

**SENATE, No. 2249**

**STATE OF NEW JERSEY**  
**221st LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Senator M. TERESA RUIZ**

**District 29 (Essex and Hudson)**

**Senator ANDREW ZWICKER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**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**

Introduced Pending Technical Review by Legislative Counsel.



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  
47 on the basis of purposeful discrimination, the court may employ one  
48 or more of the following remedies to assure a fair and impartial trial

1 to all parties, redress the constitutionally impermissible behavior,  
2 and expedite proceedings:

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

5 (2) order the forfeiture of the peremptory challenge that was  
6 improperly used;

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

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

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