

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2828**

BY DELEGATES SUMMERS, CANESTRARO, MILLER, R. AND

HOLLEN

[Introduced March 8, 2017; Referred  
to the Committee on the Judiciary.]

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 four strikes  
 3 each to the accused and the prosecution; and setting forth the order the strikes are to be  
 4 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~~ four jurors and the prosecuting attorney may strike off ~~two jurors~~ four jurors.  
 6 The prosecuting attorney ~~shall first strike off two jurors, and then the accused six~~ first strikes off  
 7 two jurors, then the accused strikes off two jurors. The parties continue in this manner until all  
 8 strikes have been used. If the accused ~~failed to strike from such panel~~ fails to strike the number  
 9 of jurors this section allows him or her ~~to strike~~ the number not stricken off by him or her shall be  
 10 stricken off by the prosecuting attorney, so as to reduce the panel to twelve, ~~who shall compose~~  
 11 ~~the jury for the trial of the case.~~ This panel composes the regular jury for the trial of the case.

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

18 take the same oath and ~~shall~~ have the same functions, powers, facilities and privileges as the  
19 regular jurors. An alternate juror who does not replace a regular juror shall be discharged after  
20 the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition  
21 to those otherwise allowed by law if one or two alternate jurors are ~~to be~~ impanelled, and two  
22 peremptory challenges if three or four alternate jurors are ~~to be~~ impanelled. The additional  
23 peremptory challenges may be used against an alternate juror only, and the other peremptory  
24 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.