

# Senate Bill 359

Sponsored by Senator GEORGE; Senators FERRIOLI, GIROD, KRUSE, NELSON, STARR, WINTERS, Representatives GILLIAM, THATCHER, WINGARD (at the request of Freedom Works)

## 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 upon offer of expert scientific evidence at trial, court must first determine whether theory or technique supporting offered evidence is based on scientifically valid principles and is pertinent. Specifies factors court must use in determining whether theory or technique is based on scientifically valid principles.

Provides that witness may not testify about scientific, technical or other specialized knowledge if compensation of witness is contingent on outcome of proceedings.

## A BILL FOR AN ACT

1  
2 Relating to evidence; creating new provisions; and amending ORS 40.410 and 426.095.

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

4 **SECTION 1.** ORS 40.410 is amended to read:

5 40.410. (1) If scientific, technical or other specialized knowledge will assist the trier of fact to  
6 understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowl-  
7 edge, skill, experience, training or education may testify thereto in the form of an opinion or oth-  
8 erwise.

9 (2) **If expert scientific evidence is offered at trial, the court shall first determine under**  
10 **ORS 40.030 whether the theory or technique supporting the offered evidence is based on sci-**  
11 **entifically valid principles and is pertinent to the issue to which the evidence is directed. In**  
12 **determining whether the proposed evidence is based on scientifically valid principles, the**  
13 **court shall consider all of the following factors:**

14 (a) **Whether the theory or technique is subject to testing.**

15 (b) **Whether other experts have tested and evaluated the theory or technique.**

16 (c) **The testing procedures used in evaluating the theory or technique, the number of**  
17 **studies on the theory or technique and any criticisms of the testing procedures used in**  
18 **evaluating the theory or technique.**

19 (d) **Whether the theory or technique has been subjected to peer review and publication.**

20 (e) **The known or potential rate of error in a technique and the existence of operational**  
21 **standards controlling the technique's operation.**

22 (f) **The degree of acceptance of the theory or technique in the relevant scientific com-**  
23 **munity.**

24 (3) **If expert scientific evidence is offered in evidence and the evidence is based on**  
25 **statements made out of court and not in evidence, the evidence must meet the requirements**  
26 **of ORS 40.415. The court may seek the assistance of its own expert for the purpose of**  
27 **evaluating the offered evidence. The court shall deny admission of the offered evidence under**  
28 **ORS 40.160 if the probative value of the evidence is outweighed by the danger of unfair**

**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 **prejudice, confusion of issues or misleading the jury.**

2 **(4) A witness may not testify about scientific, technical or other specialized knowledge**  
 3 **if compensation of the witness is contingent on the outcome of the proceedings in which the**  
 4 **testimony is offered.**

5 **SECTION 2. The amendments to ORS 40.410 by section 1 of this 2009 Act apply only to**  
 6 **trials and other proceedings commenced on or after the effective date of this 2009 Act.**

7 **SECTION 3.** ORS 426.095 is amended to read:

8 426.095. The following is applicable to a commitment hearing held by a court under ORS 426.070:

9 (1) The hearing may be held in a hospital, the person's home or in some other place convenient  
 10 to the court and the allegedly mentally ill person.

11 (2) The court shall hold the hearing at the time established according to the following:

12 (a) Except as provided by paragraph (b) or (c) of this subsection, a hearing shall be held five  
 13 judicial days from the day a court under ORS 426.070 issues a citation provided under ORS 426.090.

14 (b) Except as provided by paragraph (c) of this subsection, if a person is detained by a warrant  
 15 of detention under ORS 426.070, a hearing shall be held within five judicial days of the commence-  
 16 ment of detention.

17 (c) If requested under this paragraph, the court, for good cause, may postpone the hearing for  
 18 not more than five judicial days in order to allow preparation for the hearing. The court may make  
 19 orders for the care and custody of the person during a postponement as it deems necessary. If a  
 20 person is detained before a hearing under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and the  
 21 hearing is postponed under this paragraph, the court, for good cause, may allow the person to be  
 22 detained during the postponement if the postponement is requested by the person or the legal  
 23 counsel of the person. Any of the following may request a postponement under this paragraph:

24 (A) The allegedly mentally ill person.

25 (B) The legal counsel or guardian of the allegedly mentally ill person.

26 (C) The person representing the state's interest.

27 (3) The allegedly mentally ill person and the person representing the state's interest shall have  
 28 the right to cross-examine all the following:

29 (a) Witnesses.

30 (b) The person conducting the investigation.

31 (c) The examining physicians or other qualified persons recommended by the Department of  
 32 Human Services who have examined the person.

33 (4) The provisions of ORS 40.230, 40.235, 40.240 and 40.250 shall not apply to and the court may  
 34 consider as evidence any of the following:

35 (a) Medical records for the current involuntary prehearing period of detention.

36 (b) Statements attributed by the maker of the medical records or the investigation report to  
 37 witnesses concerning their own observations in the absence of objection or if such persons are  
 38 produced as witnesses at the hearing available for cross-examination.

39 (c) The testimony of any treating physicians, nurses or social workers for the prehearing period  
 40 of detention. Any treating physician, nurse or social worker who is subpoenaed as a witness for the  
 41 proceeding shall testify as an expert witness under the provisions of ORS 40.410 (1), 40.415, 40.420  
 42 and 40.425 and is subject to treatment as an expert witness in the payment of witness fees and costs.

43 (d) The investigation report prepared under ORS 426.074. Subject to the following, the investi-  
 44 gation report shall be introduced in evidence:

45 (A) Introduction of the report under this paragraph does not require the consent of the allegedly

1 mentally ill person.

2 (B) Upon objection by any party to the action, the court shall exclude any part of the investi-  
3 gation report that may be excluded under the Oregon Evidence Code on grounds other than those  
4 set forth in ORS 40.230, 40.235, 40.240 or 40.250.

5 (C) Neither the investigation report nor any part thereof shall be introduced into evidence under  
6 this paragraph unless the investigator is present during the proceeding to be cross-examined or un-  
7 less the presence of the investigator is waived by the allegedly mentally ill person or counsel for  
8 the allegedly mentally ill person.

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