

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 74**

(By Senator Sypolt)

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

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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.