

## SB 807 A -A8 STAFF MEASURE SUMMARY

### House Committee On Rules

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**Meeting Dates:** 6/1, 6/7

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#### WHAT THE MEASURE DOES:

Provides process for a judge to challenge a motion or series of motions to disqualify the judge from a criminal or juvenile delinquency case or cases, if the motion or series of motions effectively denies the judge assignment to a criminal or juvenile delinquency docket. Permits the subject judge to request a hearing from a disinterested judge. Requires the disinterested judge to make an objective inquiry and determine whether a reasonable person would believe that the subject judge lacks impartiality. Places the burden of proof on the moving party. Grants the disinterested judge authority to bar the motion filer from further motions to disqualify the subject judge for a period of up to one year, or take other appropriate action, if the inquiry does not establish that a reasonable person would believe the subject judge lacks impartiality. Permits the Chief Justice to make rules to implement the measure.

*REVENUE: No revenue impact*

*FISCAL: Has minimal fiscal impact*

#### ISSUES DISCUSSED:

- Foundations of justice system include perception of fairness and neutral assignment of judges
- Disqualification motions are not often challenged
- High bar for judge to prove a motion was filed in bad faith
- Blanket disqualifications have greater impact in districts with one to three judges
- Proposed amendment follows discussions in stakeholder workgroup

#### EFFECT OF AMENDMENT:

-A8 Specifies that the disinterested judge may not be from the same judicial district as the subject judge, and will also determine whether the motion or series of motions effectively denies the subject judge assignment to a criminal or juvenile delinquency docket. Changes the standard on a challenge to "a reasonable good faith belief that the judge lacks fairness or impartiality." Permits the motion filer to submit a supplemental affidavit with specific grounds for the reasonable good faith belief. Removes provision authorizing the disinterested judge to bar the filer from filing further motions, or to take other action in addition to denying the motion, if denial is warranted.

#### BACKGROUND:

Under ORS 14.260, a party may file a motion to disqualify a judge from assignment to a case within a specified time after notification of the assignment. The party or attorney must affirm under oath that they believe they cannot have a fair and impartial trial or hearing before the judge, and that the motion is made in good faith and not for purposes of delay. No specific facts need be stated. A judge may challenge a motion to disqualify by proving that the motion was made in bad faith or for the purposes of delay. The burden of proof is on the judge to prove a filer's bad faith. In *State ex rel. Kafoury v. Jones*, 315 Or. 201 (1992), the Supreme Court interpreted the statute to require that the disqualification be upheld unless the disqualified judge proves that the filer's primary intent is something other than fair adjudication of the action or that the grounds for the motion are irrational.

There have been some instances of "blanket disqualifications," when district attorneys or public defenders move to disqualify a particular judge every time the judge is assigned to one of their cases. If the motion filer is assigned

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to most or all of the criminal or juvenile delinquency cases, it may have the effect of disqualifying the judge from all criminal or juvenile delinquency cases in that district. In a judicial district with few judges, it has required bringing a judge from another judicial district to cover the affected criminal docket.

Senate Bill 807 A allows a judge to challenge a motion or motions to disqualify the judge when the motion or motions effectively deny the judge's assignment to a criminal or juvenile delinquency docket, by requesting a hearing before a disinterested judge to conduct an objective inquiry into whether a reasonable person would believe that the judge lacks impartiality, with the burden of proof on the motion filer.