

Dear House Judiciary Committee,

I am writing to express my strong support for HB 2641, which proposes crucial modifications to the admissibility of prior conviction evidence to impeach witnesses.

I proudly support this bill because the use of prior convictions as impeachment, without any limitations, runs counter to principles of due process, fairness, racial equity, and justice.

- It impedes factfinding by admitting highly prejudicial evidence with low probative value without any judicial oversight.
- It prevents people from being able to testify in their own defense and infringes on that incredibly valuable constitutional right.
- It creates a high risk of propensity-based reasoning, improperly shifting the factfinder's focus away from the merits of the case to a witness's *general propensity* for criminality. This is something that is otherwise highly disfavored in Oregon law. The current iteration of OEC 609 creates an end run around Oregon's general prohibition on propensity evidence.
- Empirical research shows that jurors use prior convictions to assess culpability rather than credibility despite contrary instructions, which effectively lowers the burden of proof as jurors become willing to convict on weaker evidence and for impermissible reasons.
- Evidence of prior convictions disproportionately affects defendants of color, who are policed, prosecuted, and convicted at higher rates.
  - Witnesses of color are more likely to have prior criminal convictions due to the over-policing of Black and Latino communities.
  - Prior convictions can trigger implicit and explicit biases among factfinders, activating stereotypes and improperly functioning as "racial character evidence".
  - Admission of this evidence interferes with the constitutional rights of defendants to testify on their behalf, silencing defendants of color who have prior convictions.
  - It impedes the ability of a defendant of color to have a fair trial and effectively deprives defendants of the opportunity to mitigate racial bias.
- It causes harm to victims when they are compelled to testify, and their criminal records are used against them.

HB 2641 proposes a balancing test, which permits judicial discretion by allowing a judge to evaluate whether the probative value of each prior conviction outweighs its prejudicial effect. This bill represents an important measured approach to addressing this type of evidence, ensuring it is used for the correct purpose and giving judges the necessary discretion to make these crucial decisions.

I urge you to support this important legislation and help Oregon join the majority of states that have adopted the federal rules of evidence, permitting judicial discretion in weighing the effect of such evidence. Thank you for your service to our community. Please vote yes on HB 2641.

Sincerely,  
Sterling Cunio  
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