

HB 2779

Relating to protective orders for victims of sexual abuse

We previously amended and reported out House Bill 2779 which authorizes the issuance of protective orders in certain cases where persons have been subjected to sexual abuse. Legislative Counsel produced the –B6 amendment to resolve conflicts identified during its review process of measures in the second chamber.

I recommend House Bill 2779 be amended, and reported out do pass as amended.

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO
B-ENGROSSED HOUSE BILL 2779**

1 On page 12 of the printed B-engrossed bill, after line 27, insert:

2 **“SECTION 21. If Senate Bill 673 becomes law, section 13 of this 2013**
3 **Act (amending ORS 40.210) is repealed and ORS 40.210, as amended by**
4 **section 5, chapter __, Oregon Laws 2013 (Enrolled Senate Bill 673), is**
5 **amended to read:**

6 “40.210. (1) Notwithstanding any other provision of law, in a prosecution
7 for a crime described in ORS 163.266 (1)(b) or (c), 163.355 to 163.427, 163.670
8 or 167.017, [*or*] in a prosecution for an attempt to commit one of those crimes
9 **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, the
10 following evidence is not admissible:

11 “(a) Reputation or opinion evidence of the past sexual behavior of an al-
12 leged victim [*of the crime*] or a corroborating witness; or

13 “(b) Reputation or opinion evidence presented for the purpose of showing
14 that the manner of dress of an alleged victim [*of the crime*] incited the crime
15 **or, in a proceeding under sections 1 to 8 of this 2013 Act, incited the**
16 **sexual abuse**, or indicated consent to the sexual acts **that are** alleged [*in*
17 *the charge*].

18 “(2) Notwithstanding any other provision of law, in a prosecution for a
19 crime or an attempt to commit a crime listed in subsection (1) of this section
20 **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**,
21 evidence of [*a*] **an alleged** victim’s past sexual behavior other than reputa-
22 tion or opinion evidence is also not admissible, unless the evidence other

1 than reputation or opinion evidence:

2 “(a) Is admitted in accordance with subsection (4) of this section; and

3 “(b) Is evidence that:

4 “(A) Relates to the motive or bias of the alleged victim;

5 “(B) Is necessary to rebut or explain scientific or medical evidence offered
6 by the state; or

7 “(C) Is otherwise constitutionally required to be admitted.

8 “(3) Notwithstanding any other provision of law, in a prosecution for a
9 crime or an attempt to commit a crime listed in subsection (1) of this section
10 **or in a proceeding conducted under sections 1 to 8 of this 2013 Act,**
11 evidence, other than reputation or opinion evidence, of the manner of dress
12 of the alleged victim or a corroborating witness, presented by a person ac-
13 cused of committing the crime **or, in a proceeding conducted under**
14 **sections 1 to 8 of this 2013 Act, by the respondent,** is also not admissible,
15 unless the evidence is:

16 “(a) Admitted in accordance with subsection (4) of this section; and

17 “(b) Is evidence that:

18 “(A) Relates to the motive or bias of the alleged victim;

19 “(B) Is necessary to rebut or explain scientific, medical or testimonial
20 evidence offered by the state;

21 “(C) Is necessary to establish the identity of the **alleged** victim; or

22 “(D) Is otherwise constitutionally required to be admitted.

23 “(4)(a) If the person accused of a crime or an attempt to commit a crime
24 listed in subsection (1) of this section, **or the respondent in a proceeding**
25 **conducted under sections 1 to 8 of this 2013 Act,** intends to offer evidence
26 under subsection (2) or (3) of this section, the accused **or the respondent**
27 shall make a written motion to offer the evidence not later than 15 days
28 before the date on which the trial in which the evidence is to be offered is
29 scheduled to begin, except that the court may allow the motion to be made
30 at a later date, including during trial, if the court determines either that the

1 evidence is newly discovered and could not have been obtained earlier
2 through the exercise of due diligence or that the issue to which the evidence
3 relates has newly arisen in the case. Any motion made under this paragraph
4 shall be served on all other parties[,] and, **in a criminal proceeding**, on the
5 alleged victim through the office of the prosecutor.

6 “(b) The motion described in paragraph (a) of this subsection shall be
7 accompanied by a written offer of proof. If the court determines that the of-
8 fer of proof contains evidence described in subsection (2) or (3) of this sec-
9 tion, the court shall order a hearing in camera to determine if the evidence
10 is admissible. At the hearing the parties may call witnesses, including the
11 alleged victim, and offer relevant evidence. Notwithstanding ORS 40.030 (2),
12 if the relevancy of the evidence that the accused **or the respondent** seeks
13 to offer in the trial depends upon the fulfillment of a condition of fact, the
14 court, at the hearing in camera or at a subsequent hearing in camera
15 scheduled for the same purpose, shall accept evidence on the issue of whether
16 the condition of fact is fulfilled and shall determine the issue.

17 “(c) If the court determines on the basis of the hearing described in par-
18 agraph (b) of this subsection that the evidence the accused **or the re-**
19 **spondent** seeks to offer is relevant and that the probative value of the
20 evidence outweighs the danger of unfair prejudice, the evidence shall be ad-
21 missible in the trial to the extent an order made by the court specifies evi-
22 dence that may be offered and areas with respect to which a witness may
23 be examined or cross-examined.

24 “(d) An order admitting evidence under this subsection **in a criminal**
25 **prosecution** may be appealed by the [government] **state** before trial.

26 “(5) For purposes of this section:

27 “(a) **‘Alleged victim’ includes the petitioner in a proceeding con-**
28 **ducted under sections 1 to 8 of this 2013 Act.**

29 “[a] (b) ‘In camera’ means out of the presence of the public and the
30 jury[; and].

1 “[(b)] (c) ‘Past sexual behavior’ means sexual behavior other than:

2 “(A) The sexual behavior with respect to which the crime or attempt to
3 commit the crime listed in subsection (1) of this section is alleged[.]; **or**

4 “(B) **In a proceeding conducted under sections 1 to 8 of this 2013**
5 **Act, the alleged sexual abuse.**

6 “(d) ‘Trial’ includes a hearing conducted under sections 1 to 8 of
7 **this 2013 Act.**

8 “**SECTION 22.** If Senate Bill 673 becomes law, section 20 of this 2013
9 Act is amended to read:

10 “**Sec. 20.** Sections 1 to 8 of this 2013 Act and the amendments to ORS
11 21.245, 36.185, 40.210, 107.835, 133.310, 133.381 and 659A.270 and ORCP 79E
12 by sections 11, **12, 14** to 18 **and 21** of this 2013 Act become operative on
13 January 1, 2014.”.

14 In line 28, delete “21” and insert “23”.

15 In line 30, delete “July 1, 2013” and insert “on its passage”.

16
