

E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 74

(By Senator Sypolt)

[Originating in the Committee on the Judiciary;
reported February 15, 2013.]

A BILL to amend and reenact §52-1-5a and §52-1-8 of the Code of West Virginia, 1931, as amended, all relating to redefining the basis for disqualification of prospective jurors to include those who have been convicted of any crime punishable by imprisonment in excess of one year, perjury or false swearing; and requiring clerks to provide copies of certain juror qualification questionnaires to counsel of record upon request.

Be it enacted by the Legislature of West Virginia:

That §52-1-5a and §52-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-5a. Jury qualification form; contents; procedure for use; penalties.

1 (a) Not less than twenty days before the date for which
2 persons are to report for jury duty, the clerk may, if directed
3 by the court, serve by first-class mail, upon each person listed
4 on the master list, a juror qualification form accompanied by
5 instructions necessary for its completion: *Provided*, That the
6 clerk may, if directed by the court, mail the juror
7 qualification form to only those prospective jurors drawn for
8 jury service under the provisions of section seven of this
9 article. Each prospective juror shall be directed to complete
10 the form and return it by mail to the clerk within ten days
11 after its receipt. The juror qualification form is subject to
12 approval by the circuit court as to matters of form and shall
13 elicit the following information concerning the prospective
14 juror:

15 (1) The juror's name, sex, race, age and marital status;

16 (2) The juror's level of educational attainment, occupation
17 and place of employment;

18 (3) If married, the name of the juror's spouse and the
19 occupation and place of employment of the spouse;

20 (4) The juror's residence address and the juror's mailing
21 address if different from the residence address;

22 (5) The number of children which the juror has and their
23 ages;

24 (6) Whether the juror is a citizen of the United States and
25 a resident of the county;

26 (7) Whether the juror is able to read, speak and
27 understand the English language;

28 (8) Whether the juror has any physical or mental
29 disability substantially impairing the capacity to render
30 satisfactory jury service: *Provided*, That a juror with a
31 physical disability, who can with reasonable accommodation
32 render competent service, is eligible for service;

33 (9) Whether the juror has, within the preceding two years,
34 been summoned to serve as a petit juror, grand juror or

35 magistrate court juror, and has actually attended sessions of
36 the magistrate or circuit court and been reimbursed for his or
37 her expenses as a juror;

38 (10) Whether the juror has lost the right to vote because
39 of a criminal conviction; and

40 (11) Whether the juror has been convicted of perjury,
41 false swearing or ~~other infamous offense~~ any crime
42 punishable by imprisonment in excess of one year under the
43 applicable law of this state, another state or the United States.

44 The juror qualification form may also request information
45 concerning the prospective juror's religious preferences and
46 organizational affiliations, except that the form and the
47 accompanying instructions shall clearly inform the juror that
48 this information need not be provided if the juror declines to
49 answer such inquiries.

50 (b) The juror qualification form shall contain the
51 prospective juror's declaration that the responses are true to
52 the best of the prospective juror's knowledge and an
53 acknowledgment that a willful misrepresentation of a

54 material fact may be punished by a fine of not more than
55 \$500 or imprisonment for not more than thirty days, or both
56 fine and imprisonment. Notarization of the juror
57 qualification form shall not be required. If the prospective
58 juror is unable to fill out the form, another person may assist
59 the prospective juror in the preparation of the form and
60 indicate that such person has done so and the reason therefor.
61 If an omission, ambiguity or error appear in a returned form,
62 the clerk shall again send the form with instructions to the
63 prospective juror to make the necessary addition, clarification
64 or correction and to return the form to the clerk within ten
65 days after its second receipt.

66 (c) Any prospective juror who fails to return a completed
67 juror qualification form as instructed shall be directed by the
68 clerk to appear forthwith before the clerk to fill out the juror
69 qualification form. At the time of the prospective juror's
70 appearance for jury service, or at the time of any interview
71 before the court or clerk, any prospective juror may be
72 required to fill out another juror qualification form in the

73 presence of the court or clerk. At that time the prospective
74 juror may be questioned with regard to the responses to
75 questions contained on the form and the grounds for the
76 prospective juror's excuse or disqualification. Any
77 information thus acquired by the court or clerk shall be noted
78 on the juror qualification form.

79 (d) Any person who willfully misrepresents a material
80 fact on a juror qualification form or during any interview
81 described in subsection (c) of this section, for the purpose of
82 avoiding or securing service as a juror, is guilty of a
83 misdemeanor and, upon conviction thereof, shall be fined not
84 more than \$500 or imprisoned not more than thirty days, or
85 both fined and imprisoned.

86 (e) Upon the clerks's receipt of the juror qualification
87 questionnaires of persons selected as prospective petit jurors,
88 he or she shall make the questionnaires of the persons so
89 selected available, upon request, to counsel of record in the
90 trial or trials for which the persons have been selected as
91 prospective jurors.

52-1-8. Disqualification from jury service.

1 (a) The court ~~upon request of a prospective juror or on its~~
2 ~~own initiative~~, shall determine ~~on the basis of information~~
3 ~~provided on the juror qualification form or interview with the~~
4 ~~prospective juror or other competent evidence~~ whether the
5 any prospective juror is disqualified for jury service on the
6 basis of information provided on the juror qualification form
7 or interview with the prospective juror or other competent
8 evidence. The clerk shall enter this determination in the
9 space provided on the juror qualification form and on the
10 alphabetical lists of names drawn from the jury wheel or jury
11 box.

12 (b) A prospective juror is disqualified to serve on a jury
13 if the prospective juror:

14 (1) Is not a citizen of the United States, at least eighteen
15 years old and a resident of the county;

16 (2) Is unable to read, speak and understand the English
17 language. For the purposes of this section, the requirement of

18 speaking and understanding the English language is met by
19 the ability to communicate in American Sign Language or
20 Signed English;

21 (3) Is incapable, by reason of substantial physical or
22 mental disability, of rendering satisfactory jury service. ~~but~~
23 A person claiming this disqualification may be required to
24 submit a physician's certificate as to the disability and the
25 certifying physician is subject to inquiry by the court at its
26 discretion;

27 (4) Has, within the preceding two years, been summoned
28 to serve as a petit juror, grand juror or magistrate court juror
29 and has ~~actually~~ attended sessions of the magistrate or circuit
30 court and been reimbursed for his or her expenses as a juror
31 pursuant to the provisions of section twenty-one of this
32 article, section thirteen, article two of this chapter, or
33 pursuant to an applicable rule or regulation of the Supreme
34 Court of Appeals promulgated pursuant to the provisions of
35 section eight, article five, chapter fifty of this code;

36 (5) Has lost the right to vote because of a criminal
37 conviction; or

38 (6) Has been convicted of perjury, false swearing or ~~other~~
39 ~~infamous offense~~ any crime punishable by imprisonment in
40 excess of one year under the applicable law of this state,
41 another state or the United States.

42 (c) A prospective juror seventy years of age or older is
43 not disqualified from serving but shall be excused from
44 service by the court upon ~~the juror's~~ his or her request.

45 (d) A prospective grand juror is disqualified to serve on
46 a grand jury if ~~the prospective grand juror~~ he or she is an
47 officeholder under the laws of the United States or of this
48 state except that the term "officeholder" does not include
49 notaries public.

50 (e) A person who is physically disabled and can render
51 competent service with reasonable accommodation ~~shall not~~
52 ~~be~~ is not ineligible to act as juror ~~or~~ and may not be
53 dismissed from a jury panel on the basis of disability alone.
54 ~~Provided, That~~ The circuit judge shall, upon motion by either

55 party or upon his or her own motion, disqualify a disabled
56 juror if the circuit judge finds that the nature of potential
57 evidence in the case including, but not limited to, the type or
58 volume of exhibits or the disabled juror's ability to evaluate
59 a witness or witnesses, unduly inhibits the disabled juror's
60 ability to evaluate the potential evidence. For purposes of
61 this section:

62 (1) Reasonable accommodation includes, but is not
63 limited to, certified interpreters for the hearing impaired,
64 spokespersons for the speech impaired, real-time court
65 reporting and readers for the visually impaired.

66 (2) The court shall administer an oath or affirmation to
67 any person present to facilitate communication for a disabled
68 juror. The substance of ~~such~~ the oath or affirmation shall be
69 that any person present as an accommodation to a disabled
70 juror will not deliberate on his or her own behalf, although
71 present throughout the proceedings, but act only to accurately
72 communicate for and to the disabled juror.

73 (f) Nothing in this article ~~shall be construed so as to limit~~
74 ~~in any way~~ limits a party's right to preemptory strikes in civil
75 or criminal actions.