

2007 ASSEMBLY BILL 336

May 15, 2007 – Introduced by Representatives GUNDRUM, MUSSER, JESKEWITZ, J. OTT, KAUFERT, GUNDERSON, NASS, ALBERS, NERISON, MURSAU and TOWNSEND, cosponsored by Senators DARLING and ROESSLER. Referred to Committee on Judiciary and Ethics.

- 1 **AN ACT** *to amend* 971.20 (3) (b), 971.20 (5) and 971.20 (6); and *to create* 971.20
2 (2m) of the statutes; **relating to:** substitution of a judge in a criminal action.

Analysis by the Legislative Reference Bureau

Under current law, a defendant has a right to one substitution of an assigned judge during the course of a criminal action, which begins with the filing of a complaint and ends with the final disposition at the trial. A defendant who wins a new trial or sentencing proceeding on appeal has a right to substitution for the new trial or proceeding, even if he or she requested a substitution for the first trial. The defendant is not required to show cause for a substitution. Also under current law, a judge is required to disqualify himself or herself from an action under a variety of circumstances, including that the judge is related to any party or counsel involved in the action, the judge has a financial interest in the outcome of the action, or the judge cannot act in an impartial manner.

This bill provides that, if a defendant does not exercise his or her right to substitution of a judge within 60 days after the initial appearance, the defendant waives the right to substitution of a judge in the criminal action, except that the defendant does not waive the right to substitution for a new trial or sentencing proceeding ordered on appeal.

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

ASSEMBLY BILL 336

1 **SECTION 1.** 971.20 (2m) of the statutes is created to read:

2 **971.20 (2m) DEADLINE TO REQUEST SUBSTITUTION.** If the defendant does not file
3 a written request for substitution of a judge with the clerk or the court within 60 days
4 after the initial appearance, the defendant waives the right under this section to
5 substitution of a judge in the criminal action, except as provided under sub. (7).

6 **SECTION 2.** 971.20 (3) (b) of the statutes is amended to read:

7 **971.20 (3) (b)** A written request for the substitution of a different judge for the
8 judge assigned to preside at the preliminary examination may be filed with the clerk,
9 or with the court at the initial appearance. If Subject to sub. (2m), if filed with the
10 clerk, the request must be filed at least 5 days before the preliminary examination
11 unless the court otherwise permits. Substitution of a judge assigned to a preliminary
12 examination under this subsection exhausts the right to substitution for the
13 duration of the action, except under sub. (7).

14 **SECTION 3.** 971.20 (5) of the statutes is amended to read:

15 **971.20 (5) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED.** If Subject to
16 sub. (2m), if a new judge is assigned to the trial of an action and the defendant has
17 not exercised the right to substitute an assigned judge, a written request for the
18 substitution of the new judge may be filed with the clerk within 15 days of the clerk's
19 giving actual notice or sending notice of the assignment to the defendant or the
20 defendant's attorney. If Subject to sub. (2m), if the notification occurs within 20 days
21 of the date set for trial, the request shall be filed within 48 hours of the clerk's giving
22 actual notice or sending notice of the assignment. If Subject to sub. (2m), if the
23 notification occurs within 48 hours of the trial or if there has been no notification, the
24 defendant may make an oral or written request for substitution prior to the
25 commencement of the proceedings.

