

HOUSE BILL ANALYSIS

HJR 4205

Brief Description: Amending the Constitution to authorize verdicts by ten or more jurors in criminal cases in courts of record.

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

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: The state constitution is amended to allow the Legislature to provide for jury verdicts by 10 or more jurors in criminal trials in courts of record.

Fiscal Note: Not requested.

Effective Date: On approval of the voters at the next general election.

Office of Program Research