Judiciary Committee

Tuesday, February 21, 2017
4:00 PM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Chris Sprowls
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time:	Tuesday, February 21, 2017 04:00 pm
End Date and Time:	Tuesday, February 21, 2017 06:00 pm
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HJR 1 Judicial Term Limits by Sullivan
HB 65 Civil Remedies for Terrorism by Fischer, White
HB 301 Supreme Court Reporting Requirements by White
HB 527 (IF RECEIVED) Sentencing for Capital Felonies by Sprowls

NOTICE FINALIZED on 02/14/2017 4:02PM by Bowen.Erika

HJR 1

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1 Judicial Term Limits
SPONSOR(S): Sullivan and others
TIED BILLS: None **IDEN./SIM. BILLS:** SJR 482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	8 Y, 7 N	Bond	Bond
2) Judiciary Committee		Bond NB	Camechis

SUMMARY ANALYSIS

Justices of the Florida Supreme Court and judges of the Florida district courts of appeal are appointed to office by the Governor. There are no limits on the number of terms of office that a justice or judge may serve, although each justice or judge is subject to removal pursuant to the merit retention process and is subject to a mandatory retirement age.

Merit retention is the system of retaining appellate court justices and judges established by a 1976 state constitutional amendment. Newly appointed justices or judges face their first merit retention vote in the next general election that occurs more than one year after their appointment. If retained in office by a majority of voters, the justice or judge serves a full six-year term. Thereafter, the justice or judge is subject to a merit retention election every six years. No Florida justice or judge has ever lost a merit retention election.

The joint resolution provides that a justice or district court of appeal judge may not appear on a ballot for retention if he or she has served more than 12 years in the same office. The joint resolution applies to justices and district court of appeal judges currently in office, but the 12-year limit does not include time served in office prior to January 9, 2019.

The joint resolution also prohibits reappointment of a term-limited justice or district court of appeal judge to the same court he or she left for one year.

The joint resolution appears to require a nonrecurring expense by the Department of State of $107,685 payable from the General Revenue Fund in FY 2018-19 for the publication of the proposed constitutional amendment in newspapers of general circulation in each county. The joint resolution has no current fiscal impact on the State Courts System. The joint resolution does not appear to have a fiscal impact on local governments.

The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 6, 2018. If adopted at the 2018 general election, the effective date of this resolution is January 9, 2019.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature to appear on the next general election ballot. If on the ballot, the constitution requires 60 percent voter approval for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Appointment of Justices and District Court of Appeal Judges
Where there is a judicial vacancy in the Florida Supreme Court or a Florida district court of appeal, the Governor must appoint a replacement justice or judge from a list of nominees provided by a Judicial Nominating Commission (JNC).[1] There are separate JNC's for the Supreme Court and for the 5 district courts of appeal. When an office becomes vacant, candidates submit an application to the JNC for that court. The JNC sends a list of three to six nominees to the Governor and the Governor fills the vacancy by selecting from that list.[2] At the next general election occurring at least a year after appointment, the newly appointed justice or district court judge sits for a retention election. If a majority of voters choose to retain the justice or judge, the justice or judge is retained for a six year term.[3] Thereafter, the justice or judge will sit for a retention election every six years.

Past Retention Election Results
Supreme Court justices have appeared on the ballot for retention 45 times between 1980 and 2016. In all 45 instances they were retained by a majority of the voters. For the general elections from 2004 through 2016, all 153 district court of appeal judges that appeared on the ballot were retained.

Mandatory Retirement Age
The Florida Constitution establishes a mandatory retirement age for justices and judges. The exact date of retirement depends upon when the 70th birthday occurs. If it occurs during the first half of a six-year term, then the mandatory retirement age is the same as the birthday. If the 70th birthday occurs in the second half of a six-year term, then the justice or judge can remain on the bench until the full term expires.[4]

Term Limits
While the state has term limits applicable to the Governor, cabinet members, and legislators, no term limit applies to justices or judges. A justice or judge can serve an unlimited number of terms of office, limited only by a failure to be retained or achieving the mandatory retirement age.

Effect of the Joint Resolution

The joint resolution provides that a Supreme Court justice or a judge of a district court of appeal may not appear on the ballot for retention if, by the end of the current term of office, the justice or judge will have served in that office for 12 consecutive years.

A justice ineligible for retention or a justice who resigns is ineligible for reappointment to the Supreme Court for one year. Similarly, a district court of appeal judge ineligible for retention or a judge who resigns is ineligible for reappointment to any district court of appeal for one year.

The term limits created by this joint resolution apply only to the office in which a justice or district court of appeal judge is serving. For instance, a district court of appeal judge promoted to the Supreme Court starts a new term limit.

[1] art. V, s.11, Fla. Const.
[2] art. V, s. 11(a), Fla. Const.
[3] art. V, s. 10, Fla. Const.
[4] art. V, s. 8, Fla. Const.

The joint resolution applies to justices and district court of appeal judges currently in office, but the 12-year limit does not include time served in office prior to January 9, 2019.

If approved by the electorate, the joint resolution takes effect January 9, 2019.

B. SECTION DIRECTORY:

n/a

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

   Publication Requirement

   Article XI, s. 5(d) of the state constitution requires publication of a proposed amendment in a newspaper of general circulation in each county.

   The Division of Elections is required to advertise the full text of proposed constitutional amendments twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. The cost to advertise constitutional amendments for the 2016 general election was $117.56 per word.[5]

   The joint resolution has 916 words, thus requiring an estimated $107,685 for publication. These funds must be spent regardless of whether the amendment passes, and are payable from the General Revenue Fund in FY18-19.

   Fiscal Impact on the State Courts System

   The Office of State Courts Administrator indicated that the "fiscal impact of this legislation cannot be accurately determined due to the unavailability of data ...."[6]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The joint resolution does not appear to have any direct economic impact on the private sector.

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[5] E-mail correspondence from the Department of State dated January 26, 2017, on file with the Civil Justice & Claims Subcommittee.

[6] Office of the State Courts Administrator, 2017 Judicial Impact Statement for HJR 1, dated February 2, 2017. On file with the Civil Justice & Claims Subcommittee.

D. FISCAL COMMENTS:

While unable to determine a specific fiscal impact to this legislation, the Office of State Courts Administrator speculates that this joint resolution may increase costs to the judicial system due to increased judicial turnover, which will lead to more frequent gaps in service, increased use of senior judges during gaps in service, increased staff turnover, and increased training costs.[7] Because of the prospective nature of the joint resolution, the potential fiscal impacts to the court system would not occur until FY 2031-32 at the earliest.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This section does not apply to a proposed constitutional amendment.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the requirements for election and approval or rejection of a proposal. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[8] Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.[9] If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.[10]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[7] Office of the State Courts Administrator, *2017 Judicial Impact Statement for HJR 1*, dated February 2, 2017. On file with the Civil Justice & Claims Subcommittee.
[8] art. XI, s. 1, Fla. Const.
[9] art. XI, s. 5(a), Fla. Const.
[10] art. XI, s. 5(e), Fla. Const.

House Joint Resolution

A joint resolution proposing an amendment to Section 10 of Article V and creation of a new section in Article XII of the State Constitution to create term limits for Supreme Court justices and judges of the district courts of appeal; providing an effective date; providing applicability.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 10 of Article V and the creation of a new section in Article XII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 10. Retention; election and terms.—

(a) Any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law. If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or

judge. When a justice or judge so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge) ...(name of justice or judge)... of the ...(name of the court)... be retained in office?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. The term of the justice or judge retained shall commence on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

(b)(1) The election of circuit judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that circuit approves a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(2) The election of county court judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approves a local option to select county judges by merit selection and retention rather than by election. The election of

county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(3)a. A vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit and county at the general election in the year 2000. If a vote to exercise this local option fails in a vote of the electors, such option shall not again be put to a vote of the electors of that jurisdiction until the expiration of at least two years.

b. After the year 2000, a circuit may initiate the local option for merit selection and retention or the election of circuit judges, whichever is applicable, by filing with the custodian of state records a petition signed by the number of electors equal to at least ten percent of the votes cast in the circuit in the last preceding election in which presidential electors were chosen.

c. After the year 2000, a county may initiate the local option for merit selection and retention or the election of county court judges, whichever is applicable, by filing with the supervisor of elections a petition signed by the number of electors equal to at least ten percent of the votes cast in the county in the last preceding election in which presidential electors were chosen. The terms of circuit judges and judges of county courts shall be for six years.

(c) The name of a justice of the supreme court or judge of

a district court of appeal may not appear on the ballot for retention if, by the end of his or her current term of office, the justice or judge will have served in that office for twelve consecutive years. A justice who is ineligible for retention under this subsection or who resigns from office may not be appointed to fill a vacancy on the supreme court for at least one year following the last date the justice served on the supreme court. A judge who is ineligible for retention under this subsection or who resigns from office may not be appointed to fill a vacancy on any district court of appeal for at least one year following the last date the judge served on the district court.

ARTICLE XII

SCHEDULE

Applicability of limitations on the terms of justices and judges.— The amendment to Section 10 of Article V takes effect on January 9, 2019, and applies to each justice and district court judge in office on that date and to each justice and district court judge who assumes office thereafter. When determining whether a justice or district court judge in office on January 9, 2019, may appear on the ballot for retention, time served by the justice or district court judge in that office prior to January 9, 2019, shall not be included in the calculation of the total number of consecutive years served in that office.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 10

ARTICLE XII

TERM LIMITS FOR JUSTICES AND JUDGES.—Proposing an amendment to the State Constitution to prohibit the name of a supreme court justice or district court of appeal judge from appearing on a ballot for retention if he or she has served more than 12 consecutive years in the same office and prohibit reappointment of a justice or judge for one year after leaving office. The term limit applies to justices and judges in office on January 9, 2019, and future appointees.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 65 Civil Remedies for Terrorism
SPONSOR(S): Fischer and White and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 898

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N	Stranburg	Bond
2) Judiciary Committee		Stranburg	Camechis

SUMMARY ANALYSIS

There is no cause of action in common law or current statutory law that is specific to terrorism. There are, however, causes of action for related acts. Common law allows a victim to sue, for example, for battery or intentional infliction of emotional distress; and statutory law allows an action for wrongful death. In most tort actions, an injured person may recover damages, but not attorney's fees. Current statutory law provides civil causes of action for a person who has been injured by specified criminal activities, but many acts of terrorism would not fall within any of those statutory causes of action.

The bill creates a statutory civil cause of action for a person injured by an act of terrorism. The definition of terrorism is adopted from the criminal law. An injured person is entitled to recover treble damages, minimum damages of $1,000, plus attorney's fees and court costs. The cause of action is not available to a person whose injuries are the result of his or her participation in the act that caused the injury.

The statute of limitations for a common law tort action is 4 years, and the limitation on wrongful death is 2 years. The limitations period for the cause of action created by this bill is 5 years which, in some cases, may be extended an additional 2 years.

The bill does not appear to have fiscal impact on state or local governments.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Tort Actions Related to a Terrorist Act

There is no statutory or common law cause of action entitled terrorism. There are, however, statutory and common law causes of action whereby an injured person may sue for damages resulting from acts of terrorism. Statutory law creates a civil cause of action for wrongful death.[1] Common law creates causes of action such as assault,[2] battery,[3] and intentional infliction of emotional distress.[4] In each of these actions, the injured party may recover economic and non-economic damages, but not attorney's fees.

In Florida, "an intentional tort is one in which [a person] exhibits a deliberate intent to injure or engages in conduct which is substantially certain to result in injury or death."[5] A defendant will be held liable for an intentional tort if the plaintiff's injuries were the natural and probable consequence of the defendant's intended actions.[6] In addition to being liable for economic and non-economic damages, a defendant who commits an intentional tort may be liable for punitive damages.[7]

Existing tort actions may not allow a victim of terrorism to recover damages from individuals or organizations who provided material support to the terrorist.[8]

Florida Civil Remedies for Criminal Practices

Chapter 772, F.S., creates statutory causes of action for persons injured by certain criminal activities. The criminal activity for which a defendant may be civilly liable encompasses a broad range of criminal conduct, some of which is conduct usually associated with terrorism (such as the use of explosives, homicide, extortion, and computer-related crimes).[9] An injured party suing under ch. 772, F.S., may recover treble damages and attorney's fees. The term "treble damages" means damages equal to three times the total of the economic and non-economic damages.

The causes of action currently in ch. 772, F.S., however, do not appear to apply to many acts of terrorism. The civil causes of action at ss. 772.104(1) and 772.11, F.S., generally require that the

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[1] The Florida Wrongful Death Act is at ss. 768.16-.26, F.S.
[2] *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982) ("Assault is defined as an intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward another under such circumstances as to create a fear of imminent peril, coupled with the apparent present ability to effectuate the attempt.").
[3] *Paul v. Holbrook*, 696 So. 2d 1311, 1312 (Fla. 5th DCA 1997) ("A battery consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent.")
[4] *Gallogly v. Rodriguez*, 970 So. 2d 470 (Fla. 2d DCA 2007); *see Johnson v. Thigpen*, 788 So. 2d 410, 412 (Fla. 1st DCA 2001) (In order to state a cause of action for intentional infliction of emotional distress, the plaintiff must demonstrate that: 1) the wrongdoer acted recklessly or intentionally; 2) the conduct was extreme and outrageous; 3) the conduct caused the plaintiff's emotional distress; and 4) plaintiff's emotional distress was severe.).
[5] *Boza v. Carter*, 993 So. 2d 561, 562 (Fla. 1st DCA 2008) (quoting *D'Amario v. Ford Motor Co.*, 806 So.2d 424, 438 (Fla. 2001)).
[6] 55 Fla. Jur 2d Torts § 6 (2015).
[7] s. 768.72, F.S.
[8] *See Boza*, 993 So. 2d at 562 ("As a general principle, a party has no legal duty to control the conduct of a third person to prevent that person from causing harm to another.").
[9] s. 772.102(1), F.S. "Criminal activity" also includes an attempt to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of the enumerated acts. *Id.* This cause of action is only available if the defendant engages in two or more similar acts of criminal activity within a five-year period. *Id.* at (4).

criminal offense be committed for pecuniary gain. Section 772.104(2) creates a cause of action for sex trafficking, and s. 772.12, F.S., creates a cause of action related to drug dealing.

Federal Tort Action for Terrorism

Federal law creates a cause of action related to terrorism.[10] The federal cause of action allows any national of the United States injured in his or her person, property, or business by reason of an act of *international* terrorism, or his or her estate, survivors, or heirs, to sue in United States district court and recover treble the damages he or she sustains and the cost of the suit, including attorney's fees.

Terrorism in Florida Criminal Law

Florida criminal law defines terrorism at s. 775.30, F.S., as:

> 775.30 Terrorism; defined.—As used in the Florida Criminal Code, the term "terrorism" means an activity that:
> (1)
> (a) Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
> (b) Involves a violation of s. 815.06;[11] and
> (2) Is intended to:
> (a) Intimidate, injure, or coerce a civilian population;
> (b) Influence the policy of a government by intimidation or coercion; or
> (c) Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Terrorism itself is not a crime under Florida, but committing a criminal act with the intent of it being an act of terrorism is a factor in criminal sentencing. As to murder, a finding that the murder was committed for the purpose of terrorism is an aggravating factor that may justify the death sentence.[12] For lesser crimes, if the court finds that the offense was committed for the purpose of terrorism, or for the purpose of facilitating or furthering an act of terrorism, the court must reclassify the felony or misdemeanor to the next highest degree[13] and the offense severity ranking[14] is increased, thus further enhancing the offender's sentence.[15]

Statutes of Limitation

A statute of limitations bars a cause of action after a specified time has elapsed, usually beginning at the time that the injury occurred. The statute of limitations for general tort actions is 4 years.[16] The statute of limitations for a wrongful death action is 2 years.[17] The statute of limitations for an action under ch 772, F.S., is 5 years, which may be extended for up to 2 additional years during the pendency of a prosecution of the underlying crime.[18]

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[10] 18 U.S.C. § 2333.
[11] s. 815.06, F.S., provides that various computer-related offenses are a felony.
[12] ss. 782.04(1)(a)2.r., (3)(r), and (4)(s), F.S.
[13] s. 775.31(1), F.S. For example, if a defendant is charged with a third-degree felony, the offense is reclassified as a second-degree felony.
[14] Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense. s. 921.0022, F.S. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. s. 921.0023, F.S.
[15] s. 775.31(2), F.S.
[16] s. 95.11(3)(a), F.S.
[17] s. 95.11(4)(d), F.S.
[18] s. 772.17, F.S.

Effect of Proposed Changes

At s. 772.13, F.S., the bill creates a specific civil cause of action for a person injured by an act of terrorism or injured by any act that facilitated or furthered an act of terrorism. The injured person is entitled to recover treble damages, minimum damages of $1,000, attorney's fees and court costs. The bill references the definitions of terrorism and of facilitating or furthering an act of terrorism that are found in current criminal law.

The cause of action created by the bill is not available to a person whose injuries are the result of his or her participation in the same act that resulted in the act of terrorism or crime that facilitated or furthered the act of terrorism. If the court finds that the plaintiff raised a claim that lacked support in fact or law, the defendant is entitled to reasonable attorney's fees and court costs.

In awarding attorney's fees and court costs, the court may not consider the ability of the opposing party to pay such fees and costs. Additionally, s. 772.13, F.S., does not limit any right to recover attorney's fees or costs provided under other provisions of law.[19]

The statute of limitations for the cause of action created by this bill is 5 years, which may be tolled for up to an additional 2 years during the pendency of a criminal proceeding against the perpetrator.[20]

B. SECTION DIRECTORY:

Section 1 creates s. 772.13, F.S., related to a civil remedy for terrorism or facilitating or furthering terrorism.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

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:

The bill may have a positive economic impact on persons in the private sector harmed by an act of terrorism.

[19] See ch. 57, F.S.; Fla. R. Civ. P. Taxation of Costs (2015).
[20] s. 772.17, F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority or a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to civil remedies for terrorism; creating s. 772.13, F.S.; creating a cause of action relating to terrorism; specifying a measure of damages; prohibiting claims by specified individuals; providing for attorney fees and court costs; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 772.13, Florida Statutes, is created to read:

772.13 Civil remedy for terrorism or facilitating or furthering terrorism.—

(1) A person who is injured by an act of terrorism as defined in s. 775.30 or a violation of a law for which the penalty is increased pursuant to s. 775.31 for facilitating or furthering terrorism has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of $1,000 and reasonable attorney fees and court costs in the trial and appellate courts.

(2) A person injured by reason of his or her participation in the same act or transaction that resulted in the act of terrorism or resulted in the defendant's penalty increase pursuant to s. 775.31 may not bring a claim under this section.

(3) The defendant is entitled to recover reasonable attorney fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim that was without support in fact or law.

(4) In awarding attorney fees and court costs under this section, the court may not consider the ability of the opposing party to pay such fees and court costs.

(5) This section does not limit a right to recover attorney fees or costs under other provisions of law.

Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 301 Supreme Court Reporting Requirements
SPONSOR(S): White and others
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	13 Y, 3 N	Stranburg	Bond
2) Judiciary Committee		Stranburg	Camechis

SUMMARY ANALYSIS

The Florida Rules of Judicial Administration, written and adopted by the Supreme Court, provide time standards for the resolution of various types of cases. Among the standards is that an appellate court render a decision within 180 days of oral argument or submission of the case to the court panel without oral argument. The trial courts and district courts of appeal must report every quarter all cases on their dockets that fall outside of the applicable time standard. This report is sent to the Chief Justice of the Supreme Court as part of the Supreme Court's constitutional duty to supervise the lower courts. The Supreme Court by practice also creates a report each quarter of the cases on its docket past the 180 day time standard, which it files with itself.

This bill requires the Supreme Court to provide an annual report by October 15 of each year listing its cases without a decision or disposition beyond a 180 day period. The report is to be delivered to the Governor, Attorney General, President of the Senate, and the Speaker of the House of Representatives. The report must list all cases on the court's docket outside of the time standard that have not been resolved and cases resolved in the previous year beyond the time standard. The report must also include the case name, number and type, the amount of time since oral argument or submission without oral argument, and the reason for the delay in rendering a decision. The report must be made in electronic spreadsheet format and able to be filtered and sorted. The bill includes 6 different designations for the case type portion of the report.

The requirement is repealed July 1, 2022, unless reviewed and reenacted by the Legislature before that date.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Art. V, s. 2 of the Florida Constitution requires the Supreme Court to adopt rules for the practice and procedure in all courts and rules for the administrative supervision of all courts.[1] Florida Rule of Judicial Administration 2.250 provides time standards for all courts to dispose of cases.[2] Trial courts have multiple time standards based on case type.[3] These standards range from 90 days from arrest to final disposition in misdemeanor cases to 24 months from filing to final discharge of contested probate cases.[4]

The general time standard for the Supreme Court and the District Courts of Appeal requires a decision to be rendered in a case within 180 days of either oral argument or submission of the case to the court panel for a decision without oral argument.[5] The time standard for juvenile dependency and termination of parental rights appeals, however, is within 60 days of oral arguments or submission to the court without oral arguments.[6]

Rule 2.250 also requires a report from each trial and district court on cases not resolved within the time standards.[7] All pending cases in circuit courts and district courts of appeal exceeding the time standards must be listed separately in a report submitted quarterly to the Chief Justice of the Supreme Court.[8] The Supreme Court, by practice, also produces a report detailing its pending cases exceeding the appellate time standard, which it files with itself. Pursuant to Rule 2.250(b), the report must include the case number, case type, case status, the date of arrest in criminal cases, and the original filing date in civil cases for each case in the report.[9] The reports generated by the District Courts and the Supreme Court contain the case number, the case name, and the date of oral argument or submission without oral argument.[10] These reports also include a list of all cases that exceed the time standard during the last quarter and that were resolved during the current quarter, including the date the opinion was rendered.[11]

The reports are furnished to the Chief Justice.[12] The cases in the report are listed in order by case number.[13] The report is due to the Chief Justice on the 15th day of the month following the last day of the quarter.[14]

Effect of Proposed Changes

The bill creates s. 25.052, F.S, requiring the Supreme Court to provide an annual report on its cases without a decision or disposition beyond a 180 day period. The report must be provided by October 15

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[1] Art. V, s. 2(a), Fla. Const.
[2] Fla. R. Jud. Admin. 2.250(a)
[3] Fla. R. Jud. Admin. 2.250(a)(1)
[4] Fla. R. Jud. Admin. 2.250(a)(1)(A),(D)
[5] *Id.*
[6] *Id.*
[7] Fla. R. Jud. Admin. 2.250(b)
[8] *Id.*
[9] *Id.*
[10] Appellate Courts Pending Caseload Report for Quarter Ending September 30, 2016. A copy of this document is on file with the Civil Justice and Claims Subcommittee.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Fla. R. Jud. Admin. 2.250(b)

and contain data as of September 30 of that year. The report must be delivered to the Governor, the Attorney General, the President of the Senate, and the Speaker of the House of Representatives.

The report must include cases on the court's docket as of September 30 that fall outside of the 180 day time standard for disposition or decision. The report also includes cases decided or disposed of between October 1 of the previous year and September 30 of the current year for which the court did not meet the 180 day time standard. For each case listed in the report, the Supreme Court must provide:

- Case name and number;
- Case type;
- A brief description of the case;
- The date on which the case was added to the court's docket;
- The date of oral argument or submission to the court panel without oral argument;
- The number of days that have elapsed since the date of oral argument or submission without oral argument for each case;
- A detailed explanation of the court's failure to render a decision or disposition within the 180 day period; and
- The date on which, or time period within which, the court expects to render a decision or disposition, if the case has not yet been decided.

For cases that were decided outside of the 180 period between October 1 of the previous year and September 30 of the current year, the Supreme Court must also provide the date of the decision or disposition and the number of days elapsed between the date of oral argument or submission without oral argument and date on which a decision or disposition was issued.

The report must be submitted in an electronic spreadsheet format. The spreadsheet must be able to be sorted and filtered by:

- Case number;
- Case type;
- The date on which the case was added to the court's docket;
- The date of oral argument or submission without oral argument;
- The number of days that have elapsed since oral argument or submission without oral argument; and
- The date of decision or disposition.

Case type designations are to include civil, criminal not seeking the death penalty, criminal seeking the death penalty, court rules, bar discipline, and judicial discipline.

The act is repealed July 1, 2022, unless it is reviewed and reenacted by the Legislature before that date.

B. SECTION DIRECTORY:

Section 1 creates s. 25.052, F.S., related to Supreme Court reporting requirements.

Section 2 provides for future legislative review and repeal by July 1, 2022.

Section 3 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Office of the State Courts Administrator was not able to determine the fiscal impact of the bill.[15]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority or a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[15] Office of the State Courts Administrator 2017 Judicial Impact Statement, dated February 2, 2017. A copy of the statement is on file with the Civil Justice & Claims Subcommittee.

A bill to be entitled

An act relating to Supreme Court reporting requirements; creating s. 25.052, F.S.; requiring the Supreme Court to issue an annual report regarding certain cases; specifying data to be included in such report; providing for future legislative review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 25.052, Florida Statutes, is created to read:

25.052 Annual report.—

(1) Between October 1 and October 15 of each year, the Supreme Court shall provide a report with data as of September 30 of that year, to the Governor, the Attorney General, the President of the Senate, and the Speaker of the House of Representatives consisting of two parts.

(a) In part I of the report, the court shall provide the following information regarding each case on the court's docket as of September 30 of the current year, for which a decision or disposition has not been rendered within 180 days after oral argument was heard or after the date on which the case was submitted to the court panel for a decision without oral argument:

1. The case name and number.

2. The case type.

3. A brief description of the case.

4. The date on which the case was added to the court's docket.

5. The date of oral argument or the date the case was submitted to the court panel for decision without oral argument.

6. The number of days that have elapsed since the date the oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument.

7. A detailed explanation of the court's failure to render a decision or disposition within 180 days after oral argument was heard or after the date on which the case was submitted to the court panel for a decision without oral argument.

8. The date on which, or the time period within which, the court expects to render a decision or disposition.

(b) In part II of the report, the court shall provide the following information regarding each case decided or disposed of by the court between October 1 of the prior year and September 30 of the current year, for which the decision or disposition was not rendered within 180 days after oral argument was heard or after the date on which the case was submitted to the court panel for a decision without oral argument:

1. The information required in subparagraphs (a)1.-5. and 7.

2. The date that a decision or disposition was issued.

3. The number of days that had elapsed between the date oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument and the date on which a decision or disposition was issued.

(2) The report shall be submitted in an electronic spreadsheet format capable of being sorted and filtered by the following elements:

(a) The case number.

(b) The case type.

(c) The date on which the case was added to the court's docket.

(d) The date of oral argument or the date the case was submitted to the court panel for decision without oral argument.

(e) The number of days that elapsed since the date oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument.

(f) The date of decision or disposition.

(3) The case type of each case reported shall include civil, criminal not seeking the death penalty, criminal seeking the death penalty, court rules, bar discipline, or judicial discipline.

Section 2. This act is repealed July 1, 2022, unless reviewed and reenacted by the Legislature before that date.

Section 3. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 527 Sentencing for Capital Felonies
SPONSOR(S): Sprowls
TIED BILLS: **IDEN./SIM. BILLS:** SB 280

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N	Homburg	White
2) Judiciary Committee		Homburg	Camechis

SUMMARY ANALYSIS

On the first day of the 2016 Regular Session, the United States Supreme Court found Florida's death penalty sentencing process unconstitutional, holding that the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death because a jury's "mere recommendation is not enough." To address this decision, the Legislature during the 2016 Regular Session enacted HB 7101 (hereinafter "the 2016 Act"), which took effect on March 7, 2016. In relevant part, the 2016 Act required the sentencing jury in a death penalty case to unanimously find at least one aggravating factor before the defendant could be eligible for a sentence of death. The 2016 Act also required at least 10 of the 12 jurors to concur in a recommendation of a sentence of death to the court.

On October 14, 2016, the Florida Supreme Court (FSC) held in *Hurst v. State* that all of the findings necessary for a jury to impose a sentence of death must be determined unanimously by the jury and that a jury's recommendation of a sentence of death must also be unanimous. On that same day, the FSC issued *Perry v. State,* in which the Court held the 2016 Act unconstitutional because it does not require the jury to unanimously recommend a sentence of death. The FSC stated, "[w]hile most of the Act can be construed constitutionally under our holding in *Hurst*, the Act's 10-2 jury recommendation requirement renders the Act unconstitutional."

To address the FSC's holding, the bill amends Florida's death penalty sentencing process to require that a jury's recommendation of a sentence of death be unanimous. Under the bill, if the jury does not unanimously determine that the defendant should be sentenced to death, the jury's recommendation must be a sentence of life imprisonment without parole.

The bill does not appear to have a fiscal impact.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Death Penalty Sentencing - Background

In 1972, the United States (U.S.) Supreme Court decided *Furman v. Georgia*, which struck down all of the then-existing death penalty statutes in the U.S. on grounds that the imposition and carrying out of the death penalty constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.[1]

Florida was the first state to reenact a death penalty statute in the wake of *Furman*. This occurred in the fall of 1972, when House Bill 1-A was enacted during a Special Session of the Legislature.[2] The death penalty sentencing process adopted at that time was repeatedly upheld as constitutional[3] and remained largely the same until 2016.

Under that process, when a defendant was convicted of a capital felony,[4] a separate sentencing proceeding was conducted before the trial jury or, if the defendant pled, before a jury impaneled for the purpose of sentencing.[5] During the sentencing proceeding, the jury, after hearing all the evidence, was required to render a recommended sentence to the judge based on the following factors:

- Whether sufficient aggravating factors[6] existed;
- Whether sufficient aggravating factors existed which outweighed the mitigating circumstances found to exist; and
- Based on these considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.[7]

Only a simple majority vote of the jury was necessary to recommend the death penalty. Juries were not required to list on the verdict aggravating and mitigating circumstances that the jury found persuasive or to disclose the number of jurors making the findings.[8] Moreover, the judge was not required to

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[1] *Furman v. Georgia*, 408 U.S. 238 (1972).

[2] The bill was signed by Governor Askew on December 8, 1972. Ch. 72-724, Laws of Fla. (1973).

[3] *See Proffitt v. Florida*, 428 U.S. 242 (1976) (holding that the death penalty was not a "cruel and unusual" punishment per se, and that Florida's capital-sentencing procedure was not unconstitutionally arbitrary and/or capricious);*Spaziano v. Florida*, 468 U.S. 447, 104 S. Ct. 3154, 82 L. Ed. 2d 340 (1984) (rejecting defendant's claim that allowing the judge to impose death when the jury recommends life violates the 5th, 6th, and 8th Amendments of the U.S. Constitution); *Hildwin v. Florida*, 490 U.S. 638, 109 S. Ct. 2055, 104 L.Ed. 2d 728 (1989)(rejecting defendant's claim that a jury, rather than the judge, must find the aggravating factors; holding that the Sixth Amendment "does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury.").

[4] Capital felonies in Florida are: (a) first degree murder; (b) the killing of an unborn child by injury to the mother which would be murder in the first degree constituting a capital felony if it resulted in the death of the mother; (c) willfully making, possessing, throwing, etcetera, a destructive device, if the act results in the death of another person; (d) unlawfully manufacturing, possessing, selling, using, etcetera, a weapon of mass destruction, if death results; and (e) certain drug trafficking, importation, and manufacturing crimes that result in a death or where the probable result of such act would be the death of a person ss. 782.04(1)(a), 782.09(1)(a), 790.161(4), 790.166(2), and 893.135(1), F.S

[5] ss. 921.141(1) and 921.142(2), F.S.

[6] "An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim." *Fla. Standard Jury Instructions, Criminal Cases,* Penalty Proceedings Capital Cases, Instr. 7.11.

[7] ss. 921.141(2) and 921.142(3), F.S.

[8] "If a majority of the jury, seven or more, determine that (defendant) should be sentenced to death, your advisory sentence will be: A majority of the jury by a vote of _____ to _____ advise and recommend to the court that it impose the death penalty upon (defendant). On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be: The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole." *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.*

sentence a defendant as recommended by the jury; instead, the judge conducted an independent analysis of the aggravating and mitigating circumstances and was authorized to impose a sentence of life or death notwithstanding the jury's recommendation.[9]

***Hurst v. Florida* – U.S. Supreme Court**

On the opening day of the 2016 Regular Session, January 12, 2016, the U.S. Supreme Court found Florida's death penalty sentencing process unconstitutional in *Hurst v. Florida*.[10]

In this case, Timothy Lee Hurst was convicted of first-degree murder for fatally stabbing his co-worker in 1998 with a box cutter.[11] A jury recommended a sentence of death by a seven-to-five vote; thereafter, the trial court entered a sentence of death.[12] Hurst challenged his sentence arguing before the U.S. Supreme Court that the jury was required to find specific aggravators and issue a unanimous advisory sentence recommendation.[13]

In the eight-to-one decision, the U.S. Supreme Court ruled that the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death because a jury's "mere recommendation is not enough."[14] The Court compared Florida's sentencing scheme to Arizona's scheme, which the Court had ruled unconstitutional in 2002 in *Ring v. Arizona*,[15] and found Florida's distinctive factor of the advisory jury verdict immaterial. Like the trial judge in *Ring*, the trial judge in *Hurst* performed her own fact finding and increased *Hurst's* authorized punishment, thereby violating the Sixth Amendment.[16] The Court remanded the case to the Florida Supreme Court (FSC) for "proceedings not inconsistent with" its decision.[17]

The U.S. Supreme Court never mentioned the issue of jury unanimity in its decision.

2016 Legislation

During the 2016 Regular Session, the Legislature for purposes of addressing the U.S. Supreme Court's decision in *Hurst* enacted HB 7101, which took effect on March 7, 2016.[18] Under the new law, the death penalty sentencing process was revised to require the jury, after hearing all of the evidence regarding aggravating factors and mitigating circumstances, to:

- Determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor.
- Return findings identifying each aggravating factor found. A finding that an aggravating factor exists must be unanimous.[19]

The new law further specified that if the jury:

- Does not unanimously find an aggravating factor, the defendant is ineligible for a sentence of death.

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[9] ss. 921.141(3) and 921.142(4), F.S

[10] *Hurst v. Florida,* 136 S.Ct. 616 (2016).

[11] *Hurst v. State*, 147 So. 3d 435, 437 (Fla. 2014), *rev'd and remanded*, 136 S.Ct. 616 (U.S. Jan. 12, 2016).

[12] *Id.* at 440.

[13] *Hurst,* 136 S.Ct. at 619-620.

[14] *Id.*

[15] In *Ring,* the court ruled that the jury, rather than the judge, must find the aggravating factors justifying a sentence of death. The decision was clear as to its application to the Arizona death penalty sentencing scheme wherein the judge, without any input from the jury beyond the verdict of guilty on the murder charge, made the sentencing decision. It was not clear, however, as to whether the *Ring* decision had any impact on Florida's "hybrid" sentencing scheme. Under Florida's "hybrid" process, the jury had input given that it made a recommendation of death or life to the judge. *Ring v. Arizona*, 536 U.S. 584 (2002).

[16] *Id.* at 621,622.

[17] *Id.* at 624.

[18] Chapter 2016-13, L.O.F. (2016).

[19] ss. 921.141(2)(a) and (b) and 921.142(3)(a) and (b), F.S.

- Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury must recommend to the court whether the defendant shall be sentenced to life imprisonment without the possibility of parole or death.[20]

In making its recommendation, the jury must weigh the following:

- Whether sufficient aggravating factors exist.
- Whether sufficient mitigating circumstances exist that outweigh the aggravating factors found to exist.
- Based on the above-referenced considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.[21]

To recommend a sentence of death, a minimum of 10 jurors out of the 12 jurors must concur in the recommendation. If fewer than 10 jurors concur, a sentence of life imprisonment without the possibility of parole must be the jury's recommendation to the court.[22]

If the jury recommends:

- Life imprisonment without the possibility of parole, the judge must impose that sentence.
- A sentence of death, the judge may impose a sentence of death or life imprisonment without the possibility of parole. The judge may only consider an aggravating factor that was unanimously found by the jury.[23]

***Hurst v. State* (on remand to the FSC)**

On October 14, 2016, the FSC issued its opinion in *Hurst v. State,* on remand from the U.S. Supreme Court. In this opinion, a majority of the FSC ruled that there are three "critical findings," also referred to by as "facts" and "elements," which must be found by the jury before the jury may consider a recommendation of death.[24] According to the majority, these critical findings are:

- The existence of each aggravating factor that has been proven beyond a reasonable doubt;
- That the aggravating factors are sufficient to impose death; and
- That the aggravating factors outweigh the mitigating circumstances.[25]

Further, according to the majority, each of the critical findings must be found *unanimously* by the jury based on Florida common law, the Florida Constitution's right to trial by jury, and the Sixth and Eighth Amendments of the U.S. Constitution. With respect to Florida law, the majority stated:

> [J]ust as elements of a crime must be found unanimously by a Florida jury, all these findings necessary for the jury to essentially convict a defendant of capital murder—thus allowing imposition of the death penalty— are also elements that must be found unanimously by the jury. ... This holding is founded upon the Florida Constitution and Florida's long history of requiring jury unanimity in finding all the elements of the offense to be proven; and it gives effect to our precedent that the "final decision in the weighing process must be supported by 'sufficient competent evidence in the record.'"[26]

Finally, the majority ruled that a jury's recommendation of a sentence of death must also be unanimous. In part, the majority stated, "[W]e conclude that juror unanimity in any recommended verdict resulting in a death sentence is required under the Eighth Amendment. Although the [U.S.]

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[20] ss. 921.141(2)(b) and 921.142(3)(b), F.S.
[21] *Id.*
[22] ss. 921.141(2)(c) and 921.142(3)(c), F.S.
[23] ss. 921.141(3)(a) and 921.142(4)(a), F.S.
[24] *Hurst v. State*, 202 So.3d 40, 54 (Fla. 2016).
[25] *Hurst*, 202 So.3d at 45.
[26] *Id.* at 53-54.

Supreme Court has not ruled on whether unanimity is required in the jury's advisory verdict in capital cases, the foundational precept of the Eighth Amendment calls for unanimity...."[27]

Applying the aforementioned holding to Hurst's case, the majority reversed and remanded for resentencing.[28] According to the majority, *Hurst v. Florida* error is not structural error. Such error "is capable of harmless error review."[29] The majority determined, however, that the error in Hurst's case was not harmless because the court could not determine whether the jury unanimously found that: (a) any aggravators existed; (b) the aggravation was sufficient for death; or (c) the aggravating factors outweighed the mitigating circumstances.[30] According to the majority, "the fact that only seven jurors recommended death strongly suggests to the contrary."[31]

Justice Canady dissented in an opinion in which Justice Polston concurred. According to the dissent:

> Because I conclude that the Sixth Amendment as explained by the Supreme Court's decision in *Hurst v. Florida* ... simply requires that an aggravating circumstance be found by the jury, I disagree with the majority's expansive understanding of *Hurst v. Florida*. And because I conclude that the absence of a finding of an aggravator by the jury that tried Hurst was harmless beyond a reasonable doubt and agree with the majority's rejection of Hurst's claim that he is entitled to be sentenced to life, I would affirm the sentence of death.
>
> The majority concludes that the Supreme Court decided in *Hurst v. Florida* that the Sixth Amendment requires jury sentencing in death cases so that no death sentence can be imposed unless a unanimous jury decides that death should be the penalty. But this conclusion cannot be reconciled with the reasoning of the Court's opinion in *Hurst v. Florida* or with [other Supreme Court precedent].... The majority's reading of *Hurst v. Florida* wrenches the Court's reference to "each fact necessary to impose a sentence of death," ..., out of context, ignoring how the Court has used the term "facts" in its Sixth Amendment jurisprudence, and failing to account for the *Hurst v. Florida* Court's repeated identification of Florida's failure to require a jury finding of an aggravator as the flaw that renders Florida's death penalty law unconstitutional.
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> ***
>
> Not content with its undue expansion of *Hurst v. Florida's* holding regarding the requirements of the Sixth Amendment, the majority injects conclusions based on the Eighth Amendment even though *Hurst v. Florida* does not address the Eighth Amendment. Remarkably, the majority adopts the view of the Eighth Amendment expressed by Justice Breyer in his concurring opinions in *Ring* and *Hurst v. Florida*. In doing so, the majority addresses a question that is not even properly at issue in this remand proceeding—which solely concerns how we are to apply *Hurst v. Florida's* Sixth Amendment holding—and delivers a ruling that dramatically departs from binding precedent from the Supreme Court. In short, the majority fundamentally misapprehends and misuses *Hurst v. Florida*, thereby unnecessarily disrupting the administration of the death penalty in Florida. I strongly dissent.[32]

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[27] *Id.* at 44-45.
[28] The majority rejected Hurst's argument that his sentence should be commuted to life imprisonment sentence under s. 775.082(2), F.S., which provides that a death penalty sentence shall be reduced to life imprisonment if the death penalty is held unconstitutional. According to the majority, the U.S. Supreme Court, "did not invalidate death as a penalty, but invalidated only that portion of the process which had allowed the necessary factfinding to be made by the judge rather than the jury in order to impose a sentence of death." *Id.* at 62-63.
[29] *Id.* at 68.
[30] *Id.* at 55-56.
[31] *Id.* at 56.
[32] *Id.* at 89-92 (citations omitted).

Perry v. State

On the same day that the FSC decided *Hurst v. State,* it also decided *Perry v. State.* In this case, the FSC considered whether the new death penalty sentencing process enacted by the Legislature in 2016 could be constitutionally applied in cases where the underlying crime was committed prior to 2016. Answering the question in the negative, the majority stated:

> [W]e resolve any ambiguity in the [death penalty sentencing process enacted in 2016] consistent with our decision in *Hurst.* Namely, to increase the penalty from a life sentence to a sentence of death, the jury must unanimously find the existence of any aggravating factor, that the aggravating factors are sufficient to warrant a sentence of death, that the aggravating factors outweigh the mitigating circumstances, and must unanimously recommend a sentence of death. ... ***While most of the Act can be construed constitutionally under our holding in Hurst, the Act's 10-2 jury recommendation requirement renders the Act unconstitutional.***[33]

Effect of the Bill

To address the FSC's holding that the death penalty sentencing process is constitutional except for its 10-2 jury recommendation requirement, the bill amends ss. 921.141(2)(c) and 921.142(3)(c), F.S., to require that a jury's recommendation of a sentence of death be unanimous. If the jury does not unanimously determine that the defendant should be sentenced to death, the jury's recommendation shall be a sentence of life imprisonment without parole.

The bill reeneacts ss. 775.082(1)(a), 782.04(1)(b), 794.011(2)(a), and 893.135(1)(b) through (l), F.S., for purposes of incorporating the bill's amendments to ss. 921.141 and 921.142, F.S.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 921.141, F.S., relating to a sentence of death or life imprisonment for capital felonies.

Section 2. Amends s. 921.142, F.S., relating to a sentence of death or life imprisonment for capital drug trafficking felonies.

Section 3. Reenacts s. 775.082, F.S., relating to capital felonies.

Section 4. Reenacts s. 782.04, F.S., relating to murder.

Section 5. Reenacts s. 794.011, F.S., relating to sexual battery.

Section 6. Reenacts s. 893.135, F.S., relating to trafficking.

Section 7. Provides the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state revenues.

2. Expenditures: The bill does not appear to have any impact on state expenditures.

[33] *Perry v. State,* 2016 WL 6036982, *25 (Fla. 2016)(emphasis added).

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: The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Retroactivity
On December 22, 2016, a majority of the FSC ruled that *Hurst* applies retroactively to anyone whose sentence became final on or after June 24, 2002, which is the day that the U.S. Supreme Court decided *Ring v. Arizona.*[34]

According to data from the Office of State Court Administrator, the sentences of 211 death penalty defendants[35] became final on or after *Ring;*[36] however, not all of these defendants will be eligible to receive a new sentencing proceeding based on *Hurst* error. If the defendant waived his or her right to a penalty phase jury, he or she is precluded from raising *Hurst* error on appeal.[37] Further, as discussed below, *Hurst* error may be found harmless in cases where the jury unanimously recommended a sentence of death. As illustrated in the chart below, approximately 20 percent of jury recommendations for a sentence of death are unanimous.

[34] *Mosely v. State, Mosely v. Jones*, Nos. SC14-436, SC14-2108 (Dec. 22, 2016); *Asay v. State, Asay v. Jones,* Nos. SC16-223, SC16-102, SC16-628 (Dec. 22, 2016).
[35] As of February 10, 2017, there are a total of 383 inmates on Florida's Death Row. Department of Corrections, *Death Row Statistics,* http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx (last visited February 10, 2017).
[36] E-mail from Sarah Naf, Director, Community and Intergovernmental Relations, Office of State Court Administrator, January 11, 2017 (on file with House of Representatives, Criminal Justice Subcommittee).
[37] *Mullens v. State,* 197 So.3d 16, 40 (2016): and *Davis v. State*, Case No. SC 13-1 (Nov. 10, 2016).

Distribution of Jury Votes in Death Cases by Calendar Year of Disposition by Florida Supreme Court[38] (N=296)																			
Original Jury Vote	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	'15	Total	%[39]	Cum %
7-5	6	1	4	4	0	3	0	2	4	1	3	2	2	3	2	3	40	12%	12%
8-4	4	6	2	6	2	0	3	0	2	9	2	1	5	2	3	5	52	15%	27%
9-3	4	4	3	6	2	2	11	3	5	6	6	9	5	2	1	2	71	21%	48%
10-2	3	12	4	3	3	3	2	2	2	5	11	1	3	2	2	2	60	18%	66%
11-1	2	8	5	5	3	1	1	2	1	5	5	1	3	2	1	0	45	13%	79%
12-0	9	6	8	4	2	3	6	7	6	0	1	6	2	5	2	3	70	21%	100%
Subtotal	28	37	26	28	12	12	23	16	20	26	28	20	20	16	11	15	338	100%	
Other[40]	3	1	2	3	4	2	0	0	1	4	3	1	0	1	0	1	26		
TOTAL	31	38	28	31	16	14	23	16	21	30	31	21	20	17	11	16	364		

Harmless Error

As discussed above, the FSC has held that *Hurst* error "is capable of harmless error review."[41] To date, the FSC has reversed for resentencing each death penalty case raising cognizable *Hurst* error where the jury did not make a unanimous recommendation of death.[42] The FSC has found *Hurst* error to be harmless in two cases where the jury unanimously recommended a sentence of death.[43]

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pending Prosecutions

As of January 15, 2017, state attorneys reported a total of 313 pending death penalty cases of which 66 were ready for trial in the twenty judicial circuits.[44] The FSC has not yet ruled on whether pending prosecutions may move forward by changing the jury instructions for death penalty sentencing proceedings to require unanimity, although litigation on this issue has been pending since October 2017.[45] As a result, death penalty prosecutions in this state have been effectively halted. Defendants charged with capital crimes are presenting demands for speedy trial in some cases in an attempt to avoid the death penalty.[46]

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[38] E-mail from Sarah Naf, Director, Community and Intergovernmental Relations, Office of State Court Administrator, November 30, 2016 (on file with House of Representatives, Criminal Justice Subcommittee).

[39] Calculated percentage excludes the "other" category.

[40] Includes waiver of penalty phase, and judicial overrides from jury recommendation of life to judge imposing death.

[41] *Hurst*, 202 So.3d at 68.

[42] *See, e.g., Franklin v. State*, No. SC13-1632 (Nov. 23, 2016)(remanding for resentencing where the jury recommended a death sentence by a 9-to-3 vote); *Johnson v. State,* No. SC14-1175 (Dec. 1, 2016) (remanding for resentencing where the jury recommended a death sentence by an 11-to-1 vote); and *Dubose v. State,* No. SC 10-2363, *31 (February 9, 2017)(remanding for resentencing where jury recommended death sentence by an 8-to-4 vote).

[43] *See Davis v. State*, No. SC11-1122 (Nov. 10, 2016); *Hall v. State,* No. SC15-1662 (February 9, 2017).

[44] Data on file with House of Representatives, Criminal Justice Committee staff.

[45] On October 25, 2016, in the death penalty prosecution of Patrick Evans in Pinellas County, Circuit Court Judge Bulone ruled that the state could move forward with the guilt phase, notwithstanding arguments by defense counsel that such cases may not be prosecuted until the Legislature amends the capital sentencing law. According to Judge Bulone, if Evans is convicted, the sentencing phase will then be conducted in accordance with the FSC's decision in *Hurst.* Defense counsel filed an Emergency Petition for Writ of Prohibition in the FSC arguing that Judge Bulone must be restrained from trying Evans. The FSC has not yet ruled on the petition. *See Evans v. State*, No. SC16-1946.

[46] Zack McDonald, *Triple murder suspect seeks speedy trial,* PANAMA CITY NEWS HERALD (Jan. 18, 2017) http://www.newsherald.com/news/20170118/triple-murder-suspect-seeks-speedy-trial (last visited February 9, 2017); Rafael Olmeda, *Speedy trial demand knocks out death penalty in Sunrise disemboweling case,* SUN SENTINEL (February 3, 2017) http://www.sun-sentinel.com/local/broward/sunrise/fl-disembowelment-case-speedy-trial-20170202-story.html (last visited February 10, 2017);.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

A bill to be entitled

An act relating to sentencing for capital felonies; amending ss. 921.141 and 921.142, F.S.; requiring a jury's recommendation of a sentence of death to be unanimous; requiring a jury to recommend life imprisonment without the possibility of parole if the jury does not unanimously recommend a sentence of death; reenacting ss. 775.082(1)(a), 782.04(1)(b), 794.011(2)(a), and 893.135(1)(b) through (l), F.S., relating to penalties, murder, sexual battery, and trafficking in controlled substances, respectively, to incorporate the amendments made by the act in cross-references to amended provisions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of section 921.141, Florida Statutes, is amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(c) If the jury unanimously determines ~~at least 10 jurors~~

~~determine~~ that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If the jury does not unanimously ~~fewer than 10 jurors~~ determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

Section 2. Paragraph (c) of subsection (3) of section 921.142, Florida Statutes, is amended to read:

921.142 Sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence.—

(3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(c) If the jury unanimously determines ~~at least 10 jurors determine~~ that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If the jury does not unanimously ~~fewer than 10 jurors~~ determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

Section 3. For the purpose of incorporating the amendment made by this act to section 921.141, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 775.082, Florida Statutes, is reenacted to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in a determination that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

Section 4. For the purpose of incorporating the amendment made by this act to section 921.141, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 782.04, Florida Statutes, is reenacted to read:

782.04 Murder.—

(1)

(b) In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment. If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court within 45 days after arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a

showing of good cause.

Section 5. For the purpose of incorporating the amendment made by this act to section 921.141, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 794.011, Florida Statutes, is reenacted to read:

794.011 Sexual battery.—

(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.

Section 6. For the purpose of incorporating the amendment made by this act to section 921.142, Florida Statutes, in references thereto, paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of subsection (1) of section 893.135, Florida Statutes, are reenacted to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of

cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. A person who has been convicted of the first degree felony of trafficking in cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court

determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 300 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or

more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, or any salt, derivative, isomer, or salt of an isomer thereof, or 14 grams or more of any mixture containing

any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, or any salt, derivative, isomer, or salt of an isomer thereof, or 7 grams or more of any mixture containing any such

substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a),

(3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

5. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s.

893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(d)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to

a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly brings into this state 800 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), and who knows that the probable result of such importation would be the death of any person commits capital importation of phencyclidine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(e)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), commits a felony of the first degree, which felony shall be known as "trafficking in methaqualone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 200 grams or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 kilograms or more, but less than 25 kilograms, such person shall be sentenced to a mandatory minimum term of

imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 25 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly brings into this state 50 kilograms or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), and who knows that the probable result of such importation would be the death of any person commits capital importation of methaqualone, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(f)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a felony of the first degree, which felony shall be known as "trafficking in amphetamine," punishable as provided in s.

775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine

provided under subparagraph 1.

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony

of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in flunitrazepam, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(h)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-hydroxybutyric acid (GHB), as described in s. 893.03(1)(d), or any mixture containing gamma-hydroxybutyric acid (GHB), commits a felony of the first degree, which felony

shall be known as "trafficking in gamma-hydroxybutyric acid (GHB)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into this state 150 kilograms or more of gamma-hydroxybutyric acid (GHB), as described in s. 893.03(1)(d), or any mixture containing gamma-hydroxybutyric acid (GHB), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of gamma-hydroxybutyric acid (GHB), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(i)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-butyrolactone (GBL), as described in s. 893.03(1)(d), or any mixture containing gamma-butyrolactone (GBL), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-butyrolactone (GBL)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into the state 150 kilograms or more of gamma-butyrolactone (GBL), as described in s. 893.03(1)(d), or any mixture containing gamma-butyrolactone (GBL), and who knows that the probable result of such manufacture or importation would be the death of any person

commits capital manufacture or importation of gamma-butyrolactone (GBL), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(j)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of 1,4-Butanediol as described in s. 893.03(1)(d), or of any mixture containing 1,4-Butanediol, commits a felony of the first degree, which felony shall be known as "trafficking in 1,4-Butanediol," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 kilograms or more, but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $500,000.

2. Any person who knowingly manufactures or brings into

this state 150 kilograms or more of 1,4-Butanediol as described in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of 1,4-Butanediol, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(k)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any of the following substances described in s. 893.03(1)(c):

a. (MDMA) 3,4-Methylenedioxymethamphetamine;

b. DOB (4-Bromo-2,5-dimethoxyamphetamine);

c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);

d. 2,5-Dimethoxyamphetamine;

e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);

f. N-ethylamphetamine;

g. 3,4-Methylenedioxy-N-hydroxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. PMA (4-methoxyamphetamine);

j. PMMA (4-methoxymethamphetamine);

k. DOM (4-Methyl-2,5-dimethoxyamphetamine);

l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);

m. MDA (3,4-Methylenedioxyamphetamine);

n. N,N-dimethylamphetamine;

o. 3,4,5-Trimethoxyamphetamine;

p. Methylone (3,4-Methylenedioxymethcathinone);

q. MDPV (3,4-Methylenedioxypyrovalerone); or

r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., commits a felony of the first degree, which felony shall be known as "trafficking in Phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved:

a. Is 10 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $250,000.

3. A person who knowingly manufactures or brings into this state 30 kilograms or more of any of the following substances described in s. 893.03(1)(c):

a. MDMA (3,4-Methylenedioxymethamphetamine);

b. DOB (4-Bromo-2,5-dimethoxyamphetamine);

c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);

d. 2,5-Dimethoxyamphetamine;

e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. PMA (4-methoxyamphetamine);

j. PMMA (4-methoxymethamphetamine);

k. DOM (4-Methyl-2,5-dimethoxyamphetamine);

l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);

m. MDA (3,4-Methylenedioxyamphetamine);

n. N,N-dimethylamphetamine;

o. 3,4,5-Trimethoxyamphetamine;

p. Methylone (3,4-Methylenedioxymethcathinone);

q. MDPV (3,4-Methylenedioxypyrovalerone); or

r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., and who knows that the probable result

of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(l)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 gram or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or of any mixture containing lysergic acid diethylamide (LSD), commits a felony of the first degree, which felony shall be known as "trafficking in lysergic acid diethylamide (LSD)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 7 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and

pay a fine of $500,000.

2. Any person who knowingly manufactures or brings into this state 7 grams or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of lysergic acid diethylamide (LSD), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

Section 7. This act shall take effect upon becoming a law.