

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 90

INTRODUCER: Senator Margolis

SUBJECT: Jury Composition

DATE: April 14, 2015

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 90 increases from six to twelve persons the number of jurors required in life-felony cases. Currently, only capital cases require twelve-member juries. Juries for other cases will continue to be six-person juries.

**II. Present Situation:**

**Jury Pools**

Jurors are selected from driver's license rolls maintained by the Department of Highway Safety and Motor Vehicles (DHSMV).<sup>1</sup> To serve as a juror, a person must be 18 years old or older, a United States citizen, and a Florida resident. People without driver's licenses are also eligible for juror service if they have an identification card from the DHSMV or execute an affidavit for service.<sup>2</sup>

**The Number of Jurors Required in Felony Cases**

Section 913.10, F.S., requires six-person juries to preside in most criminal cases, and 12-person juries in capital cases.

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<sup>1</sup> Section 40.01, F.S.

<sup>2</sup> Section 40.011(3) and (4), F.S.

Many states require 12-member juries in all felony cases.<sup>3</sup> Arizona requires a 12-member jury if the prosecution seeks a sentence of 30 years or longer.<sup>4</sup> Indiana requires 12-member juries for certain felonies or enhanced penalty charges.<sup>5</sup> Louisiana requires 12-member juries where punishment involves confinement at hard labor.<sup>6</sup> New Jersey requires 12-member juries in all criminal cases.<sup>7</sup> Indiana, Oregon, and Washington, D.C., allow the parties to consent to less than the standard number of jurors.<sup>8</sup>

### **Life Felonies**

Life felonies are generally treated as reclassifications of other offenses from first degree felonies to life felonies or as enhanced penalties for crimes with aggravating circumstances.<sup>9</sup> Life felonies are punishable by life imprisonment<sup>10</sup> and \$15,000 in fines.<sup>11</sup>

### **Jury Selection**

During jury selection in criminal cases, the state and the defense are each able to remove potential jurors from serving as jury members for a particular case. To remove a juror, counsel must notify the court that he or she is challenging the service of an individual juror.

Section 913.03, F.S., establishes grounds for challenges for cause of individual jurors, which are:

- The juror does not meet qualifications required by law;
- The juror is not of sound mind or suffers from a physical condition that renders him or her incapable of performing duties required of a juror;
- The juror has a state of mind or conscientious beliefs that preclude him or her of reaching a finding of guilt or innocence unless the court establishes that the person can render an impartial verdict based on the evidence;

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<sup>3</sup> These include Alabama, Alaska, Arkansas, California, Colorado, Delaware, the District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. National Conference of State Legislatures (NCSL), *Felony Juries*, <http://data.ncsl.org/QvAJAXZfc/opedoc.htm?document=Public%20App/SCO.qvw&host=QVS@qlikviewisa&anonymous=true&bookmark=Document/BM185> (last visited April 13, 2015).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Email correspondence from Jonathan Griffin, NCSL (April 13, 2015).

<sup>9</sup> Offenses reclassified from a first degree felony to a life felony include: an offense in which the use of a weapon or firearm is an essential element and during the commission of the felony the person carries, displays, uses, threatens to use, or attempts to use the weapon or firearm or commits an aggravated battery (s. 775.087(1)(a), F.S.); a person who without consent takes a firearm from a law enforcement officer lawfully engaged in his or her duties and commits any other crime involving the firearm (s. 775.0875(2)(a)1., F.S.); and a person who commits a gang-related offense punishable by a first degree felony (s. 874.04(2)(c), F.S.). Additionally, a person who kidnaps a child under the age of 13 and commits aggravated child abuse, sexual battery, lewd or lascivious conduct, prostitution, or child exploitation on the child commits a life felony (s. 787.01(3)(a), F.S.); and a person who commits human trafficking for commercial sexual activity of a child under the age of 18 commits a life felony (s. 787.06(3)(g), F.S.).

<sup>10</sup> Section 775.082(3)(a)3., F.S.

<sup>11</sup> Section 775.083(1)(a), F.S.

- The juror has certain ties to the case, such as serving on the grand jury that returned an indictment; serving on a former jury trying that defendant in the same case or another person for the same offense charged; or serving as a juror in a civil action related to the criminal charge;
- The juror is an adverse party in a civil action;
- The juror is related by blood or marriage within the third degree to parties in the case;
- The juror served as a state or defense witness at the preliminary hearing or before the grand jury or is going to be a witness for either party at trial; or
- The juror is a surety on the defendant's bail bond.

Either party may request an unlimited number of the removal of jurors based on challenges for cause. Peremptory challenges, or challenges for other than cause, however, are limited to:

- Ten challenges, if the offense is punishable by death or life imprisonment.
- Six challenges, if the offense is punishable by more than 12 months imprisonment but not death or life.
- Three challenges for all other offenses.<sup>12</sup>

The Equal Protection Clause of the United State Constitution prohibits peremptory challenges of a juror for the sole purpose of excluding a person from service based on the race of the juror. The court has long considered this practice of exclusion an impermissible denial of a citizen's honor and privilege of serving on a jury.<sup>13</sup> Either party may challenge a peremptory strike on the basis of the race of the juror. Through a process known as a *Batson* challenge, once counsel challenges opposing counsel's strike of a juror, opposing counsel must offer a race-neutral reason for the strike.<sup>14</sup>

The specific process for a *Batson* challenge first places the burden on the opponent of the peremptory challenge to make a prima facie showing of race discrimination. The burden of persuasion then shifts to the proponent of the strike to offer a race-neutral explanation, after which the trial court must determine which side has met their burden.<sup>15</sup>

Although the *Batson* case involved a black defendant challenging the striking of four black persons which resulted in an all-white jury, subsequent courts have extended the *Batson* Court's holding to removal of potential jurors based on other ethnicities.<sup>16</sup> To establish a prima facie showing, the racial discrimination alleged must be of a cognizable class, in which the group is "objectively discernible from the rest of the community."<sup>17</sup>

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<sup>12</sup> Section 913.08(1), F.S.

<sup>13</sup> *Challenge to Prospective Jurors*, 47 AM. JUR. 2D Jury Selection 213; In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Court, in citing an 1880 Supreme Court case, opined "More than a century ago, the court decided that the State denies a black defendant equal protection from which members of his race have been purposefully excluded." *Id.* at 85.

<sup>14</sup> *Batson v. Kentucky*, 476 U.S. 79, 99 (1986).

<sup>15</sup> *Id.* at 93-94.

<sup>16</sup> *State v. Alen*, 616 So. 2d 452, 454 (Fla. 1993).

<sup>17</sup> *Id.* at 454. In this case, the Court ruled that the state impermissibly struck a Hispanic juror as the state failed to show an absence of pretext when challenged. *Id.* at 456.

**III. Effect of Proposed Changes:**

This bill increases from six to twelve persons the number of jurors required in life-felony cases. Currently, only capital cases require twelve-member juries. Juries for other cases will continue to be six-person juries. Increasing the number of jurors from six to twelve members in a life felony case may increase the number of hung juries, or juries returning less than a unanimous verdict in life-felony cases.<sup>18</sup> This bill does not change court rules requiring a unanimous verdict in criminal trials.

The bill takes effect July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill may require counties to spend additional funds on court facilities to accommodate the additional jurors required by the bill. However, because the bill relates to criminal laws, it appears to be exempt from the restraints on the power of the Legislature to enact local mandates under Article VII, section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

During the 2014 Legislative Session, with respect to a previous version of this bill, CS/SB 94, the Association of Court Clerks and Comptrollers (Clerks) indicated that the 2014 bill would have added \$0.7 million in annual recurring costs to the clerks of court. The clerks based their assumption on 12-member juries costing double what six-person

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<sup>18</sup> Unanimous verdicts are required in all criminal cases. The Florida Rules of Criminal Procedure provide: "No verdict may be rendered unless all of the trial jurors concur in it." Fla. R. Crim. P. 3.440.

juries cost. The Supreme Court, in studying the issue of standards for jury panel sizes, recommends a large number of potential jurors to be summoned for a 12-person jury (40 jurors), in contrast to a county court trial (14 jurors). Based on the Supreme Court's recommendation that more jurors be summoned for 12-person juries than six-person juries, the clerks considered their estimate to be conservative.<sup>19</sup>

Funding court facilities is a responsibility of counties under Section 14 (c), Article V, of the State Constitution. To the extent that existing facilities are insufficient to meet the requirements imposed by this bill, counties will have additional facility expenses.

The Office of State Courts Administrator expects judges to spend more time supervising the jury selection process, as the attorneys are likely to take longer to reach consensus on the seating of 12 jurors, rather than the current six required in life felony cases. With the increase in the number of jurors, more hung juries may result leading to retrials. However, the exact fiscal impact is unknown.<sup>20</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 913.10 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>19</sup> Clerks of the Court, *Fiscal Impact Statement for SB 94*.

<sup>20</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 90* (April 14, 2015).