

2007 DRAFTING REQUEST

Bill

Received: **02/14/2007**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing: **Lance**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Substitution of a judge in a criminal action

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> |
|--------------|---------------------|---------------------|-----------------------|----------------|-----------------------|------------------------|-----------------|
| /? | | | | | | | |
| /1 | rryan 03/21/2007 | jdyer 03/27/2007 | nmatzke 03/27/2007 | _____ | lparisi 03/27/2007 | sbasford 05/10/2007 | |

FE Sent For: **NONE**

<END>

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|--------------|----------------|------------------------|--------------|----------------|------------------|-----------------|-----------------|
| /? | rryan | 1 ^{3/} 27 jld | nwn 3/27 | nwn/ 3/27 | | | |

FE Sent For:

<END>

Lance -
Jendrum

971.20 Substitution of Judge

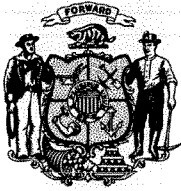
Judicial Council Note of 1981 reads that this statute has an objective of allowing defendants in criminal trials one substitution of the assigned judge upon making a timely request. The statute is not to be used for delay nor for "judge shopping" but is to ensure a fair and impartial trial for the defendants [no language for victims]. The Statute does not govern removal for cause of the assigned judge through an affidavit of prejudice.

The Statute has become a vehicle for "judge shopping" which was the reason why it has become the subject of regular debate. Former legislator Scott Walker, while serving in the Assembly brought several proposals to eliminate the statute as Wisconsin is one of the few if only states that even has this statute. It has proven to be a statute that, politically, will forever be a part of our code. Recently there has been a movement which appears to satisfy all involved as a possible compromise. The most significant problem with this statute is to the delay it can cause in the State's effort to secure a trial. In large jurisdictions with several criminal judges court rotations, spin trial courts etc. result in this statute being invoked largely to secure an adjournment.

It appears that there is general support in Madison and by the private and criminal bar to provide a sunset provision for the application of this statute. The sunset provision could provide that no subsection of the statute may be used in a criminal case 60 or 90 days following an initial appearance.

← Do
this

w/ in 60 days
of initial
appearance



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1944/2

RLR:.....

In 3/21/07

jld

RMR
D-N

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 AN ACT ...; 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 him^{self} 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:

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

1 971.20 (2m) DEADLINE TO REQUEST SUBSTITUTION. If the defendant does not file
2 a written request for substitution of a judge with the clerk or the court within 60 days
3 after the initial appearance, the defendant waives the right under this section to
4 substitution of a judge in the criminal action, except as provided under sub. (7).

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

6 971.20 (3) (b) A written request for the substitution of a different judge for the
7 judge assigned to preside at the preliminary examination may be filed with the clerk,
8 or with the court at the initial appearance. If Subject to sub. (2m), if filed with the
9 clerk, the request must be filed at least 5 days before the preliminary examination
10 unless the court otherwise permits. Substitution of a judge assigned to a preliminary
11 examination under this subsection exhausts the right to substitution for the
12 duration of the action, except under sub. (7).

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

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

14 971.20 (5) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED. If Subject to
15 sub. (2m), if a new judge is assigned to the trial of an action and the defendant has
16 not exercised the right to substitute an assigned judge, a written request for the
17 substitution of the new judge may be filed with the clerk within 15 days of the clerk's
18 giving actual notice or sending notice of the assignment to the defendant or the
19 defendant's attorney. If Subject to sub. (2m), if the notification occurs within 20 days
20 of the date set for trial, the request shall be filed within 48 hours of the clerk's giving
21 actual notice or sending notice of the assignment. If Subject to sub. (2m), if the
22 notification occurs within 48 hours of the trial or if there has been no notification, the

1 defendant may make an oral or written request for substitution prior to the
2 commencement of the proceedings.

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

SECTION 4. 971.20 (6) of the statutes is amended to read:

4 971.20 (6) SUBSTITUTION OF JUDGE IN MULTIPLE DEFENDANT ACTIONS. In actions
5 involving more than one defendant, the request for substitution shall be made jointly
6 by all defendants. If severance has been granted and the right to substitute has not
7 been exercised prior to the granting of severance or waived under ✓ sub. (2m), the
8 defendant or defendants in each action may request a substitution under this
9 section.

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

SECTION 5. Initial applicability.

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

13 (END)

d-note



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1944/1dn

RLR: 1:....

date

Jld

Representative Gundrum:

* This bill retains the defendant's right to substitution of a judge for a new trial or sentencing hearing that is ordered on appeal, regardless of what occurred with respect to substitution during the initial pre-trial proceedings or the first trial. See s. 971.20 (7).[✓] Is this what you intend?

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1944/1dn
RLR:jld:nwn

March 27, 2007

Representative Gundrum:

This bill retains the defendant's right to substitution of a judge for a new trial or sentencing hearing that is ordered on appeal, regardless of what occurred with respect to substitution during the initial pretrial proceedings or the first trial. See s. 971.20 (7). Is this what you intend?

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

Basford, Sarah

From: Burri, Lance

Sent: Thursday, May 10, 2007 9:57 AM

To: LRB.Legal

Subject: Draft Review: LRB 07-1944/1 Topic: Substitution of a judge in a criminal action

Please Jacket LRB 07-1944/1 for the ASSEMBLY.

05/10/2007