

2005 DRAFTING REQUEST

Bill

Received: 11/23/2004

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Judy Krawczyk (608) 266-0485

By/Representing:

This file may be shown to any legislator: NO

Drafter: mlief

May Contact:

Addl. Drafters:

Subject: Courts - courts/judges/commsrs

Extra Copies:

Submit via email: YES

Requester's email: Rep.Krawczyk@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Substitution of judge

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 11/24/2004	kfollett 12/17/2004		_____			S&L
/1			pgreensl 12/20/2004	_____	lnorthro 12/20/2004	sbasford 12/20/2004	

FE Sent For:

<END>

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/?	rnelson2	11/23/04 12/1/04	12/20/04 ps	12/20/04 ps			

FE Sent For:

<END>

Nelson, Robert P.

From: Dykman, Peter
Sent: Tuesday, November 23, 2004 8:04 AM
To: Nelson, Robert P.
Subject: FW: two bill draft requests

-----Original Message-----

From: Rep.Krawczyk
Sent: Monday, November 22, 2004 3:07 PM
To: Dykman, Peter
Subject: two bill draft requests

Since I'm not sure who would draft these, I'm sending both to you.

1). In counties in which there are three or more circuit court judges, the state would have the right to file one substitution of judge per case.

[REDACTED]

Both of these are at the request of the Brown County District Attorney's office.

Please call Ken Machtan in my office (266-0485) if you have any questions or if you need additional information.

Thank you.

12/22

KJF

2003 BILL

1 AN ACT *to repeal* 971.20 (1) to (6); and *to amend* 971.20 (7) of the statutes;
② relating to: substitution of judges ^{by the state} in criminal cases.

regenerate

Analysis by the Legislative Reference Bureau

Under current law, there are two methods by which a judge who is scheduled to handle a case is replaced: disqualification and substitution. A judge is required to disqualify himself or herself in a case if the judge may be considered to have an interest in the matter, such as if the judge is related to a party, has previously been involved with the case as counsel, or has a significant financial or personal interest in the outcome.

Substitution is the method by which parties in the case may have a judge who is scheduled to handle a case taken off the case without having to give a reason. 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 provides that a ~~criminal defendant~~ ^{in a criminal trial the state} has the right to substitution ~~only if an appellate court orders a new trial or sentencing proceeding.~~ In addition, the defendant has the right to only one substitution; if the case involves more than one defendant, all the defendants must jointly make the substitution request, unless the appellate court has ordered severance of defendants, in which case the defendant or defendants in each action may request a substitution.

county
the county in which the least trial is held has at least three circuit court judges.

BILL

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:

JWS
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~~SECTION 1. 971.20 (1) to (6) of the statutes are repealed.~~

~~SECTION 2. 971.20 (7) of the statutes is amended to read:~~

~~971.20 (7) SUBSTITUTION OF JUDGE FOLLOWING APPEAL. If The defendant has the right of substitution of a judge if an appellate court orders a new trial or sentencing proceeding, a. The defendant has the right to only one substitution of a judge under this section. The right of substitution shall be exercised as provided in this section. If the case involves more than one defendant, the request for substitution shall be made jointly by all defendants. If the appellate court has ordered severance of defendants, the defendant or defendants in each action may request a substitution under this section. A request under this section may shall be filed within 20 days after the filing of the remittitur by the appellate court, whether or not a request for substitution was made prior to the time the appeal was taken.~~

SECTION 3. Initial applicability.

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

16

(END)

X

renumbered 971.20(2)(a)

Section #. 971.20 (2) of the statutes is amended to read

See #. CR; 971.20(2)(b)

that is tried in a circuit having at least 3 branches,

971.20 (2) ^(b) ~~ONE~~ substitution. In any criminal action, the defendant has a right to only one substitution of a judge, except under sub. (7). The right of substitution shall be exercised as provided in this section.

the district attorney

History: 1981 c. 137; 1987 a. 27; 1997 a. 250; 2001 a. 61

FNS 1-1



Section #. 971.20 (10) of the statutes is amended to read:

971.20 (10) FORM OF REQUEST. A request for substitution of a judge may be made in the following form:

STATE OF WISCONSIN

CIRCUIT COURT

.... County

State of Wisconsin

vs.

....(Defendant)

* Pursuant to ^{S.A. 971.20}~~971.20~~ the defendant (or defendants) or the district attorney request (s) a substitution for the Hon. as judge in the above entitled action.

Dated, (year)

(FR) →(Signature of defendant or defendant's attorney) ^{LPS:}
or district attorney ← center under line above

History: 1981 c. 137; 1987 a. 27; 1997 a. 250; 2001 a. 61.

end
INS 1-1

LPS: see attached for format
↓

causing death is in one county and the death of the defendant may be tried in either county. If it can be determined, the defendant may be tried in the county in which the body is found.

If the trial is commenced outside the state and is commenced in the state, the defendant may be tried in the county in which the offense was consummated.

If the offense is committed on boundary waters at a place where two or more counties have common jurisdiction under s. 2.03 or any other law, the prosecution may be in either county. If the process against the offender is first instituted in one county and subsequently removed to another county, the defendant may be tried in either county.

In a criminal action for a violation of s. 948.31, the defendant may be tried in the county where the crime was committed or the county of residence of the child.

In a criminal action under s. 301.45 (6) (a) or (ag), the defendant may be tried in the county of residence at the time that the complaint is filed. If the defendant does not have a county of residence at the time that the complaint is filed, or if the county of residence is unknown at the time that the complaint is filed, the defendant may be tried in any of the following counties:

(1) The county in which he or she has resided while subject to the criminal action.

(2) The county in which he or she was convicted, found not guilty, or found insane by reason of mental disease or defect or found not responsible for the sex offense that requires the person to register under s. 301.45.

(3) The county in which the defendant is required to register under s. 301.45 (1g) if the person was found to be a sexually violent offender under ch. 980.

(4) The county in which the person is required to register only under s. 301.45 (1g) if the person is a student in this state.

(5) The county under s. 30.547 for intentionally falsifying an identification card, a certificate of number, a registration or a certificate of title. The defendant may be tried in the defendant's county of residence at the time that the complaint is filed, in the county in which the defendant purchased the boat if purchased from a dealer, or in the county of the department of natural resources received the boat.

(6) The county under s. 943.201, the defendant may be tried in the county of residence of the victim or intended victim resided at the time that the complaint is filed, or in any other county designated under this section.

(7) The county under s. 943.203, the defendant may be tried in the county of residence of the victim or intended victim was located at the time that the complaint is filed, or in any other county designated under this section.

(8) The county under s. 943.204, the defendant may be tried in the county of residence of the victim or intended victim resided at the time that the complaint is filed, or in any other county designated under this section.

(9) The county under s. 943.205, the defendant may be tried in the county of residence of the victim or intended victim resided at the time that the complaint is filed, or in any other county designated under this section.

(10) The county under s. 943.206, the defendant may be tried in the county of residence of the victim or intended victim resided at the time that the complaint is filed, or in any other county designated under this section.

Substitution of judge. (1) **DEFINITION.** In this section, "substitution of judge" means the substitution of a judge for the judge presiding at the trial level.

(2) **APPLICATION.** In any criminal action, the defendant may be tried in any county in which the substitution of a judge, except under sub. (3), shall be exercised as provided in this section.

Substitution of judge assigned to preliminary examination. In this subsection, "judge" includes a circuit judge who is assigned to conduct the preliminary examination.

(1) **REQUEST FOR SUBSTITUTION.** A request for the substitution of a different judge to preside at the preliminary examination may be made by the defendant, the clerk, or with the court at the initial appearance.

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

(3) **SUBSTITUTION OF TRIAL JUDGE ORIGINALLY ASSIGNED.** A written request for the substitution of a different judge for the judge originally assigned to the trial of the action may be filed with the clerk before making any motions to the trial court and before arraignment.

(4) **SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED.** If a new judge is assigned to the trial of an action and the defendant has not exercised the right to substitute an assigned judge, a written request for the substitution of the new judge may be filed with the clerk within 15 days of the clerk's giving actual notice or sending notice of the assignment to the defendant or the defendant's attorney. If the notification occurs within 20 days of the date set for trial, the request shall be filed within 48 hours of the clerk's giving actual notice or sending notice of the assignment. If the notification occurs within 48 hours of the trial or if there has been no notification, the defendant may make an oral or written request for substitution prior to the commencement of the proceedings.

(5) **SUBSTITUTION OF JUDGE IN MULTIPLE DEFENDANT ACTIONS.** In actions involving more than one defendant, the request for substitution shall be made jointly by all defendants. If severance has been granted and the right to substitute has not been exercised prior to the granting of severance, the defendant or defendants in each action may request a substitution under this section.

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

(7) **PROCEDURES FOR CLERK.** Upon receiving a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge for the determination and reassignment of the action as necessary. If the request is determined to be proper, the clerk shall request the assignment of another judge under s. 751.03.

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

(9) **FORM OF REQUEST.** A request for substitution of a judge may be made in the following form:

STATE OF WISCONSIN

CIRCUIT COURT

.... County

State of Wisconsin

vs.

....(Defendant)

Pursuant to s. 971.20 the defendant (or defendants) request (s) a substitution for the Hon. as judge in the above entitled action.

Dated, (year)

.....(Signature of defendant or defendant's attorney)

(10) **RETURN OF ACTION TO SUBSTITUTED JUDGE.** Upon the filing of an agreement signed by the defendant or defendant's attorney and by the prosecuting attorney, the substituted judge and the substituting judge, the criminal action and all pertinent records shall be transferred back to the substituted judge.

History: 1981 c. 137; 1987 a. 27; 1997 a. 250; 2001 a. 61.

NOTE: See the 1979-80 Statutes for notes and annotations relating to 971.20 prior to its repeal and recreation by ch. 137, laws of 1981.

Judicial Council Note, 1981: Section 971.20 has been revised to clarify its objective of allowing defendants in criminal trials one substitution of the assigned judge upon making a timely request. The statute is not to be used for delay nor for "judge

shopping," but is to ensure a fair and impartial trial not government removal for cause of the assigned judge.

Sub. (2) clarifies that the defendant has a right to a criminal action, unless an appellate court order is issued, but the effect of this provision was unclear under prior sub. (3).

Sub. (3) allows the defendant's right of substitution to the preliminary examination and sentencing.

Sub. (4) allows the defendant's right of substitution originally assigned to preside at trial, specifying the defendant's right of substitution.

Sub. (5) allows the defendant's right of substitution to preside at trial in place of the judge at the time of these requests.

Sub. (6) clarifies that all defendants in a criminal action may request a substitution.

Sub. (7) allows a substitution request to be made at trial, irrespective of whether a substitution of judge was requested. It is the only exception to the rule of one substitution. The request is tied to filing of the remittitur, in a 2d 514 (1980). [LRB NOTE: Senate Amendment allows the substitution request to be made upon proceedings.]

Sub. (8) provides for the determination of the substitution request to be made by the chief judge within 7 days.

Sub. (9) is prior sub. (2), amended to allow a defendant to request to accept any plea. The prior statute required a defendant to request to accept a plea of not guilty. This revision promotes judicial efficiency by allowing a defendant to request to accept a plea of not guilty before the action is reassigned. Defendant's request accepted by the substituting judge does not constitute a plea of not guilty until after the action is reassigned.

Sub. (10) is prior sub. (5).

Sub. (11) is prior sub. (6). [Bill 163-S] Section 971.20, 1979 stats., was not unconstitutional. 2d 31, 315 N.W.2d 703 (1982).

When an appellate court remands for the action, it has not remanded for a sentencing proceeding. Substitution under sub. (7). State v. Foley, App. 1989.

When an initial appearance is conducted by the clerk, strict application of the filing deadline is not required. The filing deadline does not provide adequate notice of the assignment to the defendant to appear in Waukesha County Circuit Court, 159 Wis. 2d 416 (1998).

Once a judge is substituted, that judge may not be substituted. Understandable inadvertent appearance waiver of the substitution. State v. Austin, App. 1992.

When a case is assigned to a newly appointed judge, the time limit to request a substitution becomes a judge. Strong v. Dane County, 416 N.W.2d 451 (Ct. App. 1994).

There is no "trial court" under sub. (4) until the case is remanded for a sentencing proceeding. Mace v. Green Lake County, 159 Wis. 2d 720 (1995).

A defendant who is charged jointly with another defendant may request a substitution of a judge under sub. (6) when the defendant is charged jointly with another defendant and to join or refuses to join a substitution request. Mace v. Green Lake County, 2002 WI App 164, 256 Wis. 2d 438 (1995).

There is no requirement under this section that the defendant request a substitution of a judge or that a judge preside at the trial. State v. Tappa, 2002 WI App 164, 256 Wis. 2d 438 (1995).

971.22 Change of place of trial. If the court determines that a change of the place of trial cannot be had in the county in which the trial is to be held at arraignment, but it may be had in another county, the court may order the trial to be held in that county.

(1) The motion shall be in writing and shall state the facts and circumstances which shall state evidentiary facts and the facts alleged. The district attorney shall file a response to the motion.

(2) If the court determines that the action is pending such prejudice to the defendant that the trial can be had in another county, the court may order the trial to be held in that county.

(3) If the court determines that the action is pending such prejudice to the defendant that the trial can be had in another county, the court may order the trial to be held in that county. The judge who orders the trial to be held in either county at the discretion of the court shall determine where the trial shall be held and where the records of the trial shall be held under s. 971.225 (1) (a) to (c) except s. 971.225 (2).

History: 1981 c. 115.

Northrop, Lori

From: Machtan, Ken
Sent: Monday, December 20, 2004 10:15 AM
To: LRB.Legal
Subject: Draft review: LRB 05-0959/1 Topic: Substitution of judge

It has been requested by <Machtan, Ken> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0959/1 Topic: Substitution of judge