

# HOUSE BILL REPORT

## EHB 1378

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**As Passed House:**  
February 20, 2017

**Title:** An act relating to disqualification of judges.

**Brief Description:** Concerning disqualification of judges.

**Sponsors:** Representatives Graves, Jinkins and Rodne.

**Brief History:**

**Committee Activity:**

Judiciary: 1/24/17, 2/2/17 [DP].

**Floor Activity:**

Passed House: 2/20/17, 97-0.

**Brief Summary of Engrossed Bill**

- Changes the terminology relating to disqualification of judges.
- Changes some of the rules governing the process of disqualification.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

**Staff:** Audrey Frey (786-7289).

**Background:**

If a person who is a party or attorney in an action or proceeding in superior court believes that he or she cannot have a fair and impartial trial before the superior court judge assigned to the case, the person can file a motion and affidavit of prejudice to establish that the judge should be disqualified.

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*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.*

A judge who has been disqualified is prohibited from hearing the case, and the case will be transferred to another judge from a different department in the same court, a visiting judge, or another court.

The rules governing the process of disqualification are as follows:

- In order to establish disqualification of a judge, a person must file a motion and affidavit of prejudice with the judge before the judge makes any ruling on a motion of either party and before the judge has made any order or ruling involving discretion.
- The following are not considered discretionary rulings: the arrangement of the calendar; the setting of an action, motion, or proceeding down for hearing or trial; the arraignment of the accused in a criminal action; and the fixing of bail.
- In counties where there is only one resident judge, the motion and affidavit of prejudice must be filed no later than the day on which the case is called to be set for trial.
- If the parties stipulate to agreement in writing, the judge can hear argument and rule upon any preliminary motions, demurrers, or other matters, even if a motion and affidavit of prejudice has been filed.
- No party or attorney is permitted to make more than one application to establish disqualification of a judge in any action or proceeding.

#### **Summary of Engrossed Bill:**

All references to a motion and affidavit of prejudice are replaced with references to a notice of disqualification.

The rules governing the process of disqualification are rephrased and rearranged. The content remains largely the same, except for the following substantive changes:

- The list of judicial actions that may involve discretion but do not preclude filing a notice of disqualification is expanded to include: ruling on an agreed continuance, issuing an arrest warrant, presiding over criminal preliminary proceedings, and presiding over juvenile detention and release hearings, in addition to the judicial actions already listed in statute (arranging the calendar, setting a date for a hearing or trial, arraigning the accused, and fixing bail).
- A judge who has been disqualified may decide issues that the parties agree to in writing or on the record in open court.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

#### **Staff Summary of Public Testimony:**

(In support) This bill adds clarity. It changes some of the terminology around disqualification of judges, and it will be very helpful for smaller counties where it's tough to find judges to come in and make some of those preliminary rulings.

Disqualification is a much better word. Using the word "prejudice" carries so much prejudice, and may not really be the right word when referring to disqualification of judges. This bill makes the whole process clearer.

The real driver behind this change is relief for our smaller counties. If lawyers use disqualifications of judges in these smaller counties it can really upend the calendar. What happens when these disqualifications are filed is judges from other counties have to come in and hear the case, so the whole case gets put on hold until a visiting judge comes in. This change will allow for ministerial matters to be handled and preserve the chance for lawyers to get a disqualification down the road. This bill also clarifies some of the language and changes the terminology.

There is a clarity that is missing in this area, and this bill will bring that clarity. There was a recent case in which there was some significant ambiguity created as to what did or did not constitute a discretionary action, and this bill does a good job of clearing this up.

(Opposed) None.

**Persons Testifying:** Representative Graves, prime sponsor; Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Sean O'Donnell, Superior Court Judges Association; and Larry Shannon, Washington State Association for Justice.

**Persons Signed In To Testify But Not Testifying:** None.