amendment.

**BACKGROUND:** Oregon law allows either the state or defense to attack the credibility of a witness through evidence that the witness has previously been convicted of any felony or of a misdemeanor involving dishonesty (*e.g.*, theft, false information to an officer). For defendants, this rule applies only if the defendant takes the stand (which the defendant has a constitutional right to avoid). The purpose of introducing the prior conviction is not to suggest that a defendant is guilty because the person has previous convictions; instead, the prior conviction is meant to address the credibility of the defendant's testimony.

HB 2340 expands the state's ability to utilize prior convictions in this fashion in cases involving sex crimes (defined by ORS 181.594). Specifically, it allows the state in sex crimes cases to impeach a defendant's credibility by introducing any prior misdemeanor sex crimes. These misdemeanor sex crimes would include sex abuse 3, contributing to the sexual delinquency of a minor, sexual misconduct and certain attempted sex crimes (rape 3, sodomy 3).

One other potential implication of HB 2340 addresses an alleged concern that in some cases, judges have refused to allow the state to use prior felony sex crimes to impeach a defendant charged with a sex crime. The justification for such a ruling is that introduction of the prior sex crime is "more prejudicial than probative" under Oregon Rule of Evidence 403. HB 2340 would theoretically make such rulings less likely.

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*This summary has not been adopted or officially endorsed by action of the committee.*