

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2828

BY DELEGATES SUMMERS, CANESTRARO, MILLER, R. AND

HOLLEN

[Originating in the Committee on the Judiciary;

March 16, 2017.]

1 A BILL to amend and reenact §62-3-3 of the Code of West Virginia, 1931, as amended, relating
2 to changing the number of strikes in jury selection in felony cases to provide five strikes to
3 the accused and three strikes to the prosecution; and setting forth the order the strikes are
4 to be taken.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. TRIAL OF CRIMINAL CASES.

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

1 In a case of felony, twenty jurors shall be drawn from those in attendance for the trial of
2 the accused. If a sufficient number of jurors ~~for such panel~~ cannot be procured in this way, the
3 court shall order others to be forthwith summoned and selected, until a panel of twenty jurors,
4 free from exception, ~~be completed, from which~~ is complete. From this panel the accused may
5 strike off ~~six jurors~~ five jurors and the prosecuting attorney may strike off ~~two jurors~~ three jurors.
6 The prosecuting attorney shall first strike off ~~two~~ three jurors, and then the accused ~~six~~ five. If the
7 accused ~~failed to strike from such panel~~ fails to strike the number of jurors this section allows him
8 ~~or her to strike~~ the number not stricken off by him or her shall be stricken off by the prosecuting
9 attorney, so as to reduce the panel to twelve, ~~who shall compose the jury for the trial of the case.~~
10 This panel composes the regular jury for the trial of the case.

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

18 regular jurors. An alternate juror who does not replace a regular juror shall be discharged after
19 the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition
20 to those otherwise allowed by law if one or two alternate jurors are ~~to be~~ impanelled, and two
21 peremptory challenges if three or four alternate jurors are ~~to be~~ impanelled. The additional
22 peremptory challenges may be used against an alternate juror only, and the other peremptory
23 challenges allowed by this section may not be used against an alternate juror.

NOTE: The purpose of this bill is to decrease the number of strikes a defendant has in a criminal proceeding from six to four from a panel of potential jurors. The bill increases the number of strikes the prosecution has from two to four. The bill also sets forth the order the strikes are to be taken.

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