

House Bill 2441

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

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 confession is inadmissible against defendant unless there is some other proof crime has been committed.

Creates exception for sex crimes against vulnerable victims when confession is trustworthy and victim is incompetent to testify.

A BILL FOR AN ACT

1
2 Relating to confessions; creating new provisions; and amending ORS 136.425.

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

4 **SECTION 1.** ORS 136.425 is amended to read:

5 136.425. (1) A confession or admission of a defendant, whether in the course of judicial pro-
6 ceedings or otherwise, cannot be given in evidence against the defendant when it was made under
7 the influence of fear produced by threats[; *nor is a confession only sufficient to warrant the conviction*
8 *of the defendant without some other proof that the crime has been committed*].

9 **(2) Except as provided in section 2 of this 2009 Act, a confession is inadmissible against**
10 **a defendant unless there is some other proof that the crime has been committed.**

11 [(2)] **(3)** Evidence of a defendant's conduct in relation to a declaration or act of another, in the
12 presence and within the observation of the defendant, cannot be given when the defendant's conduct
13 occurred while the defendant was in the custody of a peace officer unless the defendant's conduct
14 affirmatively indicated the belief of the defendant in the truth of the matter stated or implied in the
15 declaration or act of the other person.

16 **SECTION 2. (1) A confession is admissible against a defendant without some other proof**
17 **that the crime has been committed if:**

18 **(a) The defendant is charged with a crime listed in ORS 181.594;**

19 **(b) The victim of the crime is a vulnerable person;**

20 **(c) The victim is incompetent to testify under ORS 40.310; and**

21 **(d) The court finds that there is sufficient corroborating evidence that would tend to**
22 **establish the trustworthiness of the confession.**

23 **(2) In making the determination described in subsection (1)(d) of this section, the court**
24 **shall consider:**

25 **(a) Whether there is evidence demonstrating the truthfulness of portions of the con-**
26 **fession;**

27 **(b) Whether the defendant had the opportunity to commit the crime;**

28 **(c) The method of interrogation used to solicit the confession; and**

29 **(d) Whether the defendant is a vulnerable person.**

30 **(3) A motion to exclude a confession under this section must be filed at least seven days**

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 before the first date set for trial, unless the court finds good cause to allow the motion at
2 a later time.

3 (4) As used in this section:

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

6 (b) "Vulnerable person" means:

7 (A) A person under 18 years of age;

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

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

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

12 or

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

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

18