

SB 807 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Judiciary**Action Date:** 03/22/23**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 4-1-0-0**Yeas:** 4 - Gelser Blouin, Linthicum, Manning Jr, Prozanski**Nays:** 1 - Thatcher**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Patricia Pascone, LPRO Analyst**Meeting Dates:** 2/27, 3/22**WHAT THE MEASURE DOES:**

Permits a judge who is the subject of a motion or series of motions to disqualify the judge from a case or cases to request a hearing from a disinterested judge if the motion or motions will effectively deny the judge assignment to a criminal or juvenile delinquency docket. Specifies applicability to a series of motions when the motions are filed by the same party, attorney, law firm, district attorney's office, public defender's office, or defense consortium. Requires a disinterested judge to make an objective inquiry and determine whether a reasonable person would believe that the judge lacks impartiality. Places the burden of proof by preponderance of the evidence 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 motion filer fails to prove that a reasonable person would believe the judge lacks impartiality. Permits the Chief Justice to make rules to implement the measure.

ISSUES DISCUSSED:

- Examples of some district attorneys filing blanket disqualification motions
- Difficulty of proving an attorney's intention in filing a disqualification motion
- Effect of disqualifications in small judicial districts with very few judges

EFFECT OF AMENDMENT:

Adds parties and defense consortia to motion filers subject to challenge if a motion or multiple motions filed effectively deny a judge assignment to a criminal or juvenile delinquency docket. Permits the subject judge to challenge the motion or motions on these grounds, and need not wait until a subsequent motion is filed after the judge has been effectively disqualified from the docket. Removes requirement that challenge be decided without oral hearing. Permits subject judge to request a hearing. Removes detailed procedural specifications; procedure may be provided by rules promulgated by the Chief Justice. Extends permissible length to one year for an order preventing the motion filer from filing additional motions if the disinterested judge's objective inquiry does not establish that a reasonable person would believe the subject judge lacks impartiality.

BACKGROUND:

ORS 14.260 permits a party to file a motion to disqualify a judge from assignment to a case within a specified time after notification of the assignment, if the party or attorney affirms under oath that they believe they cannot have a fair and impartial trial or hearing before the judge. The party or attorney need not articulate the specific facts the belief is based on. The statute also permits a judge to 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.

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

SB 807 A STAFF MEASURE SUMMARY

hearing before a disinterested judge to conduct an objective inquiry into whether a reasonable person would believe that the judge lacks impartiality, and places the burden of proof on the motion filer.