

# House Bill 2340

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon District Attorneys Association)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that defendant who is charged with sex crime and testifies may be impeached by evidence that defendant has been convicted of committing one or more other sex crimes.

## A BILL FOR AN ACT

1  
2 Relating to evidence; creating new provisions; and amending ORS 40.355.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 40.355 is amended to read:

5 40.355. (1) For the purpose of attacking the credibility of a witness, evidence that the witness  
6 has been convicted of a crime shall be admitted if elicited from the witness or established by public  
7 record, but only if the crime:

8 (a) Was punishable by death or imprisonment in excess of one year under the law under which  
9 the witness was convicted; or

10 (b) Involved false statement or dishonesty.

11 (2)(a) If a defendant is charged with one or more of the crimes listed in paragraph (b) of this  
12 subsection, and the defendant is a witness, evidence that the defendant has been convicted of com-  
13 mitting one or more of the following crimes against a family or household member, as defined in  
14 ORS 135.230, may be elicited from the defendant, or established by public record, and admitted into  
15 evidence for the purpose of attacking the credibility of the defendant:

16 (A) Assault in the fourth degree under ORS 163.160.

17 (B) Menacing under ORS 163.190.

18 (C) Harassment under ORS 166.065.

19 (D) Attempted assault in the fourth degree under ORS 163.160 (1).

20 (E) Attempted assault in the fourth degree under ORS 163.160 (3).

21 (F) Strangulation under ORS 163.187.

22 (b) Evidence may be admitted into evidence for the purpose of attacking the credibility of a  
23 defendant under the provisions of this subsection only if the defendant is charged with committing  
24 one or more of the following crimes against a family or household member, as defined in ORS  
25 135.230:

26 (A) Aggravated murder under ORS 163.095.

27 (B) Murder under ORS 163.115.

28 (C) Manslaughter in the first degree under ORS 163.118.

29 (D) Manslaughter in the second degree under ORS 163.125.

30 (E) Assault in the first degree under ORS 163.185.

31 (F) Assault in the second degree under ORS 163.175.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (G) Assault in the third degree under ORS 163.165.
- 2 (H) Assault in the fourth degree under ORS 163.160.
- 3 (I) Rape in the first degree under ORS 163.375 (1)(a).
- 4 (J) Sodomy in the first degree under ORS 163.405 (1)(a).
- 5 (K) Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).
- 6 (L) Sexual abuse in the first degree under ORS 163.427 (1)(a)(B).
- 7 (M) Kidnapping in the first degree under ORS 163.235.
- 8 (N) Kidnapping in the second degree under ORS 163.225.
- 9 (O) Burglary in the first degree under ORS 164.225.
- 10 (P) Coercion under ORS 163.275.
- 11 (Q) Stalking under ORS 163.732.
- 12 (R) Violating a court's stalking protective order under ORS 163.750.
- 13 (S) Menacing under ORS 163.190.
- 14 (T) Harassment under ORS 166.065.
- 15 (U) Strangulation under ORS 163.187.
- 16 (V) Attempting to commit a crime listed in this paragraph.

17 **(3) If a defendant is charged with a sex crime as defined in ORS 181.594, and the defend-**  
18 **ant is a witness, evidence that the defendant has been convicted of committing one or more**  
19 **other sex crimes as defined in ORS 181.594 may be elicited from the defendant, or established**  
20 **by public record, and admitted into evidence for the purpose of attacking the credibility of**  
21 **the defendant.**

22 [(3)] (4) Evidence of a conviction under this section is not admissible if:

- 23 (a) A period of more than 15 years has elapsed since the date of the conviction or of the release
- 24 of the witness from the confinement imposed for that conviction, whichever is the later date; or
- 25 (b) The conviction has been expunged by pardon, reversed, set aside or otherwise rendered
- 26 nugatory.

27 [(4)] (5) When the credibility of a witness is attacked by evidence that the witness has been  
28 convicted of a crime, the witness shall be allowed to explain briefly the circumstances of the crime  
29 or former conviction; once the witness explains the circumstances, the opposing side shall have the  
30 opportunity to rebut the explanation.

31 [(5)] (6) The pendency of an appeal therefrom does not render evidence of a conviction inad-  
32 missible. Evidence of the pendency of an appeal is admissible.

33 [(6)] (7) An adjudication by a juvenile court that a child is within its jurisdiction is not a con-  
34 viction of a crime.

35 [(7)] (8) A conviction of any of the statutory counterparts of offenses designated as violations  
36 as described in ORS 153.008 may not be used to impeach the character of a witness in any criminal  
37 or civil action or proceeding.

38 **SECTION 2. The amendments to ORS 40.355 by section 1 of this 2007 Act apply only to**  
39 **criminal proceedings commenced by the issuance of a charging instrument on or after the**  
40 **effective date of this 2007 Act.**

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