

House Bill 3569

Sponsored by Representative HICKS

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**.

Modifies rules of evidence to allow introduction of evidence pertaining to commission of sex crimes under certain circumstances.

A BILL FOR AN ACT

Relating to evidence; creating new provisions; and amending ORS 40.355.

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

SECTION 1. ORS 40.355 is amended to read:

40.355. (1) For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record, but only if the crime:

(a) Was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted; or

(b) Involved false statement or dishonesty.

(2) If a defendant is charged with one or more sex crimes as defined in ORS 181.594 and the defendant is a witness, evidence that the defendant has been convicted of committing one or more sex crimes, or one or more statutory counterparts in another jurisdiction to a sex crime, may be elicited from the defendant, or established by public record, and admitted into evidence for the purpose of attacking the credibility of the defendant.

[(2)(a)] **(3)(a)** If a defendant is charged with one or more of the crimes listed in paragraph (b) of this subsection, and the defendant is a witness, evidence that the defendant has been convicted of committing one or more of the following crimes against a family or household member, as defined in ORS 135.230, may be elicited from the defendant, or established by public record, and admitted into evidence for the purpose of attacking the credibility of the defendant:

(A) Assault in the fourth degree under ORS 163.160.

(B) Menacing under ORS 163.190.

(C) Harassment under ORS 166.065.

(D) Attempted assault in the fourth degree under ORS 163.160 (1).

(E) Attempted assault in the fourth degree under ORS 163.160 (3).

(F) Strangulation under ORS 163.187.

(G) The statutory counterpart in another jurisdiction to a crime listed in this paragraph.

(b) Evidence may be admitted into evidence for the purpose of attacking the credibility of a defendant under the provisions of this subsection only if the defendant is charged with committing one or more of the following crimes against a family or household member, as defined in ORS 135.230:

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 (A) Aggravated murder under ORS 163.095.
- 2 (B) Murder under ORS 163.115.
- 3 (C) Manslaughter in the first degree under ORS 163.118.
- 4 (D) Manslaughter in the second degree under ORS 163.125.
- 5 (E) Assault in the first degree under ORS 163.185.
- 6 (F) Assault in the second degree under ORS 163.175.
- 7 (G) Assault in the third degree under ORS 163.165.
- 8 (H) Assault in the fourth degree under ORS 163.160.
- 9 (I) Rape in the first degree under ORS 163.375 (1)(a).
- 10 (J) Sodomy in the first degree under ORS 163.405 (1)(a).
- 11 (K) Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).
- 12 (L) Sexual abuse in the first degree under ORS 163.427 (1)(a)(B).
- 13 (M) Kidnapping in the first degree under ORS 163.235.
- 14 (N) Kidnapping in the second degree under ORS 163.225.
- 15 (O) Burglary in the first degree under ORS 164.225.
- 16 (P) Coercion under ORS 163.275.
- 17 (Q) Stalking under ORS 163.732.
- 18 (R) Violating a court's stalking protective order under ORS 163.750.
- 19 (S) Menacing under ORS 163.190.
- 20 (T) Harassment under ORS 166.065.
- 21 (U) Strangulation under ORS 163.187.

22 (V) Attempting to commit a crime listed in this paragraph.

23 [(3)] (4) Evidence of a conviction under this section is not admissible if:

24 (a) A period of more than 15 years has elapsed since the date of the conviction or of the release
25 of the witness from the confinement imposed for that conviction, whichever is the later date; or

26 (b) The conviction has been expunged by pardon, reversed, set aside or otherwise rendered
27 nugatory.

28 [(4)] (5) When the credibility of a witness is attacked by evidence that the witness has been
29 convicted of a crime, the witness shall be allowed to explain briefly the circumstances of the crime
30 or former conviction; once the witness explains the circumstances, the opposing side shall have the
31 opportunity to rebut the explanation.

32 [(5)] (6) The pendency of an appeal therefrom does not render evidence of a conviction inad-
33 missible. Evidence of the pendency of an appeal is admissible.

34 [(6)] (7) An adjudication by a juvenile court that a child is within its jurisdiction is not a con-
35 viction of a crime.

36 [(7)] (8) A conviction of any of the statutory counterparts of offenses designated as violations
37 as described in ORS 153.008 may not be used to impeach the character of a witness in any criminal
38 or civil action or proceeding.

39 **SECTION 2. Section 3 of this 2011 Act is added to and made a part of ORS 40.010 to 40.210.**

40 **SECTION 3. (1) In a civil case in which the relief sought is predicated on a party's com-**
41 **mission of conduct constituting a sex crime as defined in ORS 181.594, evidence that the**
42 **party committed one or more other sex crimes, in this or in any other jurisdiction, is ad-**
43 **missible and may be considered by the fact finder in deciding any matter to which the evi-**
44 **dence is relevant.**

45 **(2) Before offering evidence under this section, the party who intends to offer the evi-**

1 **dence must disclose the evidence to the party against whom it will be offered at least 15 days**
2 **before the scheduled date of trial or hearing, or at such later time as the court may allow**
3 **for good cause. The disclosure must include written statements of witnesses or a summary**
4 **of the substance of any testimony that the party expects to offer at the trial or hearing.**

5 **(3) This section does not limit the admission or consideration of evidence of other crimes,**
6 **wrongs or acts under ORS 40.170 or other provisions of law.**

7 **SECTION 4. (1) Section 3 of this 2011 Act applies to civil actions filed on or after the ef-**
8 **fective date of this 2011 Act.**

9 **(2) The amendments to ORS 40.355 by section 1 of this 2011 Act apply to criminal prose-**
10 **cutions for crimes committed on or after the effective date of this 2011 Act.**

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