

No. 1214

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1214

(By Mr. Del. Chambers & Del. Casey)

— ● —

Passed March 7, 1986

In Effect July 1, 1986

Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1214
(By DELEGATE CHAMBERS and DELEGATE CASEY)

[Passed March 7, 1986; in effect July 1, 1986.]

AN ACT to repeal section eleven, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article one of chapter fifty-two; to amend and reenact sections two, three, four and thirteen, article two of said chapter fifty-two; and to amend and reenact section one, article three of said chapter, all relating to selecting petit and grand jurors at random; declaration of policy; prohibition of discrimination; definitions; establishment of jury commissions; removal of jury commissioners; oath; master lists; jury boxes and jury wheels; random selection of names from master list for jury wheel or jury box; drawing of jury panels and qualification of jurors; juror qualification form; penalty for misrepresentation of qualification facts; penalty for failure to complete and return juror qualification form; penalty for failure to appear; disqualification from jury service; assignment of jurors to jury panels; drawing of additional jurors upon shortage of qualified jurors; elimination of exemptions; excuses from jury services; discharge of excess jurors; competency of jurors when municipality county or district is a part in interest; summoning jurors from other counties; challenging compliance with selection procedures and relief; preservation of records and duty

to report information; payment of mileage and compensation of jurors; taxing jury cost; when jurors not entitled to compensation; record of allowance to jurors; certification to auditor; failure of clerk to comply with provisions and penalty; payment of compensation; failure of sheriff to pay and penalty; excuse from employment; fraud in selection of jurors and penalty; length of juror service; penalty for failure to perform as a juror; retention of present method of jury selection until master is prepared; application of article to magistrate jury selection; application of article one to grand jury selection; selection and summoning grand jurors; quorum; additional grand jurors; compensation and mileage of grand jurors; discrimination for jury service; attorney fees; and penalty.

Be it enacted by the Legislature of West Virginia:

That section eleven, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, be repealed; that article one, chapter fifty-two be amended and reenacted; that sections two, three, four and thirteen, article two of said chapter fifty-two be amended and reenacted; and that section one, article three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-1. Declaration of policy.

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

§52-1-2. Prohibition of discrimination.

1 A citizen may not be excluded from jury service on
2 account of race, color, religion, sex, national origin or
3 economic status.

§52-1-3. Definitions.

1 As used in this article:

2 (1) "The court" means the circuit and magistrate
3 courts of this state, and includes, when the context
4 requires, any judge of the court;

5 (2) "Clerk" means clerk of the circuit court and
6 includes any deputy circuit clerk;

7 (3) "Master list" means the voter registration lists and
8 drivers' license lists for the county which may be
9 supplemented with names from other sources prescribed
10 pursuant to section five of this article in order to foster
11 the policy and protect the rights secured by this article:
12 *Provided, That in the case of a county whose circuit*
13 *court, or chief judge thereof, chooses to employ a jury*
14 *box in place of a jury wheel, that "master list" means*
15 *the voter registration lists for the county.*

16 (4) "Voter registration lists" means the official records
17 of persons registered to vote in the most recent general
18 election;

19 (5) "Drivers' license lists" means the official records of
20 persons licensed by the state to operate motor vehicles
21 and who reside within the county and have applied for
22 a driver's license or renewal of a driver's license within
23 the preceding two years. The department of motor
24 vehicles shall furnish such a list upon request of the clerk
25 of the circuit court.

26 (6) "Jury wheel" means any electronic system in which
27 are placed names or identifying numbers of prospective
28 jurors taken from the master list and from which names
29 are drawn at random for jury panels;

30 (7) "Jury box" means any physical, nonelectronic
31 device in which are placed names or identifying numbers
32 of prospective jurors taken from the master list and from
33 which names are drawn at random for jury panels.

§52-1-4. Jury commission.

1 (a) A jury commission is established in each county to
2 manage the jury selection process under the supervision
3 and control of the circuit court. The jury commission
4 shall be composed of the clerk of the circuit court and
5 two jury commissioners appointed for a term of four

6 years by the chief judge of the circuit court or judge in
7 a single judge circuit. The terms of office for
8 commissioners shall commence on the first day of June
9 following appointment. Those jury commissioners
10 appointed by the circuit court or the chief judge thereof
11 in office when this section takes effect shall continue in
12 office, unless removed, until the expiration of their
13 respective terms of office.

14 No jury commissioner, after having served four years,
15 shall be eligible to serve a successive additional term:
16 *Provided*, That a jury commissioner in a Class V, VI or
17 VII county, as defined in section three, article seven,
18 chapter seven, of this code, shall be eligible for appoint-
19 ment to serve one additional successive four year term
20 in such office. The jury commissioners must be citizens
21 of the United States, residents of the county for which
22 they are appointed, and well-known members of oppos-
23 ing political parties of said county; the chairman of a
24 political party shall be ineligible for appointment. The
25 jury commissioners shall receive as compensation for
26 their services, while necessarily employed, an amount to
27 be fixed by the circuit court or the chief judge thereof,
28 in accordance with the rules of the supreme court of
29 appeals.

30 (b) Jury commissioners may be removed from office by
31 the circuit court, or the chief judge thereof, for official
32 misconduct, incompetency, habitual drunkenness, neg-
33 lect of duty or gross immorality. Vacancies caused by
34 death, resignation or otherwise shall be filled for the
35 unexpired term in the same manner as the original
36 appointments.

37 (c) Before entering upon the discharge of duties, a jury
38 commissioner shall take and subscribe to an oath to the
39 following effect:

40 State of West Virginia,

41 County of _____, to wit:

42 I, A _____ B _____

43 do solemnly swear that I will support the Constitution
44 of the United States and the Constitution of this State
45 and will faithfully discharge the duties of jury commis-

46 sioner to the best of my skill and judgment and that I
47 will not place any person upon the jury list in violation
48 of law.

§52-1-5. Master list.

1 (a) Each jury commission must employ either a jury
2 wheel or a jury box. The choice of employing a jury
3 wheel or jury box is in the discretion of the circuit court,
4 or the chief judge thereof.

5 (b) (1) In those counties whose circuit courts, or chief
6 judges thereof, choose to employ a jury wheel, the jury
7 commission shall compile and maintain a master list
8 consisting of all voter registration lists and driver license
9 lists for the county, supplemented with names from other
10 lists of persons resident therein, such as lists of utility
11 customers, property and income taxpayers, and motor
12 vehicle registrations, which the supreme court of appeals
13 may designate. The supreme court of appeals may
14 exercise the authority to designate lists from time to time
15 in order to foster the policy and protect the rights
16 asserted by this article. In compiling the master list the
17 commission shall avoid the duplication of names.

18 (2) In those counties whose circuit courts, or chief
19 judges thereof, choose to employ a jury box, the jury
20 commission shall compile and maintain a master list
21 consisting of all voter registration lists for the county. In
22 compiling the master list the commission shall avoid
23 duplication of names.

24 (c) Whoever has custody, possession or control of any
25 of the lists making up or used in compiling the master
26 list, including those designated under subsection (a) of
27 this section by the supreme court of appeals as supple-
28 mentary sources of names, shall make the list available
29 to the jury commission for inspection, reproduction and
30 copying at all reasonable times.

31 (d) The master list is open to the public for examina-
32 tion.

**§52-1-6. Jury wheel or jury box; random selection of
names from master list for jury wheel or jury
box.**

1 (a) The jury commission for each county shall maintain
2 a jury wheel or jury box, into which the commission shall
3 place the names or identifying numbers of prospective
4 jurors taken from the master list.

5 (b) In counties having a population of less than fifteen
6 thousand persons according to the last available census,
7 the jury wheel or jury box shall include at least two
8 hundred names; in counties having a population of at
9 least fifteen thousand but less than fifty thousand, at
10 least four hundred names; a population of at least fifty
11 thousand but less than ninety thousand, at least eight
12 hundred names; and a population of ninety thousand or
13 more, at least one thousand six hundred names. From
14 time to time a larger or additional number may be
15 determined by the jury commission or ordered by the
16 circuit court to be placed in the jury wheel or jury box.
17 In October of each even-numbered year the jury wheel
18 or jury box shall be emptied and refilled as prescribed
19 in this article: *Provided*, That the jury commission shall
20 take measures to insure that a sufficient number of
21 jurors has been drawn from the earlier jury wheel or
22 jury box before it is emptied to provide jurors for all jury
23 panels until the jury wheel or jury box is refilled and
24 additional jurors may be drawn therefrom; and those
25 jurors drawn from the former wheel or box shall remain
26 eligible as jurors until the last day of December of that
27 year, and if drawn for a particular jury which has not
28 finished hearing or deciding the matter before it by the
29 last day of December of that year, said person shall
30 remain eligible as a juror for that particular unfinished
31 case or grand jury session until said case or session is
32 finished or the juror is otherwise discharged as provided
33 by law.

34 (c) The names or identifying numbers of prospective
35 jurors to be placed in the jury wheel or jury box shall
36 be selected by the jury commission at random from the
37 master list in the following manner: The total number
38 of names on the master list shall be divided by the
39 number of names to be placed in the jury wheel or jury
40 box and the whole number next greater than the
41 quotient shall be the "key number," except that the key

42 number shall never be less than two. A “starting
43 number” for making the selection shall then be deter-
44 mined by a random method from the numbers from one
45 to the key number, both inclusive. The required number
46 of names shall then be selected from the master list by
47 taking in order the first name on the master list
48 corresponding to the starting number and then succes-
49 sively the names appearing in the master list at intervals
50 equal to the key number, recommencing if necessary at
51 the start of the list until the required number of names
52 has been selected. Upon recommencing at the start of the
53 list, or if additional names are subsequently to be
54 selected for the master jury wheel or jury box, names
55 previously selected from the master list shall be
56 disregarded in selecting the additional names. The jury
57 commission is not required to, but may, use an electronic
58 or mechanical system or device in carrying out its duties.
59 (For example, assume a county with a master list of
60 eight thousand nine hundred and eighty names, a
61 population of less than fifteen thousand, and a desired
62 jury box or wheel containing two hundred names. Eight
63 thousand nine hundred and eighty names divided by two
64 hundred is forty four and nine-tenths percent. The next
65 whole number is forty five. The commission would take
66 every forty fifth name on the list, using a random
67 starting number between one and forty-five.)

68 (d) Prior to implementing the procedure described in
69 subsection (c), the commission shall strike from the
70 master list the names of all those persons who have
71 served as petit jurors in the preceding two years.

**§52-1-7. Drawings from the jury wheel or jury box;
notice of jury duty; juror qualification forms;
penalties.**

1 (a) The chief judge of the circuit, or the judge in a
2 single judge circuit, shall provide by order rules relating
3 to the random drawing by the jury commission of panels
4 from the jury wheel or jury box for juries in the circuit
5 and magistrate courts. Upon receipt of the direction and
6 in the manner prescribed by the court, the jury commis-
7 sion shall publicly draw at random from the jury wheel
8 or jury box the number of jurors specified.

9 (b) If a jury is ordered to be drawn, the clerk
10 thereafter shall cause each person drawn for jury service
11 to be served not less than thirty days before the date for
12 which the persons are to report for jury duty with a
13 summons either personally or by registered or certified
14 mail, return receipt requested, addressed to the person
15 at their usual residence, business or post office address,
16 requiring them to report for jury service at a specified
17 time and place.

18 (c) If the summons provided in subsection (b) of this
19 section is served by registered or certified mail, the clerk
20 shall also serve in the same mail with the summons a
21 juror qualification form accompanied by instructions to
22 fill out and return the form by mail to the clerk within
23 ten days after its receipt. If the summons provided in
24 subsection (b) of this section is served personally, such
25 service shall also include a like juror qualification form
26 with similar instructions to complete and return the
27 form. The juror qualification form is subject to approval
28 by the circuit court as to matters of form and shall elicit
29 the name, address of residence, sex, race and age of the
30 prospective juror and whether the prospective juror:

31 (1) Is a citizen of the United States and a resident of
32 the county;

33 (2) Is able to read, speak and understand the English
34 language;

35 (3) Has any physical or mental disability substantially
36 impairing the capacity to render satisfactory jury
37 service;

38 (4) Has served as a magistrate, petit or grand juror
39 within the previous two years;

40 (5) Has lost the right to vote because of a criminal
41 conviction; and

42 (6) Has been convicted of perjury, false swearing, or
43 other infamous offense.

44 The juror qualification form shall contain the prospec-
45 tive juror's declaration that the responses are true to the
46 best of the prospective juror's knowledge and an

47 acknowledgment that a willful misrepresentation of a
48 material fact may be punished by a fine of not more than
49 five hundred dollars or imprisonment for not more than
50 thirty days, or both fine and imprisonment. Notarization
51 of the juror qualification form shall not be required. If
52 the prospective juror is unable to fill out the form,
53 another person may do it for the prospective juror and
54 indicate that such person has done so and the reason
55 therefor. If it appears there is an omission, ambiguity or
56 error in a returned form, the clerk shall again send the
57 form with instructions to the prospective juror to make
58 the necessary addition, clarification or correction and to
59 return the form to the clerk within ten days after its
60 second receipt.

61 (d) Any prospective juror who fails to return a
62 completed juror qualification form as instructed shall be
63 directed by the jury commission to appear forthwith
64 before the clerk to fill out the juror qualification form.
65 At the time of the prospective juror's appearance for jury
66 service, or at the time of any interview before the court
67 or clerk, any prospective juror may be required to fill
68 out another juror qualification form in the presence of
69 the court or clerk, at which time the prospective juror
70 may be questioned, but only with regard to the responses
71 to questions contained on the form and ground for the
72 prospective juror's excuse or disqualification. Any
73 information thus acquired by the court or clerk shall be
74 noted on the juror qualification form.

75 (e) A prospective juror who fails to appear as directed
76 by the commission pursuant to subsection (b) of this
77 section shall be ordered by the court to appear and show
78 cause for failure to appear as directed. If the prospective
79 juror fails to appear pursuant to the court's order or fails
80 to show good cause for failure to appear as directed by
81 the jury commission, such prospective juror is guilty of
82 civil contempt and shall be fined not more than one
83 thousand dollars.

84 (f) Any person who willfully misrepresents a material
85 fact on a juror qualification form or during any
86 interview described in subsection (b) of this section for
87 the purpose of avoiding or securing service as a juror,

88 is guilty of a misdemeanor, and, upon conviction, shall
89 be fined not more than five hundred dollars or impri-
90 soned not more than thirty days, or both fined and
91 imprisoned.

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

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

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

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

14 (2) Is unable to read, speak and understand the
15 English language;

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

22 (4) Has served as a magistrate, petit or grand juror
23 within the previous two years;

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

26 (6) Has been convicted of perjury, false swearing, or
27 other infamous offense.

28 (c) A prospective juror sixty-five years of age or older
29 is not disqualified from serving, but shall be excused
30 from service by the court upon the juror's request.

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

jurors.

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

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

10 (c) The names of the qualified jurors drawn from the
11 jury wheel or jury box and the contents of jury quali-
12 fication forms completed by those jurors shall be made
13 available to the public.

§52-1-10. No exemptions.

1 No qualified prospective juror is exempt from jury
2 service.

§52-1-11. Excuses from jury service.

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

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

§52-1-12. Discharge of excess jurors.

1 Any court may, upon the appearance of an excess
2 number of qualified jurors, dispense with the attendance
3 of the unneeded jurors on any one day the court is sitting,

4 as long as such discharge from duty is conducted in a
5 random fashion and in a manner consistent with the
6 spirit of this article.

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

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

**§52-1-14. When and how jurors are to be summoned
from other county.**

1 In any criminal case in any court, if in the opinion of
2 the court, or the judge thereof in vacation, qualified
3 jurors, not exempt from serving, cannot be conveniently
4 found in the county in which the trial is to be, the court,
5 or the judge thereof in vacation, shall enter an order of
6 record to such effect and may cause so many jurors as
7 may be necessary to be summoned from any other
8 county. In such order the court, or the judge thereof in
9 vacation, shall fix a day on which the jurors shall be
10 required to attend and in the order shall indicate the
11 county from which the jurors shall be drawn and the
12 number of jurors to be drawn. An attested copy of the
13 order shall be certified to the circuit court of the county
14 designated, or the judge thereof in vacation, and
15 thereupon such circuit court or the judge thereof in
16 vacation, shall, by order, direct that a jury be drawn in
17 the manner provided by law for the drawing of petit
18 jurors and proceedings respecting the drawing of the
19 jurors, including the names of the jurors so drawn, shall

20 be certified by the clerk of the circuit court of the county
 21 designated to the clerk of the court wherein the trial is
 22 to be. Thereupon, the clerk of the circuit court of the
 23 county from which the jurors are to be drawn shall
 24 summon, in the manner provided in section nine of this
 25 article, the jurors so drawn to attend for jury service in
 26 the county wherein the trial is to be held.

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

1 (a) Within seven days after the moving party disco-
 2 vered or by the exercise of diligence could have disco-
 3 vered the grounds therefor, and in any event before the
 4 petit jury is sworn to try the case, a party may move to
 5 stay the proceedings and in a criminal case to quash the
 6 indictment or for other appropriate relief on the ground
 7 of substantial failure to comply with this article in
 8 selecting the jury.

9 (b) Upon motion filed under subsection (a) of this
 10 section containing a sworn statement of facts which, if
 11 true, would constitute a substantial failure to comply
 12 with this article, the moving party is entitled to present
 13 in support of the motion the testimony of the jury
 14 commissioners or the clerk, any relevant records and
 15 papers not public or otherwise available used by the jury
 16 commissioners or the clerk, and any other relevant
 17 evidence. If the court determines that in selecting a jury
 18 there has been a substantial failure to comply with this
 19 article, the court shall stay the proceedings pending the
 20 selection of the jury in conformity with this article,
 21 quash an indictment or grant other appropriate relief.

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

§52-1-16. Preservation of records.

1 All records and papers compiled and maintained by
 2 the jury commissioners or the clerk in connection with
 3 selection and service of jurors shall be preserved by the

4 clerk for at least four years after the jury wheel or jury
5 box used in their selection is emptied and refilled, or for
6 any longer period ordered by the court.

7 The jury commission of each county shall make an
8 annual report no later than the first day of March of each
9 year to the supreme court of appeals setting forth the
10 following information: whether the commission em-
11 ployed a jury box or jury wheel for the year reported,
12 and the age, race, and gender of each person for whom
13 a juror qualification form has been received. The
14 supreme court of appeals shall provide this information
15 to the president of the senate and the speaker of the
16 house on an annual basis, no later than the first day of
17 April of each year.

§52-1-17. Mileage and compensation of jurors.

1 (a) A juror shall be paid mileage, at the rate set by
2 the commissioner of finance and administration for state
3 employees, for travel expenses from the juror's residence
4 to the place of holding court and return and shall be
5 compensated at a rate of between fifteen and forty
6 dollars, set at the discretion of the circuit court or the
7 chief judge thereof, for each day of required attendance
8 at sessions of the court. Such compensation shall be
9 based on vouchers submitted to the sheriff. Such mileage
10 and compensation shall be paid out of the state treasury.

11 (b) When a jury in any case is placed in the custody
12 of the sheriff, he shall provide for and furnish the jury
13 necessary meals and lodging while they are in the
14 sheriff's custody at a reasonable cost to be determined
15 by an order of the court; and the meals and lodging shall
16 be paid for out of the state treasury.

17 (c) There shall be taxed in the costs against any person
18 against whom a judgment on the verdict of a jury may
19 be rendered in a case of misdemeanor or felony and
20 against any person against whom judgment on the
21 verdict of a jury may be rendered in a civil action, a total
22 of one hundred eighty dollars for jury costs. Such costs
23 when collected by the circuit clerk or the magistrate
24 clerk from the party, shall be paid by the sheriff into
25 the state treasury. All money so received by the clerk

26 shall be forthwith paid by the clerk to the sheriff and
 27 the clerk and the clerk's surety are liable therefor on the
 28 clerk's official bond as for other money coming into the
 29 clerk's hands by virtue of the clerk's office.

30 (d) The clerks of the circuit court and magistrate court
 31 of each county in this state shall annually certify to the
 32 county commission a list of all money so paid to the clerk
 33 and by the clerk paid to the sheriff, and in addition
 34 thereto, a correct list of all the cases in which jury fees
 35 have been taxed and are, at the time, properly due and
 36 payable in the state treasury, and the sheriff of the
 37 county shall be held to account in the sheriff's annual
 38 settlement for all such moneys collected by the sheriff.

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

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

§52-1-19. Record of allowance to jurors; certification to auditor; failure of clerk to comply with provisions; penalties.

1 The clerk of any court upon which juries are in
 2 attendance shall, before the final adjournment of each
 3 term, and under the direction of the court, make an entry
 4 upon its minutes stating separately the amount which
 5 each juror is entitled to receive out of the state treasury
 6 for services or attendance during the term; and the clerk
 7 of any court upon which juries are in attendance, if
 8 directed by the court, shall at any time during the term
 9 and under the direction of the court make an entry upon
 10 its minutes stating separately the amount which each
 11 juror is entitled to receive out of the state treasury for
 12 services or attendance during the term. It is the duty of
 13 the clerk, as soon as practicable after adjournment of the
 14 court, to transmit to the auditor certified copies of all
 15 orders under this section making allowances payable out
 16 of the state treasury. Any clerk who fails to pay over,
 17 as required by law, any moneys so received by the clerk
 18 or otherwise to comply with the provisions of this article,
 19 is guilty of a misdemeanor, and, upon conviction thereof,

20 shall be fined not less than fifty dollars nor more than
21 three hundred dollars.

§52-1-20. Payment of compensation.

1 It is the duty of the clerk, as soon as practicable after
2 the adjournment of the court or before the adjournment
3 of the court at such time as the court may direct, to
4 deliver to the sheriff of the county certified copies of all
5 orders under section nineteen of this article making
6 allowances to jurors payable out of the state treasury.
7 The sheriff shall, upon receipt of such order or orders,
8 issue a check payable to the juror for the amount allowed
9 to him and deliver the check to the clerk who shall
10 deliver it to the juror. If any sheriff fails to pay any
11 allowance as required by law, the sheriff may be
12 proceeded against as for a contempt of court.

13 Any allowance paid by the sheriff under the provisions
14 of this section shall be repaid to the sheriff out of the
15 state treasury upon the production of satisfactory proof
16 that the same has actually been paid by the sheriff. Proof
17 of payment shall be in the form of a complete itemized
18 statement indicating the total amount eligible for
19 reimbursement.

§52-1-21. Excuse from employment.

1 Upon receiving a summons to report for jury duty an
2 employee shall, the next day the employee is engaged in
3 employment, exhibit the summons to the employee's
4 immediate superior and the employee shall thereupon be
5 excused from employment for the day or days required
6 in serving as a juror in any court created by the
7 constitutions of the United States or of the state of West
8 Virginia or the laws of the United States or the state of
9 West Virginia.

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

1 If any person is guilty of any fraud by tampering with
2 the jury wheel or jury box prior to drawing jurors or in
3 any other way in the drawing of jurors, such person shall
4 be guilty of a felony, and upon conviction thereof, shall
5 be fined not more than five thousand dollars, or
6 imprisoned in the penitentiary for not less than one nor

7 more than five years, or both fined and imprisoned.

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

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

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

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

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

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

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

1 A person summoned for jury service who fails to
2 appear or to complete jury service as directed shall be
3 ordered by the court to appear forthwith and show cause
4 for failure to comply with the summons. If the person
5 fails to show good cause for noncompliance with the
6 summons, the person is guilty of civil contempt and, shall
7 be fined not more than one thousand dollars.

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

1 The present method of jury selection utilized by a
2 county shall remain in full force until a master list of
3 potential jurors has been prepared by the jury commis-
4 sion under this article.

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

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

ARTICLE 2. GRAND JURIES.

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

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

4 govern grand juries.

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

1 The jury commissioners of any court requiring a grand
2 jury shall, at least thirty days before the term of court,
3 draw and assign persons for the grand jury, but the
4 court, or judge thereof, may require the jury commis-
5 sioners to appear forthwith, or at any specified time and
6 draw and assign grand jurors for either a regular,
7 special or adjourned term of court. On the day appointed,
8 the jury commissioners shall appear and draw the names
9 of sixteen persons from the jury wheel or jury box, and
10 the persons so drawn shall constitute the grand jury,
11 and, at the same time the jury commissioners shall draw
12 the names of not less than six nor more than twelve
13 additional persons from the jury wheel or jury box, as
14 the chief judge of the circuit, or the judge in a single
15 judge circuit shall by prior order direct, and the persons
16 so drawn shall constitute alternate jurors from the grand
17 jury and the judge may replace any absent members of
18 the grand jury from among the alternate grand jurors
19 in the order in which the alternate jurors were drawn.
20 The jury commissioners shall enter the names of all
21 persons so drawn in a book kept for that purpose, and
22 they shall issue summonses to the persons so drawn in
23 the same manner as that provided for petit jurors in
24 subsection (b) of section seven, article one of this chapter.

§52-2-4. Quorum; additional jurors.

1 Any fifteen or more of the grand jurors attending shall
2 be a competent grand jury. If there is an unanticipated
3 shortage of grand jurors drawn from the jury wheel or
4 jury box, the court may require the sheriff to summon
5 a sufficient number of grand jurors selected by the clerk
6 in a manner prescribed and supervised by the circuit
7 court: *Provided*, That the number of grand jurors
8 selected in this manner not exceed two.

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

1 Every person who shall serve upon a grand jury may
2 not be paid for more than four days' service at any one
3 term of the court, except in the counties of Harrison,

4 McDowell, Fayette, Cabell, Marshall, Marion, Mercer,
 5 Wood, Ohio, Mingo, Monongalia, Preston and Summers,
 6 where such grand jurors may not be paid for more than
 7 ten days' service for any one term of court, and except
 8 in Kanawha County where such grand jurors may not
 9 be paid for more than sixty days' services for any one
 10 term of court. Grand jurors shall be paid mileage, at the
 11 rate set by the commissioner of finance and administra-
 12 tion for state employees, for travel expenses incurred in
 13 traveling from the grand juror's residence to the place
 14 of the holding of the grand jury and return, and shall
 15 be compensated at a rate of between fifteen and forty
 16 dollars, set at the discretion of the circuit court or the
 17 chief judge thereof, for each day of required attendance
 18 at sessions of the court.

ARTICLE 3. DISCRIMINATION FOR JURY SERVICE.

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

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

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

23 summons.

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

27 (d) Any employer who discriminates against an
28 employee because the employee received or was served
29 with a summons for jury duty, or was absent from work
30 to respond to a summons for jury duty or to serve on any
31 jury in any court of this state, the United States or any
32 state of the United States, is guilty of civil contempt and
33 shall be fined not less than one hundred dollars nor more
34 than five hundred dollars.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

Paul C. Willis
Clerk of the Senate

Donald L. Hoyle
Clerk of the House of Delegates

Dan Tonkovich
President of the Senate

Joseph P. Allright
Speaker of the House of Delegates

The within approved this the 26th
day of March, 1986.

Richard M. Hays
Governor

PRESENTED TO THE

GOVERNOR

Date 3/21/86

Time 4:43 p.m.

RECEIVED

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SECRETARY OF STATE

FILE IN THE OFFICE OF
SECRETARY OF STATE
WEST VIRGINIA

THIS DATE 3/26/86