



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1997 ASSEMBLY BILL 441**

May 6, 1998 - Offered by Representative GROTHMAN.

1     **AN ACT to amend** 971.20 (3) (b) and (4) to (9) of the statutes; **relating to:**  
2             substitution of judges in criminal cases.

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

3             **SECTION 1.** 971.20 (3) (b) and (4) to (9) of the statutes are amended to read:  
4             971.20 (3) (b) A written request and affidavit for the substitution of a different  
5     judge for the judge assigned to preside at the preliminary examination may be filed  
6     with the clerk, or with the court at the initial appearance. The affidavit shall state  
7     that the judge has a personal bias or prejudice either against the defendant or in  
8     favor of any adverse party and shall state the facts and the reasons for that belief.  
9     If filed with the clerk, the request and affidavit must be filed at least 5 days before  
10    the preliminary examination unless the court otherwise permits. Substitution of a  
11    judge assigned to a preliminary examination under this subsection exhausts the  
12    right to substitution for the duration of the action, except under sub. (7).

1           (4) SUBSTITUTION OF TRIAL JUDGE ORIGINALLY ASSIGNED. A written request and  
2 affidavit for the substitution of a different judge for the judge originally assigned to  
3 the trial of the action may be filed with the clerk before making any motions to the  
4 trial court and before arraignment. The affidavit shall state that the judge has a  
5 personal bias or prejudice either against the defendant or in favor of any adverse  
6 party and shall state the facts and the reasons for that belief.

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

18           (6) SUBSTITUTION OF JUDGE IN MULTIPLE DEFENDANT ACTIONS. In actions involving  
19 more than one defendant, the request for substitution shall be made jointly by all  
20 defendants but the affidavit need only be completed by one defendant. If severance  
21 has been granted and the right to substitute has not been exercised prior to the  
22 granting of severance, the defendant or defendants in each action may request a  
23 substitution under this section.

24           (7) SUBSTITUTION OF JUDGE FOLLOWING APPEAL. If an appellate court orders a new  
25 trial or sentencing proceeding, a request and affidavit under this section may be filed

1 within 20 days after the filing of the remittitur by the appellate court, whether or not  
2 a request for substitution was made prior to the time the appeal was taken.

3 **(8) PROCEDURES FOR CLERK.** Upon receiving a request for substitution and  
4 affidavit, the clerk shall immediately contact the judge whose substitution has been  
5 requested for a determination of whether the request was and affidavit were made  
6 timely and in proper form. If no determination is made within 7 days or if the judge  
7 named in the substitution request finds that the request or affidavit was not timely  
8 and in proper form, the clerk shall refer the matter to the chief judge, or to the chief  
9 judge of an adjoining judicial administrative district if the judge named in the  
10 request is the chief judge, for the determination and reassignment of the action as  
11 necessary. If the request is and affidavit are determined to be proper, the clerk shall  
12 request the assignment of another judge under s. 751.03.

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

17 **SECTION 2. Initial applicability.**

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

20 **SECTION 3. Effective date.**

21 (1) This act takes effect on the first day of the 4th month beginning after  
22 publication.

23 **(END)**