

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 39 Juries in Criminal Trials  
**SPONSOR(S):** Criminal Justice Subcommittee; Bracy and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 94

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Article I, Sections 16 and 22 of the Florida Constitution give all persons the right of trial by jury, but specify that the qualifications and the number of jurors, not fewer than six, must be fixed by law. Florida law currently requires a jury in a capital felony case to consist of 12 jurors. Juries in all other cases must consist of six jurors.

The bill requires a jury in a life felony case to consist of 12 jurors.

The Office of the State Courts Administrator and the Florida Court Clerks and Comptrollers report that the bill will have a fiscal impact on both state and local governments. See "FISCAL COMMENTS."

The bill is effective July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

Article I, Sections 16 and 22 of the Florida Constitution give all persons the right of trial by jury, but specify that the qualifications and the number of jurors, not fewer than six, must be fixed by law.

Section 913.10, F.S., requires a jury in a capital felony<sup>1</sup> case to consist of 12 jurors.<sup>2</sup> Juries in all other cases must consist of six jurors.<sup>3</sup> Additionally, Florida requires all jury verdicts to be unanimous.<sup>4</sup>

The life felony offenses<sup>5</sup> in Florida are:

- Kidnapping of a victim under 13 years of age, where the defendant, in the course of committing the offense, commits an enumerated offense;<sup>6</sup>
- False imprisonment victim under 13 years of age, where the defendant, in the course of committing the offense, commits an enumerated offense;<sup>7</sup>
- Human trafficking for commercial sexual activity with a victim under 15 years of age;<sup>8</sup>
- Sexual battery upon a victim under 12 years of age;<sup>9</sup>
- Sexual battery upon a victim 12 years of age or older when the defendant:
  - Uses or threatens to use a deadly weapon; or
  - Uses actual physical force likely to cause serious personal injury;<sup>10</sup>
- Sexual battery of a victim younger than 12 years of age by a defendant who is in a position of familial or custodial authority, or in an attempt to commit sexual battery that injures the sexual organs;<sup>11</sup>
- Lewd and lascivious molestation upon a victim under 12 years of age by a defendant older than 18 years;<sup>12</sup>
- Continuing criminal enterprise under ch. 893, F.S.;<sup>13</sup> and
- Tampering with a witness, victim, or informant, where the investigation or prosecution affected is a life or capital felony.<sup>14</sup>

Florida is the only state that requires a jury for a life felony offense to consist of six jurors. All other states require a jury in a life felony case to consist of 12 jurors; except for Utah, which requires eight jurors. Many states allow the parties to stipulate prior to trial for a jury to consist of less than 12 persons.

#### Effect of the Bill

The bill amends s. 913.10, F.S., to require a jury in a life felony case to consist of 12 jurors.

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<sup>1</sup> A capital felony must be punished by death if a sentencing proceeding results in findings by the court that the person must be punished by death, otherwise the person must be punished by life imprisonment and is ineligible for parole. Section 775.082, F.S. First degree murder is an example of a capital felony.

<sup>2</sup> Section 910.13, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Rule 3.440, Fla. R. Crim. Pro.

<sup>5</sup> There are also a number of statutes that allow for a first degree felony offense to be reclassified to a life felony.

<sup>6</sup> Section 787.01(3)(a), F.S. The enumerated offenses include: aggravated child abuse; sexual battery against the child; lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition; a violation of ss. 796.03 or 796.04, F.S., relating to prostitution, upon the child; or exploitation of the child or allowing the child to be exploited.

<sup>7</sup> Section 787.02(3), F.S. The enumerated offenses listed are the same as in s. 787.01(3), F.S.

<sup>8</sup> Section 787.06(3)(5), F.S.

<sup>9</sup> Section 794.011(2)(a), F.S.

<sup>10</sup> Section 794.011(3), F.S.

<sup>11</sup> Section 794.011(8)(c), F.S.

<sup>12</sup> Section 800.04(5)(b), F.S.

<sup>13</sup> Section 893.20, F.S.

<sup>14</sup> Section 914.22(2)(e), F.S.

## B. SECTION DIRECTORY:

Section 1. Amends s. 913.10, F.S., relating to number of jurors.

Section 2. Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill requires all life felony cases to be tried before a 12-person jury. This increases the number of jurors that the counties will be required to expend management related costs on, which includes summons,<sup>15</sup> compensation and reimbursement,<sup>16</sup> and meals and lodging.<sup>17</sup> The management costs for jurors are funded from filing fees, service charges, court costs, and fines (fees) as part of the maximum annual budget.<sup>18</sup> Any surplus of fees collected is sent to the Department of Revenue to be included in the General Revenue Fund.<sup>19</sup>

In considering SB 94, which is identical to the bill, the Florida Court Clerks and Comptrollers (FCCC) stated that for the 2012 fiscal year, 367 six-person life felony trials were held.<sup>20</sup> The cost to the state for *all* jury management related costs was \$11.1 million.<sup>21</sup>

The Clerks estimate that the bill will result in an increase in expenditures for management related costs in the amount of \$696,000, which will reduce the amount of surplus money available to send to the General Revenue Fund.<sup>22</sup> As a result, the bill will likely result in a negative fiscal impact to state revenues.

#### 2. Expenditures:

The Office of State Courts Administrator (OSCA) determined that requiring life felony cases to be tried before a 12-person jury will result in an increased workload for judges, state attorneys, and public defenders.<sup>23</sup> The increased workload will result from the jury selection process taking longer to complete - both from conducting voir dire and selecting a panel. Additionally, OSCA cited that to the extent it is more difficult for 12 jurors to reach agreement than six, there may be more hung juries, thus resulting in retrials.<sup>24</sup> Any estimate regarding the potential increase in the number of retrials is speculative.<sup>25</sup>

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<sup>15</sup> Section 40.23, F.S., requires the clerk of the circuit court (clerk) to mail written notices to individuals summoned for jury service.

<sup>16</sup> Section 40.24, F.S., requires the clerk to compensate and reimburse jurors as follows: \$15 per day for the first three days, but only for jurors who are not regularly employed or who do not continue to receive regular wages while serving; and \$30 per day for all jurors who serve more than three days. Jurors are not entitled to additional reimbursement by the clerk of the circuit court for travel or other out-of-pocket expenses. "Jury service" constitutes being summoned and reporting for jury service as well as actual service on a jury. Juror service does not include days for which the juror was notified before reporting that his or her presence was not required. "Regular employment" includes full-time employment and part-time, temporary, and casual employment, as long as the employment hours of a juror can be reasonably determined by a schedule or by custom and practice established during the 3-month period preceding the term of service as a juror.

<sup>17</sup> Section 40.26, F.S., requires the clerk to pay for jurors' meals and lodging if ordered by the court.

<sup>18</sup> Section 40.32, F.S.

<sup>19</sup> Section 28.37, F.S.

<sup>20</sup> Florida Court Clerks and Comptrollers, Revised Analysis of SB 94 (on file with the Criminal Justice Subcommittee).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Office of State Courts Administrator, Analysis of CS/HB 39 (on file with the Criminal Justice Subcommittee).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

Lastly, OSCA states that the fiscal impact on the courts cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial time and workload.<sup>26</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

There will be an increase in both the number of people who are summoned for the initial jury pool, as well as an increase in the number of people who are sworn onto life felony juries. As a result, there will likely be an increase in the number of people that miss work or other duties as a result of being summoned for jury service.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

OSCA cites that this bill will result in the need for changes to Rule 3.270, of the Florida Rules of Criminal Procedure, which governs the number of jurors and models s. 913.10, F.S.<sup>27</sup>

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill as drafted only applies to a life felony offense and does not include offenses that are classified as first degree felonies that are punishable by life.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 12, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment limits the bill to require only life felony cases to consist of a 12-person jury.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*