

1 HOUSE BILL NO. 332

2 INTRODUCED BY B. WAGNER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A JURY MAY JUDGE BOTH THE FACTS AND
5 THE LAW APPLICABLE TO A CIVIL OR CRIMINAL JUDICIAL PROCEEDING; AND AMENDING SECTIONS
6 25-7-102, 25-7-302, 26-1-201, AND 46-16-103, MCA."

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

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10 **NEW SECTION. Section 1. Jury to decide questions of law and fact.** Notwithstanding any other law
11 to the contrary, the following provisions apply:

12 (1) The legislature recognizes that the authority for trial jurors to judge the law as well as the facts
13 provides protection for freedom and is consistent with the historic intent for the right to jury trial and that jurors
14 may not be prevented from, punished for, or excluded for knowing about or exercising this historic prerogative.

15 (2) In all jury trials, the parties have the right to argue to the jurors that a law is unconstitutional, is
16 unconstitutional as applied, or should be nullified for any other reason. Upon request by a party, the court in any
17 jury trial shall inform the jurors that the jurors may judge both the facts and the law in the case. Denial of the
18 instruction is reversible error.

19 (3) In all criminal trials, the court shall inform the jurors that the jurors may vote their conscience to acquit
20 an accused in spite of technical guilt. Denial of the instruction is reversible error.

21 (4) In all jury trials, jurors may not be prevented from having access to the state and federal constitutions
22 and any statute books a juror might request.

23 (5) Juries in all criminal trials must be informed of the relevant sentence or sentencing ranges that will
24 be applied if an accused is convicted. Juries may offer sentencing recommendations within these ranges if they
25 render verdicts of guilty.

26 (6) Obstruction of this section is reversible error.

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

29 **"25-7-102. Issues of law to be decided by court.** Except as provided in Article II, section 7, of the
30 Montana constitution and in [section 1], all questions of law, including the admissibility of testimony, the facts

1 preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are
 2 to be decided by the court unless they are referred upon consent, and all discussions of law are to be addressed
 3 to the court."

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5 **Section 3.** Section 25-7-302, MCA, is amended to read:

6 **"25-7-302. Directed verdict when no issues of fact.** ~~Where~~ Except as provided in [section 1], when,
 7 upon the trial of an issue by a jury, the case presents only questions of law, the judge may direct the jury to render
 8 a verdict in favor of the party entitled thereto."

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10 **Section 4.** Section 26-1-201, MCA, is amended to read:

11 **"26-1-201. Questions of law.** Except as provided in Article II, section 7, of the Montana constitution and
 12 in [section 1], all questions of law, including the admissibility of testimony, the facts preliminary to such admission,
 13 the construction of statutes and other writings, and other rules of evidence, must be decided by the court."

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15 **Section 5.** Section 46-16-103, MCA, is amended to read:

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

18 (2) ~~Questions~~ Except as provided in [section 1], questions of law must be decided by the court and
 19 questions of fact by the jury, except that on a trial for criminal defamation, the jury shall determine both questions
 20 of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under
 21 46-16-110(3)."

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23 NEW SECTION. **Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an
 24 integral part of Title 25, chapter 7, part 5, and the provisions of Title 25, chapter 7, part 5, apply to [section 1].

25 (2) [Section 1] is intended to be codified as an integral part of Title 46, chapter 16, and the provisions
 26 of Title 46, chapter 16, apply to [section 1].

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28 NEW SECTION. **Section 7. Saving clause.** [This act] does not affect rights and duties that matured,
 29 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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