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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Corrections and the Courts...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Assembly

Record of Committee Proceedings

Committee on Corrections and the Courts

Assembly Bill 390

Relating to: substitution of judges by the state in criminal cases.

By Representatives Krawczyk, Van Roy, Ott, Vos, Nass, LeMahieu, Gunderson, Hines, Owens, Ballweg, Lamb and F. Lasee; cosponsored by Senators Cowles and A. Lasee.

April 27, 2005 Referred to Committee on Corrections and the Courts.

November 30, 2005 **PUBLIC HEARING HELD**

Present: (10) Representatives Bies, Gundrum, Underheim, Owens,
Suder, LeMahieu, Pope-Roberts, Wasserman, Seidel,
Parisi.

Absent: (0) None.

Appearances For

- Representative Judy Krawczyk – 88th Assembly District

Appearances Against

- John Voelker – Director of State Courts
- Kirk Ohear – WI Association of Civil Defense Lawyers

Appearances for Information Only

- None.

Registrations For

- Senator Robert Cowles – 2nd Senate District

Registrations Against

- Representative Sheryl Albers – 50th assembly District

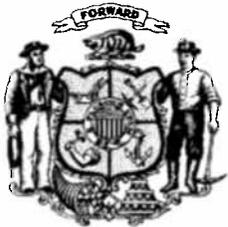
May 4, 2006

Failed to pass pursuant to Senate Joint Resolution 1.

Andrew Nowlan
Committee Clerk



WISCONSIN STATE LEGISLATURE





Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Shirley S. Abrahamson
Chief Justice

16 East State Capitol
Telephone 608-266-6828
Fax 608-267-0980

A. John Voelker
Director of State Courts

October 5, 2005

The Honorable Garey Bies
Chair, Assembly Committee on Corrections and the Courts
Room 125 West, State Capitol
Madison, WI 53702

RE: Assembly Bill 390, Relating to Substitution of Judges in Criminal Cases

Dear Representative Bies:

I regret that I will be unable to personally testify before your committee today, but I ask that you accept this written testimony. The Legislative Committee of the Judicial Conference believes this bill would have negative consequences for the administration of the court system and may lead to unjust results within the criminal justice system. The Committee urges the members of this committee and of the Assembly to reject this proposal.

Substitution of a judge in any case requires readjustment of court calendars and the workload of the other judges in the county or in the judicial administrative district. In small counties, especially in one-judge counties, substitution requires assigning judges from other counties to handle cases. Despite those administrative adjustments, judges recognize the importance of our current system that allows substitution of judges as a matter of right. The administrative adjustments are a proper price to pay for the broader goal of fostering the reality and the perception that an unbiased judicial official is handling a case.

Allowing the state to have a substitution of judge in criminal cases, however, appears to go beyond that goal, and the numbers of appearances by the state in the thousands of criminal cases brought every year would likely result in a significant increase in substitution requests. We believe this would result in delays in some cases while judges' calendars are rearranged.

It appears an effort has been made to alleviate scheduling difficulties in smaller counties by limiting the right to substitution to those counties that have three or more branches of circuit court. While that may be easier administratively, it would appear to be unfair on its face to the state's representatives in smaller counties who would not have the right of substitution. It would also place defendants in differing size counties in a different position before the court.

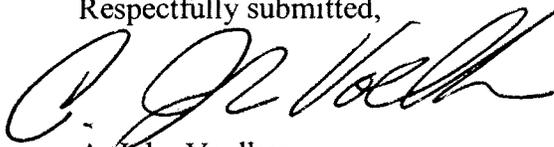
As the most frequent player in criminal proceedings, the state has a great influence on the direction of those proceedings and has almost daily contact with the judges and other court personnel.

It is important to evaluate the impact of a right of substitution on the balance that currently exists in the criminal justice system. The state has significantly greater tools and power to impact the timing and progress of criminal proceedings. Besides determining whether and what charges will be brought, the state also determines when charges are brought. The timing of the charging decisions can influence which judge might be assigned to a case.

In its discussion of this bill, the Legislative Committee determined a right of substitution would tip the balance too far in favor of the state.

I hope these comments will assist your committee in its deliberations. If you have questions about this position, please do not hesitate to contact me or our Legislative Liaison, Nancy Rottier. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. John Voelker". The signature is fluid and cursive, with a large initial "A" and "J".

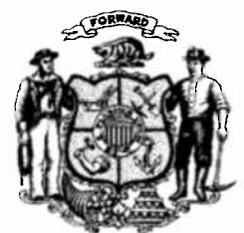
A. John Voelker
Director of State Courts

AJV:NMR

cc: Members, Assembly Committee on Corrections and the Courts



WISCONSIN STATE LEGISLATURE



Chair:
Workforce Development
Vice Chair:
State Affairs



Member:
Colleges and Universities
Health
Natural Resources

JUDY KRAWCZYK

STATE REPRESENTATIVE • 88TH ASSEMBLY DISTRICT

MEMO TO: ASSEMBLY COMMITTEE ON CORRECTIONS AND
THE COURTS
REP. GAREY BIES – CHAIR

FROM: REP. JUDY KRAWCZYK

DATE: NOVEMBER 30, 2005

RE: ASSEMBLY BILL 390

Thank you for the opportunity to appear before you today in support of Assembly Bill 390 relating to substitution of judges by the state in criminal cases. I would like to especially thank Chairman Bies for holding a hearing on this legislation.

I introduced this legislation at the request of the Brown County District Attorney's Office. As you may know, there are two parties to every criminal action: the State and the defendant. Current state law provides that in any criminal action the defendant has the right to file one substitution for the judge assigned to his or her case. However, there is no such corresponding right for the state. Both sides in civil cases also have the right to file one substitution per s. 801.58 of the statutes.

Assembly Bill 390 would allow the state the right to exercise the same opportunity as the defendant in criminal cases. Occasionally there may be a judge that may have a different attitude or philosophy concerning a particular case. The State cannot appeal a judge's sentence, no matter how unfair or inappropriate it may appear even though that right is granted to the defendant. Additionally, past political situations may have created tension between a judge and a prosecutor. An example of this would be in the case where a district attorney may have sought the same appointment as the judge received or may have even run against the judge in an election.

Recognizing the need for efficiency in the court system, the right of substitution for the State under this legislation would be limited to counties in which there are at least three judges. In one-judge counties, a substitution necessitates bringing in a judge from another county or a reserve judge and even in two-judge counties, the practical concern would be that a substitution of one judge would automatically transfer the case to the only other judge in the county.

There would be no fiscal cost to the taxpayers under this bill. The public, represented by district attorneys, would have the same rights as defendants.

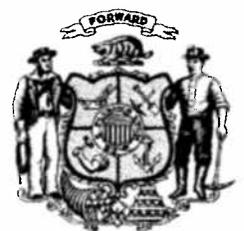
Again, thank you for the opportunity to appear before you today in support of Assembly Bill 390.

Office: P.O. Box 8952, State Capitol • Madison, Wisconsin 53708-8952
(608) 266-0485 • Fax: (608) 282-3688 • Toll-Free: (888) 534-0088 • Rep.Krawczyk@legis.state.wi.us

District: 2294 Manitowoc Road • Green Bay, Wisconsin 54311 • (920) 469-4364



WISCONSIN STATE LEGISLATURE





Memorandum

To: Members, Assembly Corrections and the Courts Committee

From: Rep. Garey Bies, Chair

Date: December 1, 2005

Re: Written Comments from Director of State Courts

Attached please find a copy of the submitted written remarks of John Voelker, Director of State Courts, regarding Assembly Bill 390.

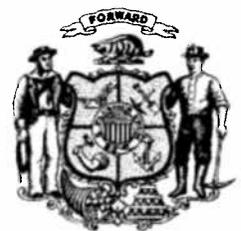
First for Wisconsin!

Capitol: P.O. 8952, Madison, WI 53708-8952 • (608) 266-5350 • Fax: (608) 282-3601
Toll-Free: (888) 482-0001 • Rep.Bies@legis.state.wi.us

Home: 2590 Settlement Road, Sister Bay, WI 54234 • (920) 854-2811



WISCONSIN STATE LEGISLATURE



AB 390

①

Brown Co Da Request

Friction between DAs & Judges

→ that may have run against
each other...

back up ^{on what exactly} she said.

Dir of SL. Ct.

This tips the balance in favor of the state. DA's already have the knowledge of receptive judges to their case & what their schedules would be.

Does not apply to 50+ counties, and it is in those counties where the DA/Judge conflict may arise.

LB 390

(2)

WI Assoc of Crim Defense Lawyers
Oppose

Prosecution already effectively has
the ability to substitute based
on their ability to control
the schedule of the case.

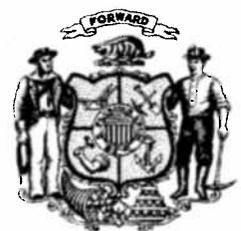
Defendant has no control
over schedule.

Counties have a regular intake
schedule. A judge has oversight
of all cases filed during
their intake period. Usually 2-8 weeks.

Do letter to DA's on this bill.



WISCONSIN STATE LEGISLATURE



This is an example why concealed carry
is not law yet?