

D R A F T

SUMMARY

Modifies provisions relating to peremptory challenges to jurors.

Modifies standard for disqualification of judges. 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

Relating to courts; creating new provisions; and amending ORS 14.210, 14.250, 14.260 and 136.230.

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

PEREMPTORY CHALLENGES

SECTION 1. ORS 136.230 is amended to read:

136.230. (1) If the trial is upon an accusatory instrument in which one or more of the crimes charged is punishable with imprisonment in a Department of Corrections institution for life or is a capital offense, both the defendant and the state are entitled to 12 peremptory challenges, and no more. In any trial before more than six jurors, both are entitled to six. In any trial before six jurors, both are entitled to three.

(2) Peremptory challenges shall be taken in writing by secret ballot as follows:

1 (a) The defendant may challenge two jurors and the state may challenge
2 two, and so alternating, the defendant exercising two challenges and the
3 state two until the peremptory challenges are exhausted.

4 (b) After each challenge the panel shall be filled and the additional juror
5 passed for cause before another peremptory challenge is exercised. Neither
6 party shall be required to exercise a peremptory challenge unless the full
7 number of jurors is in the jury box at the time.

8 (c) The refusal to challenge by either party in order of alternation does
9 not prevent the adverse party from exercising that adverse party's full num-
10 ber of challenges, and such refusal on the part of a party to exercise a
11 challenge in proper turn concludes that party as to the jurors once accepted
12 by that party. If that party's right of peremptory challenge is not exhausted,
13 that party's further challenges shall be confined, in that party's proper turn,
14 to such additional jurors as may be called.

15 (3) Notwithstanding subsection (2) of this section, the defendant and the
16 state may stipulate to taking peremptory challenges orally.

17 *[(4) Peremptory challenges are subject to ORCP 57 D(4).]*

18 **(4)(a) A party may not exercise a peremptory challenge on the basis**
19 **of race, ethnicity, sex, religion, sexual orientation or gender identity.**
20 **Courts shall presume that a peremptory challenge does not violate this**
21 **paragraph, but the presumption may be rebutted in the manner pro-**
22 **vided by this section.**

23 **(b) If a party believes that the adverse party is exercising a**
24 **peremptory challenge on a basis prohibited under paragraph (a) of this**
25 **subsection, the party may object to the exercise of the challenge. The**
26 **objection must be made before the court excuses the juror. The ob-**
27 **jection must be made outside of the presence of the jurors. The party**
28 **making the objection has the burden of establishing a prima facie case**
29 **that the adverse party challenged the juror on the basis of race,**
30 **ethnicity, sex, religion, sexual orientation or gender identity.**

31 **(c) If the court finds that the party making the objection has es-**

1 **established a prima facie case that the adverse party challenged a pro-**
2 **spective juror on the basis of race, ethnicity, sex, religion, sexual**
3 **orientation or gender identity, the burden shifts to the adverse party**
4 **to show that the peremptory challenge was not exercised on the basis**
5 **of race, ethnicity, sex, religion, sexual orientation or gender identity,**
6 **and that the peremptory challenge was exercised on another objec-**
7 **tively reasonable basis. The adverse party may examine the challenged**
8 **juror further in support of the challenge. If the adverse party fails to**
9 **meet the burden of justification as to the questioned challenge, the**
10 **presumption that the challenge does not violate paragraph (a) of this**
11 **subsection is rebutted.**

12 **(d) If the court finds that the adverse party challenged a prospec-**
13 **tive juror on the basis of race, ethnicity, sex, religion, sexual orien-**
14 **tation or gender identity, and not on another objectively reasonable**
15 **basis, the court shall disallow the peremptory challenge.**

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17

DISQUALIFYING JUDGES

18

19 **SECTION 2.** ORS 14.210 is amended to read:

20 14.210. (1) A judge shall not act as such in a court of which the judge is
21 a member [*in*] **when a reasonable person would question the judge's**
22 **impartiality, including but not limited to** any of the following circum-
23 stances:

24 (a) The judge shall not act as judge if the judge is a party to or directly
25 interested in the action, suit or proceeding, except that the judge shall not
26 be disqualified from acting as such in a case in which the judge is added as
27 a party after taking any official action as a judge in the action, suit or
28 proceeding, and in that case the judge shall be dismissed as a party without
29 prejudice.

30 (b) Except as provided in ORS 2.111 and 2.570, a judge shall not act as
31 judge if the judge was not present and sitting as a member of the court at

1 the hearing of a matter submitted for its decision. A judge may sign an order
2 or judgment reflecting a decision made by another judge if, for good cause,
3 the judge who made the decision is not available.

4 (c) A judge shall not act as judge if the judge is related to any party, or
5 to the attorney for any party, or to the partner or office associate of any
6 such attorney, by consanguinity or affinity within the third degree.

7 (d) A judge shall not act as judge if the judge has been attorney in the
8 action, suit or proceeding for any party.

9 (e) If appeal is made from a decision of another court, or judicial review
10 of a decision of an administrative agency is sought, a judge shall not act as
11 judge on appeal if the judge participated in making the decision that is
12 subject to review.

13 (2) This section does not apply to an application to change the place of
14 trial, or the regulation of the order of business in court. In the circumstances
15 specified in subsection (1)(c) and (d) of this section, the disqualification shall
16 be deemed waived by the parties unless a motion for disqualification of the
17 judge is made as provided by statute or court rule.

18 **SECTION 3.** ORS 14.250 is amended to read:

19 14.250. (1) **Except as provided in subsection (2) of this section,** no
20 judge of a circuit court shall sit to hear or try any suit, action, matter or
21 proceeding when it is established, as provided in ORS 14.250 to 14.270, that
22 any party or attorney believes that such party or attorney cannot have a fair
23 and impartial trial or hearing before such judge. In such case the presiding
24 judge for the judicial district shall forthwith transfer the cause, matter or
25 proceeding to another judge of the court, or apply to the Chief Justice of the
26 Supreme Court to send a judge to try it; or, if the convenience of witnesses
27 or the ends of justice will not be interfered with by such course, and the
28 action or suit is of such a character that a change of venue thereof may be
29 ordered, the presiding judge may send the case for trial to the most conven-
30 ient court; except that the issues in such cause may, upon the written stip-
31 ulation of the attorneys in the cause agreeing thereto, be made up in the

1 district of the judge to whom the cause has been assigned.

2 **(2) The prosecution in a criminal case may not disqualify a judge**
3 **under this section. This subsection does not limit the ability of the**
4 **prosecution in a criminal case to seek to disqualify a judge under ORS**
5 **14.210.**

6 **SECTION 4.** ORS 14.260 is amended to read:

7 14.260. (1) Any party to or any attorney appearing in any cause, matter
8 or proceeding in a circuit court, **other than the prosecution in a criminal**
9 **case**, may establish the belief described in ORS 14.250 by motion supported
10 by affidavit that the party or attorney believes that the party or attorney
11 cannot have a fair and impartial trial or hearing before the judge, and that
12 it is made in good faith and not for the purpose of delay. No specific grounds
13 for the belief need be alleged. The motion shall be allowed unless the judge
14 moved against, or the presiding judge for the judicial district, challenges the
15 good faith of the affiant and sets forth the basis of the challenge. In the
16 event of a challenge, a hearing shall be held before a disinterested judge.
17 The burden of proof is on the challenging judge to establish that the motion
18 was made in bad faith or for the purposes of delay.

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

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

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

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

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

11
12 **JUSTIFIED USE OF PHYSICAL FORCE**

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14 **SECTION 5. Section 6 of this 2022 Act is added to and made a part**
15 **of ORS 161.195 to 161.275.**

16 **SECTION 6. Notwithstanding ORS 161.190, the justifiable use of**
17 **physical force in self-defense or in defending a third person under ORS**
18 **161.205 (5) is an affirmative defense when the defendant engaged in,**
19 **directed or otherwise participated in wrongful conduct that was in-**
20 **tended to cause the victim to be unavailable as a witness, and did**
21 **cause the victim to be unavailable.**

22 **SECTION 7. Section 6 of this 2022 Act applies to conduct alleged to**
23 **constitute an offense occurring on or after the effective date of this**
24 **2022 Act.**

25
26 **CAPTIONS**

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28 **SECTION 8. The unit captions used in this 2022 Act are provided**
29 **only for the convenience of the reader and do not become part of the**
30 **statutory law of this state or express any legislative intent in the**
31 **enactment of this 2022 Act.**

