

**SB 398 A STAFF MEASURE SUMMARY**

**Carrier:** Sen. Burdick

**Senate Committee On Judiciary and Ballot Measure 110  
Implementation**

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**Action Date:** 03/10/21

**Action:** Do pass with amendments. (Printed A-Eng.)

**Vote:** 4-3-0-0

**Yeas:** 4 - Dembrow, Gelser, Manning Jr, Prozanski

**Nays:** 3 - Heard, Linthicum, Thatcher

**Fiscal:** Has minimal fiscal impact

**Revenue:** No revenue impact

**Prepared By:** Gillian Fischer, Counsel

**Meeting Dates:** 3/2, 3/10

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**WHAT THE MEASURE DOES:**

Creates the Class A misdemeanor crime of intimidation by display of a noose. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both. Defines noose. Defines intimidate.

**ISSUES DISCUSSED:**

- Constitutionally protected speech
- Definition of terms in measure
- Historical significance of a noose

**EFFECT OF AMENDMENT:**

Replaces the measure.

**BACKGROUND:**

Under current Oregon statute, freedom of expression is restricted by few crimes in the criminal code. Speech may only be regulated when the impact of the words or conduct place the public or another person at risk of or in fear of imminent physical harm to a person or their property. Examples of crimes that may be characterized as limiting a person's freedom of expression are ORS 163.190, Menacing, and ORS 166.155 Bias Crime. Oregon case law has held that to legally restrict speech, in any form, the speech must amount to a communication that "instills in the addressee a fear of imminent and serious personal violence from the speaker, is unequivocal, and is objectively likely to be followed by unlawful acts." Both the Oregon and U.S. Supreme courts have concluded that preventing the type of harm that results from those types of communication justify a narrowly tailored restriction on speech and do not violate the U.S. Constitution or the Oregon Constitution.

Senate Bill 398 A establishes the crime of intimidation by display of a noose is committed if a person, with the intent to intimidate another, knowingly places a noose on public or private property without consent and the display causes the other person to be reasonably intimidated or placed in fear of bodily harm by the display.