

One-Pager: The Disability and Age in Jury Service Nondiscrimination Act

28 U.S.C § 1862 prohibits exclusion from federal jury service “on account of race, color, religion, sex, national origin or economic status,” but not on account of disability or age. The *Disability and Age in Jury Service Nondiscrimination Act* would right this wrong by adding the words “disability” and “age” alongside the other protected characteristics.

Additionally, under 28 U.S.C. § 1865(b)(2)(3)(4), jurors that are at least 18 years old are qualified to serve unless they are “unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form,” “unable to speak the English language,” or are “incapable, by reason of mental or physical infirmity, to render satisfactory jury service.” The bill clarifies that no person may be disqualified from serving on a federal jury under those provisions on account of disability if they are able to meet these qualifications with reasonable accommodations. In other words, the bill clarifies that people with disabilities, including deaf, hard-of-hearing, blind people, or others with communications disabilities, are not “unable to read, write, and understand the English language” or “unable to speak the English language” within the meaning of the statute. It also clarifies that jurors with communications or non-communications disabilities who are capable of satisfactorily completing their jury duties with reasonable accommodations are qualified to serve.

Twenty-seven states have statutes that prohibit discrimination or disqualification from state jury service on account of a disability (AK, AZ, CA, CO, CT, FL, HI, ID, IN, IO, KY, ME, MD, MA, MN, NM, ND, OR, RI, SC, SD, TN, TX, UT, VA, WV, and WI). Eleven states have policies that prohibit age-based jury discrimination (AK, AZ, CA, ID, IO, MA, MN, OR, UT, WI, WY).

The Americans with Disabilities Act does not extend to the federal judiciary. Although the Judicial Conference of the United States has a policy to accommodate jurors with communication disabilities, discrimination against disabled and elderly persons in federal jury service has been, and remains, a problem. For example:

- In *United States v. Watson*, 483 F.3d 328 (D.C. Cir. 2007), the appeals court affirmed the peremptory striking of two visually impaired jurors because they were not members of a suspect class to which heightened scrutiny applied, rejecting the argument that such scrutiny “should be extended to the blind in view of the long history of prejudice and discrimination against the disabled and the Supreme Court's suggestion . . . that jury service is a fundamental right.” *Id.* at 829.
- In *United States v Grimmond*, 137 F.3d 823 (4th Cir. 1998), the court affirmed the peremptory striking of a 65-year-old juror — described by the prosecution as “elderly” — under Fourth Circuit precedent “that age is a legitimate race-neutral factor that may be relied upon by a prosecutor for challenging a potential juror.”

The bill is endorsed by: Access Ready, Alliance for Justice, American Association for Justice, American Council of the Blind, American Foundation for the Blind, American Geriatrics Society, The Arc, Bay State Council of the Blind, Bazelon Center for Mental Health Law, Disability Rights Advocates, Gerontological Society of America, Hearing Loss Association of America, Justice in Aging, National Association of Councils on Developmental Disabilities, National Association of Criminal Defense Lawyers, National Association of the Deaf, National Federation of the Blind, Paralyzed Veterans of America, United Spinal Association, and VisionServe Alliance

No adult should be prevented from serving on a federal jury on the basis of a disability or their age.