

Chairman Clippinger, Vice Chair Bartlett and fellow members of Judiciary,

I am asking for a favorable vote on HB1079, a bill that would change the rules on jury examination, voir dire, in our State courts system. The single, primary, and overriding principle or purpose of voir dire is to ascertain the existence of cause for disqualification from the jury. Presently the procedure for jury selection provides such limited information to judges and counsel, i.e., demographic information on the prospective juror, that it would be impossible to determine whether a juror has an underlying bias that would impair their ability to be impartial in a particular case.

HB 1079 specifies that the purpose of jury examination, in all jury trials in any State court, must be to (1) identify and remove prospective jurors who are unable to serve fairly and impartially and (2) allow the parties to obtain information that may provide guidance for the use of peremptory challenges and challenges for cause.

The present law does not truly allow for “voir dire” in the State of Maryland. The information provided to the lawyers, judges alike is exclusively demographic in nature. After the jury examination, the parties in a civil or criminal proceeding may exercise a peremptory challenge excluding a prospective juror without stating a reason.

Case law in Maryland openly discusses this failure in our jury selection process and in several cases such as *Collins v. State*, 463 Md. 372, 404 (2019) the Court states that Maryland “does not allow “voir dire” in the manner and for the purpose it is designed; that is, for the purpose of supplying information to trial counsel that may guide them in the strategic use of their peremptory challenges.” In essence Counsel operates with its hands tied. The only information available to an attorney or a judge in the jury selection process is that which appears on the jury form – demographic information such as name, age, sex, marital status, employment, and zip code. Under the present law judges and lawyers alike may not be able to assess whether a juror has implicit or in some cases explicit biases based on other background information. Where information base is strictly demographic information, we create an environment where judge or counsel may improperly strike a juror based because of race or gender. And we risk running afoul of the U.S. Constitution which protects the right to a fair trial by clearly stating that a juror cannot be disqualified strictly on the grounds of race or gender. But how are we to know that was the underlying objective or rationale was in disqualifying the potential juror when counsel may exclude a juror without stating a reason? Additionally, with no right to interview a prospective juror with more probing questions, we are asking the potential juror to self-assess whether they are fit to serve on a particular jury even if their overall demographic profile would allow them to do so.

Passage of this bill would bring the State of Maryland in line with most States on how the Courts conduct jury selection and enable judges and lawyers to dig deeper than demographic information to ascertain whether a potential juror harbors biases that should exclude them from the pool of qualified jurors. Additionally, this change would protect the Constitutional right to a fair trial avoiding any violation of that Constitutional right where a juror is excluded exclusively because of race or gender.

For all the reasons above, I ask for a favorable vote and HB1079 which will remove this controversial and questionable jury selection practice from our Maryland Judicial System.

Respectfully Submitted,

Delegate N. Scott Phillips