

No: 331

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 331

(By Senators JACKSON AND TUCKER)

PASSED MARCH 12, 1988

In Effect July 1, 1988 Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 331

(SENATORS JACKSON AND TUCKER, *original sponsors*)

[Passed March 14, 1988; to take effect July 1, 1988.]

AN ACT to amend and reenact section five-d, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article one, chapter fifty-one of said code by adding thereto a new section, designated section twenty; to amend and reenact sections three, five, six, seven, eight, fifteen and sixteen, article one, chapter fifty-two of said code; to further amend said article one, chapter fifty-two by adding thereto two new sections, designated sections five-a and seven-a; and to amend and reenact sections three and four, article two of said chapter fifty-two, all relating to jury selection generally; creating an exception to the confidentiality of tax returns and requiring the tax commissioner to provide lists of individuals filing state personal income tax returns for purposes of jury selection; providing for a feasibility study by the supreme court of appeals of a one day, one trial jury selection system; defining certain terms to be used in the selection of jurors; providing for the compiling of a master list of residents of the county from which prospective jurors are to be chosen; describing the lists of names to be used in compiling the master list; requiring persons on the master list to complete a juror qualification form and describing the contents thereof; defining penalties for willfully

misrepresenting a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror; mandating the maintenance of a jury box or jury wheel; prescribing a formula for determining the minimum number of names to be included in a jury box or jury wheel; providing for the random selection of names to be placed in the jury box or jury wheel; providing for the random drawing of names from the jury box or jury wheel of panels for juries; defining a civil penalty for prospective jurors who fail to appear or fail to show good cause for failure to appear; authorizing the optional use of computerized selection; describing the circumstances under which a prospective juror is disqualified from jury service; providing the filing of motions which allege a substantial failure to comply with applicable procedures for selecting a jury; establishing limitations on the preservation of records; requiring reports by the jury commissioners to the supreme court of appeals and the Legislature; prescribing the method for selecting grand jurors and alternate grand jurors; and establishing the number of grand jurors attending a session of the grand jury necessary for a quorum.

Be it enacted by the Legislature of West Virginia:

That section five-d, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article one, chapter fifty-one of said code be amended by adding thereto a new section, designated section twenty; that sections three, five, six, seven, eight, fifteen and sixteen, article one, chapter fifty-two of said code be amended and reenacted; that said article one, chapter fifty-two be further amended by adding thereto two new sections, designated sections five-a and seven-a; and that sections three and four, article two of said chapter fifty-two be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5d. Confidentiality and disclosure of returns and return information.

- 1 (a) *General rule.*—Except when required in an official
- 2 investigation by the tax commissioner into the amount of

3 tax due under any article administered under this article or
4 in any proceeding in which the tax commissioner is a party
5 before a court of competent jurisdiction to collect or
6 ascertain the amount of such tax and except as provided in
7 subsections (d) through (n) of this section, it shall be
8 unlawful for any officer or employee of this state to divulge
9 or make known in any manner the tax return, or any part
10 thereof, of any person or disclose information concerning
11 the personal affairs of any individual or the business of any
12 single firm or corporation, or disclose the amount of
13 income, or any particulars set forth or disclosed in any
14 report, declaration or return required to be filed with the
15 tax commissioner by any article of this chapter imposing
16 any tax administered under this article or by any rule or
17 regulation of the tax commissioner issued thereunder, or
18 disclosed in any audit or investigation conducted under this
19 article.

20 (b) *Definitions*.—For purposes of this section:

21 (1) *Background file document*.—The term “background
22 file document,” with respect to a written determination,
23 includes the request for that written determination, any
24 written material submitted in support of the request and
25 any communication (written or otherwise) between the
26 state tax department and any person outside the state tax
27 department in connection with the written determination
28 received before issuance of the written determination.

29 (2) *Disclosure*.—The term “disclosure” means the
30 making known to any person in any manner whatsoever a
31 return or return information.

32 (3) *Inspection*.—The terms “inspection” and
33 “inspected” mean any examination of a return or return
34 information.

35 (4) *Return*.—The term “return” means any tax or
36 information return or report, declaration of estimated tax,
37 claim or petition for refund or credit, or petition for
38 reassessment that is required by, or provided for, or
39 permitted, under the provisions of this article (or any article
40 of this chapter administered under this article) which is
41 filed with the tax commissioner by, on behalf of, or with
42 respect to any person, and any amendment or supplement
43 thereto, including supporting schedules, attachments or

44 lists which are supplemental to, or part of, the return so
45 filed.

46 (5) *Return information*.—The term “return
47 information” means:

48 (A) A taxpayer’s identity; the nature, source or amount of
49 his income, payments, receipts, deductions, exemptions,
50 credits, assets, liabilities, net worth, tax liability, tax
51 withheld, deficiencies, overassessments or tax payments,
52 whether the taxpayer’s return was, is being, or will be
53 examined or subject to other investigation or processing, or
54 any other data received by, recorded by, prepared by,
55 furnished to or collected by the tax commissioner with
56 respect to a return or with respect to the determination of
57 the existence, or possible existence, of liability (or the
58 amount thereof) or by any person under the provisions of
59 this article (or any article of this chapter administered
60 under this article) for any tax, additions to tax, penalty,
61 interest, fine, forfeiture, or other imposition or offense; and

62 (B) Any part of any written determination or any
63 background file document relating to such written
64 determination. “Return information” does not include,
65 however, data in a form which cannot be associated with, or
66 otherwise identify, directly or indirectly, a particular
67 taxpayer. Nothing in the preceding sentence, or in any other
68 provision of this code, shall be construed to require the
69 disclosure of standards used or to be used for the selection
70 of returns for examination, or data used or to be used for
71 determining such standards.

72 (6) *Tax administration*.—The term “tax
73 administration” means:

74 (A) The administration, management, conduct, direction
75 and supervision of the execution and application of the tax
76 laws or related statutes of this state, and the development
77 and formulation of state tax policy relating to existing or
78 proposed state tax laws, and related statutes of this state,
79 and

80 (B) Includes assessment, collection, enforcement,
81 litigation, publication and statistical gathering functions
82 under the laws of this state.

83 (7) *Taxpayer identity*.—The term “taxpayer identity”
84 means the name of a person with respect to whom a return is

85 filed, his mailing address, his taxpayer identifying number
86 or a combination thereof.

87 (8) *Taxpayer return information.*—The term “taxpayer
88 return information” means return information as defined in
89 subdivision (5) of this subsection (b) which is filed with, or
90 furnished to, the tax commissioner by or on behalf of the
91 taxpayer to whom such return information relates.

92 (9) *Written determination.*—The term “written
93 determination” means a ruling, determination letter,
94 technical advice memorandum or letter or administrative
95 decision issued by the tax commissioner.

96 (c) *Criminal penalty.*—Any officer or employee (or
97 former officer or employee) of this state who violates this
98 section shall be guilty of a misdemeanor, and, upon
99 conviction thereof, shall be fined not more than one
100 thousand dollars or imprisoned for not more than one year,
101 or both, together with costs of prosecution.

102 (d) *Disclosure to designee of taxpayer.*—Any person
103 protected by the provisions of this article may, in writing,
104 waive the secrecy provisions of this section for such purpose
105 and such period as he shall therein state. The tax
106 commissioner may, subject to such requirements and
107 conditions as he may prescribe, thereupon release to
108 designated recipients such taxpayer’s return or other
109 particulars filed under the provisions of the tax articles
110 administered under the provisions of this article, but only to
111 the extent necessary to comply with a request for
112 information or assistance made by the taxpayer to such
113 other person. However, return information shall not be
114 disclosed to such person or persons if the tax commissioner
115 determines that such disclosure would seriously impair
116 administration of this state’s tax laws.

117 (e) *Disclosure of returns and return information for use*
118 *in criminal investigations.*

119 (1) *In general.*—Except as provided in subdivision (3) of
120 this subsection, any return or return information with
121 respect to any specified taxable period or periods shall,
122 pursuant to and upon the grant of an ex parte order by a
123 federal district court judge, federal magistrate or circuit
124 court judge of this state, under subdivision (2) of this
125 subsection, be open (but only to the extent necessary as
126 provided in such order) to inspection by, or disclosure to,

127 officers and employees of any federal agency, or of any
128 agency of this state, who personally and directly engaged
129 in:

130 (A) Preparation for any judicial or administrative
131 proceeding pertaining to the enforcement of a specifically
132 designated state or federal criminal statute to which this
133 state, the United States or such agency is or may be a party;

134 (B) Any investigation which may result in such a
135 proceeding; or

136 (C) Any state or federal grand jury proceeding
137 pertaining to enforcement of such a criminal statute to
138 which this state, the United States or such agency is or may
139 be a party.

140 Such inspection or disclosure shall be solely for the use of
141 such officers and employees in such preparation,
142 investigation, or grand jury proceeding.

143 (2) *Application of order.*—Any United States attorney,
144 any special prosecutor appointed under Section 593 of Title
145 28, United States Code, or any attorney in charge of a
146 United States justice department criminal division
147 organized crime strike force established pursuant to
148 Section 510 of Title 28, United States Code, may authorize
149 an application to a circuit court judge or magistrate, as
150 appropriate, for the order referred to in subdivision (1) of
151 this subsection. Any prosecuting attorney of this state may
152 authorize an application to a circuit court judge of this state
153 for the order referred to in subdivision (1) of this subsection.
154 Upon such application, such judge or magistrate may grant
155 such order if he determines on the basis of the facts
156 submitted by the applicant that:

157 (A) There is reasonable cause to believe, based upon
158 information believed to be reliable, that a specific criminal
159 act has been committed;

160 (B) There is reasonable cause to believe that the return
161 or return information is or may be relevant to a matter
162 relating to the commission of such act; and

163 (C) The return or return information is sought
164 exclusively for use in a state or federal criminal
165 investigation or proceeding concerning such act, and the
166 information sought to be disclosed cannot reasonably be
167 obtained, under the circumstances, from another source.

168 (3) The tax commissioner shall not disclose any return

169 or return information under subdivision (1) of this
170 subsection if he determines and certifies to the court that
171 such disclosure would identify a confidential informant or
172 seriously impair a civil or criminal tax investigation.

173 (f) *Disclosure to person having a material*
174 *interest.*—The tax commissioner may, pursuant to
175 legislative regulations promulgated by him, and upon such
176 terms as he may require, disclose a return or return
177 information to a person having a material interest therein:
178 *Provided*, That such disclosure shall only be made if the tax
179 commissioner determines, in his discretion, that such
180 disclosure would not seriously impair administration of
181 this state's tax laws.

182 (g) *Statistical use.*—This section shall not be construed
183 to prohibit the publication or release of statistics so
184 classified as to prevent the identification of particular
185 returns and the items thereof.

186 (h) *Disclosure of amount of outstanding lien.*—If notice
187 of lien has been recorded pursuant to section twelve of this
188 article, the amount of the outstanding obligation secured by
189 such lien may be disclosed to any person who furnishes
190 written evidence satisfactory to the tax commissioner that
191 such person has a right in the property subject to such lien
192 or intends to obtain a right in such property.

193 (i) *Reciprocal exchange.*—The tax commissioner may,
194 pursuant to written agreement, permit the proper officer of
195 the United States, or the District of Columbia or any other
196 state, or any political subdivision of this state, or his
197 authorized representative, who is charged by law with
198 responsibility for administration of a similar tax, to inspect
199 reports, declarations or returns filed with the tax
200 commissioner or may furnish to such officer or
201 representative a copy of any such document, provided such
202 other jurisdiction grants substantially similar privileges to
203 the tax commissioner or to the attorney general of this state.
204 Such disclosure shall be only for the purpose of, and only to
205 the extent necessary in, the administration of tax laws:
206 *Provided*, That such information shall not be disclosed to
207 the extent that the tax commissioner determines that such
208 disclosure would identify a confidential informant or
209 seriously impair any civil or criminal tax investigation.

210 (j) *Inspection of business and occupation tax returns by*

211 *municipalities*.—The tax commissioner shall, upon the
212 written request of the mayor of any West Virginia
213 municipality having a business and occupation tax or
214 privilege tax, allow the duly authorized agent of such
215 municipality to inspect and make copies of the state
216 business and occupation tax return filed by taxpayers of
217 such municipality. Such inspection or copying shall only be
218 for the purposes of securing information for municipal tax
219 purposes and shall only be allowed if such municipality
220 allows the tax commissioner the right to inspect or make
221 copies of the municipal business and occupation tax returns
222 of such municipality.

223 (k) *Release of administrative decisions*.—The tax
224 commissioner shall release to the public his administrative
225 decisions, or a summary thereof: *Provided*, That unless the
226 taxpayer appeals the administrative decision to circuit
227 court or waives in writing his rights to confidentiality, any
228 identifying characteristics or facts about the taxpayer shall
229 be omitted or modified to such an extent so as to not disclose
230 the name or identity of the taxpayer.

231 (l) *Release of taxpayer information*.

232 (1) If the tax commissioner believes that enforcement of
233 the tax laws administered under this article will be
234 facilitated and enhanced thereby, he shall disclose, upon
235 request, the names and address of persons:

236 (A) Who have a current business registration certificate.

237 (B) Who are licensed employment agencies.

238 (C) Who are licensed collection agencies.

239 (D) Who are licensed to sell drug paraphernalia.

240 (E) Who are distributors of gasoline or special fuel.

241 (F) Who are contractors.

242 (G) Who are transient vendors.

243 (H) Who are authorized by law to issue a sales or use tax
244 exemption certificate.

245 (I) Who are required by law to collect sales or use taxes.

246 (J) Who are foreign vendors authorized to collect use
247 tax.

248 (K) Whose business registration certificate has been
249 suspended or canceled or not renewed by the tax
250 commissioner.

251 (L) Against whom a tax lien has been recorded under

252 section twelve of this article (including any particulars
253 stated in the recorded lien).

254 (M) Against whom criminal warrants have been issued
255 for a criminal violation of this state's tax laws.

256 (N) Who have been convicted of a criminal violation of
257 this state's tax laws.

258 (m) *Disclosure of return information to office of child*
259 *advocate.*

260 (1) *State return information.*—The tax commissioner
261 may, upon written request, disclose to the director of the
262 office of child advocate created by article two, chapter
263 forty-eight-a of this code:

264 (A) Available return information from the master files
265 of the tax department relating to the social security account
266 number address, filing status, amounts and nature of
267 income, and the number of dependents reported on any
268 return filed by or with respect to, any individual with
269 respect to whom child support obligations are sought to be
270 enforced, and

271 (B) Available state return information reflected on any
272 state return filed by, or with respect to any individual
273 described in paragraph (A) of this subdivision (1) relating to
274 the amount of such individual's gross income, but only if
275 such information is not reasonably available from any other
276 source.

277 (2) *Restrictions on disclosure.*—The tax commissioner
278 shall disclose return information under subdivision (1) of
279 this subsection only for purposes of, and to the extent
280 necessary in, collecting child support obligations from, and
281 locating individuals owing such obligations.

282 (n) *Disclosure of names and addresses for purposes of*
283 *jury selection.*

284 The tax commissioner shall, at the written request of a
285 circuit court or the chief judge thereof, provide to the circuit
286 court within thirty calendar days a list of the names and
287 addresses of individuals residing in the county or counties
288 comprising the circuit who have filed a state personal
289 income tax return for the preceding tax year. The list
290 provided shall set forth names and addresses only. The
291 request shall be limited to counties within the jurisdiction
292 of the requesting court.

293 The court, upon receiving the list or lists, shall direct the

294 jury commission of the appropriate county to merge the
295 names and addresses with other lists used in compiling a
296 master list of residents of the county from which
297 prospective jurors are to be chosen. Immediately after the
298 master list is compiled, the jury commission shall cause the
299 list provided by the tax commissioner and all copies thereof
300 to be destroyed and shall certify to the circuit court and to
301 the tax commissioner that the lists have been destroyed.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-20. Feasibility study of one day-one trial jury selection system.

1 The supreme court of appeals shall conduct a study to
2 determine the feasibility of a system of jury selection for
3 petit juries in West Virginia wherein those prospective
4 jurors who are called for jury duty are required to report for
5 duty for not more than one day or until the completion of
6 one trial for which they are chosen on that day. The supreme
7 court shall designate a judicial circuit within this state and
8 direct the court of that circuit to order the jury commission
9 of each county within the circuit to employ this a jury
10 selection system in whole, or in part, from the first day of
11 July, one thousand nine hundred eighty-eight, to the
12 thirtieth day of June, one thousand nine hundred eighty-
13 nine.

14 Before the first day of September, one thousand nine
15 hundred eighty-nine, the jury commission shall prepare
16 and deliver a report to the supreme court of appeals relating
17 the cost, efficiency, effectiveness and general acceptance of
18 the system. The supreme court of appeals shall report to the
19 Legislature on the feasibility of the system before the first
20 day of January, one thousand nine hundred ninety. The
21 supreme court of appeals shall fund those expenses
22 necessary to conduct this study out of the budget of the
23 court.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-3. Definitions.

1 As used in this article:

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

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

7 (3) "Master list" means the master list of residents of the
8 county from which prospective jurors are to be chosen, and
9 which is compiled in accordance with the provisions of
10 section five of this article;

11 (4) "Persons who are registered to vote" means persons
12 whose names appear on the official records of the clerk of
13 the county commission as persons registered to vote in the
14 most recent general election;

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

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

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

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

1 (a) In each county, the jury commission shall compile
2 and maintain a master list of residents of the county from
3 which prospective jurors are to be chosen. The master list
4 shall be a list of individuals compiled by whatever random
5 key number system the commission may choose from not
6 less than two of the following source lists:

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

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

10 (3) Persons who hold a valid motor vehicle operator's or
11 chauffeur's license as determined from the drivers' license
12 lists provided by the department of motor vehicles.

13 The jury commission shall take randomly a sample of
14 names from each source used. The same percentage of
15 names must be selected from each list. One source list shall
16 be designated a primary source, and the names selected
17 from that source shall be compared with the list of names
18 from the second source. Duplicate names shall be removed
19 from the second source sample, and the remaining names
20 shall be combined with the sample of names selected from
21 the primary source to form the master list. If more than two
22 source lists are used, this process shall be repeated, using
23 the previously combined list for comparison with the third
24 source list, and so on.

25 (b) In addition to the master list required to be compiled
26 under the provisions of subsection (a) of this section, the
27 jury commission shall compile a list of persons who pay real
28 property taxes to compile and maintain a list of freeholders
29 to be used as jurors in condemnation cases.

30 (c) Any public officer of an agency, department or
31 political subdivision of this state having custody,
32 possession or control of any of the source lists designated to
33 be used in compiling the master list, shall make the source
34 list available to the jury commission for inspection,
35 reproduction and copying at all reasonable times:
36 *Provided*, That the tax commissioner shall be exempt from
37 this requirement. The master list and the freeholder list
38 shall be open to the public for examination.

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

1 (a) Not less than twenty days before the date for which
2 persons are to report for jury duty, the clerk may, if directed
3 by the court, serve by first class mail, upon each person
4 listed on the master list, a juror qualification form
5 accompanied by instructions necessary for its completion:
6 *Provided*, That the clerk may, if directed by the court, mail
7 the juror qualification form to only those prospective jurors
8 drawn for jury service under the provisions of section seven
9 of this article. Each prospective juror shall be directed to
10 complete the form and return it by mail to the clerk within
11 ten days after its receipt. The juror qualification form is
12 subject to approval by the circuit court as to matters of form

13 and shall elicit the following information concerning the
14 prospective juror:

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

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

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

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

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

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

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

28 (8) Whether the juror has any physical or mental
29 disability substantially impairing the capacity to render
30 satisfactory jury service;

31 (9) Whether the juror has, within the preceding two
32 years, been summoned to serve as a petit juror, grand juror
33 or magistrate court juror, and has actually attended
34 sessions of the magistrate or circuit court and been
35 compensated as a juror;

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

38 (11) Whether the juror has been convicted of perjury,
39 false swearing or other infamous offense.

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

46 (b) The juror qualification form shall contain the
47 prospective juror's declaration that the responses are true
48 to the best of the prospective juror's knowledge and an
49 acknowledgment that a willful misrepresentation of a
50 material fact may be punished by a fine of not more than
51 five hundred dollars or imprisonment for not more than
52 thirty days, or both fine and imprisonment. Notarization of
53 the juror qualification form shall not be required. If the
54 prospective juror is unable to fill out the form, another

55 person may assist the prospective juror in the preparation
 56 of the form and indicate that such person has done so and
 57 the reason therefor. If an omission, ambiguity or error
 58 appear in a returned form, the clerk shall again send the
 59 form with instructions to the prospective juror to make the
 60 necessary addition, clarification or correction and to return
 61 the form to the clerk within ten days after its second receipt.

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

75 (d) Any person who willfully misrepresents a material
 76 fact on a juror qualification form or during any interview
 77 described in subsection (c) of this section, for the purpose of
 78 avoiding or securing service as a juror, is guilty of a
 79 misdemeanor, and, upon conviction, shall be fined not more
 80 than five hundred dollars or imprisoned not more than
 81 thirty days, or both fined and imprisoned.

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

1 (a) At the direction of the circuit court, the jury
 2 commission for each county shall maintain a jury wheel or
 3 jury box, into which the commission shall place the names
 4 or identifying numbers of prospective jurors taken from the
 5 master list. The choice of employing a jury wheel or jury box
 6 shall be at the discretion of the circuit court or the chief
 7 judge thereof.

8 (b) In counties having a population of less than fifteen
 9 thousand persons according to the last available census, the
 10 jury wheel or jury box shall include at least two hundred
 11 names; in counties having a population of at least fifteen
 12 thousand but less than fifty thousand, at least four hundred
 13 names; a population of at least fifty thousand but less than

14 ninety thousand, at least eight hundred names; and a
15 population of ninety thousand or more, at least one
16 thousand six hundred names. From time to time a larger or
17 additional number may be determined by the jury
18 commission or ordered by the circuit court to be placed in
19 the jury wheel or jury box. The jury commission shall take
20 measures to ensure that a sufficient number of additional
21 jurors are drawn from time to time so that the jury wheel or
22 jury box is refilled and additional jurors may be drawn
23 therefrom. In October of each even-numbered year, or at
24 such other time as the court may direct, the jury commission
25 shall remove from the jury box or jury wheel the names of
26 all persons who have, within the preceding two years, been
27 summoned to serve as petit jurors, grand jurors or
28 magistrate court jurors, and who have actually attended
29 sessions of the magistrate or circuit court and been
30 compensated as jurors pursuant to the provisions of section
31 twenty-one of this article, section thirteen, article two of
32 this chapter, or under any applicable rule or regulation of
33 the supreme court of appeals promulgated pursuant to the
34 provisions of section eight, article five, chapter fifty of this
35 code.

36 (c) The names or identifying numbers of prospective
37 jurors to be placed in the jury wheel or jury box shall be
38 selected by the jury commission at random from the master
39 list in the following manner: The total number of names on
40 the master list shall be divided by the number of names to be
41 placed in or added to the jury wheel or jury box and the
42 whole number next greater than the quotient shall be the
43 "key number," except that the key number shall never be
44 less than two. A "starting number" for making the selection
45 shall then be determined by a random method from the
46 numbers from one to the key number, both inclusive. The
47 required number of names shall then be selected from the
48 master list by taking in order the first name on the master
49 list corresponding to the starting number and then
50 successively the names appearing in the master list at
51 intervals equal to the key number, recommencing if
52 necessary at the start of the list until the required number of
53 names has been selected. Upon recommencing at the start of
54 the list, or if additional names are subsequently to be
55 selected for the jury wheel or jury box, names previously

56 selected from the master list shall be disregarded in
57 selecting the additional names. The jury commission is not
58 required to, but may, use an electronic or mechanical
59 system or device in carrying out its duties. (For example,
60 assume a county with a master list of eight thousand nine
61 hundred and eighty names, a population of less than fifteen
62 thousand, and a desired jury box or wheel containing two
63 hundred names. Eight thousand nine hundred and eighty
64 names divided by two hundred is forty-four and nine-
65 tenths percent. The next whole number is forty-five. The
66 commission would take every forty-fifth name on the list,
67 using a random starting number between one and forty-
68 five.)

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

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

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

19 (c) A prospective juror who fails to appear as directed
20 by the summons issued pursuant to subsection (b) of this
21 section shall be ordered by the court to appear and show
22 cause for failure to appear as directed. If the prospective
23 juror fails to appear pursuant to the court's order or fails to
24 show good cause for failure to appear as directed by the
25 summons, he or she is guilty of civil contempt and shall be
26 fined not more than one thousand dollars.

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

1 Notwithstanding any provision of this article to the
2 contrary, the court may, after conferring with the clerk and
3 the jury commissioners, direct the use of electronic data
4 processing methods, or a combination of manual and
5 machine methods, for any combination of the following
6 tasks:

7 (a) Recording in machine readable form names that are
8 initially selected manually from source lists authorized by
9 this article.

10 (b) Copying of names from source lists authorized by
11 this article, from any counties or other sources that
12 maintain those lists in machine readable form such as
13 punched cards, magnetic tapes or magnetic discs.

14 (c) Selecting names from source lists for inclusion in the
15 jury list.

16 (d) Selecting names from the jury list for the list of
17 jurors summoned to attend at any term of court.

18 (e) Sorting or alphabetizing lists of names, deleting
19 duplicate selections of names and deleting names of persons
20 exempt, disqualified or excused from jury service.

21 (f) Selecting and copying names for the creation of any
22 papers, records or correspondence necessary to recruit,
23 select and pay jurors and for other clerical tasks.

24 If the court elects to use electronic machine methods for
25 any tasks described above, the selection system shall be
26 planned and programmed in order to ensure that any group
27 of names chosen will represent all segments of source files
28 from which drawn and that the mathematical odds of any
29 single name being picked are substantially equal.

30 When machine methods for jury selection are employed,
31 both the jury list and the jury list as recorded in machine
32 readable form shall be safely kept in a secure location with
33 the office of the clerk of the circuit court. Any selection of
34 jurors from a source list or jury list shall be made in the
35 presence of the jury commissioners.

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

1 (a) The court, upon request of the jury commission or a
2 prospective juror or on its own initiative, shall determine on
3 the basis of information provided on the juror qualification

4 form or interview with the prospective juror or other
5 competent evidence whether the prospective juror is
6 disqualified for jury service. The clerk shall enter this
7 determination in the space provided on the juror
8 qualification form and on the alphabetical lists of names
9 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 eighteen
13 years old and a resident of the county;

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

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

22 (4) Has, within the preceding two years, been
23 summoned to serve as a petit juror, grand juror or
24 magistrate court juror, and has actually attended sessions
25 of the magistrate or circuit court and been compensated as a
26 juror pursuant to the provisions of section twenty-one of
27 this article, section thirteen, article two of this chapter, or
28 pursuant to an applicable rule or regulation of the supreme
29 court of appeals promulgated pursuant to the provisions of
30 section eight, article five, chapter fifty of this code;

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

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

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

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

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

1 (a) Within seven days after the moving party discovers,
2 or by the exercise of due diligence could have discovered,

3 the grounds therefor, and in any event before the petit jury
4 is sworn to try the case, a party may move to stay the
5 proceedings, quash the indictment or move for other relief
6 as may be appropriate under the circumstances or the
7 nature of the case. The motion shall set forth the facts which
8 support the party's contention that there has been a
9 substantial failure to comply with this article in selecting
10 the jury.

11 (b) Upon motion filed under subsection (a) of this
12 section containing a sworn statement of facts which, if true,
13 would constitute a substantial failure to comply with this
14 article, the moving party is entitled to present, in support of
15 the motion, the testimony of the jury commissioners or the
16 clerk, any relevant records and papers not public or
17 otherwise available used by the jury commissioners or the
18 clerk, and any other relevant evidence. The clerk or the jury
19 commissioners may identify the lists utilized in compiling
20 the master list, but may not be required to divulge the
21 contents of such lists. If the court determines that in
22 selecting a jury there has been a substantial failure to
23 comply with this article, the court shall stay the
24 proceedings pending the selection of the jury in conformity
25 with this article, quash an indictment or grant such other
26 relief as the court may deem appropriate.

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

§52-1-16. Preservation of records.

1 All records and papers compiled and maintained by the
2 jury commissioners or the clerk in connection with selection
3 and service of jurors from the master list, the jury box or the
4 jury wheel shall be preserved by the clerk for at least four
5 years after such jurors were selected, or for any longer
6 period ordered by the court.

7 The jury commission of each county shall make an annual
8 report no later than the first day of March of each year to the
9 supreme court of appeals setting forth the following
10 information: Whether the commission employed a jury box
11 or jury wheel for the year reported, and the age, race, and

12 gender of each person for whom a juror qualification form
13 has been received. The supreme court of appeals shall
14 provide this information to the president of the Senate and
15 the speaker of the House on an annual basis, no later than
16 the first day of April of each year.

ARTICLE 2. 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, draw
3 and assign persons for the grand jury, but the court, or judge
4 thereof, may require the jury commissioners to appear
5 forthwith, or at any specified time and draw and assign
6 grand jurors for either a regular, special or adjourned term
7 of court. On the day appointed, the jury commissioners shall
8 appear and draw the names of sixteen persons from the jury
9 wheel or jury box, and the persons so drawn shall constitute
10 the grand jury, and, at the same time the jury commissioners
11 shall draw the names of such additional numbers of persons
12 from the jury wheel or jury box, as the chief judge of the
13 circuit, or the judge in a single judge circuit shall by prior
14 order direct, and the persons so drawn shall constitute
15 alternate jurors for the grand jury and the judge may
16 replace any absent members of the grand jury from among
17 the alternate grand jurors in the order in which the
18 alternate jurors were drawn. The jury commissioners shall
19 enter the names of all persons so drawn in a book kept for
20 that purpose, and they shall issue summonses to the persons
21 so drawn in the same manner as that provided for petit
22 jurors in subsection (b), section seven, article one of this
23 chapter.

§52-2-4. Quorum.

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

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

Bruce O. Williams
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1988.

Todd C. Willis
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Don Tolson
.....
President of the Senate

W. J. O'Connell
.....
Speaker House of Delegates

The within *Approved* this the *30th*
Hand
day of 1988.

Arthur J. ...
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/88

Time 11:35 A.M.

RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE