

D R A F T

SUMMARY

Modifies provisions relating to peremptory challenges to jurors.

Provides that prosecution in criminal case may not move to disqualify judge solely on basis that prosecution cannot have fair and impartial trial or hearing before judge.

Provides that justifiable use of physical force in self-defense or in defending third person is affirmative defense when defendant engaged in, directed or otherwise participated in wrongful conduct that was intended to cause victim to be unavailable as witness, and did cause victim to be unavailable.

A BILL FOR AN ACT

1
2 Relating to courts; creating new provisions; and amending ORS 14.210, 14.250
3 and 14.260 and ORCP 57 D.

4 **Be It Enacted by the People of the State of Oregon:**

PEREMPTORY CHALLENGES

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8 **SECTION 1.** ORCP 57 D is amended to read:

9 **D Challenges.**

10 D(1) **Challenges for cause; grounds.** Challenges for cause may be taken
11 on any one or more of the following grounds:

12 D(1)(a) The want of any qualification prescribed by ORS 10.030 for a
13 person eligible to act as a juror.

14 D(1)(b) The existence of a mental or physical defect which satisfies the
15 court that the challenged person is incapable of performing the duties of a
16 juror in the particular action without prejudice to the substantial rights of

1 the challenging party.

2 D(1)(c) Consanguinity or affinity within the fourth degree to any party.

3 D(1)(d) Standing in the relation of guardian and ward, physician and pa-
4 tient, master and servant, landlord and tenant, or debtor and creditor to the
5 adverse party; or being a member of the family of, or a partner in business
6 with, or in the employment for wages of, or being an attorney for or a client
7 of the adverse party; or being surety in the action called for trial, or other-
8 wise, for the adverse party.

9 D(1)(e) Having served as a juror on a previous trial in the same action,
10 or in another action between the same parties for the same cause of action,
11 upon substantially the same facts or transaction.

12 D(1)(f) Interest on the part of the juror in the outcome of the action, or
13 the principal question involved therein.

14 D(1)(g) Actual bias on the part of a juror. Actual bias is the existence
15 of a state of mind on the part of a juror that satisfies the court, in the ex-
16 ercise of sound discretion, that the juror cannot try the issue impartially and
17 without prejudice to the substantial rights of the party challenging the juror.
18 Actual bias may be in reference to: the action; either party to the action; the
19 sex of the party, the party's attorney, a victim, or a witness; or a racial or
20 ethnic group of which the party, the party's attorney, a victim, or a witness
21 is a member, or is perceived to be a member. A challenge for actual bias may
22 be taken for the cause mentioned in this paragraph, but on the trial of such
23 challenge, although it should appear that the juror challenged has formed
24 or expressed an opinion upon the merits of the cause from what the juror
25 may have heard or read, such opinion shall not of itself be sufficient to
26 sustain the challenge, but the court must be satisfied, from all of the cir-
27 cumstances, that the juror cannot disregard such opinion and try the issue
28 impartially.

29 D(2) Peremptory challenges; number. A peremptory challenge is an ob-
30 jection to a juror for which no reason need be given, but upon which the
31 court shall exclude such juror. Either party is entitled to no more than three

1 peremptory challenges if the jury consists of more than six jurors, and no
2 more than two peremptory challenges if the jury consists of six jurors. Where
3 there are multiple parties plaintiff or defendant in the case, or where cases
4 have been consolidated for trial, the parties plaintiff or defendant must join
5 in the challenge and are limited to the number of peremptory challenges
6 specified in this subsection except the court, in its discretion and in the in-
7 terest of justice, may allow any of the parties, single or multiple, additional
8 peremptory challenges and permit them to be exercised separately or jointly.

9 D(3) Conduct of peremptory challenges. After the full number of jurors
10 has been passed for cause, peremptory challenges shall be conducted by
11 written ballot or outside of the presence of the jury as follows: the plaintiff
12 may challenge one and then the defendant may challenge one, and so alter-
13 nating until the peremptory challenges shall be exhausted. After each chal-
14 lenge, the panel shall be filled and the additional juror passed for cause
15 before another peremptory challenge shall be exercised, and neither party is
16 required to exercise a peremptory challenge unless the full number of jurors
17 is in the jury box at the time. The refusal to challenge by either party in
18 the order of alternation shall not defeat the adverse party of such adverse
19 party's full number of challenges, and such refusal by a party to exercise a
20 challenge in proper turn shall conclude that party as to the jurors once ac-
21 cepted by that party and, if that party's right of peremptory challenge is not
22 exhausted, that party's further challenges shall be confined, in that party's
23 proper turn, to such additional jurors as may be called. The court may, for
24 good cause shown, permit a challenge to be taken as to any juror before the
25 jury is completed and sworn, notwithstanding that the juror challenged may
26 have been previously accepted, but nothing in this subsection shall be con-
27 strued to increase the number of peremptory challenges allowed.

28 D(4) Challenge of peremptory challenge exercised on basis of race,
29 ethnicity, or sex.

30 D(4)(a) A party may not exercise a peremptory challenge on the basis of
31 race, ethnicity, or sex. Courts shall presume that a peremptory challenge

1 does not violate this paragraph, but the presumption may be rebutted in the
2 manner provided by this section.

3 D(4)(b) If a party believes that the adverse party is exercising a
4 peremptory challenge on a basis prohibited under paragraph (a) of this sub-
5 section, the party may object to the exercise of the challenge. The objection
6 must be made before the court excuses the juror. The objection must be made
7 outside of the presence of the jurors. The party making the objection has the
8 burden of establishing a prima facie case that the adverse party challenged
9 the juror on the basis of race, ethnicity, or sex.

10 D(4)(c) If the court finds that the party making the objection has estab-
11 lished a prima facie case that the adverse party challenged a prospective
12 juror on the basis of race, ethnicity, or sex, the burden shifts to the adverse
13 party to show that the peremptory challenge was not exercised on the basis
14 of race, ethnicity, or sex, **and that the peremptory challenge was exer-**
15 **cised on another objectively reasonable basis.** If the adverse party fails
16 to meet the burden of justification as to the questioned challenge, the
17 presumption that the challenge does not violate paragraph (a) of this sub-
18 section is rebutted.

19 D(4)(d) If the court finds that the adverse party challenged a prospective
20 juror on the basis of race, ethnicity, or sex, **and not on another objectively**
21 **reasonable basis,** the court shall disallow the peremptory challenge.

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DISQUALIFYING JUDGES

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25 **SECTION 2.** ORS 14.250 is amended to read:

26 14.250. (1) **Except as provided in subsection (2) of this section,** no
27 judge of a circuit court shall sit to hear or try any suit, action, matter or
28 proceeding when it is established, as provided in ORS 14.250 to 14.270, that
29 any party or attorney believes that such party or attorney cannot have a fair
30 and impartial trial or hearing before such judge. In such case the presiding
31 judge for the judicial district shall forthwith transfer the cause, matter or

1 proceeding to another judge of the court, or apply to the Chief Justice of the
2 Supreme Court to send a judge to try it; or, if the convenience of witnesses
3 or the ends of justice will not be interfered with by such course, and the
4 action or suit is of such a character that a change of venue thereof may be
5 ordered, the presiding judge may send the case for trial to the most conven-
6 ient court; except that the issues in such cause may, upon the written stip-
7 ulation of the attorneys in the cause agreeing thereto, be made up in the
8 district of the judge to whom the cause has been assigned.

9 **(2) The prosecution in a criminal case may not disqualify a judge**
10 **under this section. This subsection does not limit the ability of the**
11 **prosecution in a criminal case to seek to disqualify a judge under ORS**
12 **14.210.**

13 **SECTION 3.** ORS 14.260 is amended to read:

14 14.260. (1) Any party to or any attorney appearing in any cause, matter
15 or proceeding in a circuit court, **other than the prosecution in a criminal**
16 **case**, may establish the belief described in ORS 14.250 by motion supported
17 by affidavit that the party or attorney believes that the party or attorney
18 cannot have a fair and impartial trial or hearing before the judge, and that
19 it is made in good faith and not for the purpose of delay. No specific grounds
20 for the belief need be alleged. The motion shall be allowed unless the judge
21 moved against, or the presiding judge for the judicial district, challenges the
22 good faith of the affiant and sets forth the basis of the challenge. In the
23 event of a challenge, a hearing shall be held before a disinterested judge.
24 The burden of proof is on the challenging judge to establish that the motion
25 was made in bad faith or for the purposes of delay.

26 (2) The affidavit shall be filed with the motion at any time prior to final
27 determination of the cause, matter or proceedings in uncontested cases, and
28 in contested cases before or within five days after the cause, matter or pro-
29 ceeding is at issue upon a question of fact or within 10 days after the as-
30 signment, appointment and qualification or election and assumption of office
31 of another judge to preside over the cause, matter or proceeding.

1 (3) A motion to disqualify a judge may not be made after the judge has
2 ruled upon any petition, demurrer or motion other than a motion to extend
3 time in the cause, matter or proceeding. A motion to disqualify a judge or
4 a judge pro tem, assigned by the Chief Justice of the Supreme Court to serve
5 in a county other than the county in which the judge or judge pro tem re-
6 sides may not be filed more than five days after the party or attorney ap-
7 pearing in the cause receives notice of the assignment.

8 (4) In judicial districts having a population of 200,000 or more, the affi-
9 davit and motion for change of judge shall be made at the time and in the
10 manner prescribed in ORS 14.270.

11 (5) In judicial districts having a population of 100,000 or more, but less
12 than 200,000, the affidavit and motion for change of judge shall be made at
13 the time and in the manner prescribed in ORS 14.270 unless the circuit court
14 makes local rules under ORS 3.220 adopting the procedure described in this
15 section.

16 (6) A party or attorney may not make more than two applications in any
17 cause, matter or proceeding under this section.

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JUSTIFIED USE OF PHYSICAL FORCE

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21 **SECTION 4. Section 5 of this 2022 Act is added to and made a part**
22 **of ORS 161.195 to 161.275.**

23 **SECTION 5. Notwithstanding ORS 161.190, the justifiable use of**
24 **physical force in self-defense or in defending a third person under ORS**
25 **161.205 (5) is an affirmative defense when the defendant engaged in,**
26 **directed or otherwise participated in wrongful conduct that was in-**
27 **tended to cause the victim to be unavailable as a witness, and did**
28 **cause the victim to be unavailable.**

29 **SECTION 6. Section 5 of this 2022 Act applies to conduct alleged to**
30 **constitute an offense occurring on or after the effective date of this**
31 **2022 Act.**

CAPTIONS

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SECTION 7. The unit captions used in this 2022 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2022 Act.
