

LEGAL SERVICES

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MEMORANDUM

February 18, 2014

SUBJECT: Jury Nullification (Work Order No. 28-LS1467\U)

TO: Representative Tammie Wilson
Attn: Theresa Woldstad

FROM: Doug Gardner
Director

TO Clerk
2/18 1:20 pm

I want to make you aware of a potential constitutional argument raised by the issue commonly referred to as "jury nullification" in the bill that is enclosed with this memorandum. While jury nullification is not likely inherently unconstitutional, constitutional issues relating to due process and equal protection could eventually develop. *See, Sparf v. United States*, 156 U.S. 51, 102 (1895) in which the United States Supreme Court ruled that judges have no duty to inform jurors that they have an inherent ability to judge the law ("it is the duty of juries in criminal cases to take the law from the court, and apply that law to the facts as they find them to be from the evidence.").

A basic tenet of our criminal justice system is that the criminal laws should be applied fairly and equally to all. If defendants are allowed to argue to the jury that the law should not apply to them in an individual case, how are we to know that the law is being applied fairly and equally to all? Further, it is the legislature's duty, on a statewide basis, to enact the laws and to decide what actions or inactions, and the circumstances thereof, that are to be subject to criminal penalties. Will the law be applied fairly and equally to all if the law is subject to argument in each individual case that it should not be applied to an individual defendant? Will juries in certain areas of the state decide that certain laws will not apply to individuals in those areas? Should an unpopular criminal law be rejected by the public by its application only on an individual basis based upon an argument by the defense or should it be rejected by referendum in the manner provided by the constitution? I do not know the answers to these questions and am only able to identify the issues.

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Enclosure