

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 74**

5 (SENATOR SYPOLT, *original sponsor*)

6 _____
7 [Passed April 13, 2013; in effect ninety days from passage.]
8 _____

9
10
11 AN ACT to amend and reenact §52-1-5a and §52-1-8 of the Code of
12 West Virginia, 1931, as amended, all relating to redefining
13 the basis for disqualification of prospective jurors to
14 include those who have been convicted of any crime punishable
15 by imprisonment in excess of one year, perjury or false
16 swearing; and requiring clerks to provide copies of certain
17 juror qualification questionnaires to counsel of record upon
18 request.

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

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

22 **ARTICLE 1. PETIT JURIES.**

23 **§52-1-5a. Jury qualification form; contents; procedure for use;**
24 **penalties.**

25 (a) Not less than twenty days before the date for which
26 persons are to report for jury duty, the clerk may, if directed by

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

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

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

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

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

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

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

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

24 (8) Whether the juror has any physical or mental disability
25 substantially impairing the capacity to render satisfactory jury
26 service: *Provided*, That a juror with a physical disability, who can

1 with reasonable accommodation render competent service, is eligible
2 for service;

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

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

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

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

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

1 is unable to fill out the form, another person may assist the
2 prospective juror in the preparation of the form and indicate that
3 such person has done so and the reason therefor. If an omission,
4 ambiguity or error appear in a returned form, the clerk shall again
5 send the form with instructions to the prospective juror to make
6 the necessary addition, clarification or correction and to return
7 the form to the clerk within ten days after its second receipt.

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

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

26

1 (e) Upon the clerk'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, shall determine whether any prospective juror
9 is disqualified for jury service on the basis of information
10 provided on the juror qualification form or interview with the
11 prospective juror or other competent evidence. The clerk shall
12 enter this determination in the space provided on the juror
13 qualification form and on the alphabetical lists of names drawn
14 from the jury wheel or jury box.

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

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

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

23 (3) Is incapable, by reason of substantial physical or mental
24 disability, of rendering satisfactory jury service. A person
25 claiming this disqualification may be required to submit a
26 physician's certificate as to the disability and the certifying

1 physician is subject to inquiry by the court at its discretion;

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

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

13 (6) Has been convicted of perjury, false swearing or any crime
14 punishable by imprisonment in excess of one year under the
15 applicable law of this state, another state or the United States.

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

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

23 (e) A person who is physically disabled and can render
24 competent service with reasonable accommodation is not ineligible
25 to act as juror and may not be dismissed from a jury panel on the
26 basis of disability alone. The circuit judge shall, upon motion by

1 either party or upon his or her own motion, disqualify a disabled
2 juror if the circuit judge finds that the nature of potential
3 evidence in the case including, but not limited to, the type or
4 volume of exhibits or the disabled juror's ability to evaluate a
5 witness or witnesses, unduly inhibits the disabled juror's ability
6 to evaluate the potential evidence. For purposes of this section:

7 (1) Reasonable accommodation includes, but is not limited to,
8 certified interpreters for the hearing impaired, spokespersons for
9 the speech impaired, real-time court reporting and readers for the
10 visually impaired.

11 (2) The court shall administer an oath or affirmation to any
12 person present to facilitate communication for a disabled juror.
13 The substance of the oath or affirmation shall be that any person
14 present as an accommodation to a disabled juror will not deliberate
15 on his or her own behalf, although present throughout the
16 proceedings, but act only to accurately communicate for and to the
17 disabled juror.

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