

**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 Criminal Justice

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BILL: SB 870

INTRODUCER: Senator Bracy

SUBJECT: Capital Felonies

DATE: January 8, 2018

REVISED: 02/05/18

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Favorable</b>
2.			RC	

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**I. Summary:**

SB 870 sets forth legislative findings and intent related to the implementation of the death penalty by the courts.

During 2016 and 2017 the question of whether a unanimous vote of the jury would be required under Florida law in order for the death penalty to be imposed was settled by the Legislature and the courts.

The Florida Supreme Court and the Legislature have now required jury unanimity and the application of that law by the court has resulted in retroactive applicability to June 24, 2002, the date of *Ring v. Arizona*, 536 U.S. 584 (2002), a U.S. Supreme Court case.

Specifically, the bill sets forth legislative findings in ss. 921.141 and 921.142, F.S., reflecting that:

- The Florida Supreme Court's decision not to apply *Hurst v. State*, 202 So.3d 40 (Fla. 2016), in cases in which the death sentence became final prior to June 24, 2002, will result in a miscarriage of justice for those inmates; and
- The retroactive application of *Hurst* in those cases will provide a more just and final resolution in those cases.

The legislative intent set forth in the bill is that the *Hurst v. State* case apply retroactively in cases in which the death sentence became final prior to June 24, 2002. This will pave the way for inmates under those sentences to seek review under *Hurst*.

Although difficult to quantify, the judiciary, prosecutors, public defenders, and appellate counsel should expect additional workload when the bill becomes law.

The bill is effective July 1, 2018.

## II. Present Situation:

### Recent Death Penalty Sentencing Background

In 2016, the U.S. Supreme Court decided in *Hurst v. Florida*<sup>1</sup> that “the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.”<sup>2</sup> The U.S. Supreme Court remanded the *Hurst v. Florida* case to the Florida Supreme Court.

The state court issued its opinion applying the *Hurst v. Florida* ruling in October 2016.<sup>3</sup> The Florida Supreme Court found that the [U.S.] Supreme Court’s decision in *Hurst v. Florida* requires that “all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury,” and that “in order for the trial court to impose a sentence of death, *the jury’s recommended sentence of death must be unanimous.*”<sup>4</sup>

After the Florida Supreme Court issued its *Hurst v. State* opinion, the 2017 Legislature passed a bill requiring jury unanimity in order for the death penalty to be imposed.<sup>5</sup>

### The *Ring v. Arizona* Case and the Retroactive Application of *Hurst*

In *Ring v. Arizona* the U.S. Supreme Court ruled that juries, rather than judges acting alone, must make crucial factual determinations that subject a convicted murderer to the death penalty. The decision was clear as to its application to the Arizona death penalty sentencing scheme.<sup>6</sup> The *Ring* court was not so clear about whether Florida’s different sentencing scheme was effected by the *Ring* decision, so over the next 14 years *Ring* was not applied in Florida. However, the U.S. Supreme Court clarified in its 2016 *Hurst v. Florida* opinion that *Ring* applied in Florida just as it did in Arizona.<sup>7</sup>

In the December 2016 *Mosely* case, the Florida Supreme Court held that its *Hurst v. State* decision requiring jury unanimity for a death sentence applied retroactively.<sup>8</sup> The date of the *Ring* opinion<sup>9</sup> became the Florida Supreme Court’s bright line for deciding *Hurst*’s retroactivity.

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<sup>1</sup> *Hurst v. Florida*, 136 S.Ct. 616 (2016).

<sup>2</sup> *Id.* at p. 619.

<sup>3</sup> *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

<sup>4</sup> *Id.* at p. 44. (emphasis added).

<sup>5</sup> Chapter 2017-1, L.O.F. (2017).

<sup>6</sup> “Capital defendants, no less than noncapital defendants, we conclude, are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment.” *Ring v. Arizona*, 536 U.S. 584, 589 (2002).

<sup>7</sup> “In light of *Ring*, we hold that *Hurst*’s sentence violates the Sixth Amendment.” *Hurst v. Florida*, 136 S.Ct. 616, 622 (2016).

<sup>8</sup> “[A] major development occurred in 2016, when the United States Supreme Court finally held in *Hurst v. Florida* that the ‘analysis the *Ring* Court applied to Arizona’s sentencing scheme applies equally to Florida’s.’” *Mosley v. State*, 209 So.3d 1248, 1274 (Fla. 2016).

<sup>9</sup> *Ring v. Arizona* was decided on June 24, 2002.

Therefore, if a death sentence became final *prior to* June 24, 2002, under current decisional law the defendant is *not* entitled to *Hurst* relief.<sup>10</sup> If, however, the sentence became final *on or after* June 24, 2002, the defendant *is* entitled to seek *Hurst* relief.<sup>11</sup>

### III. Effect of Proposed Changes:

The bill creates the opportunity for inmates whose death sentences became final prior to June 24, 2002, to seek relief under the *Hurst v. State* decision which requires a unanimous jury vote for death in order for a death sentence to be imposed.<sup>12</sup>

The bill sets forth legislative findings in ss. 921.141 and 921.142, F.S., the death penalty statutes, reflecting that:

- The Florida Supreme Court's decision not to apply *Hurst* in cases in which the death sentence became final prior to June 24, 2002,<sup>13</sup> will result in a miscarriage of justice for those inmates; and
- The retroactive application of *Hurst* in those cases will provide a more just and final resolution in those cases.

The legislative intent in the bill is that the *Hurst v. State*<sup>14</sup> case apply retroactively in cases in which the death sentence became final prior to June 24, 2002.

The bill is effective July 1, 2018.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>10</sup> *Asay v. State*, 210 So.3d 1, 11 (Fla., 2016), *cert. den.* 138 S.Ct. 41 (2017).

A sentence becomes final on the disposition of the petition for writ of certiorari by the U.S. Supreme Court if filed, or 90 days after the Florida Supreme Court's decision affirming a judgment and sentence becomes final if the petition for certiorari review is not filed. Fla. R. Crim. P. 3.851.

<sup>11</sup> *Mosely v. State*, 209 So.3d 1248, 1283 (Fla. 2016).

<sup>12</sup> *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

<sup>13</sup> June 24, 2002, is the date that the U.S. Supreme Court's opinion in *Ring v. Arizona* was decided. *Ring v. Arizona*, 536 U.S. 584 (2002).

<sup>14</sup> *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The number of cases in which the death sentence may be effected by the bill cannot be determined with certainty. There are currently 350 people sentenced to death and housed in the Department of Corrections and an undetermined number of those inmates are already entitled to post-*Ring* case review under the *Hurst* decision.<sup>15</sup> If the bill becomes law all death cases will be under review. For this reason, the judiciary, prosecutors, public defenders, and appellate counsel should expect additional workload.

The Department of Corrections submitted its 2018 Agency Bill Analysis on January 8, 2018, indicating that the fiscal impact to the department resulting from this bill is indeterminate.<sup>16</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

While the *Hurst* opinion did require jury unanimity for a death sentence, it did not declare the death penalty itself to be unconstitutional.<sup>17</sup> Therefore, no case to come before the Florida Supreme Court after the court's *Hurst* decision has resulted in a death row inmate being set free or having his or her sentence automatically changed to a life sentence.

As the court has considered death cases raising a *Hurst* claim, the court has ruled that if the jury's recommended death sentence was the result of a vote that was less than unanimous (a *Hurst* claim), then the sentencing error was not harmless.<sup>18</sup> In those cases the court has vacated the death sentences, and remanded the cases to the trial court for a new penalty proceeding.<sup>19</sup>

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<sup>15</sup> Florida Department of Corrections, Corrections Offender Network, Offender Information Search, Death Row Statistics, <http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx> (last visited January 4, 2018).

<sup>16</sup> Department of Corrections, 2018 Agency Legislative Bill Analysis for Senate Bill 870, p. 4 (January 4, 2018) (on file with the Senate Committee on Criminal Justice).

<sup>17</sup> *Hurst v. State*, 202 So.3d 40, 65 (Fla. 2016).

<sup>18</sup> The harmless error analysis places the burden on the state, as the beneficiary of the error, to prove that there is no reasonable possibility that the error contributed to the conviction or to the sentence recommended in the sentencing proceeding. Where the Court finds that the error was not harmless the case must be remanded to "correct" the error. *State v. DiGuilio*, 491 So.2d 1129, 1138 (Fla. 1986); *Zack v. State*, 753 So.2d 9, 20 (Fla. 2000).

<sup>19</sup> *Hojan v. State*, 212 So.3d 982 (Fla. 2017).

Conversely, if the jury recommendation for death was the result of a unanimous vote, the death sentences have been upheld by the court.<sup>20</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 921.141 and 921.142.

**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>20</sup> *Cozzie v. State*, 225 So.3d 717 (Fla. 2017).