

---

Specific instances of the conduct of a witness -- for the purpose of attacking or supporting the witness's credibility and other than conviction of crime -- **may**, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

- concerning the witness' character for truthfulness or untruthfulness, OR
- concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

*See* Fed. R. Evid. 608(b).

2) OEC – NO SPECIFIC INSTANCES OF WITNESS’S CONDUCT

Specific instances of a witness's conduct -- for the purpose of attacking or supporting the witness's credibility and other than conviction of crime -- **may not**, even if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness. *See* Or. Rev. Stat. § 40.350(2); OEC 608(2).

**C. Impeachment by Evidence of Conviction of Crime**

Evidence can be used to attack a witness's credibility under certain circumstances.

- 1) CRIME PUNISHABLE BY DEATH OR IMPRISONMENT OVER 1 YEAR
- a) FRE

The admission of evidence that a witness other than an accused has been convicted of a crime must be admitted if the crime was punishable by death or imprisonment in excess of **1** year under the law under which the witness was convicted. *See* Fed. R. Evid. 609(a)(1). This rule is subject to the following limitation:

(1) PROBATIVE VALUE CANNOT BE OUTWEIGHED

This evidence must be excluded if its probative value is substantially outweighed by:

- the danger of unfair prejudice,
- confusion of the issues, or
- misleading the jury, or
- by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

**NOTE:** The preceding rule is important because it is both cited in and textually referenced within the Federal Rule governing impeachment by evidence of conviction of crime with respect to crimes punishable by death or imprisonment over **1** year. *See* Fed. R. Evid. 609(a)(1). The textual reference provides that such evidence must be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. *Id.*