

# House Bill 4073

Sponsored by Representative WILDE; Representatives HELM, HUDSON, PHAM, REYNOLDS, SCHOUTEN, Senator DEMBROW (Pre-session filed.)

## 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 **as introduced**.

Modifies provisions relating to peremptory challenges to jurors.

Modifies standard for disqualification of judges. Provides that prosecution in criminal case may not move to disqualify judge solely on basis that prosecution cannot have fair and impartial trial or hearing before judge.

Provides that justifiable use of physical force in self-defense or in defending third person is affirmative defense when defendant engaged in, directed or otherwise participated in wrongful conduct that was intended to cause victim to be unavailable as witness, and did cause victim to be unavailable.

## A BILL FOR AN ACT

Relating to courts; creating new provisions; and amending ORS 14.210, 14.250, 14.260 and 136.230.

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

## PEREMPTORY CHALLENGES

**SECTION 1.** ORS 136.230 is amended to read:

136.230. (1) If the trial is upon an accusatory instrument in which one or more of the crimes charged is punishable with imprisonment in a Department of Corrections institution for life or is a capital offense, both the defendant and the state are entitled to 12 peremptory challenges, and no more. In any trial before more than six jurors, both are entitled to six. In any trial before six jurors, both are entitled to three.

(2) Peremptory challenges shall be taken in writing by secret ballot as follows:

(a) The defendant may challenge two jurors and the state may challenge two, and so alternating, the defendant exercising two challenges and the state two until the peremptory challenges are exhausted.

(b) After each challenge the panel shall be filled and the additional juror passed for cause before another peremptory challenge is exercised. Neither party shall be required to exercise a peremptory challenge unless the full number of jurors is in the jury box at the time.

(c) The refusal to challenge by either party in order of alternation does not prevent the adverse party from exercising that adverse party's full number of challenges, and such refusal on the part of a party to exercise a challenge in proper turn concludes that party as to the jurors once accepted by that party. If that party's right of peremptory challenge is not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called.

(3) Notwithstanding subsection (2) of this section, the defendant and the state may stipulate to taking peremptory challenges orally.

*[(4) Peremptory challenges are subject to ORCP 57 D(4).]*

**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 (4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity,  
 2 sex, religion, sexual orientation or gender identity. Courts shall presume that a peremptory  
 3 challenge does not violate this paragraph, but the presumption may be rebutted in the  
 4 manner provided by this section.

5 (b) If a party believes that the adverse party is exercising a peremptory challenge on a  
 6 basis prohibited under paragraph (a) of this subsection, the party may object to the exercise  
 7 of the challenge. The objection must be made before the court excuses the juror. The ob-  
 8 jection must be made outside of the presence of the jurors. The party making the objection  
 9 has the burden of establishing a prima facie case that the adverse party challenged the juror  
 10 on the basis of race, ethnicity, sex, religion, sexual orientation or gender identity.

11 (c) If the court finds that the party making the objection has established a prima facie  
 12 case that the adverse party challenged a prospective juror on the basis of race, ethnicity,  
 13 sex, religion, sexual orientation or gender identity, the burden shifts to the adverse party to  
 14 show that the peremptory challenge was not exercised on the basis of race, ethnicity, sex,  
 15 religion, sexual orientation or gender identity, and that the peremptory challenge was exer-  
 16 cised on another objectively reasonable basis. The adverse party may examine the challenged  
 17 juror further in support of the challenge. If the adverse party fails to meet the burden of  
 18 justification as to the questioned challenge, the presumption that the challenge does not vi-  
 19 olate paragraph (a) of this subsection is rebutted.

20 (d) If the court finds that the adverse party challenged a prospective juror on the basis  
 21 of race, ethnicity, sex, religion, sexual orientation or gender identity, and not on another  
 22 objectively reasonable basis, the court shall disallow the peremptory challenge.

23  
 24 **DISQUALIFYING JUDGES**

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 26 **SECTION 2.** ORS 14.210 is amended to read:

27 14.210. (1) A judge shall not act as such in a court of which the judge is a member [*in*] **when**  
 28 **a reasonable person would question the judge's impartiality, including but not limited to** any  
 29 of the following circumstances:

30 (a) The judge shall not act as judge if the judge is a party to or directly interested in the action,  
 31 suit or proceeding, except that the judge shall not be disqualified from acting as such in a case in  
 32 which the judge is added as a party after taking any official action as a judge in the action, suit  
 33 or proceeding, and in that case the judge shall be dismissed as a party without prejudice.

34 (b) Except as provided in ORS 2.111 and 2.570, a judge shall not act as judge if the judge was  
 35 not present and sitting as a member of the court at the hearing of a matter submitted for its deci-  
 36 sion. A judge may sign an order or judgment reflecting a decision made by another judge if, for good  
 37 cause, the judge who made the decision is not available.

38 (c) A judge shall not act as judge if the judge is related to any party, or to the attorney for any  
 39 party, or to the partner or office associate of any such attorney, by consanguinity or affinity within  
 40 the third degree.

41 (d) A judge shall not act as judge if the judge has been attorney in the action, suit or proceeding  
 42 for any party.

43 (e) If appeal is made from a decision of another court, or judicial review of a decision of an  
 44 administrative agency is sought, a judge shall not act as judge on appeal if the judge participated  
 45 in making the decision that is subject to review.

1 (2) This section does not apply to an application to change the place of trial, or the regulation  
 2 of the order of business in court. In the circumstances specified in subsection (1)(c) and (d) of this  
 3 section, the disqualification shall be deemed waived by the parties unless a motion for disqualifica-  
 4 tion of the judge is made as provided by statute or court rule.

5 **SECTION 3.** ORS 14.250 is amended to read:

6 14.250. (1) **Except as provided in subsection (2) of this section,** no judge of a circuit court  
 7 shall sit to hear or try any suit, action, matter or proceeding when it is established, as provided in  
 8 ORS 14.250 to 14.270, that any party or attorney believes that such party or attorney cannot have  
 9 a fair and impartial trial or hearing before such judge. In such case the presiding judge for the ju-  
 10 dicial district shall forthwith transfer the cause, matter or proceeding to another judge of the court,  
 11 or apply to the Chief Justice of the Supreme Court to send a judge to try it; or, if the convenience  
 12 of witnesses or the ends of justice will not be interfered with by such course, and the action or suit  
 13 is of such a character that a change of venue thereof may be ordered, the presiding judge may send  
 14 the case for trial to the most convenient court; except that the issues in such cause may, upon the  
 15 written stipulation of the attorneys in the cause agreeing thereto, be made up in the district of the  
 16 judge to whom the cause has been assigned.

17 (2) **The prosecution in a criminal case may not disqualify a judge under this section. This**  
 18 **subsection does not limit the ability of the prosecution in a criminal case to seek to dis-**  
 19 **qualify a judge under ORS 14.210.**

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

21 14.260. (1) Any party to or any attorney appearing in any cause, matter or proceeding in a cir-  
 22 cuit court, **other than the prosecution in a criminal case,** may establish the belief described in  
 23 ORS 14.250 by motion supported by affidavit that the party or attorney believes that the party or  
 24 attorney cannot have a fair and impartial trial or hearing before the judge, and that it is made in  
 25 good faith and not for the purpose of delay. No specific grounds for the belief need be alleged. The  
 26 motion shall be allowed unless the judge moved against, or the presiding judge for the judicial dis-  
 27 trict, challenges the good faith of the affiant and sets forth the basis of the challenge. In the event  
 28 of a challenge, a hearing shall be held before a disinterested judge. The burden of proof is on the  
 29 challenging judge to establish that the motion was made in bad faith or for the purposes of delay.

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

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

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

42 (5) In judicial districts having a population of 100,000 or more, but less than 200,000, the affi-  
 43 davit and motion for change of judge shall be made at the time and in the manner prescribed in ORS  
 44 14.270 unless the circuit court makes local rules under ORS 3.220 adopting the procedure described  
 45 in this section.

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

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4 **JUSTIFIED USE OF PHYSICAL FORCE**

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6 **SECTION 5. Section 6 of this 2022 Act is added to and made a part of ORS 161.195 to**  
7 **161.275.**

8 **SECTION 6. Notwithstanding ORS 161.190, the justifiable use of physical force in self-**  
9 **defense or in defending a third person under ORS 161.205 (5) is an affirmative defense when**  
10 **the defendant engaged in, directed or otherwise participated in wrongful conduct that was**  
11 **intended to cause the victim to be unavailable as a witness, and did cause the victim to be**  
12 **unavailable.**

13 **SECTION 7. Section 6 of this 2022 Act applies to conduct alleged to constitute an offense**  
14 **occurring on or after the effective date of this 2022 Act.**

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16 **CAPTIONS**

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18 **SECTION 8. The unit captions used in this 2022 Act are provided only for the convenience**  
19 **of the reader and do not become part of the statutory law of this state or express any leg-**  
20 **islative intent in the enactment of this 2022 Act.**

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