

**2011 DRAFTING REQUEST**

**Assembly Amendment (AA-SB74)**

Received: 10/26/2011

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Andre Jacque (608) 266-9870

By/Representing:

May Contact:

Drafter: phurley

Subject: Criminal Law - miscellaneous  
Criminal Law - procedure

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Jacque@legis.wi.gov

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Substitution of judges

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**Instructions:**

See attached; be sure to incorporate adopted amendment 1

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**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	phurley 10/26/2011	kfollett 10/26/2011	rschluet 10/26/2011	_____	ggodwin 10/26/2011	ggodwin 10/26/2011	

FE Sent For:

<END>

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/1	phurley	1/15/11 10/26		ph 10/24 to			

FE Sent For:

<END>

## Hurley, Peggy


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**From:** Jacque, Andre  
**Sent:** Wednesday, October 26, 2011 10:55 AM  
**To:** Hurley, Peggy  
**Subject:** SB 74 Amendment request


Hi Peggy,


Could you please draft an amendment to SB 74 (as amended by the senate) to insert the language highlighted below?


Thanks!  
André


SA1-SB74, Item 1. - continued   
Pg1Ln4 971.20 (10) **Form of request.** A request for substitution of a judge shall specify  
Pg1Ln5 the reason for the request, shall be in writing, and may shall be made in the following form:


SA1-SB74, Item 1. - continued   
Pg1Ln6 STATE OF WISCONSIN


SA1-SB74, Item 1. - continued   
Pg1Ln7 CIRCUIT COURT

SA1-SB74, Item 1. - continued   
Pg1Ln8 .... County


SA1-SB74, Item 1. - continued   
Pg1Ln9 State of Wisconsin

SA1-SB74, Item 1. - continued   
Pg1Ln10 vs.


SA1-SB74, Item 1. - continued   
Pg1Ln11 ....(Defendant)

SA1-SB74, Item 1. - continued   
Pg2Ln1 Pursuant to s. 971.20 the defendant (or defendants) request (s) a substitution  
Pg2Ln2 for the Hon. .... as judge in the above entitled action. The reason (s) for this request  
Pg2Ln3 (is/are) the following: ...(Must select one)

1. The judge has been engaged as counsel in the action prior to appointment or election as judge.
2. The judge is otherwise interested in the action.
3. The judge is of kin or related to either party to the action.
4. The judge is a material witness in the action.
5. The party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice, or interest of the judge he cannot obtain a fair and impartial trial. (Optional explanation)

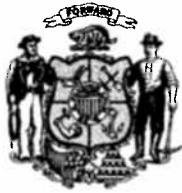
SA1-SB74, Item 1. - continued 

Pg2Ln4 Dated ....., .... (year)

SA1-SB74, Item 1. - continued 

Pg2Ln5 .....(Signature of defendant or defendant's attorney)".

Pg2Ln6 **(End)**



## 2011 SENATE BILL 74

April 27, 2011 – Introduced by Senators ZIPPERER, KEDZIE, DARLING and WANGGAARD, cosponsored by Representatives JACQUE, BIES, KNILANS, MURSAU, RIVARD, SPANBAUER, VOS and ZIEGELBAUER. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

- 1     **AN ACT to repeal** 971.20 of the statutes; **relating to:** eliminating substitution  
2             of judges in criminal matters.

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### *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.

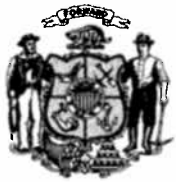
This bill retains the provisions relating to the disqualification of a judge for both civil and criminal matters, but eliminates the defendant's right to substitution of a judge in criminal matters.

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

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





**SENATE AMENDMENT 1,  
TO 2011 SENATE BILL 74**

June 8, 2011 – Offered by Senator GROTHMAN.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: delete that line and substitute:

3 “SECTION 1m. 971.20 (10) of the statutes is amended to read:

4 971.20 (10) FORM OF REQUEST. A request for substitution of a judge <sup>and</sup> shall specify  
5 the reason for the request, shall be in writing, and ~~may~~ shall be made in the following form:

6 STATE OF WISCONSIN

7 CIRCUIT COURT

8 .... County

9 State of Wisconsin

10 vs.

11 ....(Defendant)

1 Pursuant to s. 971.20 the defendant (or defendants) request (s) a substitution  
2 for the Hon. .... as judge in the above entitled action. The reason (s) for this request  
3 (is/are) the following: ...

4 Dated ....., .... (year)

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

6 (END)





ASSEMBLY AMENDMENT,  
TO 2011 SENATE BILL 74

*today*

1 At the locations indicated, amend the bill as follows:

*change component*

2 **1.** Page 2, line 1: *after* On page 1, line 5 of the material inserted by senate  
3 amendment 1, delete "may" and substitute *judge* "shall". *insert* ~~may~~ *may*

*4,*

4 **2.** Page 2, line 1: On page 2, line 3, of the material inserted by senate  
5 amendment 1, delete "following: ..." and substitute "following (must select one):"

6 1. The judge has been engaged as counsel in the action prior to appointment  
7 or election as judge. *o*

8 2. The judge is otherwise interested in the action.

9 3. The judge is of kin or related to either party to the action.

10 4. The judge is a material witness in the action.

*Page 2, line 1: on page 1, line 5, of the material inserted by senate amendment 1, delete "may" and substitute "shall".*

