

SENATE BILL 333

Introduced by Rye, et al.

2/08	Introduced
2/08	Referred to Judiciary
2/08	First Reading
2/18	Hearing
2/19	Committee Report--Bill Not Passed
2/19	Adverse Committee Report Adopted

1 ~~SENATE~~ BILL NO. 333
2 INTRODUCED BY Rep. Whalen
3 Sen. NATH
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A FULLY
5 INFORMED JURY; AND AMENDING SECTIONS 25-7-102, 26-1-201, AND
6 46-16-103, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Fully informed jury. (1) (a)

10 Whenever government is one of the parties in a trial by
11 jury, the court shall inform the jurors that each of them
12 has an inherent right to vote on the verdict, in the
13 direction of mercy, according to the juror's own conscience
14 and sense of justice.

15 (b) The court shall allow any party to the trial to
16 present to the jury, for its consideration, evidence and
17 testimony relating to the motives and circumstances of the
18 defendant and the extent to which the defendant actually
19 harmed another person. Any party to the trial may also
20 present to the jury arguments regarding the spirit, intent,
21 merits, and constitutionality of any law itself and its
22 applicability to the case at hand.

23 (c) Trial jurors shall acknowledge by oath that they
24 understand this right, and a potential juror may not be
25 disqualified from serving on a jury for expressing a

1 willingness to consider that testimony or evidence, to
2 evaluate the law or its application, or to vote on the
3 verdict according to conscience or sense of justice.

4 (2) Before the jury hears a case and again before jury
5 deliberation begins, the court shall inform the jurors of
6 their rights in these words:

7 "As jurors, your first responsibility is to decide
8 whether the defendant has broken the law. If you determine
9 that the evidence will support a finding of guilt or
10 liability as charged, you may make that finding.

11 However, if that finding would violate your conscience
12 or sense of justice, you may exercise your right to
13 consider, in addition to the evidence and testimony
14 presented:

15 (1) the motives and the circumstances of the defendant;

16 (2) the extent to which the defendant's actions
17 actually damaged the rights of another person; and

18 (3) the merits of the law itself and the wisdom of
19 applying it to the defendant in the case before you.

20 The considerations may be used as a basis for finding a
21 criminal defendant not guilty or guilty of a lesser offense
22 that is wholly contained in the original charge. In a civil
23 case, the considerations may be used as a basis for finding
24 the defendant not liable or liable for less than the amount
25 of damages claimed by the plaintiff.

1 In no case may you escalate the charges against a
2 criminal defendant or increase the award to be paid by a
3 civil defendant beyond the value of the damages claimed in
4 the original complaint made by the plaintiff.

5 The court cautions that with the exercise of your right
6 to vote according to your own sense of right and wrong,
7 instead of strictly according to the law, comes full
8 personal, moral accountability, both to yourself and to your
9 community, for the verdict you bring in."

10 (3) Failure to so inform the jury or to hear the
11 jurors' acknowledgment by oath that they understand the
12 information given them or any other infraction of
13 subsections (1) and (2) is grounds for mistrial and another
14 trial by jury.

15 **Section 2.** Section 25-7-102, MCA, is amended to read:

16 "25-7-102. Issues of law to be decided by court. Except
17 as provided in Article II, section 7, of the Montana
18 constitution and [section 1], all questions of law,
19 including the admissibility of testimony, the facts
20 preliminary to such admission, the construction of statutes
21 and other writings, and other rules of evidence, are to be
22 decided by the court unless they are referred upon consent,
23 and all discussions of law are to be addressed to the
24 court."

25 **Section 3.** Section 26-1-201, MCA, is amended to read:

1 "26-1-201. Questions of law. Except as provided in
2 Article II, section 7, of the Montana constitution and
3 [section 1], all questions of law, including the
4 admissibility of testimony, the facts preliminary to such
5 admission, the construction of statutes and other writings,
6 and other rules of evidence, must be decided by the court."

7 **Section 4.** Section 46-16-103, MCA, is amended to read:

8 "46-16-103. Who decides questions of law and fact. (1)
9 All prosecutions deciding issues of fact must be tried by
10 the court and jury, except on a plea of guilty.

11 (2) Questions Except as provided in [section 1],
12 questions of law must be decided by the court and questions
13 of fact by the jury, except that on a trial for criminal
14 defamation, the jury shall determine both questions of law
15 and of fact. Questions of law and fact must be decided by
16 the court when a trial by jury is waived under
17 46-16-110(3)."

18 **NEW SECTION. Section 5.** Codification instruction.
19 [Section 1] is intended to be codified as an integral part
20 of Title 25, chapter 7, part 1, and the provisions of Title
21 25, chapter 7, part 1, apply to [section 1].

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