

LC 186
Equity in Oregon Courts

Background

The recent trials of Kyle Rittenhouse and the murderers of Ahmaud Arbery shone an unflattering light on our justice system. While there's no single bill that can end racism, we can fix the loopholes in our judicial system that give it expression. Here are three examples of needed reform:

1. Justified use of physical force: The law should not presume that a homicide victim acted unreasonably in his last moments. As the law stands, if a defendant files a claim of self-defense, admitting that they caused the death of another person, they must prove nothing; instead, the state must disprove their claim, beyond a reasonable doubt. This becomes an obvious problem when the victim cannot testify because the victim is deceased by the defendant's own hand. This is particularly important in cross-racial homicides, where the perception of threat is often unreasonably greater due to unconscious bias.

2. Disqualification of judges: Based solely on the *belief* that they cannot have a fair and impartial trial or hearing in a criminal case, the state may disqualify a judge from hearing a case. Allowing one set of elected officials to remove a duly elected judge for unsubstantiated reasons is not consistent with checks and balances of co-equal branches of government and has been used frequently to recuse minority judges from criminal cases. The replacement standard would be that a reasonable person would believe that a judge had a bias in the case. This is already the standard in federal court.

3. Jury selection: Similarly, in the trial of the murder of Ahmaud Arbery, the defense eliminated 11 of 12 Black potential jurors without providing a reasonable explanation. While deliberately excluding jurors based on race (or gender) is already prohibited, a lawyer must only give an "articulable reason" (the reason need not be *objectively* reasonable). **Data shows that Black potential jurors are excluded 4.5 times more than white jurors, often for reasons that are clearly race-related.** The draft provides that, in a criminal case, the exclusion of a juror must have an objectively reasonable non-racial basis.

What the bill does

Relating to the courts, LC 186 -

- Rebalances the law requiring the killer to prove self-defense by a preponderance of the evidence when the defendant has deprived the victim of their life and voice;
- Prohibits no-cause disqualification of judges by the state in criminal cases; and
- Prevents the unreasonable exclusion of protected classes from jury service in criminal cases.

[LC 186](#)
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What the bill does *not* do

- The bill does not change the self-defense standard when the victim is alive and able to testify.
- The bill does not mandate the state prove *actual* bias to recuse a judge; rather, the bill makes clear there must be a reasonable appearance of bias.
- Regarding jury selection, the bill does not require that the other party agree that the basis is objectively reasonable; that determination is made by the court, after the objecting party has had the opportunity to question a juror about their potential biases.

Arguments in support of LC186

- Prevents peremptory challenges and implicit bias regarding jury selection in criminal cases
- Requires an objectively reasonable non-racial basis for striking a juror, like WA and CA
- Removes unsavory practice of “judge shopping”
- Demands justice by changing the standard of proof in self-defense cases involving deadly force, ensuring that when the defendant uses deadly force in self-defense, the defendant must prove they did so by a preponderance of evidence

Arguments in opposition to LC186

- The defendant should enjoy a presumption of innocence, even for an affirmative defense.
- The state and judges may not want to “air dirty laundry” in proving bias by a judge.
- Oregon should not have a higher standard than the federal government for excluding jurors.