

SB 807 B STAFF MEASURE SUMMARY**Carrier:** Rep. Kropf**House Committee On Rules****Action Date:** 06/07/23**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.)**Vote:** 5-1-1-0**Yeas:** 5 - Fahey, Kropf, Nosse, Valderrama, Wallan**Nays:** 1 - Breese-Iverson**Exc:** 1 - Scharf**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Patricia Pascone**Meeting Dates:** 6/1, 6/7**WHAT THE MEASURE DOES:**

Provides 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 or series of motions effectively denies the judge assignment to a criminal or juvenile delinquency docket. Permits the judge to request a hearing by a disinterested judge. Specifies that the disinterested judge may not be from the same judicial district. Requires the disinterested judge to make an objective inquiry and (a) determine whether the judge is effectively denied assignment to a criminal or juvenile delinquency docket, and if so, (b) determine whether there is a reasonable good faith belief that the judge lacks fairness or impartiality. Places the burden of proof on the moving party and allows the moving party to submit a supplemental affidavit with specific grounds for the reasonable good faith belief. Permits the Chief Justice to make rules to implement the measure.

ISSUES DISCUSSED:

- Foundations of justice system include perception of fairness and neutral assignment of judges
- Disqualification motions are not often challenged; high bar to prove a motion was filed in bad faith
- Blanket disqualifications have greater impact in districts with one to three judges
- Proposed amendment follows discussions in stakeholder workgroup
- Blanket disqualifications have occurred for both the civil and criminal dockets in Jackson County
- People are more likely to abide by a process they view as fair

EFFECT OF AMENDMENT:

Specifies that the disinterested judge may not be from the same judicial district as the subject judge and will first determine whether the motion or series of motions effectively denies the subject judge assignment to a criminal or juvenile delinquency docket. Changes the standard on a challenge to "a reasonable good faith belief that the judge lacks fairness or impartiality." Permits the moving party to submit a supplemental affidavit with specific grounds for the reasonable good faith belief. Removes authorization for the disinterested judge to prohibit the moving party from filing further motions against 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. 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. In *State ex rel. Kafoury v. Jones*, 315 Or. 201 (1992), the Oregon Supreme Court interpreted the statute to require that the disqualification be upheld unless the disqualified judge proves that the filer's primary intent is something other than fair adjudication of the

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action or that the grounds for the motion are irrational.

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 motion 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 in a judge from another judicial district to cover the affected criminal docket.

Senate Bill 807 B allows a judge to challenge a motion or series of motions to disqualify the judge when it effectively denies the judge's assignment to a criminal or juvenile delinquency docket, by requesting a hearing before a disinterested judge to determine whether there is a reasonable good faith belief that the judge lacks fairness or impartiality, with the burden of proof on the motion filer.