

## House passes bill allowing admission of sex crimes when victims can't testify

by Bend\_Weekly\_News\_Sources

SALEM, Ore. — The Oregon House on Wednesday unanimously passed a bill giving vulnerable victims of sex crimes greater access to the criminal justice system. HB 2441, sponsored and carried by Rep. Sara Gelser (D-Corvallis), would allow confessions to sex crimes against vulnerable adults and children to be admitted as evidence in a trial, even when the victim is unable to speak in court.

“This bill strikes the balance between protecting vulnerable victims of sex crimes and protecting the due process rights of the defendant,” said Gelser. “Too often, these heinous crimes are not prosecuted because the victims cannot testify. When the defendant has confessed, it is heartbreaking that justice cannot be served because of the victim’s inability to testify.”

Two recent Oregon Supreme Court cases highlighted the challenge of prosecuting sex crimes committed against vulnerable populations. In 2007, the Supreme Court overturned Michael Simons' convictions sexual abuse against three elderly patients in a memory care facility despite the Simons' confession to the crimes (Oregon v. Simons). In 2008, the Supreme Court overturned a conviction for sexual abuse against a toddler, despite the defendant's confession (Oregon v. Delp). In the Delp case, the Supreme Court opinion read, in part: “This issue requires us to confront the difficult problem that arises when the victim of a confessed crime is incapable of recounting or perhaps even perceiving the injury or harm to himself or herself, and the record does not contain physical evidence of such an injury or harm.”

“Unfortunately, recent Oregon case law has revealed that those prosecuting crimes against vulnerable victims face sometimes insurmountable hurdles,” said Representative Nick Kahl (D-East County). “Vulnerable victims are often unable to provide evidence of abuse and as a result the suspect's confession is the only evidence of guilt. Because confessions in these cases are not currently admissible, admitted rapists are set free.”

“This bill creates a very narrow accommodation in those cases where a victim cannot speak for himself or herself that greatly increases the chance for justice,” said Representative Chris Garrett (D-Lake Oswego).

The bill would only apply to sex crimes committed against individuals the court has determined unable to

testify in court. In addition, a judge must determine that the confession is trustworthy in a pre-trial hearing before the confession can be admitted. If the defendant is a person with a developmental disability, a person with a mental illness, or a juvenile, the confession will not be admitted.

Once the confession is deemed admissible, it would be entered into evidence at a trial and considered by the jury like any other evidence. The prosecution would still need to prove the case beyond a reasonable doubt in order to achieve a conviction.

Vulnerable victims are especially at risk for sexual abuse, yet are often unable to pursue justice because they cannot testify in court," said Representative Judy Stiegler (D-Bend). "We have a responsibility to protect those who are least able to protect themselves."

Several states have already enacted legislation to allow the admission of confessions.

Protecting Oregon's most vulnerable citizens from abuse is part of the House Democrats' 2009 Roadmap for Oregon's future. HB 2441 is a cornerstone of that effort.

HB 2441 now moves to the Senate for consideration.

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