

# House Bill 2641

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon Criminal Defense Lawyers Association)

## 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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes how prior convictions may be used. (Flesch Readability Score: 75.5).  
Modifies when a prior conviction is admissible to impeach the character of a witness.  
Limits prior convictions that may be used to calculate the criminal history of a defendant for the purposes of sentencing.

## A BILL FOR AN ACT

Relating to prior convictions; creating new provisions; and amending ORS 40.355.

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

## PRIOR CONVICTIONS AS EVIDENCE

**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)(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:]*

*[(A) Aggravated murder under ORS 163.095.]*

**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        *[(B) Murder in the first degree under ORS 163.107.]*
- 2        *[(C) Murder in the second degree under ORS 163.115.]*
- 3        *[(D) Manslaughter in the first degree under ORS 163.118.]*
- 4        *[(E) Manslaughter in the second degree under ORS 163.125.]*
- 5        *[(F) Assault in the first degree under ORS 163.185.]*
- 6        *[(G) Assault in the second degree under ORS 163.175.]*
- 7        *[(H) Assault in the third degree under ORS 163.165.]*
- 8        *[(I) Assault in the fourth degree under ORS 163.160.]*
- 9        *[(J) Rape in the first degree under ORS 163.375 (1)(a).]*
- 10       *[(K) Sodomy in the first degree under ORS 163.405 (1)(a).]*
- 11       *[(L) Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).]*
- 12       *[(M) Sexual abuse in the first degree under ORS 163.427 (1)(a)(B).]*
- 13       *[(N) Kidnapping in the first degree under ORS 163.235.]*
- 14       *[(O) Kidnapping in the second degree under ORS 163.225.]*
- 15       *[(P) Burglary in the first degree under ORS 164.225.]*
- 16       *[(Q) Coercion under ORS 163.275.]*
- 17       *[(R) Stalking under ORS 163.732.]*
- 18       *[(S) Violating a court's stalking protective order under ORS 163.750.]*
- 19       *[(T) Menacing under ORS 163.190.]*
- 20       *[(U) Harassment under ORS 166.065.]*
- 21       *[(V) Strangulation under ORS 163.187.]*
- 22       *[(W) Attempting to commit a crime listed in this paragraph.]*
- 23       *[(3) 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) When the credibility of a witness is attacked by evidence that the witness has been convicted*  
29 *of a crime, the witness shall be allowed to explain briefly the circumstances of the crime or former*  
30 *conviction; once the witness explains the circumstances, the opposing side shall have the opportunity*  
31 *to rebut the explanation.]*
- 32       *[(5) The pendency of an appeal therefrom does not render evidence of a conviction inadmissible.*  
33 *Evidence of the pendency of an appeal is admissible.]*
- 34       *[(6) An adjudication by a juvenile court that a child is within its jurisdiction is not a conviction*  
35 *of a crime.]*
- 36       *[(7) A conviction of any of the statutory counterparts of offenses designated as violations as de-*  
37 *scribed in ORS 153.008 may not be used to impeach the character of a witness in any criminal or civil*  
38 *action or proceeding.]*
- 39       **(1) The following rules apply to attacking a witness's character for truthfulness by evi-**  
40 **dence of a criminal conviction:**
- 41           **(a) For a crime that, in the convicting jurisdiction, was punishable by death or**  
42 **imprisonment for more than one year, the evidence:**
- 43                **(A) Must be admitted, subject to ORS 40.160, in a civil case or in a criminal case in which**  
44 **the witness is not a defendant.**
- 45                **(B) Must be admitted in a criminal case in which the witness is a defendant, if the**

1 probative value of the evidence outweighs its prejudicial effect to that defendant.

2 (b) For any crime, regardless of the punishment, the evidence must be admitted if the  
3 court can readily determine that establishing the elements of the crime required proving,  
4 or the witness's admitting, a dishonest act or false statement.

5 (2) If more than 10 years have passed since the witness's conviction or release from  
6 confinement for the conviction, whichever is later, evidence of the conviction is admissible  
7 only if:

8 (a) The probative value of the conviction, supported by specific facts and circumstances,  
9 substantially outweighs its prejudicial effect; and

10 (b) The proponent gives an adverse party reasonable written notice of the intent to use  
11 the conviction so that the party has a fair opportunity to contest the use of the conviction.

12 (3) Evidence of a conviction is not admissible if:

13 (a) The conviction has been the subject of a pardon, annulment, certificate of rehabili-  
14 tation or other equivalent procedure based on a finding that the person has been rehabili-  
15 tated, and the person has not been convicted of a later crime punishable by death or by  
16 imprisonment for more than one year; or

17 (b) The conviction has been the subject of a pardon, annulment or other equivalent pro-  
18 cedure based on a finding of innocence.

19 ~~(4) Evidence of a juvenile adjudication is admissible under this rule only if:~~

20 ~~(a) The adjudication is offered in a criminal case;~~

21 ~~(b) The adjudication was of a witness other than the defendant;~~

22 ~~(c) The adjudication is for conduct that, if committed by an adult, would result in a~~  
23 ~~conviction that would be admissible to attack the adult's credibility; and~~

24 ~~(d) Admitting the evidence is necessary to fairly determine guilt or innocence.~~

25 ~~(5) A conviction that satisfies the provisions of this section is admissible even if an appeal~~  
26 ~~of the conviction is pending. Evidence of the pendency of the appeal is also admissible.~~

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28 **PRIOR CONVICTIONS IN SENTENCING**

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30 ~~**SECTION 2.** (1) When determining a defendant's criminal history category for purposes~~  
31 ~~of the sentencing guidelines, only the following convictions may be considered:~~

32 ~~(a) Convictions for which the date of entry of the judgment of conviction is within the~~  
33 ~~15 years prior to the date of the crime for which the defendant is being sentenced; and~~

34 ~~(b) Convictions for which the defendant was incarcerated within the 15 years prior to the~~  
35 ~~date of the crime for which the defendant is being sentenced.~~

36 ~~(2) The Oregon Criminal Justice Commission, in the rules of the commission concerning~~  
37 ~~the sentencing guidelines grid, shall limit when a conviction may be used to determine a~~  
38 ~~defendant's criminal history category in accordance with subsection (1) of this section.~~

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40 **APPLICABILITY**

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42 ~~**SECTION 3.** (1) The amendments to ORS 40.355 by section 1 of this 2025 Act apply to~~  
43 ~~proceedings based on conduct occurring on or after the effective date of this 2025 Act.~~

44 ~~(2) Section 2 of this 2025 Act applies to sentencing proceedings for convictions based on~~  
45 ~~conduct occurring on or after the effective date of this 2025 Act.~~

CAPTIONS

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**SECTION 4. The unit captions used in this 2025 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2025 Act.**

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