

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 74**

5 (By Senator Sypolt)

6 \_\_\_\_\_  
7 [Originating in the Committee on the Judiciary;  
8 reported February 15, 2013.]  
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11  
12 A BILL to amend and reenact §52-1-5a and §52-1-8 of the Code of  
13 West Virginia, 1931, as amended, all relating to redefining  
14 the basis for disqualification of prospective jurors to  
15 include those who have been convicted of any crime punishable  
16 by imprisonment in excess of one year, perjury or false  
17 swearing; and requiring clerks to provide copies of certain  
18 juror qualification questionnaires to counsel of record upon  
19 request.

20 *Be it enacted by the Legislature of West Virginia:*

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

23 **ARTICLE 1. PETIT JURIES.**

24 **§52-1-5a. Jury qualification form; contents; procedure for use;**  
25 **penalties.**

26 (a) Not less than twenty days before the date for which

1 persons are to report for jury duty, the clerk may, if directed by  
2 the court, serve by first-class mail, upon each person listed on  
3 the master list, a juror qualification form accompanied by  
4 instructions necessary for its completion: *Provided*, That the  
5 clerk may, if directed by the court, mail the juror qualification  
6 form to only those prospective jurors drawn for jury service under  
7 the provisions of section seven of this article. Each prospective  
8 juror shall be directed to complete the form and return it by mail  
9 to the clerk within ten days after its receipt. The juror  
10 qualification form is subject to approval by the circuit court as  
11 to matters of form and shall elicit the following information  
12 concerning the prospective juror:

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

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

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

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

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

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

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

25 (8) Whether the juror has any physical or mental disability  
26 substantially impairing the capacity to render satisfactory jury

1 service: *Provided*, That a juror with a physical disability, who  
2 can with reasonable accommodation render competent service, is  
3 eligible for service;

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

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

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

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

21 (b) The juror qualification form shall contain the prospective  
22 juror's declaration that the responses are true to the best of the  
23 prospective juror's knowledge and an acknowledgment that a willful  
24 misrepresentation of a material fact may be punished by a fine of  
25 not more than \$500 or imprisonment for not more than thirty days,  
26 or both fine and imprisonment. Notarization of the juror

1 qualification form shall not be required. If the prospective juror  
2 is unable to fill out the form, another person may assist the  
3 prospective juror in the preparation of the form and indicate that  
4 such person has done so and the reason therefor. If an omission,  
5 ambiguity or error appear in a returned form, the clerk shall again  
6 send the form with instructions to the prospective juror to make  
7 the necessary addition, clarification or correction and to return  
8 the form to the clerk within ten days after its second receipt.

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

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

1 (e) Upon the clerks's receipt of the juror qualification  
2 questionnaires of persons selected as prospective petit jurors, he  
3 or she shall make the questionnaires of the persons so selected  
4 available, upon request, to counsel of record in the trial or  
5 trials for which the persons have been selected as prospective  
6 jurors.

7 **52-1-8. Disqualification from jury service.**

8 (a) ~~The court upon request of a prospective juror or on its~~  
9 ~~own initiative, shall determine on the basis of information~~  
10 ~~provided on the juror qualification form or interview with the~~  
11 ~~prospective juror or other competent evidence whether the any~~  
12 ~~prospective juror is disqualified for jury service on the basis of~~  
13 ~~information provided on the juror qualification form or interview~~  
14 ~~with the prospective juror or other competent evidence. The clerk~~  
15 shall enter this determination in the space provided on the juror  
16 qualification form and on the alphabetical lists of names drawn  
17 from the jury wheel or jury box.

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

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

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

26 (3) Is incapable, by reason of substantial physical or mental

1 disability, of rendering satisfactory jury service. ~~but~~ A person  
2 claiming this disqualification may be required to submit a  
3 physician's certificate as to the disability and the certifying  
4 physician is subject to inquiry by the court at its discretion;

5 (4) Has, within the preceding two years, been summoned to  
6 serve as a petit juror, grand juror or magistrate court juror and  
7 has ~~actually~~ attended sessions of the magistrate or circuit court  
8 and been reimbursed for his or her expenses as a juror pursuant to  
9 the provisions of section twenty-one of this article, section  
10 thirteen, article two of this chapter, or pursuant to an applicable  
11 rule or regulation of the Supreme Court of Appeals promulgated  
12 pursuant to the provisions of section eight, article five, chapter  
13 fifty of this code;

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

16 (6) Has been convicted of perjury, false swearing or ~~other~~  
17 ~~infamous offense~~ any crime punishable by imprisonment in excess of  
18 one year under the applicable law of this state, another state or  
19 the United States.

20 (c) A prospective juror seventy years of age or older is not  
21 disqualified from serving but shall be excused from service by the  
22 court upon ~~the juror's~~ his or her request.

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

1 public.

2 (e) A person who is physically disabled and can render  
3 competent service with reasonable accommodation ~~shall not be~~ is not  
4 ineligible to act as juror ~~or~~ and may not be dismissed from a jury  
5 panel on the basis of disability alone. ~~Provided, That~~ The circuit  
6 judge shall, upon motion by either party or upon his or her own  
7 motion, disqualify a disabled juror if the circuit judge finds that  
8 the nature of potential evidence in the case including, but not  
9 limited to, the type or volume of exhibits or the disabled juror's  
10 ability to evaluate a witness or witnesses, unduly inhibits the  
11 disabled juror's ability to evaluate the potential evidence. For  
12 purposes of this section:

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

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

24 (f) Nothing in this article ~~shall be construed so as to limit~~  
25 ~~in any way~~ limits a party's right to preemptory strikes in civil or  
26 criminal actions.

