WEST VIRGINIA CODE CHAPTER 52

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.

WV Legislature

(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.]

WV Legislature

§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.

WV Legislature

§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.

WVLegislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§52-2-1. At what terms grand jury shall attend; when court or judge may dispense with it.

There shall be a grand jury at each term of a circuit court, except that the circuit court of any county by an order entered of record, or the judge thereof in vacation by written order to the clerk at least twenty days before the term, may dispense with the grand jury for one or two of the terms required by law to be held in such county annually, and the circuit court of any county in which there may be a criminal court whose jurisdiction includes the trial of felony cases, by an order entered of record, may dispense with the grand jury for all the terms of such circuit court required by law to be held in such county annually; and in such case no grand jury shall be drawn by the court or by the judge in vacation. Any circuit court may, at a special, regular or adjourned term thereof, whenever it shall be proper to do so, order a grand jury to be drawn and to attend such term. A grand jury summoned to attend a special, regular or adjourned term may consider any offense against the laws, whether the same shall have been committed before the next preceding term of the court or not, and whether the accused shall have been held for trial or not prior to the next preceding regular term.

WV Legislature

§52-2-2. Provisions governing petit juries govern grand juries.

The provisions of article one of this chapter relating to petit juries, so far as applicable and not inconsistent with the provisions of this article, shall be observed and govern grand juries.

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§52-2-3. Selection and summoning of jurors.

The clerk of any circuit court requiring a grand jury shall, at least 30 days before the term of court, draw and assign persons for the grand jury, but the court, or judge thereof, may require the clerk at any specified time to draw and assign grand jurors for either a regular, special, or adjourned term of court. When required by the circuit court or the chief judge thereof, the clerk shall draw the names of 16 persons from the jury wheel and the persons so drawn shall constitute the grand jury. At the same time, the clerk shall draw the names of such additional numbers of persons from the jury wheel as the chief judge of the circuit, or the judge in a single judge circuit shall by prior order direct, and the persons so drawn shall constitute alternate jurors for the grand jury. The judge may replace any absent members of the grand jury from among the alternate grand jurors, in the order in which the alternate jurors were drawn. The clerk shall enter the names of all persons so drawn in a book kept for that purpose and shall issue summonses to the persons drawn in the same manner as that provided for petit jurors in §52-1-7(b) of this code.

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§52-2-4. Quorum.

Of the sixteen grand jurors chosen from the grand jurors and alternate grand jurors summoned, fifteen or more of the grand jurors attending shall be a competent grand jury.

WV Legislature

§52-2-5. Oath.

From among the persons so summoned, who attend, the court shall select a foreman, who shall be sworn as follows: "You shall diligently inquire and true presentment make of all such matters as may be given you in charge or come to your knowledge touching the present service. You shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor, partiality or affection, but in all your presentments you shall present the truth, the whole truth and nothing but the truth. So help you God." The other grand jurors shall afterwards be sworn as follows: "The same oath that your foreman has taken on his part, you and each of you shall observe and keep on your part. So help you God."

WV Legislature

§52-2-6. Charge.

The grand jurors, after being sworn, shall be charged by the judge, and shall then be sent to their room.

WV Legislature

§52-2-7. Duties; preservation of evidence.

The grand jury shall inquire of and present all felonies, misdemeanors and violations of penal laws, committed in the jurisdiction of the court wherein they are sworn, except that no presentment shall be made of a matter for which there is no imprisonment, but only a fine, where the fine is limited to an amount not exceeding $10 and the offense is cognizable by a justice of the peace. They shall appoint one of their number as clerk, who shall write down the name of each witness examined by them, and the substance of the evidence given by him and furnish the same to the prosecuting attorney.

WV Legislature

§52-2-8. Finding or making of indictment or presentment.

At least twelve of the grand jurors must concur in finding or making an indictment or presentment. They may make a presentment or find an indictment upon the information of two or more of their own body, and when a presentment or indictment is so made, or on the testimony of witnesses called on by the grand jury, or sent to it by the court, the names of the grand jurors giving the information, or of the witnesses, shall be written at the foot of the presentment or indictment.

WV Legislature

§52-2-9. Second hearing.

Although a bill of indictment be returned not a true bill, another bill of indictment against the same person for the same offense may be sent to and acted on by the same or another grand jury.

WV Legislature

§52-2-10. Substituting new juror to fill vacancy; summoning additional juror.

If the foreman or any grand juror be unable or fail to attend after being sworn, another may be sworn in his stead. And when one grand juror has been discharged, another may, by order of the court, be summoned to attend at the same term.

WV Legislature

§52-2-11. Materials subpoenaed by grand jury; authorizing custodian possession and use thereof.

(a) For purposes of this section:

(1) "Prosecuting attorney" means a prosecuting attorney, assistant prosecuting attorney or duly appointed special prosecuting attorney.

(2) "Investigator" means an investigator employed by a prosecuting attorney's office or an employee of a state agency authorized by the provisions of this code to perform criminal investigations. For purposes of this definition, state agency shall include a legislative committee, commission or entity authorized by the provisions of this code to perform criminal investigations.

(3) "Law-enforcement officer" shall have the same meaning as is set forth in section one, article twenty-nine, chapter thirty of this code: Provided, That for purposes of this section, "law-enforcement officer" shall also include those individuals meeting the definition of "chief executive" set forth in section one, article twenty-nine, chapter thirty of this code.

(4) "Subpoenaed material" means books, records, documents, papers, computers, laptops, computer hard drives, electronic records, including, but not limited to, emails, electronic files, electronic documents, metadata or any other thing in any form in which it may exist.

(b) Notwithstanding any provision of this code to the contrary, material subpoenaed and received by a prosecuting attorney pursuant to a grand jury subpoena may thereafter, in the discretion of the prosecuting attorney, be delivered to a designated law-enforcement officer or investigator. Upon receipt from the prosecuting attorney, the designated law-enforcement officer or investigator may keep, review and analyze the subpoenaed materials and otherwise use the subpoenaed materials for investigative purposes.

(c) Prior to providing subpoenaed material to a designated law-enforcement officer or investigator, as authorized by subsection (b) of this section, the prosecuting attorney shall prepare and have the designated law-enforcement officer or investigator execute a nondisclosure statement acknowledging the existence and content of the subpoenaed material is secret under Rule 6(e) of the West Virginia Rules of Criminal Procedure. The prosecuting attorney shall file all nondisclosure statements, under seal, with the clerk of the circuit court. The existence or contents of any subpoenaed material subject to the provisions of this section may only be disclosed to another law-enforcement officer or investigator for investigative purposes with the prior written authorization of the prosecuting attorney and the receiving law-enforcement officer's or investigator's execution of a nondisclosure statement.

(d) The designated law-enforcement officer or investigator, as authorized by subsection (b) of this section, may, in the discretion of the prosecuting attorney, retain the subpoenaed material or other evidence in his or her possession, care, custody or control until the

termination of the investigation or presentation of the subpoenaed matter to the grand jury.

WV Legislature

§52-2-12. Incompetency or disqualification of juror not to affect validity of finding.

No presentment or indictment shall be quashed or abated on account of the incompetency or disqualification of any one or more of the grand jurors who found the same.

WV Legislature

§52-2-13. Compensation and mileage of grand jurors.

A grand juror shall be paid mileage, at the rate set by the commissioner of finance and administration for state employees, for travel expenses incurred in traveling from the grand juror's residence to the place of the holding of the grand jury and return, and shall be reimbursed for other expenses incurred as a result of required attendance at sessions of the grand jury at a rate of between $15 and $40, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance.

WV Legislature

§52-2-14. Grand jury authorized to sit for as long as one year and in addition to any other grand jury; provisions of article applicable with certain exception.

Whenever it appears to the judge of any court of record having criminal jurisdiction that there may be possible offenses against the criminal laws of this state which because of their complexity and involvement may require a grand jury to sit for an extended period of time, he may, pursuant to the provisions of this section, order a grand jury to be drawn and to attend any special, regular or adjourned term of such court in addition to any other grand jury attending any such term of court and all of the provisions of this article shall apply, except as follows:

(1) Such grand jury shall sit for one year unless an order for its discharge be earlier entered upon a determination by such grand jury, by majority vote, that its business has been completed, and such grand jury shall have the power to make presentments or find indictments at any time while it is sitting, notwithstanding the end of the term of court during which it was drawn and summoned;

(2) The term limitation specified in the last sentence of section ten of this article shall not apply to a grand jury attending pursuant to the provisions of this section fourteen; and

(3) Notwithstanding the first two sentences of section thirteen of this article, every person who shall serve upon a grand jury attending pursuant to the provisions of this section fourteen shall be entitled to receive for such services not less than $8 nor more than $20, to be fixed by the court, for each day he may so serve, for a total period not in excess of one year, and in addition thereto the same mileage as allowed to witnesses, to be paid out of the county treasury.

WV Legislature

§52-2-15. Secrecy of Grand Jury Proceedings.

(a) A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the state, or any person to whom disclosure is made under paragraph (B), subdivision (1), subsection(c) of this section, shall not disclose matters occurring before the grand jury, except as otherwise provided by subsection (c) of this section, and rules promulgated by the Supreme Court of Appeals.

(b) A person who knowingly violates subsection (a)of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000 or confined in jail not more than thirty days, or both fined and confined.

(c) (1) Disclosure otherwise prohibited by this section of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to:

(A) An attorney for the state for use in the performance of such attorney's duty; and

(B) Such official personnel as are deemed necessary by an attorney for the state to assist an attorney for the state in the performance of such attorney's duty to enforce criminal law.

(2) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may also be made:

(A) when so directed by a court preliminarily to or in connection with a judicial proceeding;

(B) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(C) when the disclosure is made by an attorney for the state to another grand jury; or

(D) when permitted by a court at the request of an attorney for the state, upon a showing that such matters may disclose a violation of federal criminal law or of the law of another state, to an appropriate official of the federal government or of such other state for the purposes of enforcing such law.

WV Legislature

§52-2-16. Juror questionnaires; judicial approval required for release of forms.

Completed juror questionnaire forms for persons called for or serving as grand jurors are confidential and may only be released from the custody of the clerk with the written permission of the circuit court.

WV Legislature

§52-3-1. Right of action for discrimination against employees summoned for jury duty; penalties.

(a) Any person who, as an employee, is discriminated against by his employer because such employee received, or was served with a summons for jury duty, or was absent from work to respond to a summons for jury duty or to serve on any jury in any court of this state, the United States or any state of the United States, may have an action against his employer in the circuit court of the county where the jury summons originated or where the discrimination occurred. If the circuit court finds that an employer terminated or threatened to terminate from employment, or decreased the regular compensation of employment of an employee for time the employee was not actually away from his employment because the employee served as a juror, the court may order the employer to cease and desist from this unlawful practice and order affirmative relief, including, but not limited to, reinstatement of the employee with or without back pay as will effectuate the purposes of this section.

(b) Nothing in this section shall be construed to require an employer to pay an employee any wages or other compensation for the time the employee is actually away from employment for jury services or to respond to a jury summons.

(c) If the employee prevails in an action under subsection (a) of this section, the employee shall be allowed reasonable attorney's fees as fixed by the court.

(d) Any employer who discriminates against an employee because the employee received or was served with a summons for jury duty, or was absent from work to respond to a summons for jury duty or to serve on any jury in any court of this state, the United States or any state of the United States, is guilty of civil contempt and shall be fined not less than $100 nor more than $500.

WV Legislature