

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO B-ENGROSSED HOUSE BILL 2779

By JOINT COMMITTEE ON WAYS AND MEANS

July 5

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 Act (amending ORS**
3 **40.210) is repealed and ORS 40.210, as amended by section 5, chapter ___, Oregon Laws 2013**
4 **(Enrolled Senate Bill 673), is amended to read:**

5 “40.210. (1) Notwithstanding any other provision of law, in a prosecution for a crime described
6 in ORS 163.266 (1)(b) or (c), 163.355 to 163.427, 163.670 or 167.017, [or] in a prosecution for an at-
7 tempt to commit one of those crimes **or in a proceeding conducted under sections 1 to 8 of this**
8 **2013 Act**, the following evidence is not admissible:

9 “(a) Reputation or opinion evidence of the past sexual behavior of an alleged victim [*of the*
10 *crime*] or a corroborating witness; or

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

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

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

21 “(b) Is evidence that:

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

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

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

25 “(3) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to
26 commit a crime listed in subsection (1) of this section **or in a proceeding conducted under**
27 **sections 1 to 8 of this 2013 Act**, evidence, other than reputation or opinion evidence, of the manner
28 of dress of the alleged victim or a corroborating witness, presented by a person accused of com-
29 mitting the crime **or, in a proceeding conducted under sections 1 to 8 of this 2013 Act, by the**
30 **respondent**, is also not admissible, unless the evidence is:

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

32 “(b) Is evidence that:

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

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

1 “(C) Is necessary to establish the identity of the **alleged** victim; or
2 “(D) Is otherwise constitutionally required to be admitted.
3 “(4)(a) If the person accused of a crime or an attempt to commit a crime listed in subsection (1)
4 of this section, **or the respondent in a proceeding conducted under sections 1 to 8 of this 2013**
5 **Act**, intends to offer evidence under subsection (2) or (3) of this section, the accused **or the re-**
6 **spondent** shall make a written motion to offer the evidence not later than 15 days before the date
7 on which the trial in which the evidence is to be offered is scheduled to begin, except that the court
8 may allow the motion to be made at a later date, including during trial, if the court determines ei-
9 ther that the evidence is newly discovered and could not have been obtained earlier through the
10 exercise of due diligence or that the issue to which the evidence relates has newly arisen in the
11 case. Any motion made under this paragraph shall be served on all other parties[,] and, **in a crim-**
12 **inal proceeding**, on the alleged victim through the office of the prosecutor.
13 “(b) The motion described in paragraph (a) of this subsection shall be accompanied by a written
14 offer of proof. If the court determines that the offer of proof contains evidence described in sub-
15 section (2) or (3) of this section, the court shall order a hearing in camera to determine if the evi-
16 dence is admissible. At the hearing the parties may call witnesses, including the alleged victim, and
17 offer relevant evidence. Notwithstanding ORS 40.030 (2), if the relevancy of the evidence that the
18 accused **or the respondent** seeks to offer in the trial depends upon the fulfillment of a condition
19 of fact, the court, at the hearing in camera or at a subsequent hearing in camera scheduled for the
20 same purpose, shall accept evidence on the issue of whether the condition of fact is fulfilled and
21 shall determine the issue.
22 “(c) If the court determines on the basis of the hearing described in paragraph (b) of this sub-
23 section that the evidence the accused **or the respondent** seeks to offer is relevant and that the
24 probative value of the evidence outweighs the danger of unfair prejudice, the evidence shall be ad-
25 missible in the trial to the extent an order made by the court specifies evidence that may be offered
26 and areas with respect to which a witness may be examined or cross-examined.
27 “(d) An order admitting evidence under this subsection **in a criminal prosecution** may be ap-
28 pealed by the [government] **state** before trial.
29 “(5) For purposes of this section:
30 “(a) **‘Alleged victim’ includes the petitioner in a proceeding conducted under sections 1**
31 **to 8 of this 2013 Act.**
32 “[a] (b) ‘In camera’ means out of the presence of the public and the jury[; and].
33 “[b] (c) ‘Past sexual behavior’ means sexual behavior other than:
34 “(A) The sexual behavior with respect to which the crime or attempt to commit the crime listed
35 in subsection (1) of this section is alleged[.]; **or**
36 “(B) **In a proceeding conducted under sections 1 to 8 of this 2013 Act, the alleged sexual**
37 **abuse.**
38 “(d) **‘Trial’ includes a hearing conducted under sections 1 to 8 of this 2013 Act.**
39 “**SECTION 22.** If Senate Bill 673 becomes law, section 20 of this 2013 Act is amended to read:
40 “**Sec. 20.** Sections 1 to 8 of this 2013 Act and the amendments to ORS 21.245, 36.185, 40.210,
41 107.835, 133.310, 133.381 and 659A.270 and ORCP 79E by sections 11, **12, 14** to 18 **and 21** of this 2013
42 Act become operative on January 1, 2014.”
43 In line 28, delete “21” and insert “23”.
44 In line 30, delete “July 1, 2013” and insert “on its passage”.
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