



1995 ASSEMBLY BILL 35

January 19, 1995 - Introduced by Representatives SERATTI, LADWIG, HANDRICK, DOBYNS, SCHNEIDERS, NASS, JENSEN, VRAKAS, OWENS, GOETSCH, FREESE, KLUSMAN, DUFF, MUSSER, PORTER, BRANDEMUEHL, LEHMAN, AINSWORTH, KAUFERT, SILBAUGH and RYBA, cosponsored by Senators A. LASEE and DARLING. Referred to Committee on Judiciary.

- 1 **AN ACT to amend** 971.20 (3) (b) and (4) to (9) of the statutes; **relating to:**
2 substitution of judges in criminal cases.

Analysis by the Legislative Reference Bureau

Under current law, there are 2 methods by which a judge who is scheduled to handle a case may be replaced: disqualification and substitution. A judge is required to disqualify himself or herself if the judge is related to a party or an attorney or any of their spouses, is a party or material witness, has previously been involved with the case as counsel or a drafter of a legal instrument, has a significant financial or personal interest in the outcome or determines that he or she cannot act impartially in the case. The disqualification may be waived if the relevant factors are disclosed and all of the parties and the judge agree to the waiver.

Under current law regarding judge substitution, a party in a case may request that the judge who is scheduled to handle the case be removed from the case and another judge substituted. A party is not required to give a reason for that request. The judge for whom the substitution is requested reviews the request, and, if he or she determines that the request is timely and in proper form, another judge is assigned to the case. If the judge for whom substitution is requested fails to act on the request within 7 days, the chief judge acts on the request. Each party in a civil case and the defendant in a criminal case generally have a right to one substitution, except that additional substitution rights occur in certain cases if there is a successful appeal or if the judge who handles a preliminary hearing is assigned to handle the trial.

This bill retains the provisions relating to the disqualification of a judge, but changes the judge substitution procedure in criminal cases. Under the bill, the party requesting substitution of a judge in a criminal case must submit an affidavit with the request stating that the judge has a personal bias or prejudice against the party. The affidavit must include facts and reasons for that belief. If a judge for whom substitution is requested fails to act on the request within 7 days of the request or

finds that the request was not timely and in proper form, the chief judge reviews the request and determines if it was timely and in proper form.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 971.20 (3) (b) and (4) to (9) of the statutes are amended to read:

2 971.20 (3) (b) A written request and affidavit for the substitution of a different
3 judge for the judge assigned to preside at the preliminary examination may be filed
4 with the clerk, or with the court at the initial appearance. The affidavit shall state
5 that the judge has a personal bias or prejudice either against the defendant or in
6 favor of any adverse party and shall state the facts and the reasons for that belief.

7 If filed with the clerk, the request and affidavit must be filed at least 5 days before
8 the preliminary examination unless the court otherwise permits. Substitution of a
9 judge assigned to a preliminary examination under this subsection exhausts the
10 right to substitution for the duration of the action, except under sub. (7).

11 **(4)** SUBSTITUTION OF TRIAL JUDGE ORIGINALLY ASSIGNED. A written request and
12 affidavit for the substitution of a different judge for the judge originally assigned to
13 the trial of the action may be filed with the clerk before making any motions to the
14 trial court and before arraignment. The affidavit shall state that the judge has a
15 personal bias or prejudice either against the defendant or in favor of any adverse
16 party and shall state the facts and the reasons for that belief.

17 **(5)** SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED. If a new judge is
18 assigned to the trial of an action and the defendant has not exercised the right to
19 substitute an assigned judge, a written request and affidavit for the substitution of
20 the new judge may be filed with the clerk within 15 days of the clerk's giving actual

1 notice or sending notice of the assignment to the defendant or the defendant's
2 attorney. If the notification occurs within 20 days of the date set for trial, the request
3 and affidavit shall be filed within 48 hours of the clerk's giving actual notice or
4 sending notice of the assignment. If the notification occurs within 48 hours of the
5 trial or if there has been no notification, the defendant may ~~make an oral or~~ submit
6 a written request for substitution and affidavit prior to the commencement of the
7 proceedings.

8 (6) SUBSTITUTION OF JUDGE IN MULTIPLE DEFENDANT ACTIONS. In actions involving
9 more than one defendant, the request for substitution shall be made jointly by all
10 defendants but the affidavit need only be completed by one defendant. If severance
11 has been granted and the right to substitute has not been exercised prior to the
12 granting of severance, the defendant or defendants in each action may request a
13 substitution under this section.

14 (7) SUBSTITUTION OF JUDGE FOLLOWING APPEAL. If an appellate court orders a new
15 trial or sentencing proceeding, a request and affidavit under this section may be filed
16 within 20 days after the filing of the remittitur by the appellate court, whether or not
17 a request for substitution was made prior to the time the appeal was taken.

18 (8) PROCEDURES FOR CLERK. Upon receiving a request for substitution and
19 affidavit, the clerk shall immediately contact the judge whose substitution has been
20 requested for a determination of whether the request was and affidavit were made
21 timely and in proper form. If no determination is made within 7 days or if the judge
22 named in the substitution request finds that the request or affidavit was not timely
23 and in proper form, the clerk shall refer the matter to the chief judge, or to the chief
24 judge of an adjoining judicial administrative district if the judge named in the
25 request is the chief judge, for the determination and reassignment of the action as

1 necessary. If the request is and affidavit are determined to be proper, the clerk shall
2 request the assignment of another judge under s. 751.03.

3 **(9) JUDGE'S AUTHORITY TO ACT.** Upon the filing of a request for substitution and
4 affidavit in proper form and within the proper time, the judge whose substitution has
5 been requested has no authority to act further in the action except to conduct the
6 initial appearance, accept pleas and set bail.

7 **SECTION 2. Initial applicability.**

8 (1) This act first applies to actions commenced on the effective date of this
9 subsection.

10 **SECTION 3. Effective date.**

11 (1) This act takes effect on the first day of the 4th month beginning after
12 publication.

13 **(END)**