

SENATE, No. 2460

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED JULY 14, 2016

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

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.



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:

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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, and be fined not more than \$5,000.00**]** be subject to
18 a civil penalty of \$5,000 which shall be collected in a summary
19 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
20 P.L.1999, c.274 (C.2A:58-10 et seq.).

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)

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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.

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39 4. This act shall take effect immediately.

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STATEMENT

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44 R.S.10:1-8 provides that no citizen possessing all other
45 qualifications prescribed by law shall be disqualified for jury
46 service on account of race, color, creed, national origin, ancestry,
47 marital status, or sex.

1 This bill would add gender identity and affectional or sexual
2 orientation to this list of grounds enumerated in the statute. The bill
3 would also eliminate the criminalization in R.S.10:1-8 for
4 disqualifying a juror on discriminatory grounds. Under the bill, a
5 person who violates the statute would not be guilty of a crime but
6 would be subject to a civil penalty of \$5,000, to be collected under the
7 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
8 et seq.). The bill would also add a requirement that a violation of the
9 statute would occur only if the person acts purposely or knowingly.

10 In addition, this bill amends N.J.S.2B:23-10, concerning
11 prospective jurors, to provide that a party shall not use a peremptory
12 challenge to remove a prospective juror on the basis of an assumption
13 that the prospective juror is biased merely because of a characteristic
14 set forth in R.S.10:1-8 or any other constitutionally impermissible
15 grounds.

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

20 The bill would also supplement the current law concerning
21 peremptory challenges to establish specific procedures which would
22 go into effect if there is an allegation that a party is using peremptory
23 challenges in a discriminatory manner. This section is modeled on
24 standards set out in "Principles for Juries & Jury Trials," promulgated
25 by the American Bar Association in 2005.

26 Under the bill, a party objecting to the peremptory challenge of a
27 prospective juror may establish a prima facie case of purposeful
28 discrimination:

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

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

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

38 The court would weigh the basis for the objection to the use of
39 the peremptory challenge against the credibility of the proffered
40 reasons for the prospective juror's exclusion. The court would
41 determine whether the explanations provided for the use of the
42 peremptory challenge are a pretext or have a reasoned, neutral
43 purpose. If the court finds, by a preponderance of the evidence, that
44 the reasons stated for the use of the peremptory challenge are the
45 product of an acceptable situation-specific basis and have a
46 reasoned, neutral purpose supported by the record, the court would
47 permit the use of the peremptory challenge. Otherwise, the court
48 would deny the peremptory challenge and proceed as provided in

1 the amendments. The court would state the basis for its ruling on
2 the record.

3 The bill provides that, in addition to any other sanctions as may
4 be provided by the Rules of Court, if the court denies the exclusion
5 of a prospective juror by the use of peremptory challenge on the
6 basis of purposeful discrimination, the court may employ one or
7 more of the following remedies to assure a fair and impartial trial to
8 all parties, redress the constitutionally impermissible behavior, and
9 expedite proceedings:

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

12 (2) order the forfeiture of the peremptory challenge that was
13 improperly used;

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

15 (4) order the forfeiture of one peremptory challenge of the party
16 who sought to use a peremptory challenge for purposeful
17 discrimination or order the addition of one peremptory challenge for
18 the other party.