

**SB 177 A STAFF MEASURE SUMMARY**

**Carrier:** Sen. Gelser

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

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**Action Date:** 03/29/21  
**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:** 3/17, 3/29

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**WHAT THE MEASURE DOES:**

States that the proponent of a statement is not required to issue a material witness order, as defined in ORS 136.608, or seek sanctions for contempt in order to show the unavailability of the declarant for purposes of admitting their statement under Or. Evid. Code 804(1).

**ISSUES DISCUSSED:**

- Domestic violence victims often reluctant to testify
- Case law standards for establishing unavailability of witness
- Purpose of hearsay exceptions

**EFFECT OF AMENDMENT:**

Replaces the measure.

**BACKGROUND:**

Oregon statutes prohibit the admissibility of certain hearsay statements in criminal proceedings unless a well established historical or statutory exception exists. Among the statutory exceptions to hearsay prohibitions are statements offered against a party who engaged in, directed, or otherwise participated in wrongful conduct that was intended to cause the declarant to be unavailable as a witness, and did cause the declarant to be unavailable. The admissibility of the hearsay statements is dependent on the statement of the proponent establishing that they were unable to secure the declarant's attendance at trial by process or other reasonable means.

A recent Oregon Supreme Court decision held that the unavailability of the witness had not been established because the state had not sought a material witness warrant or a remedial contempt order against the victim.

Senate Bill 177 A states that the proponent of a statement is not required to issue a material witness warrant in order to establish the unavailability of witness.