

HOUSE BILL ANALYSIS

HB 1295

Title: An act relating to jury verdicts in criminal cases in courts of record.

Brief Description: Authorizing less-than-unanimous jury verdicts in criminal cases.

Sponsors: Representatives Carrell, Sheahan, Backlund, Lambert, D. Sommers, Sterk, McDonald, Zellinsky, Boldt, Delvin, Ballasiotes, Schoesler, Mitchell, DeBolt, Dyer, Mulliken, Clements, Radcliff, Hickel, Talcott, Thompson, Dunn and Mielke.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: The Washington State Constitution provides in Article 1, Section 21 that:

"The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record and for a verdict by nine or more jurors in civil cases..."

This provision makes explicit allowance for legislatively authorized non-unanimous jury verdicts in civil cases. By implication, no such possibility exists for criminal cases. In fact, the state supreme court has held that in criminal cases, jury verdicts must be unanimous. See State v. Ortega-Martinez, 124 Wn.2d 702, 707 (1994), citing State v. Stephens, 93 Wn.2d 186 (1980); State v. Kitchen, 110 Wn.2d 403 (1988); and State v. Workman, 66 Wash. 292 (1911).

Federal case law has interpreted the federal constitution so as to allow states, but not the federal government, to provide for less than unanimous jury verdicts in some criminal cases. In a case from Oregon, Apodoca v. Oregon, 406 U.S. 404 (1972), a split Court upheld a statute that allowed 10 out of 12 jurors to convict in criminal cases other than first-degree murder. Four of the justices would have allowed non-unanimous verdicts generally, four of the remaining five would have prohibited non-unanimous verdicts, and one justice felt that the federal constitution required unanimous verdicts in federal criminal prosecutions, but not in state criminal cases. Therefore, in a five-to-four decision the Court upheld the Oregon statute.

Summary of Bill: A less than unanimous jury may return a verdict in a criminal trial in a court of record. With two exceptions, 10 or more out of 12 jurors may convict

or acquit a defendant. A unanimous verdict by all 12 jurors is still required to convict or acquit a defendant of aggravated first-degree murder. A unanimous verdict is also still required to impose the death penalty.

NOTE: This bill is implementing legislation for HJR 4205.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research