



*Jim Justice*  
*Governor of West Virginia*

March 25, 2020

**VIA HAND DELIVERY**

The Honorable Mac Warner  
Secretary of State  
Suite 157-K  
State Capitol  
Charleston, WV 25305

Re: Enrolled Committee Substitute for Senate Bill 692

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for Senate Bill 692.

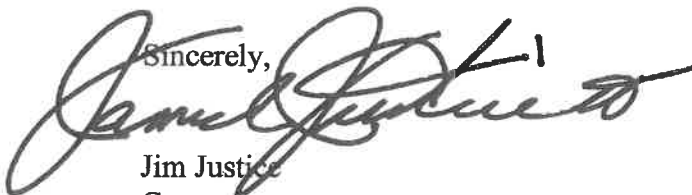
While the intent of the bill is surely laudable, Enrolled Committee Substitute for Senate Bill 692 would place an incredible burden on the courts and resources of this state and each county by requiring separate trials as a matter of right, without requiring any showing of prejudice. The United States Constitution and the West Virginia Constitution guarantee this right to those indicted or charged jointly if issues of co-defendant statements or finger-pointing arise during a unitary trial. In other words, separate trials are guaranteed if a codefendant's testimony or admissible statement would implicate a codefendant. *See, e.g., Bruton v. United States*, 391 U.S. 123 (1968).

Further, the bill intends to supersede rules of the Supreme Court of Appeals of West Virginia that already provide for separate trials in appropriate circumstances. Article VIII, §3 of the West Virginia Constitution reads, "The court shall have the power to promulgate rules for all cases and proceedings, civil and criminal, for all of the courts of the state relating to writs, warrants, process, practice and procedure, which shall have the force and effect of law." Rule 14(b) of the West Virginia Rules of Criminal Procedure presently contemplates and permits joint trials of defendants subject to constitutional and evidentiary prejudice. The rule reads, in pertinent part, "[i]f the joinder of a defendant in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the State, the Court may sever the defendants' trials, or provide whatever other relief that justice requires." Relief may be granted in felony or misdemeanor trials under the Rule.

OFFICE OF THE GOVERNOR

Because of the burden this bill would place on our courts and our state's and county's limited resources, because the right to a separate trial is protected under the Constitution and the West Virginia Rules of Criminal Procedure, and because the bill unconstitutionally infringes on the responsibility of the Supreme Court of Appeals of West Virginia to promulgate rules for proceedings in this state, I must disapprove and return the Enrolled Committee Substitute for Senate Bill 692.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice", with a long horizontal flourish extending to the right.

Jim Justice  
Governor

cc: The Honorable Mitch Carmichael  
President of the Senate  
The Honorable Roger Hanshaw  
Speaker of the House of Delegates