

**HB 4073 -1, -3, -4, -5, -6, -7, -10, -11 STAFF MEASURE
SUMMARY**

House Committee On Judiciary

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Meeting Dates: 2/3, 2/11

WHAT THE MEASURE DOES:

Modifies procedures for exercising peremptory challenges in criminal trials. Specifies disqualification of judge for cause when reasonable person would question judge's impartiality. Prohibits prosecution in criminal case from disqualifying judge solely on belief that prosecution cannot have fair and impartial trial or hearing before judge. Specifies justifiable use of physical force in defense of self or others is affirmative defense when defendant participated in wrongful conducted intended to, and did, cause victim to be unavailable as witness. Specifies that affirmative defense applies to conduct occurring on or after effective date.

ISSUES DISCUSSED:

- Impact of bias on justice system and jury selection
- Current workgroup on peremptory challenges
- The need for change to procedures on disqualifying a judge in rural counties

EFFECT OF AMENDMENT:

- 1 Removes modifications to disqualifications of judges.
- 3 Removes affirmative defense placed on defendant asserting justified use of physical force when defendant engaged in wrongful conduct that was intended, and did, cause the victim to be unavailable as witness.
- 4 Removes modifications to peremptory challenges.
- 5 Removes affirmative defense placed on defendant asserting justified use of physical force when defendant caused victim to be unavailable as witness. Specifies that "reasonable belief" of necessity for use of force in defense of self, others, premises, or property may not be based on another person's race, color, religion, sex, sexual orientation, gender identity, national origin, or marital status. Requires jury instruction on limits of "reasonable belief" be given by the court in jury trials.
- 6 Modifies procedures for disqualifying judges in judicial districts with five or fewer judges.
- 7 Specifies that modifications to peremptory challenges become operative on or after January 1, 2024.
- 10 Replaces measure. Modifies procedures for exercising peremptory challenges. Specifies that modifications to peremptory challenges become operative on or after January 1, 2024. Specifies that "reasonable belief" of necessity for use of force in defense of self, others, premises, or property may not be based on another person's race, color, religion, sex, sexual orientation, gender identity, national origin, or marital status. Requires jury instruction on limits of "reasonable belief" be given by the court in jury trials.
- 11 Replaces measure. Modifies procedures for exercising peremptory challenges. Operative on January 1, 2024.

BACKGROUND:

A peremptory challenge is when an attorney objects to a potential juror without providing a justification for the objection. ORS 136.230 governs peremptory challenges in criminal trials. Currently, peremptory challenges may not be exercised on the basis of race, ethnicity, or sex.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution also prohibits discrimination on the basis of gender or race in jury selection. See *State v. Curry*, 298 Or. App. 377, 380-381 (2019) and *Batson v. Kentucky*, 476 U.S. 79 (1986).

Oregon law establishes procedures for when a judge must be disqualified from a case. A judge may be disqualified for cause or when an attorney or party to a proceeding believe that they cannot have a fair and impartial trial or hearing before such judge. ORS 14.210 and ORS 14.250.

There are several defenses to criminal liability in Oregon law. Some defenses the prosecution bears the burden of disproving beyond a reasonable doubt. Other defenses are known as “affirmative defenses” and the defense must prove the defense by a preponderance of the evidence. ORS 161.055.

Defense of self or others is a justification defense that the prosecution bears the burden to disprove beyond a reasonable doubt. ORS 161.190. The defense must either provide notice of the defense prior to trial or the defense must present evidence of the defense at trial. ORS 161.055. Oregon law governs when a person is justified in acting in self-defense or defense of others.

House Bill 4073 modifies procedures for exercising peremptory challenges in criminal trials. The measure also modifies procedures for disqualifying judges. Finally, HB 4073 provides that the justifiable use of force in defense of self or others is an affirmative defense when the defendant engaged in conduct intended to, and did, cause the victim to be unavailable as a witness.