

Enrolled Senate Bill 242

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CHAPTER

AN ACT

Relating to previous convictions; creating new provisions; and amending ORS 132.540.

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

SECTION 1. ORS 132.540 is amended to read:

132.540. (1) The indictment is sufficient if it can be understood therefrom that:

(a) The defendant is named, or if the name of the defendant cannot be discovered, that the defendant is described by a fictitious name, with the statement that the real name of the defendant is to the jury unknown.

(b) The crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein.

(c) The crime was committed at some time prior to the finding of the indictment and within the time limited by law for the commencement of an action therefor.

(2) **Except as provided in ORS 136.765 (1) and subsection (3) of this section,** the indictment *[shall]* **may** not contain allegations that the defendant has previously been convicted of the violation of any statute *[which]* **that** may subject the defendant to enhanced penalties, *except where the conviction constitutes a material element of the crime charged*.

(3) The indictment must allege that the defendant has previously been convicted of an offense when the previous conviction constitutes a material element of the charged offense.

~~[(3)]~~ (4) Words used in a statute to define a crime need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

SECTION 2. (1) Except as provided in ORS 163.103 and 813.326, if an accusatory instrument or the written notice described in ORS 136.765 (2) alleges that the defendant has previously been convicted of an offense, the state has the burden of proving the previous conviction unless the defendant stipulates to that fact. The stipulation must:

(a) Be in writing;

(b) Admit without qualification that the defendant previously was convicted of the offense and that the conviction is valid;

(c) Include an express waiver of the defendant's right to a jury trial on the fact of the previous conviction; and

(d) Be filed with the court and served on the district attorney.

(2) If the defendant submits a stipulation to a previous conviction that meets the requirements of subsection (1) of this section, the court shall accept the stipulation. Upon acceptance:

(a) The stipulation constitutes a judicial admission to the fact of the previous conviction;

(b) If the previous conviction is a material element of the offense and the jury finds the defendant guilty upon instruction regarding the balance of the elements of the offense, the court shall enter a judgment of guilt on the charged offense in accordance with the stipulation;

(c) Except as provided in subsection (3) of this section, the court may not submit the allegation of the previous conviction to the jury; and

(d) Except as provided in subsections (3) and (4) of this section, neither the court nor the state may reveal to the jury the defendant's previous conviction.

(3)(a) A stipulation that is accepted by the court must be presented to the jury if:

(A) The statute that defines the charged offense includes as a material element that the defendant previously was convicted of the offense that is the subject of the stipulation and the charged conduct does not constitute a criminal offense except with that element; or

(B) The previous conviction is relevant to an enhancement fact that will be submitted to the jury in accordance with ORS 136.765 to 136.785.

(b) Except as provided in subsection (4) of this section, when the court presents a stipulation to the jury under this subsection, the court may not admit any other evidence of the previous conviction.

(4) The state may offer, and the court may receive and submit to the jury, evidence of the previous offense or conviction for any purpose other than establishing the fact of the previous conviction when the evidence of the previous offense or conviction is otherwise admissible for that purpose. When evidence of the previous offense or conviction has been admitted by the court, the state may comment upon, and the court may give instructions about, the evidence of the previous offense or conviction only to the extent that the comments or instructions relate to the purpose for which the evidence was admitted.

SECTION 3. (1) Except as provided in ORS 813.328, if an accusatory instrument or the written notice described in ORS 136.765 (2) alleges that the defendant has previously been convicted of an offense, the defendant may challenge the validity of the previous conviction by filing a notice of the defendant's intent to do so. The notice must:

(a) Identify the previous conviction that the defendant seeks to challenge;

(b) Specify the factual and legal basis for the challenge; and

(c) Be filed with the court and served on the district attorney within 35 days of the arraignment, or of the defendant's entry of the initial plea on an accusatory instrument, whichever is sooner, unless a different time is permitted by the court for good cause shown.

(2) The validity of the previous conviction shall be determined by the court before trial. At the hearing on the defendant's challenge:

(a) The state has the burden of proving by a preponderance of the evidence that the defendant previously was convicted of the offense; and

(b) The defendant has the burden of proving by a preponderance of the evidence that the previous conviction is not valid.

(3) If the court determines that the defendant was not previously convicted of the offense that is the subject of the challenge or that the previous conviction is not valid, the court shall enter an order prior to trial that so provides and excludes evidence of the previous conviction. The state may appeal from the order pursuant to ORS 138.060 (1)(c) or (2)(a).

(4) If the court determines that the defendant previously was convicted of the offense and that the conviction is valid, or if the defendant does not file and serve a notice under subsection (1) of this section, the previous conviction shall be admitted at trial or, if the previous conviction is relevant to an enhancement fact described in ORS 136.770 (4) or 136.773 (1), during the sentencing phase of the proceeding. If the previous conviction is admitted, the

defendant may dispute whether the defendant previously was convicted of the alleged offense but may not challenge the validity of the conviction. If the previous conviction is a material element of the charged offense or is an enhancement fact, the state must prove the previous conviction beyond a reasonable doubt unless the defendant stipulates to the fact of the previous conviction in accordance with section 2 of this 2009 Act.

(5) For purposes of this section, a previous conviction is not valid if:

(a) In the proceedings resulting in the conviction, the defendant was not represented by counsel and was deprived of the right to counsel in violation of the state or federal Constitution and the defendant is entitled under either Constitution to challenge the validity of the prior conviction in the proceeding before the court.

(b) Before the defendant committed the charged offense, the previous conviction was vacated by the court of conviction, reversed or set aside by a court of competent jurisdiction, expunged or pardoned.

SECTION 4. Sections 2 and 3 of this 2009 Act and the amendments to ORS 132.540 by section 1 of this 2009 Act apply to prosecutions for offenses committed on or after the effective date of this 2009 Act.

Passed by Senate March 10, 2009

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Secretary of Senate

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President of Senate

Passed by House May 13, 2009

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Speaker of House

Received by Governor:

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

Approved:

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

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Governor

Filed in Office of Secretary of State:

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

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Secretary of State