WEST VIRGINIA CODE CHAPTER 52 ARTICLE 1

WV Legislature

§52-1-1. Declaration of policy.

It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the county served by the court, and that all citizens have the opportunity in accordance with this article to be considered for jury service and an obligation to serve as jurors when summoned for that purpose.

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§52-1-2. Prohibition of discrimination.

A citizen may not be excluded from jury service on account of race, color, religion, sex, national origin, economic status or being a qualified individual with a disability.

WV Legislature

§52-1-3. Definitions.

As used in this article:

"Administrative director" means the individual appointed by the Supreme Court of Appeals under Section 3, Article VIII of the West Virginia Constitution;

"Court" means the circuit and magistrate courts of this state, and includes, when the context requires, any judge of the court;

"Clerk" means clerk of the circuit court and includes any deputy circuit clerk;

"Master list" means the list of residents of all 55 counties in West Virginia which is compiled in accordance with the provisions of §52-1-5 of this code;

"County list" means the subset of the master list specific to each county from which prospective jurors are to be chosen;

"Persons who are registered to vote" means persons whose names appear on the official records of the clerk of the county commission as persons registered with the Office of the Secretary of State to vote in the most recent general election;

"Drivers' license lists" means the official records of persons licensed by the Division of Motor Vehicles to operate motor vehicles and who reside within the county;

"Jury wheel" means any electronic system in which are placed names or identifying numbers of prospective jurors taken from the master list and from which names are drawn at random for jury panels.

WV Legislature

§52-1-4. Jury selection.

Potential petit jurors shall be selected by the clerk of the circuit court pursuant to the provisions of this article and under the supervision of the circuit court, or in circuits with more than one circuit judge, the chief judge of the circuit.

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§52-1-5. Master list; method for compilation; additional freeholder list; lists to be available to public.

(a) The administrative director or his or her designee shall compile the master list consisting of persons appearing on not less than two of the following source lists:

(1) Persons who have filed a state personal income tax return for the preceding tax year;

(2) Persons who are registered to vote in the county; or

(3) Persons who hold a valid motor vehicle operator's or chauffeur's license as determined from the driver’s license lists provided by the Division of Motor Vehicles.

(b) The master list shall be compiled by combining all the names from each source used and eliminating all duplicates as follows:

(1) One source list shall be designated a primary source;

(2) Names selected from the second source shall be compared with the entire list of names on the primary source;

(3) Duplicate names shall be removed from the second source and the remaining names shall be combined with the names selected from the primary source to form the master list; and

(4) If more than two source lists are used, this process shall be repeated, using the previously combined list for comparison with the third source list, and so on.

(c) The administrative director or his or her designee shall provide each clerk with his or her county list from which prospective jurors are to be chosen, and the clerk shall maintain the county list.

(d) The master list shall be used for a period of two years or any other period as designated by the Supreme Court of Appeals or its designee.

(e) In October of each odd-numbered year, or at other times, the administrative director or his or her designee shall remove from the jury wheel the names of all persons who have, within the preceding two years, been summoned to serve as petit jurors, grand jurors, or magistrate court jurors, and who have actually attended sessions of the magistrate or circuit court and been reimbursed for their expenses as jurors pursuant to the provisions of §52-1-17 or §52-2-13 of this code, or any applicable rules of the Supreme Court of Appeals promulgated pursuant to §50-5-8 of this code.

(f) In addition to the master list required to be compiled under the provisions of this section, the clerk shall compile a list of persons who pay real property taxes to compile and maintain a list of freeholders to be used as jurors in eminent domain cases.

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(g) The names from the county list provided to the clerks and freeholder list shall be open for public inspection in person during business hours.

(h) Any public officer of an agency, department, or political subdivision of this state having custody, possession or control of any of the source lists designated to be used in compiling the master list shall make the source list available to the administrative director or his or her designee for inspection, reproduction, and copying at all reasonable times: *Provided*, That the Tax Commissioner is exempt from this requirement.

WV Legislature

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

(a) Not less than 20 days before the date for which persons are to report for jury duty, the clerk may, if directed by the court, serve by first-class mail, upon each person listed on the county list, a juror qualification form accompanied by instructions necessary for its completion: *Provided*, That the clerk may, if directed by the court, mail the juror qualification form to only those prospective jurors drawn for jury service under the provisions of §52-1-7 of this code. Each prospective juror shall be directed to complete the form and return it by mail to the clerk within 10 days after its receipt. The juror qualification form is subject to approval by the administrative director and shall elicit the following information concerning the prospective juror:

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

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

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

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

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

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

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

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

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

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

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

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

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(b) The juror qualification form shall contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and an acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than $500 or imprisonment for not more than 30 days, or both fine and imprisonment. Notarization of the juror qualification form is not required. If the prospective juror is unable to fill out the form, another person may assist the prospective juror in the preparation of the form and indicate that such person has done so and the reason therefor. If an omission, ambiguity, or error appear in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the clerk within 10 days after its second receipt.

(c) Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the clerk to appear promptly before the clerk to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, any prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk. At that time the prospective juror may be questioned with regard to the responses to questions contained on the form and the grounds for the prospective juror's excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

(d) Any person who willfully misrepresents a material fact on a juror qualification form or during any interview described in subsection (c) of this section, for the purpose of avoiding or securing service as a juror, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or imprisoned not more than 30 days in jail, or both fined and imprisoned.

(e) Upon the clerk's receipt of the juror qualification questionnaires of persons selected as prospective petit jurors, he or she shall make the questionnaires of the persons so selected available, upon request, to counsel of record in the trial or trials for which the persons have been selected as prospective jurors: *Provided*, That upon the conclusion of the trial the juror qualification forms for persons serving on a particular trial jury may only be released with the written permission of the judge who presided over the trial or his or her successor: *Provided, however*, That if the judge denies the request, the reasons for the denial must be in writing and be shared with all parties in the case and the person making the request within 30 days after filing the motion.

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§52-1-6. Jury wheel; random selection of names from county list for jury wheel.

(a) The clerk for each county shall maintain a jury wheel and place the names or identifying numbers of prospective jurors taken from the county list into the jury wheel, using the electronic system provided by the administrative director.

(b) In counties having a population of less than 15,000 persons according to the last available census, the jury wheel shall include at least 200 names; in counties having a population of at least 15,000 but less than 50,000, at least 400 names; a population of at least 50,000 but less than 90,000, at least 800 names; and a population of 90,000 or more, at least 1,600 names. The clerk shall take measures to ensure that a sufficient number of jurors are drawn for each new term of court so that the jury wheel is refreshed and previous term jurors are removed.

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§52-1-7. Drawings from the jury wheel; notice of jury duty; penalties.

(a) The clerk shall draw the prescribed number of jurors for civil and criminal trials in accordance with the most recent administrative order issued by the Supreme Court of Appeals.

(b) If a jury is ordered to be drawn, the clerk shall cause each person drawn for jury service to be notified not less than 20 days before the date for which the persons are to report for jury duty with a summons and juror qualification form, if the form has not already been completed, by personal service or first class mail addressed to the person at his or her usual residence, business, or post-office address, requiring him or her to report for jury service at a specified time and place.

(c) A prospective juror who fails to appear as directed by the summons issued pursuant to subsection (b) of this section shall be ordered by the court to appear and show cause for failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for failure to appear as directed by the summons, he or she is guilty of civil contempt and shall be fined not more than $1,000.

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§52-1-7a. Alternate procedure for selection of jury by electronic data processing methods.

[Repealed.]

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§52-1-8. Disqualification from jury service.

(a) The court shall determine whether any prospective juror is disqualified for jury service on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical lists of names drawn from the jury wheel.

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

(1) Is not a citizen of the United States, at least 18 years old, and a resident of the county;

(2) Is unable to read, speak, and understand the English language. For the purposes of this section, the requirement of speaking and understanding the English language is met by the ability to communicate in American Sign Language or Signed English;

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

(4) Has, within the preceding two years, been summoned to serve as a petit juror, grand juror, or magistrate court juror and has attended sessions of the magistrate or circuit court and been reimbursed for his or her expenses as a juror pursuant to the provisions of §52-1-17 or §52-2-13 of this code, or pursuant to an applicable rule or regulation of the Supreme Court of Appeals promulgated pursuant to the provisions of §50-5-8 of this code;

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

(6) Has been convicted of perjury, false swearing or any crime punishable by imprisonment in excess of one year under the applicable law of this state, another state, or the United States: *Provided*, That any otherwise-qualified prospective juror whose conviction was expunged or set aside, or who subsequent thereto receives an unconditional pardon for said offense, shall not be disqualified from serving on a jury.

(c) A prospective juror 70 years of age or older is not disqualified from serving but shall be excused from service by the court upon his or her request.

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

(e) A person who is physically disabled and can render competent service with reasonable accommodation is not ineligible to act as juror and may not be dismissed from a jury panel on the basis of disability alone. The circuit judge shall, upon motion by either party or upon his or her own motion, disqualify a disabled juror if the circuit judge finds that the nature of

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potential evidence in the case including, but not limited to, the type or volume of exhibits or the disabled juror's ability to evaluate a witness or witnesses, unduly inhibits the disabled juror's ability to evaluate the potential evidence. For purposes of this section:

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

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

(f) Nothing in this article limits a party's right to preemptory strikes in civil or criminal actions.

WV Legislature

§52-1-9. Assignment of jurors to jury panels; drawing of additional jurors upon shortage of qualified jurors.

(a) The jurors drawn for jury service shall be assigned at random by the clerk to each jury panel in a manner prescribed by the court.

(b) If there is an unanticipated shortage of available petit jurors drawn from the jury wheel the court may require the sheriff to summon a sufficient number of petit jurors selected at random by the clerk from the jury wheel in a manner prescribed by the circuit court.

(c) If there is an unanticipated shortage of available grand or petit jurors, qualified jurors that have not yet served on a jury in the current term may be used to replace needed jurors.

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§52-1-10. No exemptions.

No qualified prospective juror is exempt from jury service.

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§52-1-11. Excuses from jury service.

(a) The court, upon request of a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror should be excused from jury service. The clerk shall enter this determination in the space provided on the juror qualification form.

(b) A person who is not disqualified for jury service under section eight of this article may be excused from jury service by the court upon a showing of undue hardship, extreme inconvenience, or public necessity, for a period the court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the court's direction.

(c) A person who is not disqualified for jury service under section eight of this article may be excused from jury service by the court if the person is a current member of the National Guard or reserves.

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§52-1-12. Discharge of excess jurors.

Any court may, upon the appearance of an excess number of qualified jurors, dispense with the attendance of the unneeded jurors on any one day the court is sitting, as long as such discharge from duty is conducted in a random fashion and in a manner consistent with the spirit of this article.

WV Legislature

§52-1-13. Competency of jurors when municipality, county or district is a party.

In any suit or proceeding in which a county, district, school district or municipal corporation is a party, no person is incompetent as a juror because such person is an inhabitant or taxpayer of the county, district, school district or municipal corporation. In any case where a municipal corporation is a party, the court, upon motion of either party to the suit, made either on the first day of the term of the court or at any other time not less than five days before the day set for the trial, may, in its discretion, disqualify jurors who are citizens or taxpayers of such municipal corporations. But this provision does not apply in any case between a municipal corporation and any citizen or taxpayer of such corporation.

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§52-1-14. When and how jurors are to be summoned from a county to serve in another county.

(a) In any criminal case or any civil case referred to the Mass Litigation Panel, in any court, if qualified jurors, not exempt from serving, cannot be conveniently found in the county in which the trial is to be held, the judge of the court shall enter an order directing as many jurors as necessary be summoned from any other county or counties: Provided, That for those cases referred to the Mass Litigation Panel, jurors may only be summoned from any contiguous county.

(b) The court order shall include the following:

(1) The date on which the jurors are required to attend;

(2) The county or counties from which the jurors shall be drawn; and

(3) The number of jurors to be drawn.

(c) The judge issuing the order shall direct his or her circuit clerk to forward a certified copy of the order to the circuit clerk in the county or counties from which the jurors are to be drawn.

(d) The circuit clerk of the court conducting the drawing shall do so in the manner provided by law for the drawing of petit jurors. The circuit clerk shall draw a separate jury pool specifically designated for the purpose of complying with the court order. The proceedings for drawing the jurors and the names of the jurors drawn shall be certified by the clerk of the circuit court of the county or counties designated to conduct the drawing and a copy of the certification shall be forwarded to the clerk of the circuit court in the county where the trial is to be held. After forwarding a copy of the certification, the clerk of the circuit court of the county or counties from which the jurors were drawn shall summon the jurors to appear for jury service in the county where the trial is to be held pursuant to the provisions of section nine of this article.

(e) Jurors summoned from a county to serve in another county shall be reimbursed expenses and compensated by the county for which the juror actually served.

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§52-1-15. Challenging compliance with selection procedures.

(a) Within seven days after the moving party discovers, or by the exercise of due diligence could have discovered, the grounds therefor, and in any event before the petit jury is sworn to try the case, a party may move to stay the proceedings, quash the indictment, or move for other appropriate relief under the circumstances or the nature of the case. The motion shall set forth the facts which support the party's contention that there has been a substantial failure to comply with this article in selecting the jury.

(b) Upon motion filed under subsection (a) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this article, the moving party is entitled to present, in support of the motion, the testimony of the clerk, any relevant records and papers not public or otherwise available used by the clerk, and any other relevant evidence. The clerk may identify the lists used in compiling the county list, but may not be required to divulge the contents of the lists. If the court determines that in selecting a jury there has been a substantial failure to comply with this article, the court shall stay the proceedings pending the selection of the jury in conformity with this article, quash an indictment or grant any other relief the court may deem appropriate.

(c) In the absence of fraud, the procedures prescribed by this section are the exclusive means by which a person accused of a crime, the state or a party in a civil case, may challenge a jury on the ground that the jury was not selected in conformity with this article.

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§52-1-16. Preservation of records.

(a) All records and papers compiled and maintained by the clerk in connection with selection and service of jurors from the county list and the jury wheel shall be preserved by the clerk for at least four years after the jurors were selected, or for any longer period ordered by the court.

(b) The clerk shall make an annual report no later than March 1 of each year to the Supreme Court of Appeals setting forth the following information: The age, race, and gender of each person for whom a juror qualification form has been received. The Supreme Court of Appeals shall provide this information to the President of the Senate and the Speaker of the House of Delegates on an annual basis, no later than April 1 of each year.

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§52-1-17. Reimbursement of jurors.

(a) A juror shall be paid mileage, at the rate set by the Secretary of the Department of Administration, for travel expenses to and from the juror's residence to the courthouse or other place where the court is convened and shall be reimbursed for other expenses incurred as a result of his or her required attendance at sessions of the court at a rate of not less than $15 nor more than $40, set at the discretion of the circuit court or the chief judge of the circuit court, for each day of required attendance. The reimbursement shall be based on vouchers submitted to the sheriff and shall be paid out of the State Treasury.

(b) When a jury in any case is placed in the custody of the sheriff, he or she shall provide the jury with meals and lodging while they are in the sheriff's custody at a reasonable cost to be determined by an order of the court. The costs of the meals and lodging shall be paid out of the State Treasury.

(c) Any time a panel of prospective jurors has been required to report to court for the selection of a petit jury in any scheduled matter, the court shall, by specific provision in a court order, assess a jury cost. In both magistrate and circuit court cases the jury cost shall be the actual cost of the jurors' service: Provided, That the actual cost of a magistrate jury can only be assessed where the jury request or demand occurs on or after July 1, 2007. For any magistrate court case in which the jury request or demand occurred prior to July 1, 2007, the jury cost assessed shall be $200. The jury costs shall be assessed against the parties as follows:

(1) In every criminal case, against the defendant upon conviction, whether by plea, by bench trial or by jury verdict;

(2) In every civil case, against either party or prorated against both parties, at the court's discretion, if the parties settle the case or elect for a bench trial; and

(3) In the discretion of the court, and only when fairness and justice so require, a circuit court or magistrate court may forego assessment of the jury fee, but shall set out the reasons for waiving the fee in a written order: Provided, That a waiver of the assessment of a jury fee in a case tried before a jury in magistrate court may only be permitted after the circuit court, or the chief judge of the circuit court, has reviewed the reasons set forth in the order by the magistrate and has approved the waiver.

(d)(1) The circuit or magistrate court clerk shall by the tenth day of the month following the month of collection remit to the State Treasurer for deposit as described in subdivision (2) of this subsection all jury costs collected and the clerk and the clerk's surety are liable for the collection on the clerk's official bond as for other money coming into the clerk's hands by virtue of the clerk's office. When the amount of the jury costs collected in a magistrate court case exceeds $200, the magistrate court clerk shall separately delineate the portion of the collected jury costs which exceeds $200.

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(2) The jury costs described in subdivision (1) of this subsection shall upon receipt by the State Treasurer be deposited as follows:

(A) All jury costs collected in a magistrate court case which exceed $200 shall be deposited in the State's General Revenue Fund; and

(B) The remaining balance of the collected jury costs shall be deposited as follows:

(i) One-half shall be deposited into the Parent Education and Mediation Fund created in section six hundred four, article nine, chapter forty-eight of this code; and

(ii) One-half shall be deposited into the Domestic Violence Legal Services Fund created in section six hundred three, article twenty-six of chapter forty-eight of this code.

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§52-1-18. When juror not entitled to reimbursement.

No juror who departs without leave of the court or who, being summoned as a witness for the state, charges for attendance as such, may be entitled to receive any reimbursement for services as a juror.

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§52-1-19. Record of allowance to jurors.

The clerk of any court upon which juries are in attendance shall make an entry upon its record stating separately the amount which each juror is entitled to receive out of the State Treasury for services or attendance during the term. Any clerk who fails to pay over, as required by law, any moneys so received by the clerk or otherwise to comply with the provisions of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $50 nor more than $300.

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§52-1-20. Payment of reimbursement.

The method of payment of jurors shall be determined by the chief judge and approved by the State Tax Commissioner. It is the duty of the clerk, as soon as practicable after the adjournment of the court or before the adjournment of the court at such time as the chief judge may direct, to deliver to the sheriff of the county a certified accounting of the amount to which each juror is entitled. If any sheriff fails to pay any allowance as required by law, the sheriff may be proceeded against as for a contempt of court.

Any allowance paid by the sheriff under the provisions of this section shall be repaid to the sheriff out of the State Treasury upon the production of satisfactory proof that the same has actually been paid by the sheriff. Proof of payment shall be in the form of a complete itemized statement indicating the total amount eligible for reimbursement.

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§52-1-21. Excuse from employment.

Upon receiving a summons to report for jury duty an employee shall, the next day the employee is engaged in employment, exhibit the summons to the employee's immediate superior and the employee shall thereupon be excused from employment for the day or days required in serving as a juror in any court created by the Constitutions of the United States or of the State of West Virginia or the laws of the United States or the State of West Virginia.

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§52-1-22. Fraud in selection of jurors; penalties.

If any person is guilty of any fraud by tampering with the jury wheel prior to drawing jurors that person is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in the penitentiary for not less than one nor more than five years, or both fined and imprisoned.

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§52-1-23. Length of service by jurors.

In any two-year period a person may not be required:

(1) To serve or attend court for prospective service as a juror more than thirty court days, except if necessary to complete service in a particular case;

(2) To serve on more than one grand jury;

(3) To serve as both a grand and petit juror; or

(4) To serve as a petit juror at more than one term of court.

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§52-1-24. Penalties for failure to perform jury service.

A person summoned for jury service who fails to appear or to complete jury service as directed shall be ordered by the court to appear forthwith and show cause for failure to comply with the summons. If the person fails to show good cause for noncompliance with the summons, the person is guilty of civil contempt and, shall be fined not more than $1,000.

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§52-1-25. Present methods of jury selection to remain in effect until preparation of master list.

[Repealed.]

WV Legislature

§52-1-26. Provisions apply to selection jurors for magistrate juries.

All provisions of this article shall apply with equal force and effect to the selection of jurors for magistrate juries as well as for petit juries.

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