



## **Support for Fair Trials – Impeachment Evidence (HB 2641)**

Chair Kropf, Vice-Chair Chotzen, Vice-Chair Wallan, and members of the Committee,

We are members of the Multnomah County Democrats’ Criminal Justice Study Group and we support HB 2641.

The rule of evidence (609) that allows the use of a witness’s criminal record to impeach their credibility if they take the stand to testify in trial is a rule that diminishes the testimony of witnesses and victims, and silences defendants from testifying in their own defense.

Furthermore, evidentiary rules allowing for impeachment by evidence of prior convictions are grounded in racist ideas and disparately harm people of color. Due to racial bias in policing and prosecution, prior conviction impeachment rules like Oregon Evidence Code 609 have a disparate impact on witnesses of color.

The stated rationale for admitting prior convictions to impeach witnesses is that a prior conviction tells us about witnesses’ credibility. In Oregon, prior convictions supposedly are probative of whether a witness has a propensity for truthfulness or untruthfulness—whether they are “worthy of belief.”<sup>1</sup> There is no evidentiary basis for the claim that the convictions made mandatorily admissible by 609(1)(a) have any bearing on the likelihood that a person will lie in court.

A prior felony conviction indicates, at best, that the person has knowingly or unknowingly broken a criminal law in a way categorized as a felony. If anything, prior convictions are predictors of race and poverty. In addition, research shows that factfinders who learn of a defendant’s prior convictions will frequently lower the burden of proof or seek to further punish the defendant for past conduct. The risk of unfair prejudice is extreme under a rule like Oregon’s that categorically admits prior convictions for the purpose of impeachment.

Studies show that where criminal defendants testify and are impeached with their prior convictions, jurors tend to rely on the prior convictions to assess the person’s culpability

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<sup>1</sup> *State v. Phillips*, 367 Or. 594, 609, 482 P.3d 52, 60 (2021) (internal citations omitted).

rather than their credibility, despite instructions to the contrary.<sup>2</sup> This effectively lowers the State's burden of proof, making it easier to convict those with prior convictions.

The practice of impeachment by prior conviction is outdated and indefensible under its stated rationale as well as a prime perpetuator of racial bias in the legal system. Oregon takes this unfair and racist practice to an extreme by denying judges the discretion to exclude prior convictions when they are introduced for impeachment purposes. Although the stated rationale for impeaching with prior convictions is to shed light on a witness's "credibility," prior convictions have no established predictive connection to a witness's truthfulness or untruthfulness. Instead, the potential for impeachment with prior convictions silences defendants and deters or diminishes vital witness testimony. When admitted, prior convictions do not help factfinders make better judgments about witnesses' honesty. To the contrary, prior convictions prejudice juries that hear about them, lowering the State's burden of proof. These effects are amplified exponentially for witnesses of color who are disproportionately the bearers of prior convictions due to racism in policing and prosecution. In this way, Oregon's evidence law has become a vehicle for imposing a serious and overlooked collateral consequence on those with prior convictions, one that does a disservice to both truth-seeking and the pursuit of justice writ large.

For all of these reasons, and to help ensure fair trials in Oregon, we urge your support for HB 2641.

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<sup>2</sup> Theodore Eisenberg & Valerie P. Hans, *Taking a Stand on Taking the Stand: The Effect of a Prior Criminal Record on the Decision to Testify and On Trial Outcomes*, 94 Cornell L. Rev. 1353, 1371, 1373, 1381-83 (2009).