

2013 APR 29 PM 5:08

SECRET

WEST VIRGINIA LEGISLATURE

EIGHTY-FIRST LEGISLATURE

REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 74

(SENATOR SYPOLT, *ORIGINAL SPONSOR*)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 74

FILED
2013 APR 29 PM 5: 08

E N R O L L E D
COMMITTEE SUBSTITUTE
FOR

CLERK OF COURTS
SECRETARY OF STATE

Senate Bill No. 74

(SENATOR SYPOLT, *original sponsor*)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §52-1-5a and §52-1-8 of the Code of West Virginia, 1931, as amended, all relating to redefining the basis for disqualification of prospective jurors to include those who have been convicted of any crime punishable by imprisonment in excess of one year, perjury or false swearing; and requiring clerks to provide copies of certain juror qualification questionnaires to counsel of record upon request.

Be it enacted by the Legislature of West Virginia:

That §52-1-5a and §52-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. PETIT JURIES.

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

- 1 (a) Not less than twenty days before the date for which
- 2 persons are to report for jury duty, the clerk may, if directed
- 3 by the court, serve by first-class mail, upon each person listed
- 4 on the master list, a juror qualification form accompanied by
- 5 instructions necessary for its completion: *Provided*, That the

6 clerk may, if directed by the court, mail the juror qualification
7 form to only those prospective jurors drawn for jury service
8 under the provisions of section seven of this article. Each
9 prospective juror shall be directed to complete the form and
10 return it by mail to the clerk within ten days after its receipt.
11 The juror qualification form is subject to approval by the
12 circuit court as to matters of form and shall elicit the
13 following information concerning the prospective juror:

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

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

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

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

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

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

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

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

32 (9) Whether the juror has, within the preceding two years,
33 been summoned to serve as a petit juror, grand juror or

34 magistrate court juror, and has actually attended sessions of
35 the magistrate or circuit court and been reimbursed for his or
36 her expenses as a juror;

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

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

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

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

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

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

85 (e) Upon the clerks's receipt of the juror qualification
86 questionnaires of persons selected as prospective petit jurors,
87 he or she shall make the questionnaires of the persons so
88 selected available, upon request, to counsel of record in the
89 trial or trials for which the persons have been selected as
90 prospective jurors.

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

1 (a) The court shall determine whether any prospective
2 juror is disqualified for jury service on the basis of
3 information provided on the juror qualification form or
4 interview with the prospective juror or other competent
5 evidence. The clerk shall enter this determination in the
6 space provided on the juror qualification form and on the

7 alphabetical lists of names drawn from the jury wheel or jury
8 box.

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

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

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

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

24 (4) Has, within the preceding two years, been summoned
25 to serve as a petit juror, grand juror or magistrate court juror
26 and has attended sessions of the magistrate or circuit court
27 and been reimbursed for his or her expenses as a juror
28 pursuant to the provisions of section twenty-one of this
29 article, section thirteen, article two of this chapter, or
30 pursuant to an applicable rule or regulation of the Supreme
31 Court of Appeals promulgated pursuant to the provisions of
32 section eight, article five, chapter fifty of this code;

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

35 (6) Has been convicted of perjury, false swearing or any
36 crime punishable by imprisonment in excess of one year

37 under the applicable law of this state, another state or the
38 United States.

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

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

46 (e) A person who is physically disabled and can render
47 competent service with reasonable accommodation is not
48 ineligible to act as juror and may not be dismissed from a jury
49 panel on the basis of disability alone. The circuit judge shall,
50 upon motion by either party or upon his or her own motion,
51 disqualify a disabled juror if the circuit judge finds that the
52 nature of potential evidence in the case including, but not
53 limited to, the type or volume of exhibits or the disabled
54 juror's ability to evaluate a witness or witnesses, unduly
55 inhibits the disabled juror's ability to evaluate the potential
56 evidence. For purposes of this section:

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

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

7

[Enr. Com. Sub. for S. B. No. 74

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

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

Member ~~.....~~
Chairman Senate Committee

.....
Chairman House Committee

SECRET
SEC. OF STATE
SIVA

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FILED

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within *is approved* this the *29th*
Day of *April*, 2013.

.....
Governor

PRESENTED TO THE GOVERNOR

APR 26 2013

Time 11:00 am