

1 **H. B. 2892**

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3 (By Delegates P. Smith, Pino and Marcum)
4 [Introduced March 11, 2013; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend and reenact §62-3-3 of the Code of West Virginia,
11 1931, as amended, relating to changing the number of strikes
12 in jury selection in felony cases to provide five strikes to
13 the accused and three strikes to the prosecution.

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

15 That §62-3-3 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 3. TRIAL OF CRIMINAL CASES.**

18 **§62-3-3. Selection of jury in felony cases; striking jurors;**
19 **alternate jurors.**

20 In a case of felony, twenty jurors shall be drawn from those
21 in attendance for the trial of the accused. If a sufficient number
22 of jurors ~~for such panel~~ cannot be procured in this way, the court
23 shall order others to be forthwith summoned and selected until a

1 panel of twenty jurors, free from exception, ~~be completed, from~~
2 ~~which is complete.~~ From this panel the accused may strike off ~~six~~
3 five jurors and the prosecuting attorney may strike off ~~two~~ three
4 jurors. The prosecuting attorney ~~shall first strike off two~~
5 ~~jurors, and then the accused six~~ first strikes off one juror then
6 the accused strikes off one juror. The parties continue in this
7 manner until all strikes have been used. If the accused ~~failed~~
8 fails to strike ~~from such panel~~ the number of jurors this section
9 allows, ~~him to strike,~~ the number not stricken off by him or her
10 shall be stricken off by the prosecuting attorney ~~so as~~ to reduce
11 the panel to twelve. ~~who shall compose the jury for the trial of~~
12 ~~the case.~~ This panel composes the regular jury for trial of the
13 case.

14 Whenever ~~in the opinion of the court~~ is of the opinion that
15 the trial ~~is likely to be a~~ may be a protracted one, ~~the court it~~
16 may direct ~~that not more than~~ up to four jurors, in addition to the
17 regular jury, be called and ~~impanelled to sit~~ impaneled as
18 alternate jurors. Alternate jurors, in the order in which they are
19 called, shall replace jurors who, prior to the time the jury
20 retires to consider its verdict, become unable or disqualified to
21 perform their duties. Alternate jurors shall be drawn in the same
22 manner, ~~shall~~ have the same qualifications, ~~shall~~ be subject to the
23 same examination and challenges, ~~shall~~ take the same oath and ~~shall~~
24 have the same functions, powers, facilities and privileges as the

1 regular jurors. An alternate juror who does not replace a regular
2 juror shall be discharged after the jury retires to consider its
3 verdict. Each side is entitled to one peremptory challenge in
4 addition to those otherwise allowed by law if one or two alternate
5 jurors are ~~to be impanelled~~ impaneled and two peremptory challenges
6 if three or four alternate jurors are ~~to be impanelled~~ impaneled.
7 The additional peremptory challenges may be used against an
8 alternate juror only and the other peremptory challenges allowed by
9 this section may not be used against an alternate juror.

NOTE: The purpose of this bill is to allow the accused to have five strikes from a panel of jurors and to allow the prosecuting attorney to have three strikes from a panel of potential jurors.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.