

1 1.

H. B. 2600

2

3

(By Delegates Canterbury, Ihle and J. Nelson)

4

[Introduced February 4, 2015; referred to the

5

Committee on the Judiciary.]

6

7

8

9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,

11 designated §62-3-9, relating to the jury's power to judge the just application of the law and

12 to deliver a verdict according to conscience in a criminal proceeding; requiring a judge to

13 instruct a jury regarding the availability of jury nullification and protecting the right of a

14 criminal defendant to present evidence and testimony in support of jury nullification.

15 Be it enacted by the Legislature of West Virginia:

16 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new

17 section, designated §62-3-9, to read as follows:

18 **ARTICLE 3. TRIAL OF CRIMINAL CASES.**

19 **§62-3-9. Role of jury in criminal proceedings; mandatory jury instructions.**

20 (a) This section shall be known and may be cited as the "Fair Trial Act."

21 (b) Except as otherwise provided by law, the jury is the exclusive judge of the facts. The jury

22 is bound to receive the law from the court and be governed thereby, except if a jury determines that

1 a defendant is guilty according to the law and that the law is unjustly applied to the defendant, the
2 jury may determine not to apply the law to the defendant and find the defendant not guilty or guilty
3 of a lesser included offense.

4 (c) The judge in a criminal proceeding shall, before the commencement of a criminal trial,
5 read the following instructions to the jury: "Members of the Jury, this is a criminal case and in a
6 criminal case, the jury are the judges of the law as well as the facts in the case. So that whatever I
7 tell you about the law, while it is intended to be helpful to you in reaching a just and proper verdict
8 in the case, it is not binding upon you as members of the jury and you may accept or reject it. And
9 you may apply the law as you apprehend it to be in the case."

10 (d) A defendant has the right to inform the jury of the jury's power to judge the just
11 application of the law and to vote on the verdict according to conscience. Failure to allow the
12 defendant to inform the jury of the jury's power is grounds for a mistrial.

13 (e) Notwithstanding any other law, the court shall allow the defendant to present to the jury,
14 for its consideration, evidence and testimony relevant to the exercise of the jury's power under this
15 section.

16 (f) The state may rebut any evidence introduced under this section with evidence of a similar
17 nature.

18 (g) If, at the close of the state's case, the trial judge determines that insufficient evidence
19 exists to support a jury verdict of guilty, he or she may issue a directed verdict of acquittal.

NOTE: The purpose of this bill is to affirm the jury's power to judge the just application of the law and to deliver a verdict according to conscience in a criminal proceeding; to require a judge

to instruct a jury regarding the availability of jury nullification; and to protect the right of a criminal defendant to present evidence and testimony in support of jury nullification.

This section is new; therefore, it has been completely underscored.