

SENATE BILL REPORT

SB 5277

As Reported by Senate Committee On:
Law & Justice, January 25, 2017

Title: An act relating to disqualification of judges.

Brief Description: Concerning disqualification of judges.

Sponsors: Senators Padden, Pedersen, Darneille and Kuderer.

Brief History:

Committee Activity: Law & Justice: 1/25/17 [DPS].

Brief Summary of Substitute Bill

- Replaces the motion and affidavit of prejudice against a judge with a notice of disqualification.
- Expands the list of non-discretionary rulings by a judge.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5277 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Tim Ford (786-7423)

Background: State law permits a party to change judges once as a matter of right, upon timely motion and affidavit of prejudice, without substantiating the claim of prejudice upon the belief that they cannot have a fair and impartial trial before the judge. A timely motion must be made before the judge makes a discretionary ruling in the matter. Non-discretionary rulings include the following:

- arrangement of the court calendar;
- setting of an action, motion or proceeding for hearing or trial;
- the arraignment of the accused in a criminal action; and
- fixing bail.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

After exercising the peremptory right to remove a judge, a party may not disqualify a second judge for prejudice by filing a second motion and affidavit under the same statutory provision of law. After prejudice has been timely established in accordance with state law, the judge may not hear or rule on the matter unless the parties, by written stipulation, agree for the judge to rule on a part of the matter.

Summary of Bill (First Substitute): The motion and affidavit of prejudice against a judge is replaced by a notice of disqualification. The statutory list of non-discretionary rulings is expanded to include the following:

- arrangement of the court calendar;
- setting of an action, motion or proceeding for hearing or trial;
- arraignment of the accused in a criminal action;
- fixing bail;
- rulings on an agreed continuance;
- issuing an arrest warrant;
- presiding over criminal preliminary proceedings for warrantless arrests; and
- presiding over juvenile detention and release hearings.

A judge who has been disqualified may decide such issues as the parties agree in writing or on the record in open court.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute): Clarifies the list of judicial actions that may be discretionary but do not cause the loss of the right for either counsel to file a motion for disqualification.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Draft Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is by request of the courts. It makes it easier for parties to understand what rulings are considered non-discretionary. Many different types of preliminary hearings are non-discretionary and listing them in this bill clarifies the law and rights of the parties. Clarity will reduce the motions and costs. Changing the language in the law from the term "prejudice" to "disqualification" is helpful to the court and parties. It is more accurate and some parties don't like to use the term prejudice. It has no effect on the rights of a party to seek a change of judge.

Persons Testifying: PRO: Judge Kitty-Ann van Doorninck, Superior Court Judges Association; Bob Cooper, WA Association of Criminal Defense Lawyers & WA Defender Association; Larry Shannon, WA Association for Justice.

Persons Signed In To Testify But Not Testifying: No one.