

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, 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.

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 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
25 and 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
32 accommodation render competent service, is eligible for
33 service;

34 (9) Whether the juror has, within the preceding two
35 years, been summoned to serve as a petit juror, grand juror
36 or magistrate court juror, and has actually attended sessions
37 of the magistrate or circuit court and been reimbursed for
38 his or her expenses as a juror;

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

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

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

51 (b) The juror qualification form shall contain the
52 prospective juror's declaration that the responses are true to
53 the best of the prospective juror's knowledge and an
54 acknowledgment that a willful misrepresentation of a
55 material fact may be punished by a fine of not more than
56 \$500 or imprisonment for not more than thirty days, or both
57 fine and imprisonment. Notarization of the juror

58 qualification form shall not be required. If the prospective
59 juror is unable to fill out the form, another person may assist
60 the prospective juror in the preparation of the form and
61 indicate that such person has done so and the reason therefor.
62 If an omission, ambiguity or error appear in a returned form,
63 the clerk shall again send the form with instructions to the
64 prospective juror to make the necessary addition, clarification
65 or correction and to return the form to the clerk within ten
66 days after its second receipt.

67 (c) Any prospective juror who fails to return a completed
68 juror qualification form as instructed shall be directed by the
69 clerk to appear forthwith before the clerk to fill out the juror
70 qualification form. At the time of the prospective juror's
71 appearance for jury service, or at the time of any interview
72 before the court or clerk, any prospective juror may be
73 required to fill out another juror qualification form in the
74 presence of the court or clerk. At that time the prospective
75 juror may be questioned with regard to the responses to
76 questions contained on the form and the grounds for the

77 prospective juror's excuse or disqualification. Any
78 information thus acquired by the court or clerk shall be noted
79 on the juror qualification form.

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

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.