

SB 807 A -A4, -A7 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 5/8, 5/15, 5/18

WHAT THE MEASURE DOES:

Provides a process for a judge to challenge a motion or series of motions to disqualify the judge from a criminal or juvenile delinquency case or cases, if the motion(s) effectively denies the judge assignment to a criminal or juvenile delinquency docket. Permits the subject judge to request a hearing from a disinterested judge. Requires the disinterested judge to make an objective inquiry and determine whether a reasonable person would believe that the subject judge lacks impartiality. Places the burden of proof by preponderance of the evidence on the moving party. Grants the disinterested judge authority to bar the motion filer from further motions to disqualify the subject judge for a period of up to one year, or take other appropriate action, if the inquiry does not establish that a reasonable person would believe the subject judge lacks impartiality. Permits the Chief Justice to make rules to implement the measure.

REVENUE: No revenue impact

FISCAL: Has minimal fiscal impact

SENATE VOTE: Ayes, 16; Nays, 12

ISSUES DISCUSSED:

- *State ex rel. Kafoury v. Jones*, 315 Or. 201 (1992)
- History of disqualification statute; purely peremptory challenges were held to be unconstitutional.
- Ethical rules do not prohibit misuse of the statute, but do prohibit misrepresentations to the court
- Examples of judges who have been unable to work on criminal dockets due to blanket disqualification
- Targeting of judges who are women, Black, or former criminal defense lawyers
- Senate Bill 812 (2013) and related Task Force led by Oregon State Bar
- Most states require that particular grounds be stated in the motion or affidavit
- Public records regarding disqualification motions
- Availability of mandamus process for decisions
- Right to remove judge for cause
- Ban could cause post-conviction relief motions based on ineffective assistance of counsel
- Chief Justice's rulemaking process
- Importance of appearance of fairness
- Existing processes to handle incorrect judicial decisions or issues with competency or mental fitness

EFFECT OF AMENDMENT:

-A4 Provides that if the inquiry establishes a reasonable person would believe that the judge lacks impartiality, the motion shall be granted; if the inquiry does not establish it, the motion shall be denied. Adds applicability of process to a motion or series of motions that would disqualify the judge from a civil docket. Removes provision authorizing the disinterested judge to bar the filer from filing further motions for a period of time or take other action. Removes provision authorizing the Chief Justice to make rules to implement the measure.

-A7 Changes standard on a challenge, from "a reasonable person would believe" to "a reasonable good faith belief" that the judge lacks impartiality. Permits the motion filer to submit a supplemental affidavit providing specific grounds for the reasonable good faith belief. Specifies that the disinterested judge may not be from the

same judicial district as the subject judge, and requires the disinterested judge to make a determination whether the motion or series of motions effectively denies the subject judge assignment to a criminal or juvenile delinquency docket. Limits the disinterested judge's authority to prohibit future motions to only motions that effectively deny the subject judge from a criminal or juvenile docket. Specifies that the disinterested judge's order must allow the filing of a motion or series of motion made upon a new reasonable good faith belief that the judge lacks impartiality, or made personally by a defendant or on behalf of the crime victim who believes that they cannot have a fair or impartial trial or hearing before the judge.

BACKGROUND:

Under ORS 14.260, a party may file a motion to disqualify a judge from assignment to a case within a specified time after notification of the assignment. The party or attorney must affirm under oath that they believe they cannot have a fair and impartial trial or hearing before the judge, and that the motion is made in good faith and not for purposes of delay, but no specific facts need be stated. A judge may challenge a motion to disqualify by proving that the motion was made in bad faith or for the purposes of delay. The burden of proof is on the judge to prove a filer's bad intent.

There have been some instances of "blanket disqualifications," when district attorneys or public defenders move to disqualify a particular judge every time the judge is assigned to one of their cases. If the filer is assigned to most or all of the criminal or juvenile delinquency cases, it may have the effect of disqualifying the judge from all criminal or juvenile delinquency cases in that district. In a judicial district with few judges, it has required bringing a judge from another judicial district to cover the affected criminal docket.

Senate Bill 807 A allows a judge to challenge a motion or motions to disqualify the judge when the motion or motions effectively deny the judge's assignment to a criminal or juvenile delinquency docket, by requesting a hearing before a disinterested judge to conduct an objective inquiry into whether a reasonable person would believe that the judge lacks impartiality, and the burden of proof is on the motion filer.