

B-Engrossed
Senate Bill 807

Ordered by the House June 8
Including Senate Amendments dated March 27 and House Amendments
dated June 8

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides procedure whereby elected judge may challenge party, attorney, law firm, district attorney's office, defense consortium or public defender's office that files motions to disqualify judge that effectively deny judge assignment to criminal or juvenile delinquency docket.

A BILL FOR AN ACT

1
2 Relating to disqualification of judges; amending ORS 14.260.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 14.260 is amended to read:

5 14.260. (1) Any party to or any attorney appearing in any cause, matter or proceeding in a cir-
6 cuit court may establish the belief described in ORS 14.250 by motion supported by affidavit that the
7 party or attorney believes that the party or attorney cannot have a fair and impartial trial or
8 hearing before the judge, and that it is made in good faith and not for the purpose of delay. **Except**
9 **as provided in subsection (7) of this section**, no specific grounds for the belief need be alleged.
10 The motion shall be allowed unless the judge moved against, or the presiding judge for the judicial
11 district, challenges the good faith of the affiant and sets forth the basis of the challenge. In the
12 event of a challenge, a hearing shall be held before a disinterested judge. The burden of proof is
13 on the challenging judge to establish that the motion was made in bad faith or for the purposes of
14 delay.

15 (2) The affidavit shall be filed with the motion at any time prior to final determination of the
16 cause, matter or proceedings in uncontested cases, and in contested cases before or within five days
17 after the cause, matter or proceeding is at issue upon a question of fact or within 10 days after the
18 assignment, appointment and qualification or election and assumption of office of another judge to
19 preside over the cause, matter or proceeding.

20 (3) A motion to disqualify a judge may not be made after the judge has ruled upon any petition,
21 demurrer or motion other than a motion to extend time in the cause, matter or proceeding. A motion
22 to disqualify a judge or a judge pro tem, assigned by the Chief Justice of the Supreme Court to serve
23 in a county other than the county in which the judge or judge pro tem resides may not be filed more
24 than five days after the party or attorney appearing in the cause receives notice of the assignment.

25 (4) In judicial districts having a population of 200,000 or more, the affidavit and motion for
26 change of judge shall be made at the time and in the manner prescribed in ORS 14.270.

27 (5) In judicial districts having a population of 100,000 or more, but less than 200,000, the affi-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 davit and motion for change of judge shall be made at the time and in the manner prescribed in ORS
2 14.270 unless the circuit court makes local rules under ORS 3.220 adopting the procedure described
3 in this section.

4 (6) A party or attorney may not make more than two applications in any cause, matter or pro-
5 ceeding under this section.

6 **(7)(a) If a party, attorney, law firm, district attorney's office, defense consortium or**
7 **public defender's office files a motion or series of motions under subsection (1) of this section**
8 **or ORS 14.270 against an elected judge that effectively denies the judge assignment to a**
9 **criminal or juvenile delinquency docket in any county within the judge's judicial district, the**
10 **judge moved against may request a hearing before a disinterested judge. For a hearing under**
11 **this subsection, the disinterested judge may not be from the same judicial district as the**
12 **judge moved against. The party, attorney, law firm, district attorney's office, defense con-**
13 **sortium or public defender's office may file a supplemental affidavit providing specific**
14 **grounds for a reasonable good faith belief that the judge lacks fairness or impartiality.**

15 **(b) The disinterested judge shall make an objective inquiry as to:**

16 **(A) Whether the motion or series of motions effectively denies the judge assignment to**
17 **a criminal or juvenile delinquency docket in any county within the judge's judicial district;**
18 **and**

19 **(B) Whether there is a reasonable good faith belief that the judge lacks fairness or im-**
20 **partiality. The burden of proof under this subparagraph is on the party, attorney, law firm,**
21 **district attorney's office, defense consortium or public defender's office filing the motion**
22 **under subsection (1) of this section or ORS 14.270.**

23 **(c) If the inquiry establishes that the motion or series of motions does not effectively**
24 **deny the judge assignment to a criminal or juvenile delinquency docket, the motion shall be**
25 **decided under subsection (1) of this section.**

26 **(d) If the inquiry establishes that the motion or series of motions effectively denies the**
27 **judge assignment to a criminal or juvenile delinquency docket and establishes a reasonable**
28 **good faith belief that the judge lacks fairness or impartiality, the motion shall be granted.**

29 **(e) If the inquiry establishes that the motion or series of motions effectively denies the**
30 **judge assignment to a criminal or juvenile delinquency docket and does not establish a rea-**
31 **sonable good faith belief that the judge lacks fairness or impartiality, the motion shall be**
32 **denied.**

33 **(f) The Chief Justice may issue rules to implement this subsection.**

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