

# Senate Bill 289

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## 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 statement made by interpreter that constitutes translation of words or signs of another person is not hearsay if interpreter has sufficient understanding of other person's language, and sufficient understanding of English, to accurately translate words or signs of other person into English.

## A BILL FOR AN ACT

1  
2 Relating to hearsay; creating new provisions; and amending ORS 40.460.

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

4 **SECTION 1.** ORS 40.460 is amended to read:

5 40.460. The following are not excluded by ORS 40.455, even though the declarant is available  
6 as a witness:

7 (1) *[(Reserved.)]* **A statement made by an interpreter that constitutes a translation of the**  
8 **words or signs of another person if the interpreter has sufficient understanding of the lan-**  
9 **guage of the other person, and sufficient understanding of English, to accurately translate**  
10 **the words or signs of the other person into English.**

11 (2) A statement relating to a startling event or condition made while the declarant was under  
12 the stress of excitement caused by the event or condition.

13 (3) A statement of the declarant's then existing state of mind, emotion, sensation or physical  
14 condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not includ-  
15 ing a statement of memory or belief to prove the fact remembered or believed unless it relates to  
16 the execution, revocation, identification, or terms of the declarant's will.

17 (4) Statements made for purposes of medical diagnosis or treatment and describing medical his-  
18 tory, or past or present symptoms, pain or sensations, or the inception or general character of the  
19 cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

20 (5) A memorandum or record concerning a matter about which a witness once had knowledge  
21 but now has insufficient recollection to enable the witness to testify fully and accurately, shown to  
22 have been made or adopted by the witness when the matter was fresh in the memory of the witness  
23 and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into  
24 evidence but may not itself be received as an exhibit unless offered by an adverse party.

25 (6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions,  
26 opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person  
27 with knowledge, if kept in the course of a regularly conducted business activity, and if it was the  
28 regular practice of that business activity to make the memorandum, report, record, or data compi-  
29 lation, all as shown by the testimony of the custodian or other qualified witness, unless the source

**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 of information or the method of circumstances of preparation indicate lack of trustworthiness. The  
2 term “business” as used in this subsection includes business, institution, association, profession, oc-  
3 cupation, and calling of every kind, whether or not conducted for profit.

4 (7) Evidence that a matter is not included in the memoranda, reports, records, or data compila-  
5 tions, and in any form, kept in accordance with the provisions of subsection (6) of this section, to  
6 prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a  
7 memorandum, report, record, or data compilation was regularly made and preserved, unless the  
8 sources of information or other circumstances indicate lack of trustworthiness.

9 (8) Records, reports, statements or data compilations, in any form, of public offices or agencies,  
10 including federally recognized American Indian tribal governments, setting forth:

11 (a) The activities of the office or agency;

12 (b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to  
13 report, excluding, in criminal cases, matters observed by police officers and other law enforcement  
14 personnel; or

15 (c) In civil actions and proceedings and against the government in criminal cases, factual  
16 findings, resulting from an investigation made pursuant to authority granted by law, unless the  
17 sources of information or other circumstances indicate lack of trustworthiness.

18 (9) Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the  
19 report thereof was made to a public office, including a federally recognized American Indian tribal  
20 government, pursuant to requirements of law.

21 (10) To prove the absence of a record, report, statement or data compilation, in any form, or the  
22 nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation,  
23 in any form, was regularly made and preserved by a public office or agency, including a federally  
24 recognized American Indian tribal government, evidence in the form of a certification in accordance  
25 with ORS 40.510, or testimony, that diligent search failed to disclose the record, report, statement  
26 or data compilation, or entry.

27 (11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood  
28 or marriage, or other similar facts of personal or family history, contained in a regularly kept record  
29 of a religious organization.

30 (12) A statement of fact contained in a certificate that the maker performed a marriage or other  
31 ceremony or administered a sacrament, made by a member of the clergy, a public official, an official  
32 of a federally recognized American Indian tribal government or any other person authorized by the  
33 rules or practices of a religious organization or by law to perform the act certified, and purporting  
34 to have been issued at the time of the act or within a reasonable time thereafter.

35 (13) Statements of facts concerning personal or family history contained in family bibles,  
36 genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts,  
37 or tombstones, or the like.

38 (14) The record of a document purporting to establish or affect an interest in property, as proof  
39 of content of the original recorded document and its execution and delivery by each person by whom  
40 it purports to have been executed, if the record is a record of a public office, including a federally  
41 recognized American Indian tribal government, and an applicable statute authorizes the recording  
42 of documents of that kind in that office.

43 (15) A statement contained in a document purporting to establish or affect an interest in prop-  
44 erty if the matter stated was relevant to the purpose of the document, unless dealings with the  
45 property since the document was made have been inconsistent with the truth of the statement or

1 the purport of the document.

2 (16) Statements in a document in existence 20 years or more the authenticity of which is es-  
3 tablished.

4 (17) Market quotations, tabulations, lists, directories, or other published compilations, generally  
5 used and relied upon by the public or by persons in particular occupations.

6 (18) (Reserved.)

7 (18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or  
8 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a  
9 complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or  
10 older is the victim, made by the witness after the commission of the alleged misconduct or abuse  
11 at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to  
12 the fact that the complaint was made.

13 (b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or  
14 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those  
15 terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS  
16 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS  
17 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is  
18 unavailable as a witness but was chronologically or mentally under 12 years of age when the  
19 statement was made or was 65 years of age or older when the statement was made. However, if a  
20 declarant is unavailable, the statement may be admitted in evidence only if the proponent estab-  
21 lishes that the time, content and circumstances of the statement provide indicia of reliability, and  
22 in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged  
23 perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of  
24 reliability as is constitutionally required to be admitted. No statement may be admitted under this  
25 paragraph unless the proponent of the statement makes known to the adverse party the proponent's  
26 intention to offer the statement and the particulars of the statement no later than 15 days before  
27 trial, except for good cause shown. For purposes of this paragraph, in addition to those situations  
28 described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a  
29 substantial lack of memory of the subject matter of the statement, is presently incompetent to tes-  
30 tify, is unable to communicate about the abuse or sexual conduct because of fear or other similar  
31 reason or is substantially likely, as established by expert testimony, to suffer lasting severe emo-  
32 tional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the  
33 declarant in chambers and on the record or outside the presence of the jury and on the record. The  
34 examination shall be conducted immediately prior to the commencement of the trial in the presence  
35 of the attorney and the legal guardian or other suitable person as designated by the court. If the  
36 declarant is found to be unavailable, the court shall then determine the admissibility of the evidence.  
37 The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the ex-  
38 amination shall be to aid the court in making its findings regarding the availability of the declarant  
39 as a witness and the reliability of the statement of the declarant. In determining whether a state-  
40 ment possesses indicia of reliability under this paragraph, the court may consider, but is not limited  
41 to, the following factors:

42 (A) The personal knowledge of the declarant of the event;

43 (B) The age and maturity of the declarant or extent of disability if the declarant is a person  
44 with a developmental disability;

45 (C) Certainty that the statement was made, including the credibility of the person testifying

1 about the statement and any motive the person may have to falsify or distort the statement;

2 (D) Any apparent motive the declarant may have to falsify or distort the event, including bias,  
3 corruption or coercion;

4 (E) The timing of the statement of the declarant;

5 (F) Whether more than one person heard the statement;

6 (G) Whether the declarant was suffering pain or distress when making the statement;

7 (H) Whether the declarant's young age or disability makes it unlikely that the declarant fabri-  
8 cated a statement that represents a graphic, detailed account beyond the knowledge and experience  
9 of the declarant;

10 (I) Whether the statement has internal consistency or coherence and uses terminology appro-  
11 priate to the declarant's age or to the extent of the declarant's disability if the declarant is a person  
12 with a developmental disability;

13 (J) Whether the statement is spontaneous or directly responsive to questions; and

14 (K) Whether the statement was elicited by leading questions.

15 (c) This subsection applies to all civil, criminal and juvenile proceedings.

16 (d) This subsection applies to a child declarant, a declarant who is an elderly person as defined  
17 in ORS 124.050 or an adult declarant with a developmental disability. For the purposes of this sub-  
18 section, "developmental disability" means any disability attributable to mental retardation, autism,  
19 cerebral palsy, epilepsy or other disabling neurological condition that requires training or support  
20 similar to that required by persons with mental retardation, if either of the following apply:

21 (A) The disability originates before the person attains 22 years of age, or if the disability is at-  
22 tributable to mental retardation the condition is manifested before the person attains 18 years of  
23 age, the disability can be expected to continue indefinitely, and the disability constitutes a sub-  
24 stantial handicap to the ability of the person to function in society.

25 (B) The disability results in a significant subaverage general intellectual functioning with con-  
26 current deficits in adaptive behavior that are manifested during the developmental period.

27 (19) Reputation among members of a person's family by blood, adoption or marriage, or among  
28 a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce,  
29 death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of  
30 a person's personal or family history.

31 (20) Reputation in a community, arising before the controversy, as to boundaries of or customs  
32 affecting lands in the community, and reputation as to events of general history important to the  
33 community or state or nation in which located.

34 (21) Reputation of a person's character among associates of the person or in the community.

35 (22) Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a  
36 plea of no contest, adjudging a person guilty of a crime other than a traffic offense, to prove any  
37 fact essential to sustain the judgment, but not including, when offered by the government in a  
38 criminal prosecution for purposes other than impeachment, judgments against persons other than the  
39 accused. The pendency of an appeal may be shown but does not affect admissibility.

40 (23) Judgments as proof of matters of personal, family or general history, or boundaries, essen-  
41 tial to the judgment, if the same would be provable by evidence of reputation.

42 (24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding  
43 in which a child under 12 years of age at the time of trial, or a person with a developmental disa-  
44 bility as described in subsection (18a)(d) of this section, may be called as a witness to testify con-  
45 cerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the

1 child or person with a developmental disability by another, the testimony of the child or person with  
2 a developmental disability taken by contemporaneous examination and cross-examination in another  
3 place under the supervision of the trial judge and communicated to the courtroom by closed-circuit  
4 television or other audiovisual means. Testimony will be allowed as provided in this subsection only  
5 if the court finds that there is a substantial likelihood, established by expert testimony, that the  
6 child or person with a developmental disability will suffer severe emotional or psychological harm  
7 if required to testify in open court. If the court makes such a finding, the court, on motion of a  
8 party, the child, the person with a developmental disability or the court in a civil proceeding, or on  
9 motion of the district attorney, the child or the person with a developmental disability in a criminal  
10 or juvenile proceeding, may order that the testimony of the child or the person with a developmental  
11 disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the  
12 parties, individuals necessary to operate the equipment and any individual the court finds would  
13 contribute to the welfare and well-being of the child or person with a developmental disability may  
14 be present during the testimony of the child or person with a developmental disability.

15 (25)(a) Any document containing data prepared or recorded by the Oregon State Police pursuant  
16 to ORS 813.160 (1)(b)(C) or (E), or pursuant to ORS 475.235 (4), if the document is produced by data  
17 retrieval from the Law Enforcement Data System or other computer system maintained and operated  
18 by the Oregon State Police, and the person retrieving the data attests that the information was re-  
19 trieved directly from the system and that the document accurately reflects the data retrieved.

20 (b) Any document containing data prepared or recorded by the Oregon State Police that is  
21 produced by data retrieval from the Law Enforcement Data System or other computer system  
22 maintained and operated by the Oregon State Police and that is electronically transmitted through  
23 public or private computer networks under an electronic signature adopted by the Oregon State  
24 Police if the person receiving the data attests that the document accurately reflects the data re-  
25 ceived.

26 (c) Notwithstanding any statute or rule to the contrary, in any criminal case in which docu-  
27 ments are introduced under the provisions of this subsection, the defendant may subpoena the ana-  
28 lyst, as defined in ORS 475.235 (6), or other person that generated or keeps the original document  
29 for the purpose of testifying at the preliminary hearing and trial of the issue. Except as provided  
30 in ORS 44.550 to 44.566, no charge shall be made to the defendant for the appearance of the analyst  
31 or other person.

32 (26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic  
33 violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after  
34 the incident occurred, if the statement:

35 (A) Was recorded, either electronically or in writing, or was made to a peace officer as defined  
36 in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency  
37 medical technician or firefighter; and

38 (B) Has sufficient indicia of reliability.

39 (b) In determining whether a statement has sufficient indicia of reliability under paragraph (a)  
40 of this subsection, the court shall consider all circumstances surrounding the statement. The court  
41 may consider, but is not limited to, the following factors in determining whether a statement has  
42 sufficient indicia of reliability:

43 (A) The personal knowledge of the declarant.

44 (B) Whether the statement is corroborated by evidence other than statements that are subject  
45 to admission only pursuant to this subsection.

1 (C) The timing of the statement.

2 (D) Whether the statement was elicited by leading questions.

3 (E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient  
4 reason for denying admission of a statement under this subsection in the absence of other factors  
5 indicating unreliability.

6 (27) A report prepared by a forensic scientist that contains the results of a presumptive test  
7 conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that  
8 the report accurately reflects the results of the presumptive test.

9 (28)(a) A statement not specifically covered by any of the foregoing exceptions but having  
10 equivalent circumstantial guarantees of trustworthiness, if the court determines that:

11 (A) The statement is relevant;

12 (B) The statement is more probative on the point for which it is offered than any other evidence  
13 that the proponent can procure through reasonable efforts; and

14 (C) The general purposes of the Oregon Evidence Code and the interests of justice will best be  
15 served by admission of the statement into evidence.

16 (b) A statement may not be admitted under this subsection unless the proponent of it makes  
17 known to the adverse party the intention to offer the statement and the particulars of it, including  
18 the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as  
19 practicable after it becomes apparent that such statement is probative of the issues at hand, to  
20 provide the adverse party with a fair opportunity to prepare to meet it.

21 **SECTION 2.** ORS 40.460, as amended by section 3, chapter 636, Oregon Laws 2007, is amended  
22 to read:

23 40.460. The following are not excluded by ORS 40.455, even though the declarant is available  
24 as a witness:

25 (1) *[(Reserved.)]* **A statement made by an interpreter that constitutes a translation of the**  
26 **words or signs of another person if the interpreter has sufficient understanding of the lan-**  
27 **guage of the other person, and sufficient understanding of English, to accurately translate**  
28 **the words or signs of the other person into English.**

29 (2) A statement relating to a startling event or condition made while the declarant was under  
30 the stress of excitement caused by the event or condition.

31 (3) A statement of the declarant's then existing state of mind, emotion, sensation or physical  
32 condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not includ-  
33 ing a statement of memory or belief to prove the fact remembered or believed unless it relates to  
34 the execution, revocation, identification, or terms of the declarant's will.

35 (4) Statements made for purposes of medical diagnosis or treatment and describing medical his-  
36 tory, or past or present symptoms, pain or sensations, or the inception or general character of the  
37 cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

38 (5) A memorandum or record concerning a matter about which a witness once had knowledge  
39 but now has insufficient recollection to enable the witness to testify fully and accurately, shown to  
40 have been made or adopted by the witness when the matter was fresh in the memory of the witness  
41 and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into  
42 evidence but may not itself be received as an exhibit unless offered by an adverse party.

43 (6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions,  
44 opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person  
45 with knowledge, if kept in the course of a regularly conducted business activity, and if it was the

1 regular practice of that business activity to make the memorandum, report, record, or data compi-  
2 lation, all as shown by the testimony of the custodian or other qualified witness, unless the source  
3 of information or the method of circumstances of preparation indicate lack of trustworthiness. The  
4 term "business" as used in this subsection includes business, institution, association, profession, oc-  
5 cupation, and calling of every kind, whether or not conducted for profit.

6 (7) Evidence that a matter is not included in the memoranda, reports, records, or data compila-  
7 tions, and in any form, kept in accordance with the provisions of subsection (6) of this section, to  
8 prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a  
9 memorandum, report, record, or data compilation was regularly made and preserved, unless the  
10 sources of information or other circumstances indicate lack of trustworthiness.

11 (8) Records, reports, statements or data compilations, in any form, of public offices or agencies,  
12 including federally recognized American Indian tribal governments, setting forth:

13 (a) The activities of the office or agency;

14 (b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to  
15 report, excluding, in criminal cases, matters observed by police officers and other law enforcement  
16 personnel; or

17 (c) In civil actions and proceedings and against the government in criminal cases, factual  
18 findings, resulting from an investigation made pursuant to authority granted by law, unless the  
19 sources of information or other circumstances indicate lack of trustworthiness.

20 (9) Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the  
21 report thereof was made to a public office, including a federally recognized American Indian tribal  
22 government, pursuant to requirements of law.

23 (10) To prove the absence of a record, report, statement or data compilation, in any form, or the  
24 nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation,  
25 in any form, was regularly made and preserved by a public office or agency, including a federally  
26 recognized American Indian tribal government, evidence in the form of a certification in accordance  
27 with ORS 40.510, or testimony, that diligent search failed to disclose the record, report, statement  
28 or data compilation, or entry.

29 (11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood  
30 or marriage, or other similar facts of personal or family history, contained in a regularly kept record  
31 of a religious organization.

32 (12) A statement of fact contained in a certificate that the maker performed a marriage or other  
33 ceremony or administered a sacrament, made by a member of the clergy, a public official, an official  
34 of a federally recognized American Indian tribal government or any other person authorized by the  
35 rules or practices of a religious organization or by law to perform the act certified, and purporting  
36 to have been issued at the time of the act or within a reasonable time thereafter.

37 (13) Statements of facts concerning personal or family history contained in family bibles,  
38 genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts,  
39 or tombstones, or the like.

40 (14) The record of a document purporting to establish or affect an interest in property, as proof  
41 of content of the original recorded document and its execution and delivery by each person by whom  
42 it purports to have been executed, if the record is a record of a public office, including a federally  
43 recognized American Indian tribal government, and an applicable statute authorizes the recording  
44 of documents of that kind in that office.

45 (15) A statement contained in a document purporting to establish or affect an interest in prop-

1 erty if the matter stated was relevant to the purpose of the document, unless dealings with the  
2 property since the document was made have been inconsistent with the truth of the statement or  
3 the purport of the document.

4 (16) Statements in a document in existence 20 years or more the authenticity of which is es-  
5 tablished.

6 (17) Market quotations, tabulations, lists, directories, or other published compilations, generally  
7 used and relied upon by the public or by persons in particular occupations.

8 (18) (Reserved.)

9 (18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or  
10 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a  
11 complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or  
12 older is the victim, made by the witness after the commission of the alleged misconduct or abuse  
13 at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to  
14 the fact that the complaint was made.

15 (b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or  
16 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those  
17 terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS  
18 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS  
19 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is  
20 unavailable as a witness but was chronologically or mentally under 12 years of age when the  
21 statement was made or was 65 years of age or older when the statement was made. However, if a  
22 declarant is unavailable, the statement may be admitted in evidence only if the proponent estab-  
23 lishes that the time, content and circumstances of the statement provide indicia of reliability, and  
24 in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged  
25 perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of  
26 reliability as is constitutionally required to be admitted. No statement may be admitted under this  
27 paragraph unless the proponent of the statement makes known to the adverse party the proponent's  
28 intention to offer the statement and the particulars of the statement no later than 15 days before  
29 trial, except for good cause shown. For purposes of this paragraph, in addition to those situations  
30 described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a  
31 substantial lack of memory of the subject matter of the statement, is presently incompetent to tes-  
32 tify, is unable to communicate about the abuse or sexual conduct because of fear or other similar  
33 reason or is substantially likely, as established by expert testimony, to suffer lasting severe emo-  
34 tional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the  
35 declarant in chambers and on the record or outside the presence of the jury and on the record. The  
36 examination shall be conducted immediately prior to the commencement of the trial in the presence  
37 of the attorney and the legal guardian or other suitable person as designated by the court. If the  
38 declarant is found to be unavailable, the court shall then determine the admissibility of the evidence.  
39 The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the ex-  
40 amination shall be to aid the court in making its findings regarding the availability of the declarant  
41 as a witness and the reliability of the statement of the declarant. In determining whether a state-  
42 ment possesses indicia of reliability under this paragraph, the court may consider, but is not limited  
43 to, the following factors:

44 (A) The personal knowledge of the declarant of the event;

45 (B) The age and maturity of the declarant or extent of disability if the declarant is a person



1 with a developmental disability;

2 (C) Certainty that the statement was made, including the credibility of the person testifying  
3 about the statement and any motive the person may have to falsify or distort the statement;

4 (D) Any apparent motive the declarant may have to falsify or distort the event, including bias,  
5 corruption or coercion;

6 (E) The timing of the statement of the declarant;

7 (F) Whether more than one person heard the statement;

8 (G) Whether the declarant was suffering pain or distress when making the statement;

9 (H) Whether the declarant's young age or disability makes it unlikely that the declarant fabri-  
10 cated a statement that represents a graphic, detailed account beyond the knowledge and experience  
11 of the declarant;

12 (I) Whether the statement has internal consistency or coherence and uses terminology appro-  
13 priate to the declarant's age or to the extent of the declarant's disability if the declarant is a person  
14 with a developmental disability;

15 (J) Whether the statement is spontaneous or directly responsive to questions; and

16 (K) Whether the statement was elicited by leading questions.

17 (c) This subsection applies to all civil, criminal and juvenile proceedings.

18 (d) This subsection applies to a child declarant, a declarant who is an elderly person as defined  
19 in ORS 124.050 or an adult declarant with a developmental disability. For the purposes of this sub-  
20 section, "developmental disability" means any disability attributable to mental retardation, autism,  
21 cerebral palsy, epilepsy or other disabling neurological condition that requires training or support  
22 similar to that required by persons with mental retardation, if either of the following apply:

23 (A) The disability originates before the person attains 22 years of age, or if the disability is at-  
24 tributable to mental retardation the condition is manifested before the person attains 18 years of  
25 age, the disability can be expected to continue indefinitely, and the disability constitutes a sub-  
26 stantial handicap to the ability of the person to function in society.

27 (B) The disability results in a significant subaverage general intellectual functioning with con-  
28 current deficits in adaptive behavior that are manifested during the developmental period.

29 (19) Reputation among members of a person's family by blood, adoption or marriage, or among  
30 a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce,  
31 death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of  
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33 (20) Reputation in a community, arising before the controversy, as to boundaries of or customs  
34 affecting lands in the community, and reputation as to events of general history important to the  
35 community or state or nation in which located.

36 (21) Reputation of a person's character among associates of the person or in the community.

37 (22) Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a  
38 plea of no contest, adjudging a person guilty of a crime other than a traffic offense, to prove any  
39 fact essential to sustain the judgment, but not including, when offered by the government in a  
40 criminal prosecution for purposes other than impeachment, judgments against persons other than the  
41 accused. The pendency of an appeal may be shown but does not affect admissibility.

42 (23) Judgments as proof of matters of personal, family or general history, or boundaries, essen-  
43 tial to the judgment, if the same would be provable by evidence of reputation.

44 (24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding  
45 in which a child under 12 years of age at the time of trial, or a person with a developmental disa-

1 bility as described in subsection (18a)(d) of this section, may be called as a witness to testify con-  
2 cerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the  
3 child or person with a developmental disability by another, the testimony of the child or person with  
4 a developmental disability taken by contemporaneous examination and cross-examination in another  
5 place under the supervision of the trial judge and communicated to the courtroom by closed-circuit  
6 television or other audiovisual means. Testimony will be allowed as provided in this subsection only  
7 if the court finds that there is a substantial likelihood, established by expert testimony, that the  
8 child or person with a developmental disability will suffer severe emotional or psychological harm  
9 if required to testify in open court. If the court makes such a finding, the court, on motion of a  
10 party, the child, the person with a developmental disability or the court in a civil proceeding, or on  
11 motion of the district attorney, the child or the person with a developmental disability in a criminal  
12 or juvenile proceeding, may order that the testimony of the child or the person with a developmental  
13 disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the  
14 parties, individuals necessary to operate the equipment and any individual the court finds would  
15 contribute to the welfare and well-being of the child or person with a developmental disability may  
16 be present during the testimony of the child or person with a developmental disability.

17 (25)(a) Any document containing data prepared or recorded by the Oregon State Police pursuant  
18 to ORS 813.160 (1)(b)(C) or (E) if the document is produced by data retrieval from the Law  
19 Enforcement Data System or other computer system maintained and operated by the Oregon State  
20 Police, and the person retrieving the data attests that the information was retrieved directly from  
21 the system and that the document accurately reflects the data retrieved.

22 (b) Any document containing data prepared or recorded by the Oregon State Police that is  
23 produced by data retrieval from the Law Enforcement Data System or other computer system  
24 maintained and operated by the Oregon State Police and that is electronically transmitted through  
25 public or private computer networks under an electronic signature adopted by the Oregon State  
26 Police if the person receiving the data attests that the document accurately reflects the data re-  
27 ceived.

28 (c) Notwithstanding any statute or rule to the contrary, in any criminal case in which docu-  
29 ments are introduced under the provisions of this subsection, the defendant may subpoena the per-  
30 son that generated or keeps the original document for the purpose of testifying at the preliminary  
31 hearing and trial of the issue. Except as provided in ORS 44.550 to 44.566, no charge shall be made  
32 to the defendant for the appearance of the person.

33 (26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic  
34 violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after  
35 the incident occurred, if the statement:

36 (A) Was recorded, either electronically or in writing, or was made to a peace officer as defined  
37 in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency  
38 medical technician or firefighter; and

39 (B) Has sufficient indicia of reliability.

40 (b) In determining whether a statement has sufficient indicia of reliability under paragraph (a)  
41 of this subsection, the court shall consider all circumstances surrounding the statement. The court  
42 may consider, but is not limited to, the following factors in determining whether a statement has  
43 sufficient indicia of reliability:

44 (A) The personal knowledge of the declarant.

45 (B) Whether the statement is corroborated by evidence other than statements that are subject

1 to admission only pursuant to this subsection.

2 (C) The timing of the statement.

3 (D) Whether the statement was elicited by leading questions.

4 (E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient  
5 reason for denying admission of a statement under this subsection in the absence of other factors  
6 indicating unreliability.

7 (27) A report prepared by a forensic scientist that contains the results of a presumptive test  
8 conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that  
9 the report accurately reflects the results of the presumptive test.

10 (28)(a) A statement not specifically covered by any of the foregoing exceptions but having  
11 equivalent circumstantial guarantees of trustworthiness, if the court determines that:

12 (A) The statement is relevant;

13 (B) The statement is more probative on the point for which it is offered than any other evidence  
14 that the proponent can procure through reasonable efforts; and

15 (C) The general purposes of the Oregon Evidence Code and the interests of justice will best be  
16 served by admission of the statement into evidence.

17 (b) A statement may not be admitted under this subsection unless the proponent of it makes  
18 known to the adverse party the intention to offer the statement and the particulars of it, including  
19 the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as  
20 practicable after it becomes apparent that such statement is probative of the issues at hand, to  
21 provide the adverse party with a fair opportunity to prepare to meet it.

22 **SECTION 3. The amendments to ORS 40.460 by sections 1 and 2 of this 2009 Act apply**  
23 **only to statements offered as evidence on or after the effective date of this 2009 Act.**

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