

HOUSE BILL ANALYSIS

HB 1470

Title: An act relating to juries in criminal trials.

Brief Description: Revising standards for criminal jury reduction or waiver.

Sponsors: Representatives Schoesler and Mastin.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: Under both the state and federal constitutions, a defendant in a criminal trial has a right to trial by an impartial jury.— The state constitution also provides that the right to a jury trial is to remain inviolate.—

Although a criminal defendant in superior court has a right to be tried by 12 jurors, that right may be waived. Under some circumstances, it may be waived altogether, and the case will be tried by the judge instead of a jury. The right may also be waived with respect to the number of jurors. Under court rule, a defendant in a noncapital criminal case may agree to a jury of as few as six in superior court.

However, waiver of the right to a jury is not itself an absolute right. Waivers of important constitutional rights generally must be voluntary, knowing, and intelligent. A state statute expressly provides that a defendant may waive the right to a jury only with the assent— of the court. Moreover, the U.S. Supreme Court has upheld a federal court rule requiring that both the judge and the prosecution consent to a defendant's waiver. *Singer v. U.S.*, 380 U.S. 24, (1965). The Court stated that although the constitution guarantees a defendant the right to a jury trial, it does not guarantee a right to have a bench trial. The Court further stated that the prosecutor in a criminal trial has a legitimate interest in seeing that cases are tried before the tribunal most likely to produce a fair result, since the government has the twofold role of assuring not only that the guilty will not escape, but also that the innocent will not suffer. However, the government need not articulate its reasons for demanding a jury trial when it refuses to consent to a defendant's waiver. In the *Singer* case, the Court specifically held only that the rule requiring prosecutorial consent was not unconstitutional where the defendant gave no reason for wanting the waiver other than to save time.

The Washington State Supreme Court has cited *Singer* with approval, stating that it is true that a defendant has no constitutional right to insist that he be tried by a judge rather than a jury.— *State v. Frampton*, 95 Wn.2d 469 (1981). The court, however, has not addressed the question of whether under the state constitution the waiver could be conditioned on approval by the prosecutor.

In district court criminal cases, a statute provides that either the defendant or the prosecutor may demand a jury trial and that any reduction in the number of jurors below six must be agreed to by the prosecutor.

Summary of Bill: A defendant in a criminal trial in superior court may waive the right to a jury trial, or may agree to a jury of less than 12, only with the consent of both the judge and the prosecutor.

Fiscal Note: Not requested.

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

Office of Program Research