

# PROSECUTION

## HB 2336: Witness Credibility...Out of State Convictions

HB 2336 allows for another jurisdiction's statutory counterpart for convictions for assault in the fourth degree, menacing, harassment, attempted assault in the fourth degree and strangulation under another jurisdiction's statutory counterpart to be entered into evidence in certain criminal proceedings for the purpose of attacking the credibility of a witness.

### VITAL STATISTICS

Effective Date: January 1st, 2010  
2009 ORS Site: Chapter 56

## HB 2339: Prosecutor Info Exempt from Disclosure

HB 2339 is designed to protect persons who prosecute criminals by allowing them to request that their address and electronic mail information be undisclosed on certain documents that are readily available to the public. The measure applies to district attorneys, deputy district attorneys, the Attorney General or an assistant attorney general, the United States Attorney for the District of Oregon or an assistant United States attorney for the District of Oregon and city attorneys who engage in the prosecution of criminal matters. HB 2339 requires the person requesting the exemption from disclosure to file a claim in writing, using the prescribed form, with the public body to which the exemption applies. The measure limits requestors to 10 documents held by a county clerk's office. The exemption continues unless and until a written request is submitted by the person originally seeking the exemption that discontinues the exemption.

### VITAL STATISTICS

Effective Date: January 1st, 2010  
2009 ORS Site: Chapter



## HB 2340: Single Venue Allowed for Stalking Crimes

HB 2340 includes the following provisions relating to the venue for criminal prosecutions involving stalking or violations of a court stalking order:

- Provides that where violations of a stalking order have occurred in multiple counties, incidents may be tried together in one of the counties where the violations occurred.

### VITAL STATISTICS

Effective Date: January 1st, 2010  
2009 ORS Site: Chapter 212



## HB 2343: "Mentally Incapacitated" Definition Change

House Bill 2343 changes the definition of "mentally incapacitated" as it applies to sex offenses by removing language that refers to "how" the victim became incapacitated. This measure removes the question of how a person who is assaulted became incapacitated as a factor in determining an offender's level of guilt and focuses instead on the person's ability to consent to sexual activity.

### VITAL STATISTICS

Effective Date: January 1st, 2010  
2009 ORS Site: Chapter 488

## HB 2394: Service of Subpoenas and Stalking Orders

HB 2394 includes the following provisions related to the service of subpoenas and stalking protective orders:

- Allows service of a subpoena on a witness under the age of 14 by delivering a copy to the witness or the witness's parent or guardian or guardian ad litem.
- Clarifies that a subpoena in a civil or criminal matter must be served upon an agency employing a peace officer 10 days prior to the date that the officer's attendance is required; if service is made to the officer personally, it need not be delivered 10 days prior to the required attendance.
- Clarifies that whenever a stalking protective order is issued, a copy of the order must be served by personal delivery to the person against whom the order is issued.

### VITAL STATISTICS

Effective Date: January 1st, 2010  
2009 ORS Site: Chapter 364



## HB 2441: Confessions in Vulnerable Victim Sex Crimes

HB 2441 modifies the law that requires corroboration before a confession is admissible and creates an exception for sex crimes against vulnerable victims when a confession is deemed trustworthy and the victim is incompetent to testify. HB 2441 requires the following:

- Requires that a confession be made to a peace officer, federal officer, or Department of Human Services (DHS) investigator acting in their official capacity.
- Requires the state to file a notice of intention to rely on the confession alone within 60 days of arraignment, or the defendant's entry of an initial plea, unless the court finds good cause.
- Requires the court to establish that the confession is trustworthy based on sufficient evidence including the following factors; evidence demonstrating the truthfulness of portions of the confession, evidence that the defendant had the opportunity to commit the crime, the method of interrogation used to solicit the confession and whether the defendant is a vulnerable person.

### VITAL STATISTICS

Effective Date: January 1st, 2010  
2009 ORS Site: Chapter

## SB 242: Pleading and Proving Previous Convictions

SB 242 codifies several Oregon appellate court opinions that address pleading and proof issues that arise in criminal cases where the offense is elevated based on a previous conviction. Cases codified in SB 242 include *State v. Reynolds*, *State v. Hess*, *State v. Probst* and *State v. Jacob*. This measure requires that the indictment must allege that the defendant has previously been convicted of an offense when the previous conviction constitutes a material element of the charged offense. When a previous conviction is alleged in an accusatory instrument or written notice:

- The state has the burden of proving the previous conviction unless the defendant stipulates to that fact. The stipulation must be in writing, admit without qualification that the defendant previously was convicted of the offense and that the conviction is valid, include an express waiver of the defendant's right to a jury trial on the fact of the previous conviction and be filed with the court and served on the district attorney.
- The defendant may challenge the validity of the previous conviction by filing a notice of the defendant's intent to do so. The notice must identify the previous conviction that the defendant seeks to challenge, specify the factual and legal basis for the challenge and be filed with the court and served on the district attorney within 35 days of the arraignment, or of the defendant's entry of the initial plea on an accusatory instrument, whichever is sooner, unless a different time is permitted by the court for good cause shown.
- The court shall determine the validity of the previous conviction before trial and will enter an order excluding the evidence if the court determines the previous conviction is not valid or shall admit the evidence at trial if the court determines the previous conviction is valid.

### VITAL STATISTICS

Effective Date: January 1st, 2010  
2009 ORS Site: Chapter 180



## SB 380: Testimony Via Electronic Transmission

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SB 380 stipulates that a witness in a criminal proceeding may not appear before a jury by simultaneous electronic transmission without the written consent of the parties and the agreement of the court. Prior to the passage of this measure, testimony via electronic transmission was explicitly prohibited in criminal trials even when all parties agreed to allow it. Trials suffered delays in situations where a witness wasn't available to testify in the courtroom and the judge lacked the statutory authority to grant an appearance by a witness by electronic transmission.

**VITAL STATISTICS**

Effective Date: January 1st, 2010  
2009 ORS Site: Chapter 219