

ASSEMBLY, No. 3089

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Prohibits juror disqualification based on gender identity or sexual orientation; codifies procedures when discriminatory use of peremptory challenges is alleged.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2020)

1 AN ACT concerning disqualification from jury service amending
2 R.S.10:1-8 and N.J.S.2B:23-10 and supplementing Title 2B of the
3 New Jersey Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. R.S.10:1-8 is amended to read as follows:

9 10:1-8. No citizen possessing all other qualifications prescribed
10 by law shall be disqualified for service as a grand or petit juror in
11 any court on account of race, color, creed, national origin, ancestry,
12 marital status **or**, sex, gender identity, or affectional or sexual
13 orientation, and any officer or other person charged with any duty
14 in the selection or summoning of jurors who shall purposely or
15 knowingly exclude or fail to summon any citizen for the cause
16 aforesaid shall **],** on conviction thereof, be deemed guilty of a
17 misdemeanor **]** be subject to a civil penalty of \$5,000 which shall be
18 collected in a summary proceeding pursuant to the "Penalty
19 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).**],**
20 and be fined not more than \$5,000.00 **]**.
21 (cf: P.L.1970, c.80, s.3)

22
23 2. N.J.S.2B:23-10 is amended to read as follows:

24 2B:23-10. Examination of jurors. a. In the discretion of the
25 court, parties to any trial may question any person summoned as a
26 juror after the name is drawn and before the swearing, and without
27 the interposition of any challenge, to determine whether or not to
28 interpose a peremptory challenge or a challenge for cause. Such
29 examination shall be permitted in order to disclose whether or not
30 the juror is qualified, impartial and without interest in the result of
31 the action. The questioning shall be conducted in open court under
32 the trial judge's supervision.

33 b. (Deleted by amendment, P.L.2007, c.204).

34 c. In any civil or criminal trial, no party shall purposefully use
35 a peremptory challenge to remove a prospective juror on the basis
36 of an assumption that the prospective juror cannot be fair and
37 impartial in carrying out the duties of a juror:

38 (1) due to any personal characteristic set forth in R.S.10:1-8; or

39 (2) because the prospective juror is a member of a
40 constitutionally protected class.

41 (cf: P.L.2007, c.204, s.4)

42
43 3. (New section) a. A party objecting to the peremptory
44 challenge of a prospective juror may establish a prima facie case of
45 purposeful discrimination:

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 (1) by showing that the challenge was exercised in violation of
2 subsection c. of N.J.S.2B:23-10, and

3 (2) by producing evidence sufficient to permit the trial judge to
4 draw an inference of discriminatory purpose.

5 b. When a prima facie case of purposeful discrimination is
6 established, the burden shifts to the party who used the peremptory
7 challenge to show that the exclusion was, in the discretion of the
8 court, the product of an acceptable situation-specific basis and a
9 reasoned, neutral purpose.

10 c. The court shall weigh the basis for the objection to the use of
11 the peremptory challenge against the credibility of the proffered
12 reasons for the prospective juror's exclusion. The court shall
13 determine whether the explanations provided for the use of the
14 peremptory challenge are a pretext or have a reasoned, neutral
15 purpose. If the court finds, by a preponderance of the evidence, that
16 the reasons stated for the use of the peremptory challenge are the
17 product of an acceptable situation-specific basis and have a
18 reasoned, neutral purpose supported by the record, the court shall
19 permit the use of the peremptory challenge. Otherwise, the court
20 shall deny the peremptory challenge and proceed as provided in
21 subsection d. of this section. The court shall state the basis for its
22 ruling on the record.

23 d. In addition to any other sanctions as may be provided by the
24 Rules of Court, if the court denies the exclusion of a prospective
25 juror by the use of peremptory challenge on the basis of purposeful
26 discrimination, the court may employ one or more of the following
27 remedies to assure a fair and impartial trial to all parties, redress the
28 constitutionally impermissible behavior, and expedite proceedings:

29 (1) after consultation with counsel for each party, reseal the
30 wrongfully excused juror;

31 (2) order the forfeiture of the peremptory challenge that was
32 improperly used;

33 (3) dismiss the jury panel and start jury selection anew; or

34 (4) order the forfeiture of one peremptory challenge of the party
35 who sought to use a peremptory challenge for purposeful
36 discrimination or order the addition of one peremptory challenge for
37 the other party.

38
39 4. This act shall take effect immediately.
40
41

42 STATEMENT

43
44 This bill would make it unlawful to disqualify a person from jury
45 service based on the person's gender identity or affectional or
46 sexual orientation.

47 Under R.S.10:1-8, it is unlawful to disqualify a citizen for
48 service as a grand or petit juror based on race, color, creed, national

1 origin, ancestry, marital status, or sex if the citizen possesses all
2 other qualifications prescribed by law. Any officer or other person
3 responsible for the selection or summoning of jurors who excludes
4 or fails to summon any citizen on such basis is guilty of a
5 misdemeanor and subject to a fine of up to \$5,000. This bill would
6 add gender identity or affectional or sexual orientation to the
7 enumerated grounds set out in the statute.

8 P.L.1978, c.95, the “New Jersey Code of Criminal Justice,”
9 abolished the term “misdemeanor.” This bill would update the
10 statute to be consistent with the Code’s classification scheme.
11 Under this scheme, a “misdemeanor” under these circumstances
12 would be treated as a crime of the fourth degree. (See N.J.S.2C:1-4,
13 2C:1-5, and 2C:43-1). This bill amends R.S.10:1-8 accordingly,
14 making a violation of the statute a crime of the fourth degree. A
15 crime of the fourth degree is generally punishable by a term of
16 imprisonment of up to 18 months or a fine up to \$10,000, or both.

17 The bill deletes the reference in R.S.10:1-8 to a maximum fine of
18 \$5,000 for a violation of this offense. This would make the statute
19 consistent with the maximum fine of \$10,000 that is generally
20 imposed under the Code for a crime of the fourth degree.

21 R.S.10:1-8 provides that no citizen possessing all other
22 qualifications prescribed by law shall be disqualified for jury service
23 on account of race, color, creed, national origin, ancestry, marital
24 status, or sex. This bill would add gender identity and affectional or
25 sexual orientation to this list of grounds enumerated in the statute.

26 This bill would add a new section 2 to the bill amending
27 N.J.S.2B:23-10, concerning prospective jurors, to provide that a party
28 shall not use a peremptory challenge to remove a prospective juror on
29 the basis of an assumption that the prospective juror is biased merely
30 because of a characteristic set forth in R.S.10:1-8 or any other
31 constitutionally impermissible grounds.

32 Peremptory challenges, which are authorized by N.J.S.2B:23-10
33 and N.J.S.2B:23-13 and by R.1:8-3 of the court rules, allow a party to
34 dismiss a prospective juror before trial without stating a reason for the
35 dismissal.

36 The bill also adds a new section 3 concerning peremptory
37 challenges. This new section is modeled on standards set out in
38 “Principles for Juries & Jury Trials,” promulgated by the American
39 Bar Association in 2005. Section 3 provides that it shall be presumed
40 that each party is utilizing peremptory challenges validly, without
41 basing those challenges on constitutionally impermissible reasons.

42 Under section 3 of the bill, a party objecting to the challenge of a
43 prospective juror on the grounds that the challenge has been exercised
44 on a constitutionally impermissible basis, establishes a prima facie
45 case of purposeful discrimination:

46 (1) by showing that the challenge was exercised against a member
47 of a constitutionally cognizable group, and

1 (2) by demonstrating that this fact, and any other relevant
2 circumstances, raise an inference that the party challenged the
3 prospective juror because of the juror's membership in that group.

4 When a prima facie case of discrimination is established, the
5 burden shifts to the party making the challenge to show a
6 nondiscriminatory basis for the challenge.

7 The bill provides that the court shall evaluate the credibility of the
8 proffered reasons. If the court finds that the reasons stated are
9 constitutionally permissible and are supported by the record, the court
10 shall permit the challenge. If the court finds that the reasons for the
11 challenge are constitutionally impermissible, the court shall deny the
12 challenge and, after consultation with counsel, determine whether
13 further remedy is appropriate. The court shall state the reasons,
14 including whatever factual findings are appropriate, for sustaining or
15 overruling the objection on the record.

16 The bill sets out specific procedures that would go into effect if
17 there is an allegation that a party is using peremptory challenges in a
18 discriminatory manner.

19 Under the bill, a party objecting to the peremptory challenge of a
20 prospective juror may establish a prima facie case of purposeful
21 discrimination:

22 (1) by showing that the challenge was exercised in violation of
23 subsection c. of N.J.S.2B:23-10, and

24 (2) by producing evidence sufficient to permit the trial judge to
25 draw an inference of discriminatory purpose.

26 The bill provides that when a prima facie case of purposeful
27 discrimination is established, the burden shifts to the party who
28 used the peremptory challenge to show that the exclusion was, in
29 the discretion of the court, the product of an acceptable situation-
30 specific basis and a reasoned, neutral purpose.

31 The court would weigh the basis for the objection to the use of
32 the peremptory challenge against the credibility of the proffered
33 reasons for the prospective juror's exclusion. The court would
34 determine whether the explanations provided for the use of the
35 peremptory challenge are a pretext or have a reasoned, neutral
36 purpose. If the court finds, by a preponderance of the evidence, that
37 the reasons stated for the use of the peremptory challenge are the
38 product of an acceptable situation-specific basis and have a
39 reasoned, neutral purpose supported by the record, the court would
40 permit the use of the peremptory challenge. Otherwise, the court
41 would deny the peremptory challenge and proceed as provided in
42 the amendments. The court would state the basis for its ruling on
43 the record.

44 The bill further provides that, in addition to any other sanctions
45 as may be provided by the Rules of Court, if the court denies the
46 exclusion of a prospective juror by the use of peremptory challenge

1 on the basis of purposeful discrimination, the court may employ one
2 or more of the following remedies to assure a fair and impartial trial
3 to all parties, redress the constitutionally impermissible behavior,
4 and expedite proceedings:

5 (1) after consultation with counsel for each party, reseal the
6 wrongfully excused juror;

7 (2) order the forfeiture of the peremptory challenge that was
8 improperly used;

9 (3) dismiss the jury panel and start jury selection anew; or

10 (4) order the forfeiture of one peremptory challenge of the party
11 who sought to use a peremptory challenge for purposeful
12 discrimination or order the addition of one peremptory challenge for
13 the other party.

14 The bill also eliminates the criminalization in current law in
15 R.S.10:1-8 for disqualifying a juror on discriminatory grounds. In the
16 view of the sponsor, criminal prosecutions for this violation are
17 unlikely. Under the bill, a person who violates the statute would not be
18 guilty of a crime but would be subject to a civil penalty of \$5,000, to
19 be collected under the "Penalty Enforcement Law of 1999,"
20 P.L.1999, c.274 (C.2A:58-10 et seq.). The bill also adds a
21 requirement that a violation of the statute would occur only if the
22 person acts purposely or knowingly.