

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2600**

**2015 Carryover**

(BY DELEGATES CANTERBURY, IHLE AND J. NELSON)

[Introduced January 13, 2016; referred to the  
Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §62-3-9, relating to the jury's power to judge the just application of the law and  
 3 to deliver a verdict according to conscience in a criminal proceeding; requiring a judge to  
 4 instruct a jury regarding the availability of jury nullification and protecting the right of a  
 5 criminal defendant to present evidence and testimony in support of jury nullification.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §62-3-9, to read as follows:

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

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

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

2 (b) Except as otherwise provided by law, the jury is the exclusive judge of the facts. The  
 3 jury is bound to receive the law from the court and be governed thereby, except if a jury  
 4 determines that a defendant is guilty according to the law and that the law is unjustly applied to  
 5 the defendant, the jury may determine not to apply the law to the defendant and find the defendant  
 6 not guilty or guilty of a lesser included offense.

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

13 (d) A defendant has the right to inform the jury of the jury's power to judge the just  
 14 application of the law and to vote on the verdict according to conscience. Failure to allow the

15 defendant to inform the jury of the jury's power is grounds for a mistrial.

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

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

21 (g) If, at the close of the state's case, the trial judge determines that insufficient evidence  
22 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.