

Enrolled House Bill 2441

Sponsored by Representative GELSER; Representatives BARKER, CAMERON, GARRETT, KAHL,
OLSON, STIEGLER

CHAPTER

AN ACT

Relating to confessions; creating new provisions; and amending ORS 136.425.

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

SECTION 1. ORS 136.425 is amended to read:

136.425. (1) A confession or admission of a defendant, whether in the course of judicial proceedings or otherwise, cannot be given in evidence against the defendant when it was made under the influence of fear produced by threats[; *nor is*].

(2) Except as provided in section 2 of this 2009 Act, a confession [only] alone is not sufficient to warrant the conviction of the defendant without some other proof that the crime has been committed.

~~[(2)]~~ **(3) Evidence of a defendant’s conduct in relation to a declaration or act of another, in the presence and within the observation of the defendant, cannot be given when the defendant’s conduct occurred while the defendant was in the custody of a peace officer unless the defendant’s conduct affirmatively indicated the belief of the defendant in the truth of the matter stated or implied in the declaration or act of the other person.**

SECTION 2. (1) A confession alone is sufficient to warrant the conviction of the defendant without some other proof that the crime has been committed if:

- (a) The state files notice in accordance with subsection (3) of this section;**
- (b) The defendant is charged with a crime listed in ORS 181.594;**
- (c) The victim of the crime is a vulnerable person;**
- (d) The victim is incompetent to testify under ORS 40.310;**
- (e) The confession is made to a peace officer or a federal officer, as those terms are defined in ORS 133.005, or to an individual conducting an investigation under ORS 430.745, while the officer or individual is acting in the course of official duty; and**
- (f) The court finds that there is sufficient evidence to establish the trustworthiness of the confession.**

(2) In making the determination described in subsection (1)(f) of this section, the court shall consider the following factors, in addition to other factors the court considers important:

- (a) Whether there is evidence demonstrating the truthfulness of portions of the confession;**
- (b) Whether the defendant had the opportunity to commit the crime;**
- (c) The method of interrogation used to solicit the confession; and**
- (d) Whether the defendant is a vulnerable person.**

(3) The state shall file notice of the intention to rely on this section within 60 days of the arraignment, or of the defendant's entry of the initial plea on an accusatory instrument, whichever is sooner. The court shall grant the state an extension for good cause shown.

(4) When the state files the notice described in subsection (3) of this section, the court shall conduct a hearing prior to trial. After the hearing, the court shall enter an order that indicates whether the confession alone is sufficient to warrant the conviction of the defendant without some other proof that the crime has been committed.

(5) As used in this section:

(a) "Activities of daily living" includes dressing, eating, toileting, bathing, exercising appropriate personal hygiene practices and moving from place to place.

(b) "Vulnerable person" means:

(A) A person under 18 years of age;

(B) A person 65 years of age or older;

(C) A person who meets the medical criteria for the receipt of services from a community program or facility as those terms are defined in ORS 430.735;

(D) A person with a developmental disability as that term is defined in ORS 40.460 (18a)(d); or

(E) A person who, as the result of a diagnosed medical condition, requires assistance in two or more activities of daily living.

SECTION 3. Section 2 of this 2009 Act and the amendments to ORS 136.425 by section 1 of this 2009 Act apply to persons charged with a crime that is alleged to have been committed on or after the effective date of this 2009 Act.

Passed by House March 25, 2009

Received by Governor:

Repassed by House June 23, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

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Governor

Passed by Senate June 22, 2009

Filed in Office of Secretary of State:

.....M.,....., 2009

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President of Senate

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Secretary of State