

HB 4073 STAFF MEASURE SUMMARY

House Committee On Judiciary

Action Date: 02/11/22

Action: Without recommendation as to passage and be referred to Rules.

Vote: 6-3-1-0

Yeas: 6 - Bynum, Dexter, Helm, Kropf, Power, Wilde

Nays: 3 - Lewis, Morgan, Wallan

Exc: 1 - Noble

Fiscal: Fiscal impact issued

Revenue: Revenue impact issued

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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 conduct 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 work group on peremptory challenges
- Procedures on disqualifying a judge in rural counties

EFFECT OF AMENDMENT:

No amendment.

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 a judge. ORS 14.210 and ORS 14.250.

There are several defenses to criminal liability in Oregon law. Some defenses the prosecution bear 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.

HB 4073 STAFF MEASURE SUMMARY

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.