

SENATE COMMITTEE ON CRIMINAL JUSTICE

3/6/23

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1 THEREUPON, the following took place:

2

3 CHAIR PERRY: Members, we're going to take up tab
4 three, SB 450, Jury Recommendations in the Death Penalty Cases
5 by Senator Ingoglia. You are recognized to explain. I'll tell
6 you what, you have a delete all.

7 MR. INGOGLIA: Yes, Mr. Chair. I'll go straight into
8 the delete all.

9 CHAIR PERRY: Yeah, it's barcode 613564. You're
10 recognized to explain your delete all amendment.

11 MR. INGOGLIA: Thank you, Mr. Chair. Members, this
12 amendment makes the following changes to the current death
13 penalty statutes. The amendment removes the requirement that a
14 unanimous jury determines that a defendant should be sentenced
15 to death if at least eight jurors determine that the defendant
16 should be sentenced to death. The jury's recommendation to the
17 court must be a sentence of death. If fewer than eight jurors
18 determine that the defendant should be sentenced to death, the
19 recommendation to the court must be a sentence of life. The
20 amendment upholds constitutional requirements by specifying that
21 the court may only impose a sentence of death if the jury
22 unanimously finds at least one aggravating factor beyond a
23 reasonable doubt. The strike all amendment also makes the same
24 changes to the death penalty statute as in 921.141 and 921.142
25 in Florida Statutes. That is the delete all. And there was an

1 amendment just -- members, I just want you to know there is an
2 amendment to the amendment.

3 CHAIR PERRY: Let's go ahead and do that. Let's take
4 up amendment barcode 613564. You're recognized to explain your
5 amendment.

6 MR. INGOGLIA: Thank you, Mr. Chair. Current law
7 provides that if the jury recommends a sentence of life, the
8 court must impose the recommended sentence, but gives the court
9 discretion in imposing a sentence of death. Members, this I
10 amendment to amendment maintains consistent with
11 (indiscernible), removes the part where the court must impose a
12 death sentence in the event nine or fewer jurors recommend the
13 sentence.

14 CHAIR PERRY: Can I --

15 MR. INGOGLIA: Yes, Mr. Chair.

16 CHAIR PERRY: Are you on that amendment that's 197178?
17 We have an amendment first and then you have an amendment 1A.
18 Are you explaining --

19 MR. INGOGLIA: I am -- I'm on amendment 613564. I
20 think that is set. I'm sorry. Mr. Chair, I don't know the
21 amendment barcode number, but this is the amendment to the
22 amendment barcode at 613564.

23 CHAIR PERRY: Okay. All right. Okay. Okay. So
24 we're doing the amendment to the amendment which is the --
25 you're on the right barcode. Gotcha. Okay. I'm sorry.

1 Continue.

2 MR. INGOGLIA: Okay. If 10 or 11 jurors recommend the
3 sentence of death, the court must impose the recommended
4 sentence. If the jury recommends a sentence of death and the
5 judge deviates from a sentence of death, the court shall include
6 in its written order the reasons for not accepting the jury's
7 recommendation sentence, if applicable.

8 So basically it's bifurcating, if a jury comes back
9 with a recommendation of at least 10 jurors recommending death,
10 the court shall impose death. But if it is eight jurors or nine
11 jurors voting in favor of death, the court can at their
12 discretion -- the judge at their discretion can still impose
13 life. And that is the amendment to the delete all amendment.

14 CHAIR PERRY: Got it. Members, questions on the
15 amendment to the amendment. Senator Pizzo.

16 MR. PIZZO: Thank you. So we're on 297178, correct?

17 CHAIR PERRY: Correct.

18 MR. PIZZO: Okay. In a follow-up --

19 CHAIR PERRY: You're recognized.

20 MR. PIZZO: Practically -- bless you -- practically
21 speaking, only when there are eight or nine jurors voting for
22 death will there be required to be a written order, correct?

23 CHAIR PERRY: You're recognized.

24 MR. INGOGLIA: Mr. Chair. Yes, but we've also been
25 having some conversation since the amendment has been filed.

1 I've been having conversations with State's Attorneys and people
2 who have been practicing some of these cases. We understand the
3 importance of the discretion and also that it may put a little
4 bit more stress on the jury to -- with this bifurcation. It may
5 be a little confusing. So we are looking at -- at the
6 possibility of making -- going back to all discretionary at
7 eight/four at the next committee stop.

8 CHAIR PERRY: Follow-up. You're recognized.

9 MR. PIZZO: That speaks to a concern I do have. Once
10 you're reached the end of a case such as this, which is going to
11 be very long, not two days, not three days and so forth, when
12 the judge is delivering jury instructions, going through 15, 20,
13 25 --

14 CHAIR PERRY: Can you speak more in your microphone?

15 MR. PIZZO: Sorry.

16 CHAIR PERRY: It's not recorded when you don't.

17 MR. PIZZO: I apologize. My concern is -- and maybe
18 this is what you're hearing from other State Attorneys or public
19 defenders or both sides or maybe even the court is to how this
20 instruction is going to be given to the jury to your point about
21 that undue pressure. So is that one of the concerns that you
22 have is how it's articulated to the jury of what their position
23 is?

24 MR. INGOGLIA: Mr. Chair.

25 CHAIR PERRY: You're recognized. You-all can go back

1 and forth.

2 MR. INGOGLIA: Yes, sir, that's -- that's one of the
3 concerns. The concerns is that it does -- it will get confusing
4 at the end after a long trial making sure the jury totally
5 understands the difference between the situation. We think that
6 may be a source of confusion and/or tension going forward with
7 the jury. So that's why we are looking at making that all
8 discretionary at a future stop.

9 MR. PIZZO: So just talking it through and it's sort o
10 a follow-up, in not so many words it will probably be more
11 eloquent and flowery, but prose. But the judge basically says,
12 folks, listen if you come back ten/two, I have -- my hands are
13 tied. I have to sentence death. Or eight or nine. You guys
14 can come back with death and I can deviate. Or are we keeping
15 consistent with we're not telling the jurors what the penalty --
16 here is the thing. You're forbidden from saying a lot of things
17 when you're in court. You can't talk about what a client is
18 facing or what penalty they're facing. Those are things that
19 are not permitted. Is there some concern that when we start
20 getting into how the numbers break up that the judge is actually
21 going to be instructing the jury of -- if X number of you find
22 this or X number of you find that or will that only be explained
23 after the jury instruction?

24 MR. INGOGLIA: So that's a process question. We have
25 some State's Attorneys that may be able to answer that question.

1 But it's been relayed to me that the jury instructions, whether
2 before or after, because of the bifurcation, may be a little
3 confusing. So they want to make it as easy as possible for the
4 jury to understand.

5 MR. PIZZO: And you and I have spoken about this. Do
6 you have any concern about judges? I mean the only one in the
7 courtroom that's elected with the exception of those State
8 Attorneys that do try some of these cases in the 20 circuits,
9 but the only elected position is the judge. Do you have some
10 concern that when you're in the eight or nine situation you
11 might have some judge -- I mean we've had colleagues who have
12 filed bills to repeal the death penalty year after year after
13 year. Some of whom sit on the bench now.

14 MR. INGOGLIA: Right.

15 MR. PIZZO: Do you have any concern about judges?

16 MR. INGOGLIA: Thank you, Mr. Chair. I do and the
17 concern is that if you have a judge who has a recommendation of
18 death and the judge under current law and will be committee stop
19 and we start working out the full judicial discretion is that
20 you can have a situation where you have a unanimous jury
21 recommending death, but the judge does not have to. The judge
22 can impose life.

23 But what's important for me and for others and some
24 State's Attorneys, because I've had these conversations, is that
25 the judge should at that point explain -- explain the situation

1 in a brief filed with the court the reasons why they are
2 deviating from the jury's recommendation.

3 MR. PIZZO: But it would only be the case when you're
4 talking about a return of eight or nine, because ten/two, they
5 say my hands are tied, right?

6 MR. INGOGLIA: Right.

7 MR. PIZZO: And then my hands are also tied, the judge
8 would say, on eight or fewer, because they're saying I have to
9 impose, you know, life.

10 MR. INGOGLIA: Yes, so the way this amendment -- so in
11 the final, when this amendment is adopted, if it is adopted,
12 coming out of this committee, as a committee substitute, is
13 going to look like that, yes. So the only two options from what
14 I understand, and they're practical options are eight/four under
15 the -- under the scheme of eight/four is eight/four shall or
16 eight/four may. Those are what I'm hearing from State's
17 Attorneys and other people who have practiced death penalty
18 cases, that those are the two likely really viable options.

19 What we're trying to do here, we were trying sort of
20 take on the activist jurors and quite frankly activist judges
21 also with this amendment. So that's why we're looking to go
22 back to eight/four with full judicial discretion.

23 MR. PIZZO: Okay.

24 CHAIR PERRY: All right. We're on the amendment to
25 the amendment. Any further questions on that? Seeing none, we

1 do have no appearance cards on the amendment to the amendment.
2 Is there debate on the amendment to the amendment? No debate.
3 You can close on your amendment to the amendment.

4 MR. INGOGLIA: I'll waive close.

5 CHAIR PERRY: Waive close. All in favor say yea.

6 (Members responded yea.)

7 CHAIR PERRY: All oppose say nay. The amendment
8 passes. So now we are back on the delete all amendment which is
9 barcode 613564. Questions on the strike all. All right. We do
10 have some appearance cards on the strike all. Howard Dimmig,
11 are you speaking?

12 MR. DIMMIG: I believe I checked the wrong box. I
13 would like to address the bill once it is --

14 CHAIR PERRY: We will put you back in that group then.

15 MR. DIMMIG: Thank you, sir.

16 MALE VOICE: We are in the bill on the final form. We
17 are on the delete all as amended. Sorry, if I confused you.
18 Okay. Yeah, we're still on the amendment, on the strike all.

19 FEMALE VOICE: We just amended the amendment.

20 MR. INGOGLIA: Right. Mr. Chair, but the delete all
21 is -- okay. I see what you're saying. I meant --

22 CHAIR PERRY: We've got a -- we haven't voted on the
23 delete all.

24 MR. INGOGLIA: Right. Well, that's what I thought you
25 wanted to speak on, right, which was the delete all as amended

1 which adopted would be the substance of the full --

2 CHAIR PERRY: But we'll still have time to speak on
3 the bill as amended with the delete all.

4 MR. INGOGLIA: Okay.

5 CHAIR PERRY: Tony Montalto wishing to speak on the
6 strike all. Welcome and you are recognized.

7 MR. MONTALTO: Thank you, Mr. Chair. First of all, I'm
8 a little confused about everything that went on here, but I'm
9 trying to follow.

10 Sadly, I'm the father of one of the Parkland victims.
11 My daughter Gina was murdered as she sat in the hallway by a
12 cold, cruel, heinous killer. She was failed by the system that
13 was supposed to protect her and then sadly this fall we saw that
14 she was failed by the justice system when our current law
15 allowed a single activist juror to hold up the system, to stop
16 debate on what should have happened to the convicted mass
17 murderer in his sentencing.

18 This amendment or bill, whichever we're talking about,
19 will help correct that. It's not about sending more people to
20 death row. It's about providing justice for the victims. Too
21 often we see the victims minimized in this process as we spend
22 so much time talking about the perpetrator and his actions.
23 That is why I support this bill. I support this bill giving
24 justice for victims. At the same time, all the protections that
25 the perpetrators have are in place. It doesn't -- it doesn't

1 eliminate the need to prove aggravators. It doesn't eliminate
2 the need for the multiple mandatory appeals. But it will
3 provide an option for justice to the victims and their families.
4 Thank you.

5 CHAIR PERRY: Thank you for coming and testifying.

6 MR. MONTALTO: Thank you.

7 CHAIR PERRY: Next we have Ryan Petty. And again if
8 you want to speak on the main bill, either way, we'll get you.
9 But you are recognized.

10 MR. PETTY: Thank you, Mr. Chair. Thank you,
11 Senators. I too am a father of a Parkland victim. My daughter
12 Lena was killed five years ago as she sat in her English class.
13 I speak -- I rise to speak today in support of this bill. There
14 was no question in this case of guilt. We were beyond that. We
15 knew who was guilty. The aggravators, many of them, almost the
16 whole of them were unanimously agreed to by the jury. But one
17 activist jury, one protest juror was able to stop justice in
18 that courtroom in Broward County because of the way the law is
19 today.

20 So I stand here before you today to ask you to please
21 change Florida law. Please amend this law and allow -- do not
22 allow one juror to highjack justice for the families and the
23 victims of these heinous crimes. Thank you.

24 CHAIR PERRY: Thank you for driving up here and your
25 testimony. Hydra Pollick is -- Hunter.

1 MALE VOICE: He had to step out. He waives his
2 support.

3 CHAIR PERRY: Waives his support. And if he wants to
4 speak on the bill, he can remind me when he comes back in.

5 So we're back on the delete all amendment. Any debate
6 on the delete all amendment? Is there -- you're recognized to
7 close on the delete all.

8 MR. INGOGLIA: Waive closing.

9 CHAIR PERRY: All in favor say yea.

10 (Members responded yea.)

11 CHAIR PERRY: Opposed nay. Show that amendment
12 passes.

13 We're now back on the bill as amended. And since our
14 Chair is here, I'm going to turn the chair back over to the real
15 chair. You are recognized.

16 CHAIR MARTIN: Thank you, Senator Perry. We have the
17 appearance cards. All right.

18 MR. POWELL: Mr. Chair, I think we're on questions.

19 CHAIR MARTIN: Yes. All right. Are there questions
20 on the bill as amended?

21 MR. POWELL: Yes.

22 CHAIR MARTIN: Is that a yes.

23 MR. POWELL: It is. Thank you.

24 CHAIR MARTIN: Go ahead. Sorry. Senator Powell.

25 MR. POWELL: Okay. Thank you, Mr. Chair.

1 Senator Ingoglia, with regard to this legislation and the death
2 penalty has -- are there steadies or is there data, evidence, or
3 documents that shows that the death penalty deters anyone from
4 criminal behavior?

5 CHAIR MARTIN: You can respond. You can go back and
6 forth if you need.

7 MR. INGOGLIA: Thank you, Mr. Chair. Through the
8 Chair, I haven't personally seen any data, but it would be --
9 and I don't know if the State's Attorneys or anyone has any data
10 on that. But it's sort of common sense, the tougher you make
11 some of these laws, you know, somebody is going to have to think
12 twice about committing a crime.

13 CHAIR MARTIN: Follow-up.

14 MR. INGOGLIA: Yes, Mr. Chair -- and for the Chair.
15 It's hard to prove a negative. It's hard to prove something
16 that didn't happen.

17 MR. POWELL: Thank you. Since we've -- since we've
18 changed the death penalty requirements a few years ago here in
19 the legislature, has there been a -- and is there research that
20 would show that there has been a reduction or an increase in
21 terms of the number of people who have been sentenced to death
22 row? Because we made a unanimous -- I don't know what that --
23 whether it's in the House a few years ago where we made it
24 unanimous for someone to receive the death penalty -- have we
25 seen a reduction or increase or has it pretty much stayed the

1 same in terms of people sentenced to death row?

2 MR. INGOGLIA: Through the Chair, we can get that data
3 for you. I don't have that data right in front of me. But it
4 would be I'm assuming relatively easy to go back through death
5 penalty cases and see every death penalty case that met the
6 aggravators which founding the guilty, step one, met the
7 aggravators, step two and then was less than unanimous on -- on
8 the third part, the death penalty recommendation phase of the
9 trial. So we could probably pull that data for you.

10 MR. POWELL: Thank you. Wouldn't this bill give
11 Florida the lowest standing for imposing the death penalty of
12 any other state in this county?

13 MR. INGOGLIA: Through the Chair. What I would say
14 that what this bill would do is show that the State of Florida
15 is serious about delivering justice to families such as the
16 Parkland families that did not -- that felt that the judicial
17 system failed them.

18 But your point in terms of numbers, yes, it would.
19 Currently Alabama is a ten/two and -- jury recommendation. And
20 under that scheme the judge shall impose a recommendation of
21 death with a ten/two.

22 MR. POWELL: Thank you. As a follow-up, that would
23 put us in line with Alabama as the only other state that would
24 be less than unanimous in terms of requiring the death penalty,
25 in line with Alabama?

1 MR. INGOGLIA: Through the chair, yes, that would be
2 correct.

3 MR. POWELL: Okay. Let me ask you this. I know you
4 said we can follow up. If this law was overturned by the
5 courts, wouldn't the defendants who were sentenced to death now
6 have to be resentenced?

7 MR. INGOGLIA: Through the Chair. I'm assuming that
8 would be the case, correct. Is that -- the Chair.

9 MR. POWELL: The question was the people who were
10 sentenced, would they be resentenced?

11 MR. INGOGLIA: They would have -- if they were struck
12 down by the court, they would have to go through the -- the
13 question is would they have to go through the process again?
14 And that would be they're retried in that case. I'm asking you,
15 Mr. Chair, since your --

16 CHAIR MARTIN: If somebody was sentenced before this
17 bill passes, jeopardy is attached. They're not going to be
18 resentenced. Because this deals with people who are going --
19 who have yet to be tried.

20 MR. POWELL: Okay. Thank you, Mr. Chair. I guess the
21 question is we talked a little bit earlier about the jurors and
22 the idea of a -- what's the term that was used -- was an
23 activist juror?

24 MR. INGOGLIA: Protest juror.

25 MR. POWELL: Protest juror. Aren't jurors who are

1 seated in capital punishment cases required to swear that they
2 could impose the death penalty if they're -- if they're sworn in
3 as a juror in a capital case, aren't they required to indicate
4 that they would and could impose the death penalty?

5 MR. INGOGLIA: Through the Chair, I believe so, yes.

6 MR. POWELL: And that's a sworn oath?

7 MR. INGOGLIA: I believe so, yes.

8 MR. POWELL: In this case, if there is the idea that
9 there's this activist juror and then we talked about activist
10 judges, well, then what's the need for the legislation if that
11 were the case, because in this -- and what's the need for the
12 change, because the new provisions of the amendment that was
13 just filed does give judges some discretion and it does say if
14 there's less than ten or less than eight what the judge can and
15 can't do, then would be the need for -- are we trying to
16 strictly push judges and jurors in a manner that we would have
17 them to vote for the death penalty or include the death penalty?
18 Is this a one-sided argument?

19 MR. INGOGLIA: Through the Chair, so there's a lot to
20 unpack with that question. The -- I do not believe that some
21 jurors are actually being truthful when they get on to some of
22 these juries. That is just a personal opinion of mine.

23 And you can look no further than the Parkland
24 situation where you have somebody who went in and committed one
25 of the most heinous crimes in American history. But you could

1 not -- and the aggravators were found unanimous. But at that
2 point, I mean if you can't find that person should be sentenced
3 to death, then what do we have the death penalty for?

4 My concern with protest jurors is you have one person
5 and nobody knows who that jury would be. That one person holds
6 all the power on the jury. You can have 11 people that totally
7 agree that this person should be sentenced to death. It is the
8 most heinous of crimes. Heinous being an aggravator. But one
9 person then will cast her or his opinion onto the other 11. So
10 when the courts said that we had to go -- because remember, the
11 State of Florida was seven/five for a long time. Then we went
12 to ten/two. Then we went -- because of a Supreme Court ruling,
13 we went to unanimous. And now this Supreme Court ruling receded
14 that ruling and said it's up to the legislature, we can
15 determine.

16 We just think that eight/four being a super majority
17 as the third part of finding guilt and sending to death is the
18 appropriate landing spot. Because remember, not only do you
19 have to find them guilty, you have to find all of the -- you
20 have to find unanimity in one of the aggravators or multiple
21 aggravators. And then the third part is the -- whether a jury
22 will recommend or not going -- putting somebody to death. And
23 remember, it's the recommendation to the judge. And obviously
24 when we go forward, we're going to be looking at amending this
25 to make sure that there is some judicial latitude on that. But

1 that's an awfully high bar. And I have seen cases -- I have
2 cases here in front of me. We have staff. We have researched
3 cases where this has been an absolute miscarriage of justice.

4 So we can sit here and opine all day long that protest
5 jurors don't exist because of the virtue of them saying that
6 they're not going to -- that they know that they have to, in the
7 perjury, or swear an affidavit that they're going to listen to
8 everything. But we know in reality it actually happens.

9 MR. POWELL: Two final questions. One concerns me the
10 most in this situation. We heard from Mr. Lindsey earlier. And
11 the Clean Hands Provision has long bothered me and a lot of us
12 in this legislature.

13 I read a study and maybe you can confirm or deny it,
14 that Florida is the number one that has had people exonerated
15 from death row. Do you know if that's true or not?

16 MR. INGOGLIA: Through the chair, I do believe it is
17 true and I believe the number is 66 exonerations. But the
18 exonerations, a lot of them, not all of them -- and that's why I
19 asked the question to Mr. Lindsey -- a lot of them had to do
20 with advances in DNA. Right. So these are the ability through
21 new technologies to deliver exonerations in today's world for
22 something that was projected and people who were convicted and
23 on death row, not just convicted on death row, but just
24 convicted, they're being exonerated because of advances in
25 technology. We're at that point today when technology is -- is

1 so good. And just look at the last couple of years with the
2 advances in touch DNA. So we don't know where the advances in
3 DNA technology are going to be five or ten years from now. But
4 every year that passes, every new iteration in technology, the
5 chances that somebody is going to be convicted and/or put on
6 death row in this case in terms of capital felonies becomes
7 lesser and lesser over the time because of the -- because of the
8 advances in DNA.

9 So when people ask the question, you know, are you
10 going to be eight/four? Are you worried about -- no, not in
11 today's environment I'm not, because of the advances in DNA and
12 to be able to go through and a lot of scientific base research
13 when it comes to investigating these crimes. I think that the
14 chances of that becomes less and less as we go forward.

15 MR. POWELL: Thank you. And I'll follow up on that
16 later. The last question I really have is -- and I just want to
17 know the thought behind this. If someone is convicted and they
18 are charged to serve a life sentence does that, as opposed to
19 the death penalty, does that mean they were not brought to
20 justice, as justice in a case that involves the death penalty as
21 opposed to life sentence, is the death penalty the only justice
22 that is acceptable in those types of cases?

23 MR. INGOGLIA: Through the Chair.

24 CHAIR MARTIN: Uh-huh.

25 MR. INGOGLIA: No, life would be acceptable. Death

1 could be acceptable. That's why we have a jury. That's why we
2 have a judge. And we're giving discretion too for them to make
3 those decisions.

4 It's the purview of the legislature to -- because we
5 have a death penalty -- to set the standards and the bar for
6 somebody who is convicted and then sentenced to death. So
7 that's part of our process. And we just think that where this
8 is settling is what should be current law going forward.

9 MR. POWELL: Thank you.

10 CHAIR MARTIN: If you have another question, I can
11 come back to you later.

12 MR. INGOGLIA: I think he's reserving his right to ask
13 a question later.

14 MR. POWELL: I'll reserve that right. Thank you.

15 CHAIR MARTIN: You're welcome. Senator Perry.

16 MR. PERRY: Yeah. Thank you, Mr. Chair. Just not
17 talking about guilt or innocence. We're talking about the
18 penalty phase, correct? So the question was brought up by
19 Senator Powell on deterrence. In your opinion do you believe
20 whether or not the data supported it, should someone's
21 punishment be based upon what somebody else may or may not do or
22 should -- or should the punishment be based on justice for that
23 particular crime? Would there be anything that would say --
24 because it may deter somebody or not deter somebody that we'd do
25 punishment or should punishment be based on what the crime was

1 and what punishment is fair at that particular time?

2 MR. INGOGLIA: Through the Chair, I think it should be
3 on the crime and what was done at the time, and in this case,
4 whether the aggravators, an aggravating situation was -- was met
5 as per the standard.

6 Look, one of the -- look, I understand discussing the
7 death penalty is -- we're talking about the ultimate, the
8 ultimate finding by a jury. Right? Or recommendation by a
9 jury. But what I think people fail to understand is that the
10 killer acted as judge, jury, and executioner, also. And I think
11 people miss that.

12 MR. PERRY: Thank you.

13 MS POLSKY: Chair.

14 CHAIR MARTIN: Yes, Senator Polsky.

15 MS. POLSKY: Thank you, Mr. Chair. Senator Ingoglia,
16 can you clarify -- you mentioned something about next steps and
17 changes that may come with this bill. I think it's important
18 that we know what that -- those changes are as we vote here
19 today. So can you explain that again?

20 MR. INGOGLIA: Sure, through the Chair. We are
21 looking at the possibility of the next committee step to keep
22 the eight/four, but add total judicial discretion, meaning the
23 judge can deviate. So if a judge -- if a -- if a recommendation
24 comes through from a jury unanimously, 12/0 as is the case right
25 now, the judge can deviate from that and impose life. If the

1 judge comes back under this new law -- and what we're looking to
2 do is under this new law -- if it comes back -- the jury comes
3 back eight/four with a recommendation of death, then the judge
4 still has the option to impose life.

5 MS. POLSKY: Doesn't that take away what these
6 victims' families are saying if -- that you can have an activist
7 judge just like you can have an activist juror who could upset,
8 you know, the whole plan alone, that this person get the death
9 penalty?

10 MR. INGOGLIA: Through the Chair.

11 CHAIR MARTIN: Yes.

12 MR. INGOGLIA: So it's a concern. It's a concern of
13 theirs. It's a concern of mine. I would much rather have a
14 scheme in place where when they meet the highest of standards
15 that the judge shall impose death. But I'm taking into account
16 some of the comments by people who try these cases, some of the
17 State's Attorneys on what the real life ramifications on a jury,
18 making sure that we're not confusing the jury.

19 But having said all that, my big problem with an
20 activist judge is sometimes, not all times, the unwillingness to
21 explain to the families why she or he is deviating from a --
22 from a recommendation of death from a jury. In my opinion,
23 these judges are elected. They should be -- they should be held
24 accountable to the voters who put them in office. It is a
25 disservice. It is quite frankly -- I find it hard to believe

1 that somebody can deviate from a recommendation of death and
2 impose life and look families in the eye across the court and
3 not give them an explanation of why.

4 So with -- what we are discussing is eight/four with
5 the judicial discretion, but only if the language incorporates,
6 which I have in this amendment, that the judge, he or she, must
7 file a brief with the court explaining why they deviated.
8 Because the communities, the families, and the voters need to
9 know that.

10 MS. POLSKY: Follow-up, Mr. Chair.

11 CHAIR MARTIN: Yes, ma'am.

12 MS. POLSKY: In every other kind of criminal matter,
13 let's just say robbery, does the jury need to return a unanimous
14 verdict in order to convict a robber?

15 MR. INGOGLIA: Through the Chair.

16 CHAIR MARTIN: Yes, sir.

17 MR. INGOGLIA: The same here, it's going to be
18 unanimous. You have the guilt. The first one is that they're
19 guilty. Yes. The second portion of this is that -- is there
20 unanimous unanimity in one of the 16 aggravators outlined in
21 Florida Statute? So that is a yes, also. So they're still
22 convicted unanimous. They still have met the aggravator portion
23 of the statute unanimously. This is the death penalty phase
24 whether they -- whether they recommend a life sentence or death.
25 That is what we're changing. So it is still a very, very high

1 bar. We're not lowering the bar on that. We're lowering the
2 bar on just that portion of that.

3 MS. POLSKY: And why do we need -- if they've gone
4 through the whole other process and it's been unanimous with
5 guilty, it's unanimous with aggravator, aggravating factor, then
6 why would we lower the bar for the final decision as to death or
7 not?

8 MR. INGOGLIA: Through the Chair, because I think
9 Parkland has proven it is not -- it is not -- Parkland is not
10 emblematic of all the cases, but it does happen. And this is
11 where judicial discretion can come in is that if somebody like
12 Nikolas Cruz does not meet the -- the benchmark for the death
13 penalty, then what do we have the death penalty for?

14 So this allows somebody to be eligible to be put to
15 death subject to the judge's discretion for somebody like if we
16 have another shooting, a mass shooting, God forbid, in the State
17 of Florida similar to Nikolas Cruz that -- somebody like that
18 doesn't -- doesn't -- and, you know, and this is -- I'm going to
19 get emotional here, because this is -- to me, this is the most
20 heinous part of it. It's -- not only do these families have to
21 sit there and look at pictures of their families, of their kids
22 that have been taken away from them by this monster, but now a
23 portion of their taxes every year is going to keep this monster
24 alive, because of a couple of jurors that did not agree with the
25 death penalty. And if you can't agree with the death penalty on

1 Nikolas Cruz, then you can't agree on the death penalty on
2 anyone. That's what I'm trying to get to.

3 MS. POLSKY: And can you talk about what the process
4 is in impaneling a jury for death penalty, the questions that
5 are asked sometimes, you know, the demographics of the folks who
6 eventually make it to a jury such as that?

7 MR. INGOGLIA: Through the Chair, I cannot answer
8 that, because I'm not an attorney. But we have State's
9 Attorneys here who have tried death penalty cases. Your Chair I
10 think is a little familiar with that. I would defer to them,
11 because I would not want to misspeak.

12 MS. POLSKY: Okay. Thank you.

13 CHAIR MARTIN: Senator Pizzo.

14 MR. PIZZO: Thank you. And if I could ask the Chair
15 or staff. We do have a State Attorney that's going to speak and
16 I don't want to lay it all on Senator Ingoglia some of my
17 questions that in fairness you probably don't know the answers
18 to but --

19 CHAIR MARTIN: You can ask that speaker questions when
20 they come up.

21 MR. PIZZO: Will you have a State Attorney that will
22 speak?

23 CHAIR MARTIN: Do we?

24 MR. PIZZO: Yeah.

25 CHAIR MARTIN: State's Attorney Gladson is in the --

1 MR. PIZZO: A couple of my questions I have I'm going
2 to direct towards the State's Attorney's Office. They're not
3 that difficult but --

4 MR. INGOGLIA: Mr. Chair.

5 CHAIR MARTIN: Yes.

6 MR. INGOGLIA: Excuse me, Senator. Can we just -- I
7 don't know if Bill Gladson, State Attorney of the Fifth
8 Judicial, has actually signed up to speak. So I don't know if
9 there's an opportunity to -- you have?

10 MR. GLADSON: Yes.

11 MR. INGOGLIA: Okay. I just wanted to make sure we
12 got his expertise.

13 CHAIR MARTIN: And if he doesn't speak or doesn't
14 answer your questions, I'll give you some leeway to ask the bill
15 sponsor.

16 MR. PIZZO: Thanks. And in fairness to any
17 anticipated speakers, one of my questions I'm going to have is
18 my concern that I think on the written finding that's required
19 by the court, I think if you went to line 85 in your original
20 draft does not reconcile with how you described it in line 27 of
21 the 297178. I just want to be clear. I don't disagree with you
22 about the court should have to make written findings. I just
23 think when it translated and came over of what the requirements
24 are actually going to be for the court are not what you hoped or
25 anticipated or had originally drafted.

1 MR. INGOGLIA: Mr. Chair.

2 CHAIR MARTIN: Yes, you may respond.

3 MR. INGOGLIA: We can look at that. We can continue
4 to work with staff and with you to make sure that we get that
5 language right.

6 MR. PIZZO: Okay. Here is my first question.
7 Basically your position is it doesn't matter if we have the
8 horrendous, heinous acts in high definition, a full confession,
9 seven mitigating -- seven aggravating factors, your concern is
10 it doesn't matter how incredibly impressive and efficient and
11 perfect the introduction of evidence was in front of a jury,
12 we're going to have one or two or a few that are just going to
13 fly in the face of reason, violate their commitment to follow
14 the law and just come back with a no just because that's their
15 personal feeling. I mean that's basically your position, right?

16 MR. INGOGLIA: Through the Chair, my position is that
17 that may happen and we need to guard against that. But also
18 again going forward, making sure that the judge has the leeway
19 to weigh, to look at all the aggravators, the mitigators, and
20 then deviate from that if she or he feels fit. But also with
21 that explanation of why.

22 MR. PIZZO: Okay.

23 CHAIR MARTIN: Follow-up?

24 MR. PIZZO: Yes. So -- I just want to make sure I've
25 got the right line number for -- I'm sorry -- 74. 74 in the

1 original compared to line 27 in the strike all -- in the
2 amendment. And so in that situation where -- and I've called
3 around and asked, because I'm removed from the State Attorney's
4 Office for a few years. So I called around and asked for other
5 Broward cases. A friend of mine who handled the last death
6 penalty case was a ten/two.

7 I don't mean to discount this or disservice at all,
8 but I appreciate and understand and agree with your position in
9 the sense that there are certain things I try to explain to my
10 sister I don't know how many times over the years. And she
11 sometimes just doesn't get it. I'm with you. Sometimes by
12 design.

13 My concern also with -- and I'll ask the State
14 Attorney, but I'll ask you as well in consideration going
15 forward, what type of written findings are going to be required?
16 It may just be a silver-plattered setup for appeal. Because you
17 have -- obviously the jury is the tryer of fact, the judge is
18 the tryer of law. But you have the most learned person likely
19 in the room making written findings that just -- that are ripe
20 for certain appellate proceedings. Is it your position that on
21 a ten/two all the judge should write is: Pursuant to Florida
22 Statute whatever this has created and amended, I am required to
23 impose death. Likewise if it's seven/five or less: Pursuant to
24 Florida Statute, I am required to impose a life sentence,
25 although I really wish it should have been death maybe. But

1 really that's all they should be doing is just citing the
2 statute and it's only when it's an eight/four or nine/three do
3 they actually have to make an extended elaboration, so to speak,
4 and expand upon why, because they can't point to a statute.
5 They have to point to their -- to their position. Is that your
6 understanding?

7 MR. INGOGLIA: So, through the Chair.

8 CHAIR MARTIN: Yes.

9 MR. INGOGLIA: So under what has been adopted in the
10 strike all, in the delete all, yes, only for eight/four and
11 nine/threes. But going forward again, we're looking at adding
12 back full judicial discretion on unanimous down to eight/four.
13 So in any of those cases, in any recommendation of death whether
14 it's unanimous or down to eight/four, we would ask the court to
15 file a brief with the explanation.

16 What is in that brief, I can only point to what some
17 judges have put into briefs or on the record explaining, because
18 not all judges don't -- don't explain. There are some judges
19 that actually will deviate and -- deviate from a death sentence
20 and put life and put the explanation.

21 My concern is making sure that there is an
22 explanation. So to answer your question of what they should
23 write and is it ripe for appeal, those are good questions. I
24 would point to what judges are currently writing when they do
25 explain or what they put on the court record when they do

1 explain when they're deviating now.

2 CHAIR MARTIN: Any follow-up?

3 MR. PIZZO: Yes. Do you know how many times in recent
4 history that the jury has come back for death and a judge in one
5 of the 20 judicial circuits has actually imposed life instead?

6 MR. INGOGLIA: Through the Chair, yeah, I mean there
7 is -- I have a couple of them in my case file right here. In my
8 file. There has been a couple of recent cases. Bill Gladson
9 can probably speak to some of those cases. I think a couple of
10 them were his cases, also.

11 So it is not -- it is not infrequent. It's frequent
12 enough when we're talking about the heavyweight of a death penalty
13 case where they should -- in my opinion that they should. But to
14 answer your question, yes, there are cases.

15 MR. PIZZO: Okay. And you and I have spoken about this.
16 This is why it's not an unfair surprise. I actually have bigger
17 concerns on a numbers basis of how many cases have been taken from
18 a jury and there may have been a sentence of life imposed when
19 there was a number of aggravators.

20 In a second-degree murder trial, how many jurors are
21 there?

22 MR. INGOGLIA: I believe it's --

23 CHAIR MARTIN: If you don't know the answer, it's six.

24 MR. PIZZO: Mr. Chair, I'm asking the bill sponsor if
25 you don't --

1 CHAIR MARTIN: Well, if you know the answer. I mean
2 we're not supposed to ask questions we don't know answers to.
3 We're only supposed to ask questions --

4 MR. PIZZO: That we know the answers to?

5 CHAIR MARTIN: Yeah. If you want to --

6 MR. PIZZO: We're only supposed to ask questions that
7 we know the answer to?

8 CHAIR MARTIN: That you don't -- that you don't know
9 the answers to. So if you know the answer, like don't -- just
10 ask him questions about the bill.

11 MR. PIZZO: Okay. With the exception of capital
12 cases, every single jury is going to be a jury of six, correct?

13 MR. INGOGLIA: I believe so, yes.

14 MR. PIZZO: Okay. Only in capital cases is it 12?

15 MR. INGOGLIA: I believe that is the case again. I'm
16 not an attorney. I just care deeply about protest jurors and
17 protest judges.

18 CHAIR MARTIN: Protestors. Okay. Do you want the
19 record to reflect that you know how many jurors there are in
20 nondeath cases? We just -- I want our time to be spent --

21 MR. PIZZO: Mr. Chair, with all due respect nobody in
22 this room has put away more shooters and murderers than I have.

23 CHAIR MARTIN: And thank you for that.

24 MR. PIZZO: Okay. The reason why I'm asking the
25 question -- and it's actually to help the bill sponsor --

1 because when 546 of the most often charged felonies in the
2 State of Florida are not death penalty cases, we only have a
3 jury of six to prove beyond a reasonable doubt. And inherently
4 built into a capital case is a higher burden, I would argue, on
5 a numbers basis to have 12 jurors that you have to convince to
6 be unanimous at 12/0. It's -- I would -- I would say it's twice
7 as hard.

8 And so that forms my reasoning, because a majority of
9 this board, of this panel here of members is all that's
10 necessary to pass this bill. And what Senator Ingoglia is
11 suggesting is a burden higher than the number of legislators
12 required to pass this law to make it law. And that's why I'm
13 trying to get to a comfort level on the number of jurors.
14 That's the reason why I'm asking it. And honestly for people as
15 well that are watching and to follow. Because it's -- this is a
16 nuance that you and I understand, but the majority of some of
17 our members don't understand nor the public.

18 CHAIR MARTIN: And you can inform of that difference
19 and then ask your question. That's all I'm getting at.

20 MR. PIZZO: Okay.

21 CHAIR MARTIN: Was we don't need to have a back and
22 forth over things that you can explain.

23 MR. PIZZO: Okay. Very good. I'll reserve the rest
24 of my questions for the State Attorney when he takes the stand.

25 CHAIR MARTIN: Any other questions?

1 All right. Now, we'll go to appearance cards.

2 Bill Gladson.

3 MR. GLADSON: Good afternoon, Senators, Chair Martin
4 and Vice-Chair Bradley. I am here to speak about the bill. I
5 understand there have been two amendments filed. We've talked
6 about them earlier.

7 Our organization however has looked at the original
8 bill. And we decided as a group to vote only on the concept
9 that we believe that unanimity is no longer required. And we
10 will support whatever number the legislature comes to.

11 But as it stands, we hadn't had a chance to look at
12 either amendment and discuss it fully. So that's our position.
13 We will support the legislature. But, you know, based on the --
14 the Supreme Court's decisions, unanimity is not required any
15 more. So, you know, it falls to the legislature to make the
16 decision at this point. So that's -- that's our position of the
17 FPA. And I understand there's probably some questions for me.

18 CHAIR MARTIN: Go ahead, Senator Pizzo.

19 MR. PIZZO: Thank you, Mr. Chair.

20 CHAIR MARTIN: You're recognized.

21 MR. PIZZO: As related to jury instructions, do you
22 have any concerns there?

23 MR. GLADSON: You know, I always have concerns with
24 jury instructions particularly in capital cases. We have a jury
25 instruction committee that looks and reviews jury instructions

1 in every year to make recommendations on all kinds of case,
2 capital and noncapital. They are complicated. They have to be
3 complicated. So that is one thing that will be considered if
4 this legislation passes. You know, that's going to go to a
5 jury -- a jury instruction group of experts from the Attorney
6 General's Office, from the Florida Bar, from everybody else that
7 would help craft instructions that will be clear for the jury to
8 understand.

9 CHAIR MARTIN: Okay. Follow-up?

10 MR. PIZZO: Yes. And have you had a chance to --
11 well, let's just take even the original -- the original draft,
12 the bill that's B 450. Do you believe that the sections as it
13 relates to the requirement of the court's written finding
14 comports with that which is practical in application? One of
15 the concerns up here, if you've ever been a prosecutor, is that
16 we pass these things and then, you know, I get text messages,
17 "Who the hell passed this?" You know, because they actually
18 have to do this in court.

19 The original draft, you feel, is consistent or comport
20 with the requirements of written findings with the court?

21 MR. GLADSON: So if -- if I can, if I could ask --

22 CHAIR MARTIN: Yeah.

23 MR. GLADSON: Earlier you were talking about an
24 inconsistency between two particular lines, I think it was 79.
25 I couldn't -- during the time I was --

1 MR. PIZZO: Come on, man.

2 MR. GLADSON: I had people whispering in my ear and
3 everything. I didn't -- I wasn't able to compare those two. So
4 if that's what you're talking about, I'd have to look at that.

5 MR. PIZZO: Okay. I think the bill sponsor is
6 amenable to look at that to make sure that even what he has
7 stated is, you know, is so.

8 Have you had a lot of -- you're aware in which
9 circuit?

10 MR. GLADSON: So I'm in the Fifth Circuit.

11 MR. PIZZO: Are there a lot of cases where the jury
12 came back with death and the judge took it back and imposed a
13 life sentence?

14 MR. GLADSON: In the last four or five years, I've had
15 three. They have come out of the Ninth Circuit where we have
16 been assigned to prosecute the death penalty cases.

17 MR. PIZZO: Okay.

18 MR. GLADSON: Three out of the five that we've got
19 death recommendations on unanimous juries have been judicial
20 overrides.

21 MR. PIZZO: Okay.

22 MR. GLADSON: One with an opinion, a written order.
23 One with an order from the bench. And one with just no
24 explanation whatsoever, just a walk off the bench.

25 CHAIR MARTIN: Last question.

1 MR. GLADSON: Yes, sir.

2 MR. PIZZO: I have contemplated an idea where upon a
3 situation like that -- well, how would you feel about the idea
4 that it goes to a three judge panel sitting on that circuit,
5 that if you had the trial judge who may be up for reelection
6 within a couple of months to basically like -- just like to hear
7 interlocutory appeals, that it's a three-judge panel where you
8 might not have a judge who would go ahead and do those three
9 imposition of life sentences when the jury came back unanimous.

10 MR. GLADSON: So if I can.

11 CHAIR MARTIN: Yes, you may.

12 MR. GLADSON: I'm not sure I follow you. I think that
13 would be a C-change compared to where we are now. And if you're
14 talking about a three-judge panel making a recommend -- doing
15 exactly what I'm --

16 MR. PIZZO: On death. I mean your situation -- is it
17 the same judge who did all three of those?

18 MR. GLADSON: No, actually I think it was three
19 different judges.

20 MR. PIZZO: Had unanimous verdicts and then followed
21 by unanimous recommendations of death?

22 MR. GLADSON: Yes, sir.

23 MR. PIZZO: 12/0 and imposed life sentences on all
24 three?

25 MR. GLADSON: Yes, sir.

1 MR. PIZZO: Isn't that a problem with the court?

2 MR. GLADSON: Listen, it hasn't happened in the Fifth
3 Circuit. It came about in the Ninth Circuit where we've been
4 prosecuting these cases which drew my attention to it.

5 MR. PIZZO: I'm sorry. And there was only one of
6 those three judges made an actual written finding explaining
7 themselves, their position?

8 MR. GLADSON: So if memory serves me, if I can -- yes,
9 there was a written order that seemed like it was going to
10 follow the jury's recommendation and at the very end it
11 sentenced to life which was somewhat odd. There was a
12 pronouncement from the bench and then there was one with no
13 explanation whatsoever.

14 MR. PIZZO: Okay. Thanks.

15 MR. GLADSON: Yes, sir.

16 CHAIR MARTIN: Thank you. Any other questions of the
17 State Attorney? Thank you.

18 MR. GLADSON: Thank you.

19 CHAIR MARTIN: Okay. Sorry. I was looking at my
20 notes to see if I wanted to ask you a question. Senator Pizzo
21 covered it. Thank you for your questions.

22 All right. Howard Dimmig from the Florida Public
23 Defenders Association.

24 MR. DIMMIG: Good afternoon, Chair, Vice-Chair,
25 Senators. My name is Rex Dimmig. I am the elected Public

1 Defender for the Tenth Judicial Circuit which is Polk,
2 Highlands, and Hardee County. And, yes, I am a capital
3 litigator. I have tried death penalty cases for about the last
4 20 years.

5 It feels a little bit like deja vu standing here
6 before the Criminal Justice Committee again discussing a death
7 penalty bill. I will say that thanks to the hard work of this
8 legislature in 2016 and 2017 for the first time since 2002
9 Florida had a procedure for imposing the death penalty that met
10 constitutional requirements.

11 The FPDA said in 2016 and 2017 that unanimity was a
12 function that would ensure that Florida's death penalty
13 procedures had the greatest probability of being upheld under
14 constitutional attack and constitutional challenge.

15 Why is that important? Well, all you have to do is
16 look back after the United States Supreme Court decided Hurst v.
17 Florida. There was chaos in our criminal court system.
18 Literally hundreds of cases had to be reviewed to determine
19 whether or not there would be a resentencing in those cases.
20 And in the scores of cases where there had to be a resentencing,
21 we haven't even completed all of those across the state here in
22 2023.

23 No law is perfect. Certainly the law that was passed
24 in 2017, I would not argue, is perfect. But it is effective.
25 In the five years that preceded the adoption of the unanimity

1 requirement in Florida, Florida's death penalty -- imposition of
2 the death penalty in Florida amounted to 18.2 percent of all of
3 the death penalties imposed in the United States. In the five
4 years since unanimity was adopted in Florida, Florida's death
5 penalty has accounted for 20 percent of all the death sentences
6 imposed in the United States. So it is still effective.

7 And in 2022, the year that just ended, Florida imposed
8 more death sentences than any other state in the country. But
9 it didn't do it in one case. One horrible, tragic case. The
10 outcome of the sentencing hearing and the murders at the
11 Marjorie Stoneman Douglas School was shocking to everyone.
12 Clearly what Nikolas Cruz did in that case was horrible.
13 Clearly it is one of the most aggravated first-degree murder
14 cases Florida has seen.

15 But the United States Supreme Court has made clear
16 that you don't impose the death penalty in just the most
17 aggravated of cases. It must be in the most aggravated of cases
18 and least mitigated of cases. We don't know what we don't know.
19 We don't know why not one, not two, but why three jurors, fully
20 25 percent of that jury panel in Broward County voted for life.
21 It may be that some of those jurors -- and I have heard jurors
22 say this to me -- that they viewed that life in prison was a
23 more harsh punishment for someone than the death penalty. It
24 may be that those jurors determined to apply mercy, finding that
25 the mental impairment that Mr. Cruz suffered because his mother

1 abused alcohol and drugs during her pregnancy had an impact on
2 this case or despite their denials -- and they have denied it
3 vehemently -- it may be that there were activist jurors on that
4 particular panel.

5 But I would suggest to you that it is unlikely that
6 that was the situation, because voir dire, the jury selection
7 process in capital cases in capital cases is one of the most
8 rigorous --

9 CHAIR MARTIN: I'll give you two more minutes.

10 MR. DIMMIG: Thank you, sir.

11 CHAIR MARTIN: Yes, sir.

12 MR. DIMMIG: No juror who says that they cannot impose
13 the death penalty is allowed to serve on a jury. And
14 prosecutors who have an inkling, who have a suspicion based upon
15 all their questioning that a juror may not be being completely
16 honest about that answer, has ten preemptory challenges. They
17 can get rid of ten jurors for any reason other than a
18 discriminatory reason. In the Parkland case, only five
19 preemptory challenges were used.

20 Likely, we will never know why that jury returned the
21 verdict they did. But what we do know is this. If a new
22 statute makes imposing the death penalty a little more likely,
23 lowers the bar, one, as a public defender from a purely selfish
24 point of view I can tell you the biggest challenge I face now is
25 recruitment and retention of lawyers. If I have to devote more

1 resources to capital cases, it is going to have an impact on
2 criminal cases all the way down the line.

3 Second, there are going to be more errors. When we
4 didn't have unanimity in Florida, there had been 30 people
5 sentenced to death row who have been exonerated. 30. We lead
6 the nation in that.

7 Third, there's going to be more litigation. And I
8 think that's an important thing. We've heard today that the
9 court did not require unanimity. The Florida Supreme Court has
10 said it does not require unanimity. But in the Hurst v. Florida
11 case before the United States Supreme Court, both the state and
12 the defense --

13 CHAIR MARTIN: 30 seconds.

14 MR. DIMMIG: -- raised the unanimity question and the
15 court refused to answer it. Did not rule on it. They declined
16 to answer the unanimity question. It will be back.

17 CHAIR MARTIN: Thank you. I have a question from
18 Senator --

19 MR. PERRY: Yeah, just a really quick question. You
20 said that the system works. However, in one horrific case it
21 didn't work. If this law was in effect before that went out,
22 that jury went out, would that have fixed it?

23 MR. DIMMIG: Well, I don't know if I --

24 MR. PERRY: Well, you said the way the law works
25 today --

1 MR. DIMMIG: Uh-huh.

2 MR. PERRY: -- but in one horrific case, it did not
3 work. If this law was in effect before that, would that have
4 fixed it?

5 MR. DIMMIG: I think the law is -- was still
6 effective. Because as I say, we don't know why the jury ruled
7 the way they did. They may have well have followed the law
8 which says if in their individual opinion --

9 MR. PERRY: I was just -- that's fine. I was just
10 clarifying. You said it works, but it didn't work in one case
11 is what you said. You said the system didn't work and I was
12 just wanting to clarify that. That's all. Thank you,
13 Mr. Chair.

14 CHAIR MARTIN: I think what Senator Perry was trying
15 to get at, how many jurors voted against the death penalty in
16 the Parkland case and would this bill have still allowed the
17 death penalty to be on the table for Nikolas Cruz?

18 MR. DIMMIG: It's my understanding from the lawyers in
19 that case three jurors voted for life and eight/four which is
20 what I understand the sponsor is ultimately working for, that
21 would have -- if only three voted for life, that would have been
22 a recommendation for death.

23 CHAIR MARTIN: Okay. Senator Ingoglia.

24 MR. INGOGLIA: Mr. Chair, thank you. Do you think the
25 State got it wrong in Poole? Do you think the Florida Supreme

1 Court got it wrong in Poole versus State?

2 MR. DIMMIG: I -- I reread Poole again last night.
3 And what Poole says is that the minimum requirements that the
4 United States Supreme Court said, that the Florida Supreme Court
5 went beyond the minimum requirements that the United States
6 Supreme Court said.

7 But as I indicated, the United States Supreme Court in
8 Hurst v. Florida did not address the unanimity question. It was
9 raised. They chose not to write on that particular issue. So
10 while Florida Supreme Court through the Poole decision says, no,
11 you don't have to have unanimity to recommend death, we don't
12 know what the United States Supreme Court will say. That will
13 be a subject of litigation.

14 MR. INGOGLIA: Through the Chair, and I think you for
15 recapping. I get all that. But in your opinion did the Florida
16 Supreme Court get it wrong in Poole versus State?

17 MR. DIMMIG: I'm always hesitant to second guess the
18 court. In light of their most recent case about unanimity, the
19 Ramos versus Louisiana case, I would say there is a strong
20 probability that the Florida Supreme Court got it wrong.

21 MR. INGOGLIA: Okay. So in your opinion they got it
22 wrong?

23 MR. DIMMIG: Yes, sir.

24 MR. INGOGLIA: Because we wouldn't be here today if --
25 if Poole versus State did not leave it open for the legislature

1 to set the bar, right? That's where we are at right now,
2 although you disagree with the process and how we got here? The
3 reality is, is that we are here today because of Poole versus
4 State?

5 MR. DIMMIG: Yes, sir.

6 MR. INGOGLIA: Okay. Follow-up.

7 CHAIR MARTIN: Yes. I'm sorry.

8 MR. INGOGLIA: Do you agree or disagree if I make the
9 statement that advances in DNA technology make it less likely
10 that we convict somebody erroneously whether it be for a regular
11 conviction or whether it be for capital felonies?

12 MR. DIMMIG: Mr. Chair.

13 CHAIR MARTIN: You may respond.

14 MR. DIMMIG: It makes it less likely, yes. Makes it
15 impossible, no. There is not DNA in all cases.

16 MR. INGOGLIA: Understood. Thank you.

17 CHAIR MARTIN: Yes. Thank you. Yes, Senator Pizzo,
18 you're recognized.

19 MR. PIZZO: Thank you. Sir, when you said that there
20 is going to be more errors and you're going to have to try real
21 hard or try harder, what did you mean by that, as far as your
22 staff is concerned or for defense attorneys?

23 MR. DIMMIG: We know the United States Supreme Court
24 in talking about the death penalty and in talking about the
25 judges' obligation in the sentencing phase has said that jurors

1 can be swayed by emotion. And I think that's unquestionably
2 true. And the reason the judge has a role in sentencing is to
3 take the emotion out of it.

4 I can tell you if somebody killed one of my family
5 members, I'd want to string them up from the closest tree.
6 That's why I wouldn't be allowed to sit on a jury --

7 MR. PIZZO: Me neither.

8 MR. DIMMIG: -- in that particular case. And that's
9 what the judge's role then is to step in and make sure that the
10 law is strictly followed, to make sure that emotion and things
11 of that nature do not impact on the decision.

12 MR. PIZZO: Follow up?

13 CHAIR MARTIN: Yes, you may.

14 MR. PIZZO: So you probably better than anyone in this
15 room are more familiar with the 16 aggravators that are in
16 statute, right?

17 MR. DIMMIG: I'm familiar with them. I don't know
18 that I'm more so than others, but I'm familiar with them.

19 MR. PIZZO: How hard are most of those to prove? And
20 one of them is, you know, if I'm in my capacity as an elected
21 official and someone shoots and kills me in cold blood, then
22 that's actually an aggravator.

23 MR. DIMMIG: Some of them are what we in the defense
24 bar call auto ag., automatic aggravators. And I can't remember
25 the exact number off the top of my head, but it's a significant

1 number of them. The bottom line is there are very few
2 premediated murders in the State of Florida that do not have at
3 least one of those aggravating factors.

4 MR. PIZZO: Okay. And what is your position -- and do
5 you think it's the Criminal Justice System acting the way it
6 should when you may have been in a -- had a case where against
7 your client the jury came back 12/0 across the board on all of
8 it and you were able to persuade the judge actually to impose a
9 life sentence instead of death, is that justice in action or is
10 that an injustice?

11 MR. DIMMIG: Under the statute that we had, it was
12 justice because that's what the law permitted. And I think my
13 definition of justice is doing what the law allows to be done.

14 MR. PIZZO: Follow up?

15 CHAIR MARTIN: Yes, you may.

16 MR. PIZZO: And what I'm gleaning from what you had
17 said in the beginning, and I don't want to mince words and I
18 don't want to put words in your mouth, so I just want to be
19 clear about this, that if there are two or three jurors -- your
20 concern certainly should be that if there are two or three
21 jurors who say no that there should be life and not death, that
22 they got it right and death should not follow, right? I mean
23 two or three or four or five, whatever, should be enough that
24 that's enough of a number of people that are of that body making
25 that determination that death should not be imposed, correct?

1 MR. DIMMIG: That is my personal opinion.

2 MR. PIZZO: Okay.

3 CHAIR MARTIN: I know, Senator Pizzo, just -- we still
4 have time for debate and we have a number of speakers yet so --

5 MR. PIZZO: Okay.

6 CHAIR MARTIN: -- I just want to make sure we get
7 through. And we have a lot of speakers.

8 MR. PIZZO: I understand. I understand. I'll be
9 super quick.

10 CHAIR MARTIN: All right.

11 MR. PIZZO: But on the flip side if you think three or
12 four members of the jury who say no, is justice occurring? But
13 on the flip side, a jury comes back 12/0 yes. And to your point
14 that the judge is the tryer of law, not of fact. The jury is
15 the tryer of fact. And you should follow the law. Isn't the
16 injustice or isn't the problem now that we have a 12 vote
17 unanimous jury verdict saying yes and the court who is supposed
18 to be dispassionate went, and even if aggravators were found,
19 went ahead and imposed life; isn't that not following the law?

20 MR. DIMMIG: No, sir, I think it is following the law.
21 Because as I said, the Supreme Court, US Supreme Court has said
22 judges look at this without the emotion. I -- I cannot imagine
23 how they got a jury in Broward County. I'll be honest with you.
24 Everybody there -- everybody in the state was emotionally
25 impacted by that case so --

1 MR. PIZZO: Okay.

2 CHAIR MARTIN: Thank you, Public Defender.

3 MR. DIMMIG: Thank you.

4 CHAIR MARTIN: All right. Anybody else? All right.
5 Let's -- let's move on. Fortunately, we were able to hear from
6 a State Attorney and a Public Defender. But unfortunately our
7 is more limited. So I'm going to ask everybody to keep their --
8 everybody that I call up who filled out an appearance record
9 card, keep your comments to a minute and a half. And we'll move
10 on from there.

11 Dustin Fetton, come on forward.

12 MR. FETTON: Thank you, Chair. Thank you, Senators,
13 for this opportunity to speak on what is undoubtedly a complex
14 and emotional issue and concern to so many in our state. I
15 speak as a proud citizen of this great state. I also speak as a
16 Roman Catholic Priest in the diocese of Pensacola, Tallahassee.

17 Over the past ten years I have ministered to victims
18 of violent crimes. I have ministered to family members who have
19 lost their child, who have lost their parent, and who have lost
20 their spouse to heinous acts. And I have also visited with men
21 on death row. I have had extensive conversations with men,
22 many, and I would say even most of whom regret the decisions
23 that they made and also regret the life circumstances that led
24 them to the decisions that they made.

25 But also as a Catholic Priest, I represent no doubt

1 hundreds and thousands of Catholics in this state that are
2 facing more and more an ethical challenge in the reality of what
3 recent Popes, Pope John Paul, II, Pope Benedict, XVI, and Pope
4 Francis now has deemed that the death penalty is inadmissible
5 and that it is an attack on human dignity and of the inviability
6 of human life. And as a result of this, this to me leads all of
7 us to realizing that this is not a -- just a political issue,
8 that this is a grave moral issue. Thank you, Mr. Chair.

9 CHAIR MARTIN: Thank you, Mr. Fetton. Zira Davis.

10 MS. DAVIS: Hi. Excuse me. My name is Zira Davis.
11 I'm a communications strategist for the ACLU of Florida. I am
12 not here as a member of -- or as an employee of the ACLU, but on
13 behalf of myself as a Florida native who is humbly asking for
14 your ear.

15 From the first time I saw an image of Condoleezza Rice
16 in the fourth grade, I considered myself a conservative. When I
17 turned 18, I moved to Washington, D.C. to continue this work.
18 While my journey has since brought me to a different set of
19 beliefs, it's because of conservatism that I first began to
20 question the death penalty. In D.C., I met like-minded
21 conservatives including conservatives concerned about the death
22 penalty.

23 Because of them, they taught me that there are many
24 reasons an innocent person can end up on death row. And I would
25 like to suggest that you look at the national registry of

1 exonerations for a full list of reasons outside of DNA testing.

2 They taught me about the innocent on death row
3 including the 30 innocent here in Florida, the highest in the
4 nation. And there are several recent stories of men who despite
5 already being executed, men including Ledell Lee in Arkansas and
6 Sedley Ailey in Tennessee that DNA testing is now exonerating
7 them despite them already being executed. Thank you.

8 This bill does not reflect the conservative values
9 that led me to oppose the death penalty in the first place. And
10 to others this bill does not reflect progressive values either.
11 Thank you for allowing me to speak today.

12 CHAIR MARTIN: Thank you. Christy Arnold with the
13 Florida Conference of Catholic Bishops.

14 MS. ARNOLD: Good afternoon, Chairman and members. My
15 name is Christy Arnold with the Florida Conference of Catholic
16 Bishops. We oppose SB 450, because we oppose making it easier
17 to execute people. We oppose the use of the death penalty in
18 general as it plagued with error, undermines human dignity,
19 perpetuates cycles of violence, and is not proven to deter
20 criminal acts compared with alternative punishment such as life
21 in prison.

22 We are concerned that this bill will lead to more
23 death sentences by eliminating the jury unanimity requirement to
24 only require super majority vote. Retaining the unanimity
25 requirement would better serve justice, because unanimity --

1 unanimity helps ensure the process is as reliable and as far as
2 possible. It promotes deliberation and engages every jury in
3 the process.

4 Florida already has the highest number of death
5 penalty exonerations in the nation. 30 since 1973. And in
6 light of this, it is unwise to weaken and erode safeguards
7 around the death penalty.

8 A death sentence is the most severe penalty that
9 society can impose. And as such, Florida should preserve the
10 highest standard possible for its application.

11 For these reasons, we oppose SB 450 and urge you to
12 vote no. Thank you.

13 CHAIR MARTIN: Thank you. There's a question for
14 Ms. Arnold.

15 MS. ARNOLD: Yes.

16 MR. PIZZO: Are there any circumstances where killing
17 someone is appropriate?

18 MS. ARNOLD: There is, I would say, appropriate
19 possible in -- with wartime situations if it's before.

20 MR. PIZZO: That was going to be my question for
21 Father, but he doesn't know me as well as you do. So my
22 follow-up is this. On a battlefield when you've been told who
23 your enemy is, when you've been directed and instructed to go
24 fight, and those who look like this or wear this or on that
25 side, it is justifiable under -- in the Catholic Church to go

1 ahead and kill another; isn't it?

2 MS. ARNOLD: Yes, in that -- in that scenario.

3 Uh-huh.

4 MR. PIZZO: So just a quick follow-up.

5 CHAIR MARTIN: Yes.

6 MR. PIZZO: If, by chance, one of the parents of the
7 14 kids that were killed in Marjorie Stoneman Douglas just
8 happened to be walking into school at the time and saw him just
9 finishing his act, would it have been justified to kill him
10 then?

11 MS. ARNOLD: I mean I'm not a (indiscernible), so I
12 can't speak to that.

13 MR. PIZZO: Okay. Thanks.

14 CHAIR MARTIN: Thank you. Andrew Grossmare. And then
15 on deck is Herman Lindsey.

16 MR. GROSSMARE: Thank you, Chairman Martin and
17 Senators. I appreciate this time here. I am speaking against
18 the bill in little different scenarios. In 2010, my daughter
19 was on her hands and knees and was shot in the head by her
20 boyfriend and killed. We -- we dealt with this criminal system.
21 We dealt with this thing. We were told we were going to get
22 subpoenaed. We did get subpoenaed. Luckily, thank God that the
23 man -- the man that did it, he had confessed.

24 He had gone to the police afterwards and turned
25 himself in. So the trial was about mitigation, about what was

1 going to happen to the man. Well, luckily he accepted a plea
2 bargain and I never had to go. But I was told by the defense
3 attorney and other people that are knowledgeable of such
4 situation that one of the things about trial was -- mitigation
5 was why my daughter deserved to be shot.

6 As a father, I can't imagine that I had to go through
7 that, would have to go through that or even get up there and
8 listen to people why my daughter deserved to die. So I was
9 spared that. And he was sentenced to a long period in prison.
10 He's done some wonderful things there. He's gotten a community
11 college degree. He's working on a Bachelor's. He leads men in
12 talking about domestic violence. He helps people with their
13 issues. And he's done himself to help reform himself. He's
14 done better about himself.

15 I can't imagine that if he had been sentenced to
16 death. But I would have to go through the appeals process. You
17 know, it's not a wound that gets over. It's a bleeding wound.
18 And that knife would have just kept jerking every time we had to
19 go to an appeal. That would have been terrible.

20 So I just want to say let the sentence be done --

21 CHAIR MARTIN: Thank you for talking.

22 MR. GROSSMARE: -- be finished. Thank you.

23 CHAIR MARTIN: Herman Lindsey, Executive Director,
24 Witness to Innocence. A minute and a half.

25 MR. LINDSEY: I'm going to make this real quick and

1 make sure I speak correctly this time in the mike. I'll make it
2 real quick. Okay. You've done heard from the prosecutor side.
3 You've done heard from the defense side. Okay. Now, you're
4 going to hear from somebody that's actually been there. There's
5 a lot of this stuff that we are hearing in this bill that is not
6 really happening in that courtroom. For instance, I'm going to
7 take the first thing in my case. My case came to an eight to
8 four jury and then the discretion went to the judge whether to
9 give me life or death. Guess what? That judge gave me death.

10 But if you read the Florida Supreme Court decisions,
11 that -- my JOA should have been granted at the time that I was,
12 you know, when we went for a motion judgment of acquittal, but
13 it wasn't. But we gave the discretion to that judge. That
14 judge should have known the law. And you say advocacy. But
15 that advocacy could be on both sides.

16 So we've been sitting here -- I've been sitting here
17 listening to the bill. We done talked about what everybody
18 thinks about justice, but we never talked about fairness,
19 equality in this whole process. We never talked about this bill
20 as it -- equal fairness. We're favoring one side here, but it's
21 going to also affect the other.

22 30 death row exonerees, 93 percent of it is
23 nonunanimous.

24 CHAIR MARTIN: Ten seconds.

25 MR. LINDSEY: Nonunanimous. So I think what we need

1 to do is just push this bill to the side right now and let's do
2 our homework so we can get it right. If you're going to do it,
3 let's do it right.

4 CHAIR MARTIN: Thank you.

5 MR. PIZZO: Mr. Chair, one question.

6 CHAIR MARTIN: Yeah. Mr. Lindsey.

7 MR. PIZZO: You better maybe than anyone would be able
8 to answer this question. Is there a situation, can you think of
9 horrific circumstances where the death penalty if you're 100
10 percent sure that that person committed a heinous act or a
11 number of heinous acts that they deserve the death penalty?

12 MR. LINDSEY. No. You know why? And to my opinion,
13 and I mean no disrespect to the family, but I've done been in
14 prison. I've done been on death row. My opinion, we're
15 cheating the victims if we put someone to death. And the reason
16 I said we're cheating the victims is because when -- think about
17 the life that -- the same man you-all are talking about,
18 Nikolas Cruz has got to live in that -- in that prison cell.
19 He's got to think about everything he done done every day. He's
20 not going to have an easy life at all period. He cannot have
21 children. He can't go out to the park. He cannot get, you know
22 support and things that he would love to do. His whole life is
23 taken from him. But if we put him to death, guess what? He
24 pays no consequences for what he done to that victim over here.
25 That victim cannot have kids now. That victim cannot go on to a

1 career or anything like that now. He needs to think about that.
2 And we -- and we -- I mean think about it. If your -- if we
3 have a loved one that's suffering from cancer and they pass
4 away, we are going to tell our kids, "Hey, they've gone off to a
5 better place." Is that what we're doing when we execute,
6 pushing the murderers off to a better place? Trust me, if you
7 ask anybody in this room right now, you say, "Which one you'd
8 rather do, would you rather spend life in prison or would you
9 die -- rather die?" Most people are going to say, "I'd rather
10 die."

11 MR. PIZZO: Thank you.

12 CHAIR MARTIN: Thank you. And then I have some
13 appearance cards where speaking is waived. Barney Bishop, III,
14 waives in support, is with the Florida Smart Justice Alliance.
15 Matt Dunnigan waives in support with the Florida Sheriffs
16 Association. Pamela Burchfort waives against with the NAACP
17 Florida State Conference. Aaron Wayt waives, Florida
18 Association of Criminal Defense Lawyers, waives against. And
19 N.R. Hines with the ACLU Florida waives against. Thank you. Is
20 there any debate?

21 MR. PIZZO: I'm going to be brief.

22 CHAIR MARTIN: Yes, Senator Pizzo.

23 MR. PIZZO: Thanks. I just want to reiterate a couple
24 of things. Again, it's only going to take a majority of this
25 body to pass this. And I didn't mean to be flippant with you,

1 Senator Ingoglia, I apologize. I don't think most people know
2 that we only have jurors of six for everything except for
3 capital cases.

4 I recognize and I agree with the Public Defender. I
5 could not serve as a juror either in this case. And if someone
6 touched my kid, I would kill them myself. And that's the honest
7 truth. So I wrestle with the hypocrisy of what I know I would
8 do and what I know I would demand for my own kids. And I ask
9 about that time, place, and manner of where you were if
10 Mr. Montalto or Mr. Petti just happened to be the school grounds
11 when that was happening. That would have been almost
12 self-defense. That would have been timely. That would have
13 been fine. And no one would disagree with that. And that's
14 what I wrestle with is the hypocrisy of how I know and what I
15 would demand of my own family. And I have to do the same for my
16 constituents.

17 And one thing we didn't sort of talk about or
18 challenge was the fact that I've caught jurors lying of what
19 they've posted on their Facebook thinking there's no way that
20 under the frenetic pace of the trial that we're in the middle of
21 that I'd be checking their Facebook profile to see if they lied
22 on the questionnaire. I've had a juror come up to me at the end
23 of trial in front of Judge Luck who is a Circuit Court Judge in
24 the Eleventh Circuit, then became a Florida Supreme Court
25 Justice after DCA stopping now in Federal Court that you-all

1 will remember, came up to me and said, "Hey, how have you been?"
2 I go, "What are you talking about?" She said, "We sat at a
3 dinner next to each other one time." I go, "Whoa, whoa, whoa,
4 come with me." We went right back to the judge's chambers to
5 say that basically we might have had a mistrial and have to do
6 it all over again. But I've had jurors who thought they were
7 doing us a favor when there were three counts or three possible
8 verdicts to be found on the juror form. And it was in front of
9 Judge Luck. And the first was I think attempted second. The
10 second one listed was manslaughter. Maybe attempted first,
11 manslaughter, and then attempted second. And the juror came --
12 the jury came back afterwards. And you're always given the
13 instruction you can speak to the attorneys if you want to,
14 you're not required to. They can come up to you and they can
15 leave. A juror comes up. The whole jury comes up and says,
16 "Did we do the right thing?" And I'm like, "What do you mean,
17 did you do the right thing?" "Like we came back with
18 manslaughter." We were disappointed, because two of those
19 charges had min. mans. Manslaughter does not. And so we're
20 like, "No, actually." And they go, "Oh, we thought we were
21 doing a favor, because it was listed attempted first,
22 manslaughter, and then attempted second." So jurors get it
23 wrong even when they think they're getting it right, you know,
24 for one particular side.

25 To the gentleman who lost his daughter, I incredibly

1 feel for you. But your tragedy is actually a perfect example of
2 why I'm in support of this bill. Because that guy, that piece
3 of you know what at the time who did that did it to one soul.
4 Well, what happens when he does it to two people and three and
5 four and five and six? When does somebody who has maybe a
6 couple of mitigating factors start to realize I've got to stop
7 shooting people? And gets all the way up to 17. That for me
8 shows a clear distinction of what a law professor once asked us
9 in a Socratic way is the following. Is there a situation where
10 someone does not deserve to die, but they don't deserve to live?
11 And can you think of a situation?

12 So you may have your position on the death penalty as
13 it relates to how completely inefficient it is. And, sir, it
14 costs a lot more with appeals for someone to be on death row
15 than it does to house them for the rest of their life at \$56 a
16 day in the Florida State Correction System.

17 So I'm honest and I take this position likely because
18 of some bias. I want to be very clear and candid about it
19 mostly because I'm a dad. And I want to be clear also for those
20 people who have a position just across the board no on the death
21 penalty. There are situations that deserve for people to be --
22 to be killed. There are those situations. I have seen them.

23 And it's unfortunate that it does take a tragedy for
24 us to wake up. Marjorie Stoneman Douglas is not the only recent
25 history where we've changed something. My colleague

1 Senator Bradley has been championing condo legislation that has
2 only happened because 98 people died. Otherwise it would fall
3 on the same deaf ears that I had filing similar bills for three
4 straight years that no one seemed to care about until bodies
5 were piled up.

6 So here's where we are. That jury, to everyone who is
7 in opposition to this, still needs to find unanimously that the
8 person is guilty. Twice as many people have to find out and
9 have to find that that person is guilty. Twice as many. The
10 burden is twice as -- just by the numbers -- twice as hard. And
11 having been a prosecutor, it is a burden that we should assume.
12 And it's true. I do think we need to take a closer look at some
13 of the sections of this bill. When you get to eight/four, it's
14 33 percent of the jury. And that's a concern.

15 But I'm going to vote for the bill, because I'm with
16 you in spirit and I'm with you, you know, on it and that the
17 burden that the State does have. And again, I am not
18 discounting your tragedy whatsoever, sir, but it serves as the
19 perfect paradigm for maybe he was an idiot and did one, pulled
20 the trigger once and did one incredibly stupid thing that he
21 regrets for the rest of his life. But we have a situation where
22 it's done 17 times. He doesn't deserve to live.

23 CHAIR MARTIN: Thank you. And real quick, we have 15
24 minutes left for our scheduled meeting. Is -- does anybody
25 think we're going to end up extending -- need to extend this?

1 Okay. Yes, Senator Polsky, you're recognized.

2 MS. POLSKY: Thank you, Mr. Chair. I think the first
3 issue with this bill is that it's really not ready for prime
4 time for its first hearings, have an amendment to the strike all
5 amendment, to say that there are going to be changes going
6 forward, I'm not really sure what we're voting on.

7 So I think Mr. Lindsey said it -- said that -- said it
8 best that this is just not ready. So that makes me very
9 uncomfortable that we have to vote right now on something that's
10 in the process of being formed.

11 It also shows how complicated this law is. And, you
12 know, none of us take that lightly. But that's why I think more
13 should have been done before we received this bill and not have
14 a rash reaction to a horrible tragedy and a huge miscarriage of
15 justice that did occur.

16 I think it's really interesting that we're voting on
17 this when we just voted on a bill an hour ago relating to
18 victims who are wrongly accused and compensating them for the
19 wrong that the State did.

20 That could happen with this new bill. With the
21 judicial overrides as State Attorney Gladson said, that there
22 have been numerous, this bill doesn't change that. I mean
23 imagine to the families if the jury was unanimous and the judge
24 said, "No, I'm still going to impose a life sentence." If that
25 was written in an opinion, would that make you feel any better?

1 I can't imagine that would be the case. Then there would be,
2 you know, complete outrage against that individual judge. So I
3 don't think this bill changes the miscarriage that occurred in
4 that trial.

5 Not only do I believe it doesn't solve the problem,
6 but it could lead to a wrong verdict. And we have a perfect
7 example on Mr. Lindsey of what a wrong verdict could be.

8 I have the distinct pleasure and honor of representing
9 Parkland. I do everything in my power in appropriations, in
10 bills to help these families and this community that is
11 devastated. I am devastated by what happened. I want you to
12 know where my heart is. And I think you know that. And I think
13 there are a lot of ways that we can work on how and why that
14 tragedy occurred. And I won't say his name. And I do agree
15 that that is when the death penalty should have been found.

16 But I don't agree that this bill that is not ready is
17 the answer. And I just want you to know that in my heart why I
18 need to vote against this bill. And it has nothing to do with,
19 you know, how I feel about that particular outcome, how I feel
20 about the families, or how seriously I take my role as a senator
21 from that area. So I just need to say all that. It's tragic no
22 matter what direction we go in. There is obviously no easy
23 answers here. And I'm so sorry that I have to vote that way.
24 But I just want you to know my heart.

25 CHAIR MARTIN: Any other debate? Senator Ingoglia,

1 you're recognized to close on the bill.

2 MR. INGOGLIA: Thank you, Mr. Chair. And I do truly
3 want to thank everyone for taking their time and coming up and
4 giving their opinions. I want to thank members of the committee
5 that I have had discussions with.

6 The way I look at this, and I've heard people who have
7 the opposite position of what I have put forth in this bill.
8 But when listening to them, I can't seem to help that -- but
9 think that there's ideological position just against the death
10 penalty itself. Right? We're not arguing the ideological
11 position. Right? Because we know that we can -- we have a
12 death sentencing scheme in the State of Florida. So we're not
13 arguing whether the death penalty ideologically is the right or
14 the wrong thing to do. Because we have the authority and it's
15 been affirmed by the Supreme Court in Poole to make these --
16 these decisions.

17 Now, the question is, is that what is the appropriate
18 level to have in order to make these decisions? Obviously
19 when -- and I do want to thank Senator Pizzo for some of the
20 comments, because you stole some of my close. And I do
21 understand what you were trying to get to in terms of the higher
22 bar. I totally get that and I appreciate that.

23 It is already a high bar in order to put somebody to
24 death in the State of Florida with the guilt phase, the -- the
25 unanimity on the aggravators. And what we're talking about is

1 the last part. And what strikes me is when I have these
2 conversations with people, even the people that are
3 ideologically opposed to the death penalty, if you ask them the
4 question or sometimes they will just offer it up. They will say
5 that if this was my child, I would have killed them. So with
6 that point -- that point, the people who are ideologically
7 opposed to death penalties want to be, because they are
8 passionate because it's something close to them, that they want
9 to be judge, jury, and executioner. They've said it. We've all
10 said it. If it happened to our kid, I would be the first one to
11 step up, I would kill them, I wouldn't care what happened to me.
12 Right?

13 But then in the same breath, there's an argument of
14 why we as the State or the jury should not find somebody and put
15 somebody to death for the same reason. It's sort of a converse
16 argument. So what always befuddles me when I hear that argument
17 that, "No, we're against the death penalty, but I would kill
18 somebody if they killed my daughter, my son, a member of my
19 family."

20 And, Senator, I understand what your sentiments are
21 that, you know, with activist judges and, you know, would it
22 help. Look, I would rather it be a shall. I would rather there
23 be a high bar and the judge shall -- shall take the jury's
24 recommendation. But we're not there.

25 The bottom line is this, is that we as the legislators

1 are within our purview to make this decision. I believe that a
2 super majority is the right thing to do especially knowing that
3 we are at five/seven for such a long time.

4 It is already a high bar. It is already a high bar
5 and I want to ensure that we don't have enough miscarriage of
6 justice going forward as we did with the Parkland families. So
7 with that I ask for your favorable support and I ask you to vote
8 for this bill.

9 CHAIR MARTIN: Sue, please call the role for CS on SB
10 450.

11 SUE: Senator Ingoglia.

12 MR. INGOGLIA: Yes.

13 SUE: Senator Perry.

14 MR. PERRY: Yes.

15 SUE: Senator Pizzo.

16 MR. PIZZO: Yes.

17 SUE: Senator Polsky.

18 MS. POLSKY: No.

19 SUE: Senator Powell.

20 MR. POWELL: No.

21 SUE: Senator Yarborough.

22 MR. YARBOROUGH: Yes.

23 SUE: Senator Bradley.

24 MS. BRADLEY: Yes.

25 SUE: Chair Martin.

1 CHAIR MARTIN: Yes. By your vote, CS for SB 450 is
2 reported favorably as the bill passes.

3

4 (The hearing was concluded.)

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CERTIFICATE OF TRANSCRIBER

1 STATE OF FLORIDA)

2 COUNTY OF POLK)

3 I, ELAINE TURNER-WOOD, Stenographic Court Reporter and
4 Notary Public, certify that I was authorized to and did
5 transcribe the foregoing Senate Committee on Criminal Justice
6 Subcommittee and that the transcript is a true and accurate
7 transcription of the record.
8

9 DATED this 30th day of April, 2023.
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Elaine Turner-Wood,
Notary Public, State of Florida
My Commission No. HH 200728
Expires: March 19, 2026



ORIGINAL

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HOUSE CRIMINAL JUSTICE SUBCOMMITTEE

3/7/23

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1 THEREUPON, the following took place:

2

3 CHAIR TRUENOW: The next bill for consideration today
4 is PCS for HB 555, Sentencing Proceedings in Death Penalty Cases
5 by Representative Jacques. Representative Jacques, you are
6 recognized to present your bill from your seat, if you may.

7 MR. JACQUES: Yes. Thank you, Mr. Chair. Currently,
8 Florida's law, death penalty law is based on a flawed court
9 ruling. This law came about in 2017 that currently requires a
10 unanimous threshold for the recommendation of the death penalty.
11 And a court decision in 2020 Poole came back and said that was -
12 - that case was wrongly decided and that it is not a
13 constitutional requirement for the jury recommendation, the last
14 phase, to be unanimous.

15 So what this bill does, it changes Florida's law to
16 make it at least eight jurors to recommend the death penalty.
17 And it also keeps the fact that all 12 jurors have to agree that
18 an aggravating factor has been met. That still has to be done
19 unanimously. It's just the last phase now is eight/four as
20 opposed to 12/zero. Since this flawed case ruling that the
21 statute is based off of countless victims' families have been
22 hurt in our courtrooms by this over-the-top burden that is not
23 required by our constitution. And this bill will fix that.
24 That is the bill, Mr. Chair.

25 CHAIR TRUENOW: Thank you. Questions, member, on the

1 Bill? Members, questions? Seeing no questions, we'll hear
2 public testimony on the bill. We have quite a few public
3 testimony cards. We will limit it to one minute. First we have
4 Bill Glassen, Florida Prosecuting Attorneys Association
5 proponent wishes to speak. You're recognized.

6 MR. GLASSEN: Barnaby. On behalf of the Florida
7 Prosecuting Attorneys Association, we have had a chance to
8 review the bill that -- as it relates to eight/four. And it's
9 our position that we are in support of any decision that the
10 legislature makes with respect to a number. But we didn't land
11 on a particular number, whether it's ten/two or eight/four. So
12 we just are taking the position that it does not need to be
13 unanimous as it currently is. It needs to be consistent with
14 constitutional law in the Poole case as was referenced earlier.

15 CHAIR TRUENOW: Thank you, sir. Jessica Branson, DMCF
16 Palm Beach waive in opposition. Christy Arnold, Florida
17 Conference of Catholic Bishops waive in opposition.
18 Loretta Phillipson, Florida CARES Charity opponent.
19 Elaine Baker an opponent. Do you wish to speak?

20 MS. BAKER: We waive in opposition.

21 CHAIR TRUENOW: Waive in opposition. Thank you.
22 Aaron Wayt, Florida Association of Criminal Defense lawyers
23 waive in opposition. Gene Sabinalier (phonetic), waive in
24 opposition. Thank you. Cora Costaka (phonetic), waive in
25 opposition. Donna Dennis waive in opposition. Jackson Overlink

1 Florida Rising, waive in opposition. Pamela Burchfort, Florida
2 State Conference of NAACP Branches, waive in opposition.
3 Matthew Dunnigan, Florida Sheriffs Association, waive in
4 support. Cara Gross, American Civil Liberties Union of Florida,
5 waive in opposition. Howard Dimmig, Florida Public Defenders
6 Association, opponent. Wish to speak?

7 MR. DIMMIG: Yes, Mr. Chairman. Thank you.

8 MR. TRUENOW: You're recognized.

9 MR. DIMMIG: Thank you, Mr. Chairman, and
10 representatives. I'll try and be very brief. After a very
11 great deal of work and effort in 2017, the Florida Legislature
12 passed a bill changing the way Florida imposes the death penalty
13 in first-degree murder cases. By doing that, they created the
14 first constitutional bill since 2002, so 2002 was the last time
15 Florida had a constitutional provision for imposing the death
16 penalty.

17 What the Florida Public Defenders Association said
18 then, what the Florida Public Defenders Association says now, is
19 that unless the death penalty itself is ever stricken, the law
20 we have in Florida is the one most likely to survive any
21 constitutional challenges.

22 Representative, if I may just address briefly what you
23 said about the Poole case, it is a technical distinction, but I
24 think an important one. The case that the United States Supreme
25 Court decided that said Florida's old statute was

1 unconstitutional was Hurst v. Florida. That case came back.
2 The Florida Legislature acted and then the Florida courts acted.
3 What the Poole case said in my opinion is that what the United
4 States Supreme Court said in Hurst v. State -- Hurst v. Florida
5 was less than what the court and the legislature here in Florida
6 adopted. But the point was that the Hurst v. Florida decision
7 of the United States Supreme Court, both the proponent and the
8 defense in that case wanted the court to address the sixth
9 amendment issue and also the question of unanimity. The court
10 did not address the question of unanimity. So when the case
11 came back to Florida and to the Florida Supreme Court in Poole,
12 they simply said, well, unanimity has not been decided, so it
13 was not required under the case law. But the bottom line is we
14 don't know what we don't know. We do not know how the United
15 States Supreme Court will rule on the question of unanimity. We
16 do know that just a couple of months ago in a case called
17 Ramos versus Louisiana on the question of whether or not the
18 jury must be unanimous on the guilt phase, the US Supreme Court
19 ruled very strongly that, yes, it did and talked a great deal
20 about the history.

21 So our position is what we have now is constitutional.
22 We know it's constitutional. It's going to survive
23 constitutional attack. And we're concerned about the collateral
24 impact of the further litigation that will arise if the bill
25 is -- if the statute is changed.

1 Thank you for your time.

2 CHAIR TRUENOW: Thank you for your testimony.

3 Barney Bishop, Florida Smart Justice Alliance.

4 MR. BISHOP: Waive in support.

5 CHAIR TRUENOW: Waive in support. Shirley Herman,
6 Democratic Women's Club.

7 MS. HERMAN: Waive in opposition.

8 CHAIR TRUENOW: Waive in opposition. Joan --

9 FEMALE: Joan -- waive in opposition.

10 CHAIR TRUENOW: Thank you. Waive in opposition.

11 Seeing no other public testimony, we are now in debate. Members
12 wishing to debate. Ranking member Rayner-Goolsby.

13 MS. RAYNER-GOOLSBY: I'm going to defer to
14 Representative Gottlieb.

15 CHAIR TRUENOW: Representative Gottlieb, you're
16 recognized.

17 MS. RAYNER-GOOLSBY: My learned colleague.

18 MR. GOTTLIEB: Thank you, Chair. Thank you, ranking
19 member. I didn't ask any questions on the bill, because, you
20 know, I think we know what the case law says. And I think that
21 by doing this we're inviting appellate error in Florida.
22 Florida is a state that has more death sentences than any other
23 state. So it seems as though the system that we have in play is
24 actually working.

25 The sixth amendment requires a jury, not a judge, to

1 find each fact necessary to impose a sentence of death. And
2 that was from Justice Sonia Sotomayor writing for the majority
3 in the Hurst case. They have to find each fact, not just one
4 aggravating factor which is I believe what this bill does. And
5 it also gives judicial override which again is -- it's in
6 violation of Ring and Apprendi.

7 Criminal sentences cannot be enhanced above the limits
8 provided by statute unless the jury finds the existence of the
9 specific aggravating factors giving rise to the enhancement
10 beyond a reasonable doubt. I think the bill is
11 unconstitutional. I think you're going to have a class of cases
12 that this is going to apply to that are going to remain in the
13 system at unnecessary cost. We have a system that in almost all
14 cases works correctly. And we're fixing something that's not
15 broken. It's a solution in search of a problem.

16 CHAIR TRUENOW: Representative.

17 MS. RAYNER-GOOLSBY: Thank you, Mr. Chair. I have had
18 opportunity to speak with Representative Jacques. And I didn't
19 ask questions on this bill, because he and I had a very long
20 conversation with regard to this.

21 When I think about this bill, I don't look at it from
22 an ideological standpoint. I don't look at it from a standpoint
23 of how I may or may not feel about the death penalty. I am a
24 lawyer. I'm a proud lawyer. I'm a criminal defense attorney
25 and civil rights attorney. And I know that there are many

1 critiques we can have on the Criminal Justice System. I have
2 them. And James Baldwin often talks about if, you know, if I
3 didn't love something so much, you know, I shouldn't be able to
4 critique it. And I do love the work that I do.

5 But, so when we have bills like this, it's about the
6 law and it's about following the law. And I want to first touch
7 on Poole. The court says in Poole we are bound by the Supreme
8 Court precedence that construes the United States Constitution.
9 And if I'm reading Poole correctly, Poole -- the court in Poole
10 declined to make an opinion or opine about unanimity and rather
11 gave that back to the legislature. The legislature has now said
12 that unanimity is required. You have Big Hurst which as a
13 friend of mine calls it, Hurst v. Florida, where it has
14 eliminated judicial override. And then you have Hurst v. State
15 which also I believe eliminated a bit of the unanimity. And
16 then we filed a bill and it was passed and signed into law where
17 unanimity was then required.

18 And as of late, there has been a cadre of bills that
19 have -- a cadre of opinions rather that have come down from the
20 United States Supreme Court most recently Ramos v. Louisiana
21 which was already discussed. And Ramos v. Louisiana stands for
22 that there must be unanimity in a conviction. And if we think
23 about a conviction, that is a lower threshold than there is to
24 sentence someone to death.

25 So if a court is saying that a ten to two or eight to

1 four is not enough for a conviction, how could it be enough for
2 a -- for a sentence of death? And then the interesting part is
3 that the makeup of the court, the Supreme Court that wrote this
4 opinion specifically Neil Gorsuch who, you know, I'm a nerd so
5 if -- you know, I have opinions on him. If you want to look it
6 up why that is so important. He talks about in his opinion the
7 sixty amendment unanimity requirement no -- and he talks about
8 that. The court has talked about unanimity more than no -- no
9 fewer than 13 times over the last 120 years. And then also he
10 talks about unanimity when we're thinking about the sixth
11 amendment right in perpetuity rather than to ask two states to
12 retry a slice of their prior criminal cases. Whether that slice
13 turns out to be large or small, it cannot outweigh the interest
14 we all share in the preservation of our constitutionally
15 promised rights.

16 We have the -- we have a right to life, liberty, and
17 the pursuit of happiness. And while Ramos does not necessarily
18 address the death penalty, I believe that the court is giving us
19 insight into how they will rule.

20 So I am concerned that we are taking an issue, the
21 issue of someone's life and we are making it political. I
22 understand where this bill has gotten its genesis. And rather,
23 the genesis of the bill is quite disgusting if you ask me. And
24 because we are playing with people's lives and not valuing what
25 the law has said. As it was mentioned, Florida had the most

1 death row sentences last year of any state in the nation. And
2 also with that, Florida gets it wrong the most. Out of 300
3 people on Florida's death row as of January 31st, 2023, Florida
4 still has the largest death row population. And then, in fact,
5 we lead the country in exonerations. 20 exonerations since
6 1973. And I would think that if you are a proponent for the
7 death penalty that you would want to make sure that, if you
8 believe in it, that at least guilty folks would be the ones that
9 are being executed. But any exoner -- any death of someone who
10 is innocent is a death that is unnecessary.

11 Only Alabama is the only state that does not require
12 unanimity and they are at ten to two. And even now Governor
13 Ivey has put those -- has put a stay on execution.

14 So my issue and why I will be voting down on this bill
15 and why am gravely concerned about the political weaponization
16 of this type of legislation to further governor's, you know,
17 opinion and his ambitions is that we're doing it on the backs of
18 families and survivors. We're doing it on the backs of folks
19 who already have to deal with the incredible loss of losing a
20 loved one. And I -- and for that reason, based on that and just
21 I don't believe that this will hold up legally, I will be voting
22 no on this bill. And I would ask members to do the same.

23 CHAIR TRUENOW: Representative Baker, you're
24 recognized.

25 MS. BAKER: Thank you, Mr. Chair. So I reached out to

1 my State Attorney in Duval County and asked her how many cases
2 was the State seeking the death penalty in the last 12 months.
3 She told me there were six cases that the State sought the death
4 penalty. None of them had the death penalty recommended. So,
5 and I just wanted to give a couple of facts.

6 One victim was buried alive. One victim was raped and
7 then strangled, had a prior rape conviction and two robbery
8 convictions. There is already a safeguard in place. And what
9 that is is the jury has to unanimously find that the defendant
10 is guilty. They have to unanimously convict that defendant
11 before we even get to the sentencing phase. That's a safeguard.

12 So I think what this bill actually does is it makes
13 sure that the super minority does not impose its will on the
14 super majority. So I urge my colleagues to vote up on this
15 bill. Thank you, Mr. Chair.

16 CHAIR TRUENOW: Representative Bracy Davis, You are
17 recognized.

18 MS. BRACY DAVIS: Thank you, Mr. Chair. I'm going to
19 be brief, because I believe my ranking member and Rep. Gottlieb
20 spoke to this so perfectly.

21 I just want to say this, that death is final. There
22 are no do overs when someone dies. Death is final. So why
23 would we not want to ensure that we get this as right as we
24 possibly can. We talk about these 30 exonerees from death row.
25 That already tells us that Florida doesn't always get it right.

1 Why would we not try to be as right as we possibly could be? I
2 am voting down on this bill. Thank you.

3 CHAIR TRUENOW: Thank you. Seeing no more debate,
4 Representative Jacques, you are recognized to close on your
5 bill.

6 MR. JACQUES: Thank you, Mr. Chair. And I just want
7 to address some points that were made during debate as well as
8 testimony from the audience. Specifically regarding to the
9 Poole case, it was said that the Poole case doesn't directly
10 address unanimity. And, in fact, it does exactly that. It was
11 a direct overturning of the Hurst case of the state version as
12 well as Perry was followed at -- was actually was ruled on that
13 same exact day.

14 So I'm just going to read from Poole, an excerpt from
15 Poole, and it's right -- it's the last two paragraphs right
16 before the conclusion. It states the court, the Florida Supreme
17 Court, the highest court in our land says we simply have
18 restored discretion that Hurst v. State wrongly took from the
19 political branches. Having thoroughly considered state's -- the
20 state's in Poole's arguments in light of the applicable law, we
21 recede from Hurst v. State except to the extent that it requires
22 a jury unanimously to find the existence of a statutory
23 aggravating circumstance beyond a reasonable doubt.

24 Now, what does that mean? It's basically saying --
25 because Hurst v. State said you have to not only have unanimity

1 in the case of the aggravators, but you also need it in the case
2 of the final recommendation. Here the direct quote says it's
3 receding on all of it except for the fact -- on the portion for
4 the aggravating circumstances.

5 So here's what happens in the penalty phase -- and we
6 can even go back even before penalty phase. So, say, a
7 first-degree murder case actually goes to a jury trial. You
8 know, a lot of these cases are actually happening just in the
9 penalty phase the defendant pled. And there's no issue as to
10 whether or not guilt or innocence. You know, they accept
11 responsibility such was the case, you know, down in Parkland.
12 It was -- everybody knew he did it. So this was just penalty
13 phase.

14 But say it goes to a trial. All 12 jurors have to
15 agree that the person is guilty beyond and to the exclusion of
16 every reasonable doubt. 12 jurors. Way more than the general
17 six that you get in noncapital cases. So it's actually even --
18 the case was -- you know, the point was made yesterday in the
19 senate hearings that it's actually a higher burden, because you
20 need to convince all 12 people, you know, to convict this person
21 beyond a reasonable doubt.

22 You then go to the penalty phase and then you present
23 aggravating factors as to whether or not this person should be
24 eligible for the death penalty. And then all 12 have to agree
25 again that this person is eligible for the death penalty by

1 looking at aggravating factors. And it was said earlier that
2 all elements and every aggravating factor has to be met which is
3 actually impossible, because they're all different. Right.
4 These are things like that is listed in Florida Statutes what an
5 aggravating factor is. It could be a murder for a pecuniary
6 gain. It could be a murder on a public official, an elected
7 official. It could be a murder on a child under 12. I mean
8 there's just so many different things that the jury can attach
9 their hats to to say that this person is eligible for the death
10 penalty. So there's no way to have to meet all those factors.

11 So once one of these factors is met unanimously,
12 beyond and to the exclusion again of every reasonable doubt,
13 they then go to a final phase to make that final recommendation.
14 And this is what the court in Poole took exception with. That
15 that last portion is not required to be unanimous. The only
16 portions that have to be unanimous is when the jury is making a
17 finding of fact that requires a sixth amendment proceeding,
18 exercise to make sure that facts are being met. And the final
19 recommendation, that doesn't occur. It's just then expressing
20 their feelings at that point.

21 And I just want to kind of go over what some other
22 states are doing. So, yes, a lot of states do require
23 unanimous. But some of them, if the jury doesn't reach -- if
24 the jury finds that the person met their aggravating factors
25 unanimously and then they can't be unanimous on the -- on the

1 death penalty recommendation, they bring back a new panel, you
2 know, to kind of go over it again. But it's not to say that
3 that last portion has to be unanimous. Because some of them
4 just have judges who does that part. Like the jury doesn't even
5 have to be a part of that last phase. They have to be part of
6 determining an aggravator exists to meet the qualifications, but
7 then a judge will take it from there.

8 And so our system allows a jury to actually have a
9 say. It allows the jury to have a super majority say. Some
10 states don't even afford that. And so it's important to
11 conceptualize it when we're looking at this. We're not
12 convicting people less than 12 jurors. We're not making people
13 be eligible for the death penalty less than 12 jurors. All
14 those have to be all 12. It's only that last portion.

15 And so it was said that -- and I also take issue with
16 this -- that this was somehow some politically motivated to prop
17 up the Governor. This is not why I'm proposing this bill.

18 And as a former prosecutor, I recall when I was
19 prosecutor not that long ago, it was actually a simple majority,
20 seven/five. We're talking about from 2012 to 2016. And then
21 the initial Hurst case came out that didn't overturn the
22 seven/five. It basically said we gave the judges too much
23 discretion on meeting the aggravators that I'm talking about,
24 that the jury has to find the aggravators are met.

25 And then the Florida Supreme Court on their own said

1 all of a sudden all 12 had to be met. But the US Supreme Court
2 never said that. And so we're talking about something that I've
3 been disturbed by since it was being litigated back when I was a
4 prosecutor, you know, prior to this Governor taking office. And
5 I commend him on wanting to achieve justice for families. But
6 to say that this is somehow a propping up of somebody for
7 political office is -- you know, we had our conversations. And
8 I could have told you flat out that was wrong.

9 So this is the policy. And what this does is it's
10 righting a wrong that the Florida Legislature based their laws
11 off of. And it brings relief to real families.

12 Not that long ago, five years ago, the Parkland
13 massacre that happened. You had an individual who literally
14 planned mass murder on children and then carried it out. And
15 all to have one juror who convinced a couple of others to
16 suspend and derail the full administration of justice when they
17 all agreed he was guilty and they all agreed unanimous that he
18 met aggravating factors for the death penalty.

19 You had a situation in my county, Pinellas County, an
20 Officer Charlie Kondek of Tarpon Springs gunned down in cold
21 blood, ten/two. There was no issue or no dispute as to that
22 person's innocence. And so we cannot let a small handful of
23 jurors derail the true administration of justice especially when
24 it's not constitutionally required.

25 And I would submit to you some of the most notorious

1 killers, you would be surprised, were not unanimous jury
2 recommendations. You go back to Ted Bundy, one of the most
3 notorious serial killers in this area, raping and killing. That
4 jury was not even unanimous in the recommendation. And so it
5 just shows you that there are many flaws in our system if we
6 allow a few and a small amount to complete derail the
7 administration of justice. And that is why I urge my colleagues
8 to vote up on this measure, because it rights a wrong and it
9 will do right by our victims and our victim families here in the
10 State of Florida. Thank you.

11 CHAIR TRUENOW: Thank you, Representative Jacques.
12 Having closed on his bill, Lindsey, please call the roll on PCS
13 for HB 555 and announce the vote.

14 LINDSEY: Representatives Abbott.

15 MR. ABBOTT: Yes.

16 LINDSEY: Baker.

17 MS. BAKER: Yes.

18 LINDSEY: Barnaby.

19 MR. BARNABY: Yes.

20 LINDSEY: Brackett.

21 MR. BRACKETT: Yes.

22 LINDSEY: Bracy Davis.

23 MS. BRACY DAVIS: No.

24 LINDSEY: Brannan.

25 MR. BRANNAN: Yes.

1 LINDSEY: Casello.
2 MR. CASELLO: No.
3 LINDSEY: Garcia.
4 MS. GARCIA: Yes.
5 LINDSEY: Gottlieb.
6 MR. GOTTLIEB: No.
7 LINDSEY: Jacques.
8 MR. JACQUES: Yes.
9 LINDSEY: Michael.
10 MS. MICHAEL: Yes.
11 LINDSEY: Plakon.
12 MS. PLAKON: Yes.
13 LINDSEY: Rayner-Goolsby.
14 MS. RAYNER-GOOLSBY: No.
15 LINDSEY: Silvers.
16 MR. SILVERS: No.
17 LINDSEY: Stark.
18 MS. STARK: Yes.
19 LINDSEY: Tuck.
20 MS. TUCK: Yes.
21 LINDSEY: Yarkosky.
22 MR. YARKOSKY: Yes.
23 LINDSEY: Chair Truenow.
24 CHAIR TRUENOW: Yes.
25 LINDSEY: 12 years, five nays, Mr. Chair.

1 CHAIR TRUENOW: Show PCS for HB 555 reported
2 favorably. Congratulations.

3

4 (The hearing was concluded.)

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CERTIFICATE OF TRANSCRIBER

1 STATE OF FLORIDA)

2 COUNTY OF POLK)

3 I, ELAINE TURNER-WOOD, Stenographic Court Reporter and
4 Notary Public, certify that I was authorized to and did
5 transcribe the foregoing House Criminal Justice Subcommittee and
6 that the transcript is a true and accurate transcription of the
7 record.
8

9 DATED this 28th day of April, 2023.
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Elaine Turner-Wood,
Notary Public, State of Florida
My Commission No. NH 200728
Expires: March 19, 2026



ORIGINAL

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HOUSE JUSTICE APPROPRIATIONS SUBCOMMITTEE

3/15/23

TRANSCRIBED BY: Elaine Turner-Wood
Stenographic Court Reporter
and Notary Public

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6808 Poley Creek Drive, West, Lakeland, Florida 33811
(863) 838-4530

1 THEREUPON, the following took place:

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3 CHAIR BRANNAN: Next up is CS for HB 555, Sentencing
4 Proceedings in Death Penalty Cases by Representative Jacques.

5 MR. JACQUES: Thank you, Mr. Chairman. Florida's
6 current death penalty law requires that all 12 jurors
7 unanimously recommend the death penalty. This was enacted in
8 2017 based on a court case, a series of court cases that were
9 subsequently overturned in 2020. CS for HB 555 would correct
10 what was done by the courts and remove the unanimous threshold
11 by making it at least eight jurors to recommend the death
12 penalty as opposed to all 12.

13 And to be clear, all 12 jurors still have to convict
14 somebody of the crime. And all 12 jurors have to find what's
15 called an aggravating factor that would make somebody eligible
16 for the death penalty. We're just speaking about the last phase
17 when it comes to the recommendation as to the death penalty.
18 And that is the bill, Mr. Chair.

19 CHAIR BRANNAN: Thank you, Representative. I see no
20 amendments. Questions, members? Questions?
21 Representative Gottlieb.

22 MR. GOTTLIEB: Thank you, Chair.
23 Representative Jacques, can you speak to the additional costs to
24 appealing a death penalty verdict to the Florida Supreme Court?

25 CHAIR BRANNAN: I recognize Representative Jacques.

1 MR. JACQUES: Yeah, so every death penalty case gets a
2 direct appeal to the Supreme Court. And so that's the current
3 status currently and that will still remain the status once this
4 bill passes.

5 CHAIR BRANNAN: Rep. Gottlieb.

6 MR. GOTTLIEB: And I understand that but obviously if
7 we lower the threshold from unanimous to eight to four, there's
8 going to be a number of additional cases going to the Florida
9 Supreme Court. My question was: What is the cost to bring a
10 case to the Florida Supreme Court as opposed to the DCA?

11 CHAIR BRANNAN: You're recognized.

12 MR. JACQUES: So as far as that fiscal impact, I
13 believe we simply don't know if there will be. There could be
14 an increase. There could not be. You know, we can't, you know,
15 predict the future. Hopefully, this will stem these type of
16 heinous acts, but certainly the cost would largely remain the
17 same as it is currently in the appellate process.

18 CHAIR BRANNAN: Rep. Gottlieb.

19 MR. GOTTLIEB: Thank you, Chair. Am I correct that
20 the additional cost for a death penalty case in the State of
21 Florida is approximately 25 million dollars per inmate at this
22 point in time?

23 CHAIR BRANNAN: You're recognized.

24 MR. JACQUES: Mr. Chair. I don't have that number in
25 front of me, but we can look into that.

1 MR. GOTTLIEB: Nothing further. Thank you, Chair.

2 CHAIR BRANNAN: Thank you, sir. Anybody else? Seeing
3 none, we'll now move to public testimony. I have
4 Neisha Rose Hines representing the ACLU of Florida, an opponent
5 of the bill. Mike Graves of Florida Public Defenders
6 Association, he wants to speak. She wants to speak.

7 MR. GRAVES: Mr. Chairman, committee members, the
8 Florida Public Defenders Association has previously expressed
9 our opposition to the bill in general based upon questions with
10 regard to its constitutionality, legality, not only by the
11 number of votes required, shrinking the eight versus unanimity,
12 but also the ban on judicial overrides, though very rarely that
13 occurs, it certainly is a safeguard that the penalty, if
14 imposed, is constitutionally and proportionately done so.

15 Further, we have expressed our concern that there is
16 no need for a move from unanimity, because if we look since 2017
17 when unanimity became the law of our state, we have not seen a
18 marked reduction in the number of death sentences. Certainly
19 not within the Fifth Judicial Circuit which is my circuit which
20 is one of the most active death penalty circuits within the
21 State of Florida.

22 But today, I speak to you about the -- what we would
23 believe would be a significant fiscal impact upon the taxpayers
24 of the State of Florida. I think there is little question that
25 the number of cases in which death is sought is the appropriate

1 penalty would increase as the State Attorneys within our state
2 look at what cases they believe reasonably they could get eight
3 votes for death versus 12.

4 There is no question that within our Criminal Justice
5 System death penalty cases are by far in a way the most
6 expensive. They require the most expertise in counsel from both
7 the State and the defense. It is the only case in which our
8 Rules of Criminal Procedure and our statutes govern who can
9 defend what kind of case. They are the most expensive when it
10 comes to support staff. Certainly when we look at the due
11 process costs that it runs the State, they are the most
12 expensive. So when we see a market increase in the number of
13 cases in which the penalty is sought, we will see a substantial
14 increase in the costs within the system.

15 The Florida Public Defenders Association at this time
16 agrees with the report from the State Court Administrators
17 Office which says we can't quantify that number, but we know it
18 will substantially increase. And this also comes at a time when
19 numbers of the agencies, whether it be the Public Defenders
20 Appellate Offices or trial -- excuse me -- or trial offices,
21 Regional County, registry lawyers, and the State Attorney's
22 Office are at crisis level when it comes to retention of the
23 people that would have to come into play to make this bill work.

24 So we ask that this substantial increase or fiscal
25 increase be considered and that if this bill passes that we are

1 not forgotten within the system, that we need to be given the
2 fiscal tools to carry out our ethical, our statutory, and our
3 constitutional responsibilities.

4 CHAIR BRANNAN: Thank you, sir. Now we'll go back to
5 Ms. Neisha Rose Hines representing the ACLU of Florida.
6 Welcome.

7 MS. HINES: Good morning. Thank you for having me.
8 My name is Neisha Rose Hines. I represent the ACLU of Florida
9 as a registered lobbyist.

10 It's unfortunate to hear in this committee, this
11 Appropriations Committee, a lack of attention on the financial
12 aspect this will have on Florida. The United Supreme Court in
13 2016 decided that the Sixth Amendment requires a jury, not a
14 judge, to find each fact necessary to impose a sentence of
15 death. A jury's mere recommendation is not enough. After
16 direction from the Florida Supreme Court based on the Florida --
17 or based on the -- after a direction from the Florida Supreme
18 Court based on the US Supreme Court's verdict, this legislature
19 in 2017 changed Florida's death penalty statute to a unanimous
20 requirement and that the jury find each fact.

21 Florida was finally in line with every other death
22 penalty state except for Alabama which still requires ten to
23 two, but that -- there's current legislation on that.

24 For the next five years after Hurst, these procedural
25 safeguards ensured that Florida's capital sentencing process was

1 reliable and accurate. In 2022, after the unanimous law
2 recommendation, we saw more people put to -- put -- sentenced to
3 death here in Florida than any other state. Currently, we have
4 298 inmates on death row. This is the highest of all states.
5 As previously mentioned, death penalty cases come with the
6 highest cost out of any criminal case.

7 As a former public defender, these take the most
8 appeals. It takes the most time. Because we are taking
9 someone's life. And I can imagine if someone -- if the State
10 were coming to take my life as well, I would -- I would take
11 advantage of every appeal possible. And that is what happens
12 oftentimes in death penalty cases.

13 Here in this Appropriations Committee, I do think that
14 financial aspect is important and should be taken into
15 consideration.

16 Because of the constitutional infirmities in this
17 bill, any sentence imposed under this legislation is vulnerable
18 to the same challenges that occurred when the Florida Supreme
19 Court had -- or when the US Supreme Court decided Hurst when
20 Florida courts were then faced with numerous death penalty
21 cases. And that resulted in 100 new penalty sentencing phases
22 for death row inmates.

23 Some of those resentencing proceedings are still
24 pending today. So in this Appropriations Committee, again I ask
25 you to look to the constitutional infirmities of this bill, the

1 cost it will require to resentence individuals should this bill
2 again be found unconstitutional as similar policies have already
3 been found unconstitutional by the Florida Supreme Court and the
4 Federal Supreme Court.

5 Florida is currently responsible for the highest
6 number of death row exonerees, individuals who were given the
7 death sentence and later found to be not guilty or to not
8 deserve that penalty. The exonerees number 30 since 1973.
9 Nearly all of these exonerees involved a nonunanimous jury.
10 Nearly all of these recommendations -- and some of these
11 recommendations also came where the judge overrode the jury's
12 life decisions.

13 We're just asking that the members of this
14 subcommittee look to the legal infirmities of this bill,
15 consider the cost that it will have on Floridians. Death
16 penalty cases are the most expensive. Changing the law around
17 the death penalty results in resentencing in cases that have
18 been given the death penalty should this law again be found --
19 again be found unconstitutional as it already has been by the
20 Florida Supreme Court and the Federal Supreme Court.

21 So the ACLU of Florida opposes this bill. We are
22 always open to speaking with members of this committee and the
23 bill sponsor to try and remedy some of these infirmities.
24 However, we don't see any pass forward of where this bill will
25 not take up substantial court time and taxpayer dollars and

1 again resentencing should the bill be found unconstitutional.

2 Thank you for your time. We welcome any questions.

3 CHAIR BRANNAN: Thank you. Next we have

4 Jack Campbell, local elected State Attorney representing the
5 Florida Prosecuting Attorneys Association. He waives in
6 support.

7 Tony Montalto wishes to speak. Morning.

8 MR. MONTALTO: Morning. Morning and thank you,
9 Mr. Chairman, for allowing me to address the committee. And
10 thanks to Representative Jacques for presenting this bill.

11 I am here as a victim. My forever 14 year-old
12 daughter Gina was murdered in the Parkland School massacre. We
13 miss her bright smile and her cheerful voice each and every day.
14 To be clear, in my opinion not every murder case deserves the
15 death sentence. And I appreciate this committee's focus on
16 fiscal issues, but that doesn't resonate with the victims'
17 families.

18 This bill is about victims' rights. Sadly, my family
19 has seen how a jury can be misled into denying justice for the
20 victims. A few months ago we witnessed tragic failure of the
21 justice system. When the jury in the penalty phase of the
22 convicted Parkland shooter only sentenced him to life in prison.

23 This admitted mass murderer chose to pull the trigger
24 139 separate times including the time when he put his gun to my
25 daughter's chest and shot her. He chose to take her life, to

1 deny her a chance to grow up and to grow old. Yet although the
2 jury found multiple of the court's aggravating factors were
3 proven beyond a reasonable doubt, a single juror who wrote a
4 note to the judge stopped the deliberation process.

5 This bill will prevent that from happening, from
6 allowing a single activist juror to disrupt the justice system.
7 It doesn't absolve the burden of the prosecution to prove its
8 case beyond a reasonable doubt. It still requires mandatory
9 appeals to assure fair treatment for the convicted murderers.

10 But I am in favor of this bill, because it will
11 provide a better opportunity for justice for the victims of a
12 murderer. My daughter Gina, her classmates, and her teachers
13 deserve justice. And this bill will allow future victims of
14 atrocious, cruel, and heinous crimes to get the justice they
15 deserve as the perpetrators are punished to the fullest extent
16 of the law. Please vote yes on this bill. Vote for the
17 victims. Thank you.

18 CHAIR BRANNAN: Thank you, sir. Next we have
19 Aaron Wayt, Florida Association of Criminal Defense Lawyers,
20 opponent of the bill waives in opposition.

21 Christy Arnold, Florida Conference of Catholic
22 Bishops.

23 MS. ARNOLD: Good morning, Chairman, committee
24 members. My name is Christy Arnold with the Florida Conference
25 of Catholic Bishops. We oppose HB 555, because we oppose making

1 it easier to execute people. In general, we oppose the death
2 penalty as it is plagued with error. It undermines human
3 dignity, perpetuates cycles of violence, and it's not proven to
4 deter criminal acts compared with the alternate punishment of
5 life with -- life in prison without parole.

6 We are concerned that this bill will lead to more
7 death sentences by eliminating the jury unanimity requirement.
8 It only requires super majority vote. We believe that retaining
9 the jury unanimity requirement would better serve justice,
10 because unanimity helps to ensure that the process is as
11 reliable and as fair as possible. Unanimity promotes
12 deliberation and engages every jury in the process.

13 Florida already has the highest number of exonerees
14 from the death row in the nation. There's been 30 exonerees
15 since 1973. And in light of this, we believe it's unwise to
16 weaken and to erode the safeguards around the death penalty.

17 A death sentence is the most severe penalty that
18 society can impose. And as such, Florida should preserve the
19 highest standard possible for its application.

20 So for these reasons we oppose HB 555 and we urge you
21 to vote no. Thank you.

22 CHAIR BRANNAN: Thank you, ma'am. All right. That
23 concludes public testimony. Members, we're now in debate.
24 Anyone wishing to debate? Representative Gottlieb.

25 MR. GOTTLIEB: Thank you, Chair. I say this without

1 hesitation. The Cruz jury got it wrong. They absolutely 100
2 percent should have imposed the death penalty. There is no
3 greater heinous crime. And, in fact, Mr. Montalto and I have
4 talked, you know, had Cruz even had a better weapon he would
5 have continued shooting and killing.

6 Being from Broward County, watching that trial, the
7 jury just 100 percent got it wrong. He absolutely deserved the
8 death penalty. However, as a criminal defense lawyer knowing
9 the case law I really truly see what we're doing here is
10 potentially unconstitutional knowing Florida's recent decisions
11 and the United States Supreme Court decisions.

12 From a fiscal standpoint as this committee is
13 concentrating on, I do think it's going to cost a considerable
14 amount more. I do believe that the question I asked was
15 accurate, that it costs approximately 25 million dollars more
16 for a death penalty appeal per individual.

17 And I think one of the biggest problems since we're
18 talking fiscal that happened in Cruz is the public defender --
19 and I think this highlights one of the major problems that I see
20 in our Criminal Justice System is that there are two different
21 systems. One for the rich and one for the poor. And the public
22 defender in that case spent an inordinate amount of money,
23 millions upon millions of dollars, which they don't do on every
24 case. And I applaud the public defender for doing what they
25 felt was appropriate in that case. But I condemn the fact that

1 it's done for one individual, because it was a case of, you
2 know, national notoriety. And I think that unfortunately what
3 we're seeing today, you know, where we see it, where we're
4 legislating for the crime du jour of catalytic converters and
5 increasing the penalties there, I think that we're doing the
6 same thing here where we really truly didn't have a broken
7 system. We had a catastrophic failure in one case where the
8 death penalty absolutely 100 percent should have been instituted
9 and wasn't. And I think we're legislating unfortunately for
10 that one case.

11 And my heart goes out to Mr. Montalto and any of the
12 families. None of us should ever have to walk a day in their
13 shoes. But I can't support this bill in the posture that it's
14 in at this point in time. Thank you.

15 CHAIR BRANNAN: Thank you, sir.
16 Representative Bracy Davis.

17 MS. BRACY DAVIS: Thank you, Mr. Chair. If I can
18 speak directly to the father of the Parkland students, to offer
19 my continued and sincerest prayers as you mourn and grieve you
20 daughter. I do believe that the jury got it wrong in that case.
21 But I am too down on this bill.

22 Scott Maxwell, a writer for the Orlando Sentinel wrote
23 yesterday, if you want to understand how disturbingly wrong
24 death penalty cases go in Florida, just look at Seminole County.
25 That's one county over from the district that I represent.

1 There you will find the story of Clemente Javier Jarquin, a
2 Honduran immigrant who was wrongly sentenced to die and spent
3 more than a decade on death row. He was convicted with bogus
4 evidence and false testimony in a botched double murder that
5 went wrong. He was kept on death row even after somebody else
6 confessed to the crimes. Taxpayers may end up paying Javier
7 millions of dollars for the wrongful conviction and stolen years
8 of his life.

9 But there's something else that you need to know about
10 this case that went so wrong. He was sentenced to die by a
11 split jury, a nine/three vote. So let's -- let's talk facts.
12 This state has incorrectly sentenced more people to die than any
13 other state in America with almost all of the errant sentences
14 involving split juries.

15 The idea of going back to the days when juries didn't
16 have to be sure someone deserved to die is dangerously, deadly,
17 and a flawed proposition.

18 Nobody should support government executing people when
19 their juries aren't completely convinced especially in a state
20 that got it so wrong so many times when that was allowed.

21 So colleagues, let me remind you death is final.
22 There are no do overs. Why would we not want to be as sure as
23 we possibly can, as right as we possibly can be. We have 30
24 exonerees which tells me we need more protections, not less in
25 this process.

1 For those reasons I am emphatically down on this bill.
2 Thank you.

3 CHAIR BRANNAN: Thank you. Vice-Chair Smith.
4 Representative Beltran.

5 MR. BELTRAN: Thank you. Thank you, Chairman. We've
6 had some discussion of the Parkland case and I think that's --
7 fair to say that's the precipitating reason why we're bringing
8 this bill. Nikolas Cruz is possibly the worst criminal in
9 Florida ever and he escaped the death penalty. And if we are
10 going to have a death penalty in this state, he is the person
11 who should be executed. He should have been at the top of the
12 list.

13 I remember last summer watching and commenting on the
14 sentencing proceeding. And he was not executed. I was upset by
15 that. I think -- I know the families of the Parkland victims
16 were upset by that. I think we're all upset by that. And that
17 shows that, you know, that was -- that case was not handled
18 correctly. He should have been executed. At least if we're
19 going to have a death penalty, then he should be the one who is
20 getting the death penalty based upon the number of victims and
21 the vulnerability of the victims and the -- really the lack of
22 any excuse or really reason for that -- for that tragedy.

23 And the reason for that -- I don't -- I don't trace
24 that though to the unanimous jury requirement. I think that the
25 problem in that case was, as my colleague Rep. Gottlieb said,

1 there was an enormous amount of resources on what we call
2 mitigation which we're talking about Mr. Cruz's upbringing and
3 so forth. And there wasn't enough emphasis on the atrocious
4 nature of that crime. And I think we take too much
5 consideration of these so-called mitigators. Because anybody
6 who would commit a crime like that or even perhaps a less
7 atrocious crime, there's obviously something wrong with them.
8 We shouldn't be putting so much weight on that. And I think if
9 we're going to change our death penalty rules, then we should
10 change -- reduce the reliance on these mitigators. There's some
11 Supreme Court case law on that. But there's Supreme Court case
12 law on this. But I think over-reliance on those mitigators is
13 what caused the miscarriage of justice in the Cruz case.

14 You know, the other thing I would say if we're going
15 to change the death penalty juris prudence or at least the
16 statute governing it is there should -- you should have to prove
17 something beyond beyond a reasonable doubt. You should have to
18 prove no doubt at all before somebody is executed. And that
19 should be something that should be found by the jury. And if we
20 had the system I just described and we still had the unanimous
21 jury system, I think Mr. Cruz would have been executed under
22 that standard and rightly so.

23 In terms of these mass shooting incidents, it's
24 relatively rare for somebody like Mr. Cruz to escape death,
25 because most of these shooters are killed in the course of their

1 crime or they kill themselves to avoid capture. I was surprised
2 when I looked at the blow-by-blow in the Parkland case. I guess
3 he discarded his weapon and then he actually went to a
4 McDonald's and had a drink. And he actually escaped with the
5 students, the folks that he was attacking. He attacked from the
6 school and the law enforcement didn't identify him because he
7 had discarded his weapon. And then later on he was unarmed and
8 he actually surrendered when the law enforcement saw him. This
9 is one of those rare cases where the shooter is not just killed
10 on the spot frankly the way that they deserve.

11 But I think like some of my colleagues, I'm
12 uncomfortable legislating on a generally applicable law based
13 on, you know, something very bad that happened in this
14 particular case. And I don't know that it's unconstitutional to
15 get rid of the unanimous requirement. I just object to it as a
16 policy matter. And certainly no -- you know, I respect my
17 colleague, the bill sponsor for his diligence. He was a
18 prosecutor and now his diligence as a legislator. But I'm just
19 philosophically opposed to reducing the procedural protections
20 surrounding the death penalty. It should be and is limited to
21 the most atrocious crimes. But because it's both permanent and
22 it's somewhat unusual in its application, it should be
23 accompanied by the additional procedural safeguards. And we
24 require unanimous juries to convict for anything and we should
25 require the unanimous juries to execute. And we shouldn't allow

1 the judge to trump the jury. And we shouldn't allow somebody to
2 be executed over the objection, not just one jury, this would be
3 over the objection of three or four jurors if this bill goes
4 into effect.

5 And the last thing I'll say is we've only had one
6 execution in the last several years. We had two in 2019 and
7 then we had no executions for almost four years. Last month on
8 February 23rd was our first execution in almost four years. And
9 I wasn't complaining, because I don't feel good about the death
10 penalty. But we've had very nearly what was an undeclared
11 moratorium on the death penalty for four years in Florida. And
12 that's fine. You know, it doesn't make me feel good to read
13 those newspaper headlines when somebody got executed.

14 But we, as one of the commentators said and as I was
15 planning to note, we have 300 people on death row in Florida.
16 Nikolas Cruz should be one of them. He should have been moved
17 to the top of the list and he should have been executed by now.
18 But there's no lack of convicted murderers to execute in
19 Florida. If we were -- had executed every one we could and, you
20 know, we were having folks escape the death penalty left and
21 right, that would be one thing. But we have plenty of people on
22 that list to execute. I don't think we're going to get all of
23 them, at least not at the rate that we're going. And I don't
24 think we need to go out of our way to make it easier to execute
25 until we execute those who have already been sentenced under our

1 current standard. Thank you.

2 CHAIR BRANNAN: Thank you. Representative Campbell.

3 MR. CAMPBELL: Thank you, Mr. Chair. I understand
4 that this bill has been brought up because of the Parkland
5 situation. And my heart goes out to you and those affected by
6 the shooter.

7 I also understand that I am a black man in America.
8 And as we sit here today and we talk about this bill, I
9 understand the implications behind how it affects black
10 individuals and minority communities. As we sit here today,
11 We -- I can count on my hand how many black folks are in this
12 room and that's including the cameraman. And so, you know, I --
13 I have a lot of concerns regarding this bill and changing what
14 is currently established in a system that we are constantly
15 questioning whether they are doing right particularly by my
16 community. And so we're looking at folks coming up and they're
17 speaking out and stating how -- stating how there are
18 discretionary questions that we need to bring forth and really
19 question. We're seeing high rates of exoneration. As it stands
20 we -- in my -- in my district, there was a gentleman that was
21 exonerated this past week.

22 And so there are flaws in our system. And for us to
23 go from a unanimous decision to an eight to four decision on the
24 death penalty I think is egregious. And so I'm down for that,
25 because this -- there's a larger conversation that we need to

1 have before we even decide to take away unanimous decision. We
2 need to look at human error. And we all -- we all -- we are not
3 perfect. And so accounting for that, I think staying, keeping
4 it as it stands is where it needs to be. And so today I am down
5 on that.

6 CHAIR BRANNAN: Thank you. Any more debate?
7 Representative Snyder.

8 MR. SNYDER: Thank you, Mr. Chairman. And I'll be
9 brief. I know that this is one of those issues that is deep.
10 And, sir, I just want to say is the father of a young 12
11 year-old daughter I cannot imagine the pain that you went
12 through and the pain that you continue to go through every
13 single day. And I too remember looking at the TV that day when
14 that verdict came out and that head-scratching moment just
15 saying what in the world just happened.

16 Because when we talk about human error, what we saw on
17 the jury stand that day, that was the human error. And it was
18 an absolute miscarriage of justice when we can sit here and say
19 that the number one person who fits the description of the death
20 penalty is not on death row. How many more times does that have
21 to happen, members? Is it someone who will surpass Nikolas Cruz
22 where human error allows a murderer to sit comfortably in a cell
23 for the rest of his life? Or maybe not so bad. Maybe it's only
24 12 innocent lives that are snuffed out. Maybe it's only five.
25 Maybe it's only four. Maybe it's only one. But in my opinion,

1 members, we have a unique opportunity to address a miscarriage
2 of justice and to make sure that for the families that went
3 through that and had to sit there and scratch their head saying
4 how did this happen, our message today with a vote to support
5 this good bill by Representative Jacques says we see you, we
6 hear you, and we will do everything in our power, sir, to make
7 sure that that never happens again.

8 With that, members, I urge you to vote up.

9 CHAIR BRANNAN: Thank you, sir.

10 Representative Jacques, you're recognized to close on CS for HB
11 555.

12 MR. JACQUES: Thank you, Mr. Chairman, and thank you,
13 Mr. Montalto, for your courage and for coming up here time and
14 time again to share your story. Certainly, I can speak to all
15 the committee members despite the way they're going to vote,
16 none of us can imagine the type of pain that you are going
17 through and so certainly we appreciate your voice in this
18 conversation. Now, also I appreciate all of the input from all
19 of the individuals who provided testimony and my colleagues as
20 we go through this deliberative process to call what policy that
21 benefits the people of the State of Florida.

22 You know, my -- several of my colleagues who will be
23 voting no on this, you know, all said that the jury in the
24 Parkland case 100 percent got it wrong. And they're right. And
25 this is the case that brought this flawed policy to the

1 forefront that shocked the consciousness of Floridians, of
2 Americans nationwide. And certainly it requires our attention
3 to get it right.

4 And the jury down in Pinellas County that heard a case
5 during the penalty phase of a cop killer, an admitted cop killer
6 where the guilt or innocence was not in doubt. Everybody in the
7 room knew he was guilty. They also got it wrong. Ten/two.

8 The jury up in northeast Florida where a murderer did
9 a home invasion abducted an elderly couple, buried them alive.
10 That jury also got it wrong. 100 percent wrong. Ten/two.

11 And if we want to go back in history -- and I want to
12 remind my colleagues that it wasn't that long -- in fact, when I
13 was a prosecutor back in 2012 - 2016, it only required a simple
14 majority. We're adding additional safeguards for super majority
15 and for unanimity on the aggravators. That wasn't even the
16 case.

17 But one of the most notorious killers in Florida
18 history, Ted Bundy who got convicted went to the death -- got
19 the death penalty. Even that jury, even that jury in such a
20 very notorious situation where this man raped and killed around
21 Tallahassee, even that jury was not unanimous.

22 So it goes to show you that there are flaws in the
23 system. And that despite some of the most heinous acts in our
24 society, you will always find a lot of times that one, that two,
25 that three who forever reason even after agreeing that the

1 person is guilty beyond and to the exclusion of every reasonable
2 doubt, that for whatever reason they cannot fully go through
3 with it.

4 And at what expense? It's the expense of the families
5 like the ones at Parkland. It's at the expense of the families,
6 people like Officer Kondak of Tarpon Springs. And it's at the
7 expense -- my friend Representative Campbell brought up, you
8 know he was concerned about people of color -- I would invite my
9 colleagues to look at some of the death row people and some of
10 their victims. A lot of them are people of color.

11 So it's at the expense of families of people of color
12 who have been victimized by very heinous acts that we don't
13 correct this flawed, this flawed law. And it is a flawed law,
14 because our Supreme Court, the highest court in our land, told
15 us it was flawed. This was based on a Hurst decision that said
16 it required unanimity for all phases. And they came back and
17 they said, no, it doesn't. Yes, unanimous obviously to convict
18 somebody. Yes, unanimous to find that an aggravating factor
19 exists. That would make somebody eligible for the death
20 penalty. These are findings of fact. It would violate the
21 constitution if we didn't require unanimity.

22 But in that last portion of the penalty phase where
23 it's just a recommendation, the courts have said it does not
24 require a unanimous recommendation. And for that reason, my
25 colleagues, I ask you to help me right this wrong for the

1 victims and the victims' families in our great state. Thank
2 you.

3 CHAIR BRANNAN: Thank you, Representative Jacques. I
4 want to stick something in here and I may be out of order. That
5 case you described, that was my case. I'm the investigator
6 that -- and along with the Jacksonville detective that
7 interviewed that suspect. I'm the one that walked out in the
8 woods and he showed me where he had buried like your grandma or
9 my grandma. I'm the one that helped uncover those folks. And
10 what a miscarriage of justice that was.

11 Having closed on the bill, call the roll.

12 ROSA: Chair Brannan.

13 CHAIR BRANNAN: Yes.

14 ROSA: Vice-Chair Smith.

15 VICE-CHAIR SMITH: Yes.

16 ROSA: Ranking member Valdes.

17 MS. VALDES: No.

18 ROSA: Representatives Beltran.

19 MR. BELTRAN: No.

20 ROSA: Bracy Davis.

21 MS. BRACY DAVIS: No.

22 ROSA: Campbell.

23 MR. CAMPBELL: No.

24 ROSA: Duggan.

25 MR. DUGGAN: Yes.

1 ROSA: Fabricio.
2 MR. FABRICIO: Yes.
3 ROSA: Fernandez-Barquin.
4 MR. FERNANDEZ-BARQUIN: Yes.
5 ROSA: Gottlieb.
6 MR. GOTTLIEB: No.
7 ROSA: Jacques.
8 MR. JACQUES: Yes.
9 ROSA: Sirois.
10 MR. SIROIS: No.
11 ROSA: Snyder.
12 MR. SNYDER: Yes.
13 ROSA: Stark.
14 MS. STARK: Yes.
15 ROSA: Waldron.
16 MS. WALDRON: No.
17 ROSA: Eight yeas, six nays.
18 CHAIR BRANNAN: Thank you, Rosa. By your vote, the
19 bill is reported favorably.
20
21 (The hearing was concluded.)

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2 STATE OF FLORIDA

3 COUNTY OF POLK 5

1, ELAINE TURNER-WOOD, Stenographic Court Reporter and Notary Public, certify that I was authorized to and did transcribe the foregoing House Justice Appropriations Subcommittee and that the transcript is a true and accurate transcription of the record.

9 DATED this 27th day of April, 2023.

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12

13

Elaine Turner Wood

Elaine Turner-Wood,
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3/22/23

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1 THEREUPON, the following took place:

2

3 CHAIR MAYFIELD: Members, we are now going to take up
4 tab five which is committee substitute for Senate Bill 450 on
5 Death Penalties. Senator Ingoglia, you are recognized to
6 explain your bill, but I do see that you have an amendment, that
7 you would like to present the amendment first.

8 MR. INGOGLIA: Yes, Madam Chair. Without -- if it's
9 okay, the amendment substantially changes the underlying bill
10 so --

11 CHAIR MAYFIELD: Okay. So we'll take it first. Take
12 up amendment barcode 654152. Senator Ingoglia, you're
13 recognized to explain your amendment.

14 MR. INGOGLIA: Thank you, Madam Chair. Senators, the
15 bill removes the requirement that a unanimous jury must
16 determine that a defendant should be sentenced to death. If at
17 least eight or more jurors determine that the defendant should
18 be sentenced to death, the jury's recommendation must be a
19 sentence of death. If less than eight jurors determine that the
20 defendant should be sentenced to death, the jury recommendation
21 must be a sentence of life.

22 The bill gives the court full discretion and may
23 impose a life sentence even if jurors determine that the
24 defendant should be sentenced to death. The bill upholds the
25 constitutional requirement by specifying that the court may only

1 impose a sentence of death if the jury unanimously finds at
2 least one aggravating factor beyond a reasonable doubt. If the
3 jury recommends a sentence of death and the judge deviates from
4 that sentence of death imposing a sentence of life, the court
5 shall include in its written order the reasons for not accepting
6 the jury's recommended sentence if applicable. That is the
7 substance of the amendment which is the bill.

8 CHAIR MAYFIELD: Great. Thank you, Senator Ingoglia.
9 Are there any questions on the amendment? Any questions on the
10 amendment? Senator Rouson.

11 MR. ROUSON: Thank you very much, Madam Chair. And,
12 Senator, since death is such a final penalty, why do you feel
13 the need to deviate from a unanimous jury recommendation?

14 MR. INGOGLIA: Through the Chair.

15 CHAIR MAYFIELD: Senator, yeah.

16 MR. INGOGLIA: Thank you, Senator, for the question.
17 So as you know, we used to have years ago I believe a majority
18 for the death penalty in the State of Florida. Then the Florida
19 Supreme Court, the old Florida Supreme Court, had ruled that it
20 needed to be unanimous. At that point the legislature came back
21 and affirmed that unanimous decision. The new court said that
22 the -- that they -- that was an error and they have since
23 receded from that opinion leaving it up to the legislature to
24 change from unanimity.

25 I believe that unanimity is a very, very high bar, too

1 high of a bar. Because then what you, in effect, have is you
2 have at least one protest juror can then give her or his opinion
3 and basically stop the death penalty from being imposed. And
4 then when you couple that with what happened at Parkland, that
5 massacre, that tragedy, and I would argue that that was just --
6 that was just an injustice for Nikolas Cruz not to be sentenced
7 to death. This sort of fixes that, allows for a super majority
8 for the imposition of death, but also with this amendment gives
9 the judge to deviate that if they don't -- if the judge thinks
10 that that isn't the appropriate sentence.

11 CHAIR MAYFIELD: Senator Rouson.

12 MR. ROUSON: Thank you very much, Madam Chair. You've
13 seen in this session some bills coming through where after 37
14 years or 32 years and part of that time being spent on death row
15 individuals were exonerated, found innocent. How would we
16 reverse a mistake?

17 MR. INGOGLIA: Through the Chair.

18 CHAIR MAYFIELD: Senator Ingoglia.

19 MR. INGOGLIA: Thank you, Senator, for the question.
20 The same we would reverse it now. I would argue that a lot of
21 the reversals that we have seen on death row in the State of
22 Florida has been because of advances in DNA technology. I mean
23 just look over the past five to seven years the advances in
24 touch DNA technology.

25 So as technology continues to evolve, I think that law

1 enforcement and the courts will continue getting more right.
2 But there's always that safety valve that if there's some
3 exculpatory evidence later that we can right those wrongs which
4 is allowed under our current process.

5 CHAIR MAYFIELD: Senator Book.

6 MS. BOOK: Thank you, Chair, and thank you,
7 Senator Ingoglia. Could you -- and you alluded to the Parkland
8 massacre -- could you if this bill were to become law and was
9 the framework for sentencing in our state during that time,
10 could you walk us through what that would look like and how what
11 happened would have been different?

12 MR. INGOGLIA: Through the Chair.

13 CHAIR MAYFIELD: You may.

14 MR. INGOGLIA: Yes, Senator. So the Parkland jury
15 verdict I believe was nine/three. I'm pretty sure it was
16 nine/three. And it was -- that was -- obviously did not meet
17 the unanimity required under current statute. So with this, the
18 jury recommendations -- jury recommendation to the judge would
19 have been a recommended sentence of death. And at that point
20 the judge would weigh all of the evidence, what happened at
21 trial, and decide if she or he would go along with the jury's
22 recommendation of death or to impose life.

23 And I just want to remind you, and I'm sure you know
24 this, and just for the rest of the committee if you're not
25 familiar, this is the last part of the -- of the trial. The

1 first part is finding the defendant guilty. That's part one.
2 The second part is finding at least one aggravating factor which
3 is listed in Florida Statute. That has to be found unanimous.
4 It is this last part that we are changing to super majority.

5 So if you think about the way we currently have it, it
6 is found guilty, unanimity on at least one of the aggravating
7 factors, and then unanimity on the death penalty, imposition of
8 the death penalty. That is a very, very high bar, so high of a
9 bar that you empower protest jurors from stopping a death
10 penalty from being imposed. And I would argue if anyone, anyone
11 should be given the death penalty for heinous crimes it would be
12 Nikolas Cruz.

13 CHAIR MAYFIELD: Follow up?

14 MS. BOOK: Thank you. So we've got -- I know -- I
15 just want to make sure. So where does mitigating factors come
16 into play here in sentencing? I mean we have the aggravating
17 factors that has to be met. But I know in Parkland particular
18 that was one of the issues, that some of the mitigating factors
19 played a role. How does that factor into the framework of this
20 going forward?

21 MR. INGOGLIA: Through the chair.

22 CHAIR MAYFIELD: You may.

23 MR. INGOGLIA: Thank you, Senator, for the question.
24 During the death penalty phase finding how many jurors would
25 look to impose the death penalty, their job is to weigh the

1 aggravators and the mitigators and then come up with that --
2 come up with the recommendation.

3 CHAIR MAYFIELD: Follow up?

4 MS. BOOK: Yes.

5 CHAIR MAYFIELD: You may.

6 MS. BOOK: Thank you. Finally, you know,
7 constitutionally are you concerned at all that there's a
8 constitutional issue with changing the structure of how we
9 arrive at a death -- a death sentence?

10 CHAIR MAYFIELD: Senator.

11 MR. INGOGLIA: Through the Chair. I'm not. Although
12 Florida -- this would be probably -- this would be the most
13 aggressive of all 50 states. You have Alabama which is a
14 ten/two and I think the Alabama ten/two is a shall impose. So
15 if the death -- and forgive me, I might have to check. But I'm
16 pretty sure it is a shall impose if the jury recommendation
17 comes back with a verdict with a recommendation of death, that
18 the jury has to impose death. Don't quote me on that.

19 But regarding the constitutionality, the judge still
20 has the opportunity to override. So it's still judicial
21 discretion.

22 CHAIR MAYFIELD: Leader Book, you're good. Senator
23 Osgood.

24 MS. OSGOOD: Thank you, Madam Chair. Good morning,
25 Senator. Just a quick question. It's my understanding right

1 now there are many people that can't serve jury duty because
2 they cannot impose the death penalty. So to me that's kind of a
3 screening-out, you know, process of someone that can't make that
4 decision. So now moving to having to have eight, you know, to
5 four to make this decision, do you not think we are watering
6 down the process more now?

7 CHAIR MAYFIELD: Senator.

8 MR. INGOGLIA: Through the Chair. I don't. And I
9 think State's Attorneys will tell you that regardless of the
10 screening process -- and I can't speak for them -- but I've had
11 these conversations with them, that regardless of the screening
12 process you will still get people who say that I can be fair, I
13 can be open, but ideologically they're just opposed. And then
14 you sort of find out some of that information later. So they
15 will say what they need to to get on a jury. But when it comes
16 time to actually make that decision, they're ideological
17 predisposition really prevents them from imposing a sentence of
18 death.

19 CHAIR MAYFIELD: Follow up?

20 MS. OSGOOD: Thank you. No follow up.

21 CHAIR MAYFIELD: Okay. Great. Any other. Senator or
22 Leader Book.

23 MS. BOOK: Sorry, just on that point, to the sponsor.
24 Wouldn't that come up in voir dire in something that the -- you
25 know, some of the attorneys would argue as a juror who doesn't

1 belong on a -- on a jury of this type?

2 CHAIR MAYFIELD: Senator.

3 MR. INGOGLIA: Through the Chair. I'm not an
4 attorney. I haven't prosecuted cases. I just know what I know.
5 It's my understanding that they have a certain amount of
6 challenges. But when those challenges run out, you may still be
7 stuck with a pool of jurors who say one thing and actually do
8 another thing.

9 MS. BOOK: Okay.

10 CHAIR MAYFIELD: Any other questions, members, on the
11 amendment? Senator Burton.

12 MS. BURTON: Thank you, Chair. Good morning,
13 Senator Ingoglia. Could you please say -- tell us a little bit
14 more about why you landed on the numbers that you landed on,
15 eight instead of ten/two? I think you just mentioned Alabama.

16 CHAIR MAYFIELD: Senator Ingoglia.

17 MR. INGOGLIA: Through the Chair. Thank you, Madam
18 Chair. So a couple of things. Number one, the Nikolas Cruz
19 decision really opened a lot of people's eyes to how you have
20 somebody that murdered that many children in such a heinous act,
21 for that person to I would argue escape with a life sentence I
22 think really opened people's eyes and had people looking at this
23 again.

24 It used to be in years past the State of Florida had
25 just a simple majority. Obviously I think that would be

1 problematic justice even though you still have to clear the
2 first two high bars, high hurdles in order to get to this phase.
3 But eight/four is a super majority. And with judicial
4 discretion, we think it's a good landing spot because it is --
5 it still allows the judge to deviate, but it is not an actual
6 imposition as ten/two must take that jury recommendation as
7 Alabama is.

8 CHAIR MAYFIELD: Follow up?

9 MS. BURTON: Is there any reason that -- could you
10 combine it, so to speak, could we have ten/two but still have
11 judicial discretion?

12 CHAIR MAYFIELD: Senator Ingoglia.

13 MR. INGOGLIA: Thank you. We had contemplated that,
14 but this is where we landed on.

15 MS. BURTON: Thank you.

16 CHAIR MAYFIELD: Follow up? Okay. Any other
17 questions, members? Okay. Do we have any appearance cards on
18 the amendment? Okay. Seeing no appearance cards. Is there any
19 debate on the amendment? Okay. Seeing no debate, you are
20 recognized to close on your amendment.

21 MR. INGOGLIA: Waive close.

22 CHAIR MAYFIELD: Waive close. All in favor of the
23 amendment say yea. Yea.

24 (Members said yea.)

25 CHAIR MAYFIELD: All opposed say nay.

1 (Members say nay.)

2 CHAIR MAYFIELD: Okay. Show that amendment adopted.
3 Okay. We are now back on the bill as amended which was the
4 substance of the bill. So are there any additional questions on
5 the bill as amended? Okay. Seeing no additional questions, we
6 do have some appearance cards. Okay. We have Christina Arnold
7 with the Florida Conference of Catholic Bishops speaking
8 against.

9 MS. ARNOLD: Good morning, Madam Chair, committee
10 members. My name is Christy Arnold with the Florida Conference
11 of Catholic Bishops. We oppose SB 450 because we oppose making
12 it easier to execute people. We're concerned that this bill
13 will lead to more sentences by eliminating the jury unanimity
14 requirement to only require super majority vote. We believe
15 that retaining the unanimity requirement would better serve
16 justice, because unanimity helps ensure that the process is
17 reliable and as fair as possible. It promotes deliberation and
18 it engages every juror in the process.

19 Florida already has the highest number of death
20 penalty exonerations in the nation. 30 exonerates since 1973.
21 And in light of this, it's unwise to weaken and erode safeguards
22 around the death penalty. A death sentence is the most severe
23 penalty that society can impose. And as such, Florida should
24 preserve the highest possible standard for its application.

25 For these reasons, we oppose SB 450 and we urge you to

1 vote no. Thank you.

2 CHAIR MAYFIELD: Thank you, Christy. Aaron Wayt is
3 with the Florida Association of Criminal Defense Lawyers, he's
4 speaking against.

5 MR. WAYT: Thank you, Chair, committee members. I'm
6 Aaron Wayt. I'm the legislative committee chair for the Florida
7 Association of Criminal Defense Lawyers representing over 1300
8 criminal defense lawyers across the State of Florida.

9 You've heard arguments about the immense additional
10 cost this bill will have on the Criminal Justice System. You've
11 heard about the added trauma to victims' families through a
12 death penalty appeal process in other committee hearings.
13 You've heard about Florida having the highest number of death
14 penalty exonerations. And our organization echoes all of those
15 arguments.

16 But we also approach reasons not to pass this bill
17 from an additional standpoint. As you've heard in 2016, the US
18 Supreme Court in Hurst found Florida's then existing death
19 penalty statute unconstitutional. A statute much the same as
20 the one currently proposed. And if true, the nation's high
21 court and Florida's high court have changed its composition,
22 have changed the justices over the past several years.

23 But with this new makeup though the US Supreme
24 Court decided Ramos v. Louisiana recently. Justice Gorsuch
25 delivered the opinion of the court and -- a court that held that

1 a right to a jury trial necessarily includes a unanimous
2 verdict. And then the Florida Supreme Court's new makeup of
3 judges decided recently Jackson v. State and Okafor v. State.
4 In those cases, the death sentence defendants who had been
5 granted new resentencing trials under the new -- because they
6 weren't unanimous verdicts were entitled to them, the Florida
7 Supreme Court said. They were entitled to those resentencing
8 hearings. And one month ago from today on February 22nd, this
9 year, 2023, the US Supreme Court with its current makeup -- that
10 court is likely the same makeup of judges that would hear a
11 challenge to this new law should it pass.

12 And in Cruz v. Arizona, a death sentence defendant
13 petitioned the court based on a due process claim. The US
14 Supreme Court chastised Arizona for ignoring the Supreme Court
15 precedent and ruled in favor of the death sentence defendant.
16 This current Supreme Court.

17 And so if this law is passed, this is exactly what
18 would be happening. It would be asking the courts to do what
19 Arizona did which is ignoring the US Supreme Court precedent.

20 And so because of these recent cases, the Florida
21 Supreme Court and US Supreme Court in their current makeup will
22 find this law unconstitutional. And so we urge you to vote no.
23 Thank you.

24 CHAIR MAYFIELD: Thank you, Aaron. We have
25 Mayor Rich Walker who is speaking for.

1 MR. WALKER: Good morning, Chair and Senators.

2 CHAIR WALKER: Good morning.

3 MR. WALKER: My name is Rich Walker. I'm the Mayor of
4 the City of Parkland. I'm not here today on my official
5 capacity. I'm here as a father of five. Having seen what
6 happened is a tragedy in Parkland and seeing how difficult it is
7 to reach a unanimous decision for these most heinous crimes, the
8 effect that it had on the parents, and not only the parents but
9 our community. It's important that -- that things -- people who
10 do the most heinous crimes are justly found, you know. So I do
11 appreciate you taking up this bill. And I am in support of 450.
12 Thank you.

13 CHAIR MAYFIELD: Right. Thank you, Mayor Walker, for
14 making the trip up here today. Next we have Barbara Devane with
15 Florida Now, she is waiving against the bill. We have
16 Pastor Marcus McCoy who is waiving against the bill. We have
17 Buddy Jacob with the Florida Prosecuting Attorneys Association
18 is waiving in support of the bill. We have Sara Elliott who is
19 waiving against the bill. And we have Sherry Crim who is
20 waiving against the bill. And we have Ashley Richardson who is
21 waiving against the bill. Is that everyone that turned in an
22 appearance card today? Great.

23 Okay. Members, we are in debate on the bill as
24 amended. Any debate on the bill as amended? Okay. Being --
25 Senator Rouson.

1 MR. ROUSON: Thank you very much, Madam Chair. And
2 I've heard the arguments on both sides and I've heard the bill
3 sponsor cite the Parkland incident of sentencing and what
4 happened with Nikolas Cruz. And he said based on that which
5 reminds me of emotions and the whim of a mob, the emotions and
6 the whim of a people based upon a heinous incident driving the
7 impetus for this bill.

8 We will never get it 100 percent as long as humanity
9 is behind the makeup of laws. But I believe unanimity is the
10 right balance when death is the final penalty.

11 And also I've heard that Florida has the highest in
12 the nation error rate. It's hard to reverse an execution. And
13 I think the current state of the law is sufficient. I'm not
14 opposed to the death penalty. But it must be a process where
15 everyone agrees that the heinous nature and the atrocious nature
16 of the crime fit the penalty.

17 So for those reasons and many more, I oppose this bill
18 which changes the current standard. Thank you.

19 CHAIR MAYFIELD: Thank you, Senator Rouson.
20 Senator Osgood.

21 MS. OSGOOD: Thank you, Madam Chair. You know, as I
22 was reading through this and just thinking a lot of tough
23 decisions we have to make and we all come to this experience
24 with different lived experiences, different face, different, you
25 know, things that influence our thinking. And I know firsthand

1 experience of the Parkland shooting and how it not only impacted
2 Parkland but an entire county and how that county is still
3 impacted by it. And in this making policy and changing policy,
4 you know, for one individual, you know, sometimes I ask myself
5 how long is Nikolas Cruz going to continue to, you know, just
6 have so much -- to create even more harm. I'll put it that way.
7 Creating more harm even to this day.

8 And it really, really puts me at a struggle. And when
9 I think about life and from, you know, my process, life starts
10 in a certain way and, you know, it ends in various ways.
11 Because, you know, we have evil in the world. But then I think
12 about a lot of the innocent people that we're finding out now
13 that is -- have lost years and years of their life that they can
14 never get back, you know, through our system. So we know that
15 it's not perfect.

16 But I can't -- you know, I'm like my colleague
17 Senator Rouson, I -- if it's unanimous, then from my thought
18 process, it's, you know, something greater that's putting
19 everybody on one accord like that. I just don't want to take a
20 chance of getting it wrong or being wrong with death being, you
21 know, so final with anyone. And we do have some evil and cruel
22 people. What Nikolas Cruz did was very evil and cruel and it
23 killed a lot of people, hurt a lot of people, tore up our whole
24 entire county. And, you know, the verdict came out. But I
25 don't -- I'm not willing to every time we have something with

1 one thing like that that it's just acclimated for, you know,
2 that one person. I could have a different thought if we've had
3 like several of these incidences or similar, you know, things
4 like this with juries and things. So I'm not going to be in
5 support of this bill.

6 CHAIR MAYFIELD: Okay. Senators. Thank you,
7 Senator Osgood. Leader Book and then Senator Torres.

8 MS. BOOK: Thank you, Chair. And I was just going to
9 quietly vote yes, because I like Senator Osgood and our
10 colleagues lived through the tragedy at Marjorie Stoneman
11 Douglas. But I sit on the commission. And we still meet and we
12 still work very hard to keep our state safe.

13 I have to tell you after watching the footage of that
14 massacre every single second, watching a gunman walk through a
15 school and shooting and killing people, some at point blank
16 range, and knowing that that person did not receive the ultimate
17 sentence of death for that cruelty for my community I believe is
18 a horrific miscarriage of justice.

19 I've watched when this bill was presented in Criminal
20 Justice. I see the changes that you've made to the bill to get
21 it to where it is today. The judicial discretion piece I think
22 is important. I understand too that all too often, you know,
23 this is the ultimate price people pay. And if we get it wrong,
24 there is no going back from that. I think DNA has changed the
25 way that we look at crimes. And so today I believe that this is

1 a safer bill than it was perhaps in Criminal Justice. And I
2 hear you saying that you're continuing to look at certain
3 things. And I know there are other bills in the process
4 relating to the death penalty. And so we're having these
5 conversations. But I believe that the horrific miscarriage of
6 justice that occurred cannot go on. And while that is the
7 hallmark that people look at and point to, we heard and I heard
8 in committee that there are other times where, you know, there
9 are horrific crimes and the death penalty was not -- was not
10 issued. And so I think that we've got to look at the totality
11 of it. And so I'm supportive of this bill today.

12 CHAIR MAYFIELD: Senator Torres.

13 MR. TORRES: Thank you, Madam Chair. And this weighs
14 heavily on my mind, because just yesterday we had a gentleman
15 who came before us who was sentenced to life and he was
16 exonerated by DNA for a homicide. And this is where we have to
17 value. Juries are funny. And you could have all the evidence
18 100 percent, but this still doesn't mean the jury is going to
19 agree with you in your sentencing.

20 And when you take into consideration the Parkland
21 shooting, it was quite evident of what the shooter was doing and
22 he didn't care the lives of those students or the teachers.

23 But the juries are composed of 12 individuals and they
24 all think differently. And they all look at evidence and they
25 evaluate in different manners. And that's the thing that I

1 understand. And I remember when we went to unanimous vote, you
2 know, to convict to homicide. And now we're lowering the bar.
3 And if you look at some of these past cases here that I have in
4 front of me and the votes nine to three, seven to five, I mean
5 it just varies. Are we willing to take a chance? And I know
6 the loss of life. And we need to value on both sides of the --
7 how guilty the person really is.

8 At this time I'm not going to support the bill. I'm
9 going to evaluate before when it goes to the floor. But thank
10 you for the opportunity, Madam Chair.

11 CHAIR MAYFIELD: Thank you, Senator Torres. Any other
12 members? Senator or President Pro Tem Baxley.

13 MR. BAXLEY: Thank you very much, Senator, for some
14 very hard work on a very difficult bill to consider. I want to
15 add one aspect that I very rarely hear mentioned. And that is
16 the fact that when we ignore this majority vote which I think
17 you've got good balance on that. What you have to remember is
18 that if there's not some ultimate end to that kind of murderous
19 activity, if there isn't a death penalty, what you have is life
20 imprisonment where you have given this person virtually a
21 license to kill fellow inmates and our staff who work with and
22 manage this population.

23 So I think we have to have a death penalty. I do not
24 celebrate when we have an execution. It's a very sad day to me.
25 I take it very serious. But at the same time if we're going to

1 have accountability and we're going to protect the inmate
2 population and the law enforcement that work with these folks
3 and manage the population, you have to have something that
4 happens, that you ultimately pay with your life if you ignore
5 all the bounds. So it's not a happy day to do it, but I think
6 it's an important day in the name of justice that we pass this
7 legislation. You have my support.

8 CHAIR MAYFIELD: Any other senators? Senator Hooper.

9 MR. HOOPER: Thank you, Madam Chair. And I don't
10 think anyone on this committee takes this issue lightly. I know
11 they -- I know we don't nor do you, Senator Ingoglia.

12 The one part that offers me some comfort that this is
13 the right thing to do and the right vote to take is yesterday in
14 Justice Approach, the gentleman was given what I would call a
15 pittance for losing thirty-plus years of his freedom for being
16 declared innocent. And I find that -- I researched a little
17 bit. I don't think anyone that's imposed and sentenced to
18 death, I don't think that sentence is carried out the next day.
19 They stay in prison for years or decades. And that's time. If
20 there is a hope of innocence in my mind, and it won't be 100
21 percent, but I think that that gives ample time to do that
22 research and check that DNA and make sure that when that
23 sentence is carried out that it truly is the right sentence. So
24 for that reason alone, that gives me comfort to support your
25 bill and go forward.

1 CHAIR MAYFIELD: Any other senator? Senator Burton.

2 MS. BURTON: Thank you, Madam Chair. And,
3 Senator Ingoglia, I know you and I have spoken really just
4 briefly about this. And I walked into this room fully prepared
5 to vote no and I know you anticipated that.

6 I will say I've heard some things this morning that
7 make me reconsider or are causing me to reconsider that. I
8 probably would have more comfort if it was ten to two. So I'm
9 going to stay where I walked in the door and where I was. But I
10 very much want to have a conversation with you before this gets
11 to the floor. And I really thank everybody, all those who came,
12 but really all the senators who are debating this morning,
13 because this is the -- the biggest conversation I've been a part
14 of so far on this -- on this issue. So thank you for all the
15 work you've done to make it a better bill. Excuse me. But
16 please come and can we have a conversation about this before it
17 gets to the floor? Thank you.

18 CHAIR MAYFIELD: Thank you, Senator Burton. Any other
19 members? Senator Ingoglia, I too this is -- this is -- in the
20 very beginning stage of this bill I think that a lot of the
21 senators did have concerns about it and was it the right --
22 right process. Was it the right number of people? I think
23 you've worked really hard on this. You know, as a Catholic,
24 this is really hard for me, too. I think that you have worked
25 through the process. I think you've got it in the right place.

1 I agree with Senator Hooper, there are -- you know, there's the
2 terms that you've put within this legislation that has to be met
3 in order to get to that death penalty and the fact that the
4 judge can make a different ruling on it, I think gives me
5 more -- gives me more comfort on it.

6 I think -- I agree with you DNA has changed. The
7 process has changed from the last 20, you know, years, even ten
8 years ago that most of the cases that are brought forward are
9 pretty well thorough -- thoroughly investigated and the data and
10 the information is accurate. As Senator Hooper said too, I
11 agree, you're not -- you know, you get the death penalty.
12 You're not immediately put to death. You're on death row for
13 many years. And there's time at that point to also provide
14 additional death -- additional evidence that may change the
15 judge's mind.

16 So with that, I'm going to support the bill. I think
17 you've worked really hard to get it to where it is with the
18 amendment. And with that, you're recognized to close on your
19 bill as amended.

20 MR. INGOGLIA: Thank you, Madam Chair, and thank you,
21 Senators, for taking the time to listen to this and chatting
22 with me all throughout the week. And I want to thank the people
23 who come up here and testify whether they are in support or
24 against this bill. But I really want to personally thank the
25 Mayor of Parkland for coming up. We met the other night. We

1 rarely -- we didn't really speak about this issue in detail, but
2 I do appreciate you taking the time up here. It is a -- it is
3 welcome and a recognition of the big decision that we have to --
4 to make here.

5 Let me go over a couple of things here. One, I do
6 want to reiterate that a lot of these exonerations in the past
7 were in the past, stuff -- people who were sentenced to death
8 decades ago when it's those advances in DNA technology that has
9 allowed us to get it right on those exonerations. And the point
10 is to get it right. We're always trying to get it right. And
11 if we do get it wrong, then the State should pay. And we're
12 seeing that now. Because it's only the right thing to do is
13 make sure that we not only fix the wrong, but we pay for the
14 things that we did wrong.

15 But the advances in DNA technology I think is a game
16 changer with a lot of this is that it is going to be very
17 difficult to go before a judge and a jury if you do not have
18 scientific DNA evidence. We know how difficult it is to build
19 circumstantial cases around murder cases, especially the death
20 penalty. So -- and the question was, is what are the
21 safeguards? I would argue that the judicial system itself is
22 the safeguard to Senator Hooper's point. People on death row
23 aren't there for years. They're there for decades. In fact, it
24 has to be reviewed by the Supreme Court to make sure that we got
25 it right. So the safeguards are actually in place.

1 A gentleman came up here and there was discussion of
2 whether the US Supreme Court was going to strike down the bill
3 when it was about the unanimity part of it. Well, our Supreme
4 Court said that unanimity is not necessary, it is not needed,
5 and the previous court got it wrong. They said they got it
6 wrong.

7 So if there is a conflict between the US Supreme Court
8 and the Florida Supreme Court, then I'm sure this is going to be
9 litigated and it's going to be decided on. We get that. This
10 is a big decision here. But just coming up here and saying that
11 the argument that the US Supreme Court said this, well, our
12 Supreme Court said something else. So that obviously may be
13 resolved in the courts.

14 Another thing which is -- I believe is very important
15 in this bill that we really haven't discussed is we have spoken
16 about activist jurors. One juror who -- who says no and stops
17 somebody from being put to death. But what we haven't spoken
18 about here is activist judges.

19 And there's actually a portion in here that actually
20 helps combat activist judges. Because under the current scheme
21 you can have a unanimous -- the jury can come back unanimously
22 saying that, yes, we are recommending the sentence of death.

23 But under the current scheme, the judges do not have
24 to take that recommendation. They can deviate from that
25 recommendation. We have seen multiple times that judges who are

1 put on the bench are ideologically opposed to death penalty
2 cases. And you can have unanimity in the jury, but the judge
3 will not only say, no, and impose a sentence of life, but the
4 judge will not give an explanation of why. And these are people
5 that are elected. I think the people deserve to know if you
6 have an activist judge who is ideologically opposed to the death
7 penalty, because now we're going to force them to explain why
8 you did not -- you did not take the jury recommendation. That
9 is a big part of this bill.

10 What happened in Parkland was abhorrent. It was a
11 tragedy that will ever been a stain on this state and we all
12 grieve for the families of Parkland and the community. But what
13 the verdict did was expose a flaw in the current system. It
14 shocked -- that verdict shocked the conscience of not only the
15 people of Parkland, not only the people in Florida, but the
16 people in the United States. And if you think about it, you
17 have to have -- under the current scheme, it's unanimity of --
18 that they're guilty, unanimity in one aggravating factors and
19 then -- at least one aggravating factor and then unanimity on a
20 jury to impose the death sentence. That is such a high bar that
21 you are giving all the power to one activist judge -- one
22 activist juror. And if one activist juror can erase all of that
23 and impose her or his ideology or thinking upon the whole
24 system, I would argue that there's something wrong with that
25 system. And the system needs to be changed. And that's why we

1 are putting forth this bill.

2 Speaking of unanimity, Nikolas Cruz didn't bother with
3 unanimity. He didn't care about the community. He didn't care
4 about the families. He didn't care about the kids.

5 Nikolas Cruz acted as judge, jury, and unfortunately for the
6 families of Parkland executioner as well. And if a person --
7 dare I say, Madam Chair -- a scumbag like Nikolas Cruz does not
8 deserve the death penalty and we cannot give the death penalty
9 on that case, then what do we have a death penalty for?

10 I would ask for your favorable support and send a
11 message to people that the State of Florida will not stand for
12 heinous crimes like that that happened in Parkland. With that I
13 close, Madam Chair.

14 CHAIR MAYFIELD: Thank you, Senator. Cindy, please
15 call the role on Committee Substitute for Committee Substitute
16 Senate Bill 450.

17 CINDY: Senator Baxley?

18 MR. BAXLEY: Yes.

19 CINDY: Senator Book.

20 MS. BOOK: Yes.

21 CINDY: Senator Boyd.

22 MR. BOYD: Yes.

23 CINDY: Senator Brodeur.

24 MR. BRODEUR: Yes.

25 CINDY: Senator Broxson.

1 MR. BROXSON: Yes.
2 CINDY: Senator Burgess.
3 MR. BURGESS: Yes.
4 CINDY: Senator Burton.
5 MS. BURTON: Yes.
6 CINDY: Senator DiCeglie.
7 MR. DICEGLIE: Yes.
8 CINDY: Senator Garcia. Senator Hooper.
9 MR. HOOPER: Yes.
10 CINDY: Senator Hutson.
11 MR. HUTSON: Yes.
12 CINDY: Senator Jones.
13 MR. JONES: No.
14 CINDY: Senator Osgood.
15 MS. OSGOOD: No.
16 CINDY: Senator Rodriguez.
17 MS. RODRIGUEZ: Yes.
18 CINDY: Senator Rouson.
19 MR. ROUSON: No.
20 CINDY: Senator Simon.
21 MR. SIMON: Yes.
22 CINDY: Senator Torres.
23 MR. TORRES: No.
24 CINDY: Senator Yaraborough.
25 MR. YARBOROUGH: Yes.

1 CINDY: Vice-Chair Perry.

2 MR. PERRY: Yes.

3 CINDY: Chair Mayfield.

4 CHAIR MAYFIELD: Yes. And by your vote, Committee
5 Substitute for Committee Substitute Senate Bill 450 is reported
6 favorably. Thank you, Senator Ingoglia.

7

8 (The hearing was concluded.)

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CERTIFICATE OF TRANSCRIBER

STATE OF FLORIDA)

COUNTY OF POLK)

I, ELAINE TURNER-WOOD, Stenographic Court Reporter and
Notary Public, certify that I was authorized to and did
transcribe the foregoing Senate Committee on Rules and that the
transcript is a true and accurate transcription of the record.

DATED this 1st day of May, 2023.

Elaine Turner-Wood,
Notary Public, State of Florida
My Commission No. HH 200728
Expires: March 19, 2026



ORIGINAL

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SENATE SESSION

3/29/23

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1 THEREUPON, the following took place:

2

3 PRESIDENT PASSIDOMO: Read the next bill.

4 SECRETARY: Committee Substitute for Committee
5 Substitute for Senate Bill 450, a bill to be entitled An Act
6 Relating to the Death Penalty.

7 PRESIDENT PASSIDOMO: Senator of the Eleventh
8 District, Senator Ingoglia is recognized to explain the bill.

9 MR. INGOGLIA: Thank you, Madam President, Senators.
10 This bill -- this bill seeks to hinder the practice of activist
11 jurors and provide transparency for protest judges. The bill
12 removes the requirement that a unanimous jury must determine
13 that a defendant should be sentenced to death. If eight or more
14 jurors determine that the defendant should be sentenced to
15 death, the jury's recommendation must be a sentence of death.

16 The bill gives the court full discretion and may
17 impose a life sentence with parole or a sentence of death if
18 eight or more jurors determine that the defendant should be
19 sentenced to death.

20 The bill upholds the constitutional requirement by
21 specifying that the court may only impose a sentence of death if
22 the jury unanimously finds at least one aggravating factor
23 beyond a reasonable doubt. If the jury recommends a sentence of
24 death and the judge deviates from that sentence of death, the
25 court shall include in its written order the reasons for not

1 accepting the jury's recommendation sentence. That is the bill,
2 Madam President.

3 PRESIDENT PASSIDOMO: Are there amendments?

4 SECRETARY: On the desk, Madam President.

5 PRESIDENT PASSIDOMO: Read the first amendment.

6 SECRETARY: Late filed amendment barcode 349120 by
7 Senator Powell to legalize 55 through 140 and insert amendment.

8 PRESIDENT PASSIDOMO: Senator Powell, you're
9 recognized to explain the amendment.

10 MR. POWELL: Thank you, Madam Present and
11 Senator Ingoglia. This amendment just brings Florida -- by
12 changing this to an eight to four jury verdict, it puts us in
13 line with only one other state in the United States and that
14 will be Alabama. To get us outside of being aligned with only
15 Alabama, it gives us an opportunity to still reduce that number
16 which is not ultimately what most of us would want, but it
17 reduces the number of jurors required for the death penalty to
18 ten as opposed to 12. I think it's a really good amendment.
19 It's a compromise that would bring us to a place that it's not
20 eight. It cuts that number -- the reduction of four in half.

21 And when you talk about activist jurors, this -- this
22 legislation is better suited to eliminate the potential of
23 having jurors who would not vote for the death penalty. So that
24 is the amendment in a nutshell, Madam President.

25 PRESIDENT PASSIDOMO: Are there any questions on the

1 amendment? Is there any debate on the amendment?

2 Senator Pizzo.

3 MR. PIZZO: Briefly, Madam President. Thank you. And
4 I don't disagree with the activist juror or jurors. But you
5 have to make the argument when you get to eight/four that you
6 had 33 percent of -- for the penalty phase that you had 33
7 percent for activist and skated by without being a cause
8 challenge and preemptions when the voir dire was happening with
9 the jury. So I'm with you, I'm with you all day on ten/two.
10 But on eight/four, nine/three, you're getting in a situation
11 where you have to believe that 33 percent of everybody was an
12 activist juror.

13 And I also don't want to go forward in a situation
14 where we're setting ourselves up for failure and come back here.
15 We try next year at nine/three, the following year at ten/two.
16 So I'm telling you and I'm making a commitment with this
17 amendment that I'm -- I'm a yes vote on this bill at ten/two for
18 what it's worth. I understand this process pretty well. I'm an
19 absolute firm yes on ten/two. If we're going a little too far
20 and we're testing a situation which might not have a good result
21 if we go elsewhere.

22 PRESIDENT PASSIDOMO: Any other debate on the
23 amendment? Senator Ingoglia.

24 MR. INGOGLIA: Thank you, Madam President. First I
25 want to thank you for the amendment, because it sort of

1 acknowledges that we have a problem with the current system
2 where we have activist jurors. And to your point,
3 Senator Pizzo, I do believe there were three activist jurors.
4 Because that's the only answer to how Nikolas Cruz in the
5 Parkland situation wasn't put or sentenced -- recommended a
6 death sentence.

7 So in the past we had a majority. This puts it a
8 super majority. The way the bill is structured currently, the
9 underlying bill would allow an eight/four super majority, but
10 still allow the judge to deviate from that eight/four if she or
11 he determines that's where they want to go.

12 So with that, I appreciate the sentiment. I
13 appreciate you recognizing that there are problems with activist
14 jurors. But I would ask everybody to vote down on the
15 amendment.

16 PRESIDENT PASSIDOMO: Senate Powell, you're recognized
17 to close.

18 MR. POWELL: Thank you, Madam Chair, and thank you,
19 Senator Ingoglia, for the acknowledgement of activist jurors,
20 but plot to us an activist juror can actually be someone who is
21 picked to actually choose the death penalty. So in this
22 circumstance if you're picking persons to be on the jury that
23 you are hopeful will be supportive of the death penalty, that
24 within itself would be the definition broad-scale of an activist
25 juror. This bill is problematic with eight to four, because

1 it's the broad-scale definition of WOKE. So this language helps
2 reduce the WOKEness of this piece of legislation by allowing it
3 to be ten to two and prevent the government overreach into the
4 court system. So I would ask everybody to vote yes on this
5 really, really good amendment which is a compromise which would
6 allow us to have most of my colleagues to support this
7 legislation who would not support it. The other way would be
8 with now ten activist jurors who are acting in a manner to
9 support the death penalty as opposed to the two that you use the
10 other way.

11 So thank you for acknowledging the idea of activist
12 jurors in this WOKE legislation. With that I close and I ask
13 everybody to support this really, really good legislation.

14 PRESIDENT PASSIDOMO: All in favor of the amendment,
15 signify by saying yea.

16 (Members voted yea.)

17 PRESIDENT PASSIDOMO: Opposed, no.

18 (Members voted nay.)

19 PRESIDENT PASSIDOMO: The amendment is not adopted.
20 Are there any questions on the bill? Senator Pizzo. Let's try
21 this over again. Are there questions on the bill?

22 MR. PIZZO: There are questions on the bill.

23 PRESIDENT PASSIDOMO: Thank you very much, sir.

24 MR. PIZZO: Thank you very much, Madam President. Do
25 I curtsy? What do I do?

1 PRESIDENT PASSIDOMO: No, don't fall over.

2 MR. PIZZO: I had back surgery. I'm good. I've got
3 brand new, brand new parts. Senator Ingoglia, I'm with you on
4 the activist juror. I have had jurors who have made assertions
5 and statements, wrote those down in questionnaires, turned out
6 not to be true. But would you agree you can have an activist
7 juror who holds up the actual guilt phase before you get to the
8 penalty phase, because you need unanimity obviously with the
9 verdict; is that correct?

10 PRESIDENT PASSIDOMO: Senator Ingoglia.

11 MR. INGOGLIA: Thank you, Madam President. I would
12 agree that jurors do not divulge or attempt to divulge their
13 true intentions both ways, either side before getting onto a
14 jury.

15 PRESIDENT PASSIDOMO: Senator Pizzo.

16 MR. PIZZO: Any consideration, and I agree with you,
17 so is there any consideration with doing a better vetting
18 process for the truth and veracity of the statements and
19 assertions made on a questionnaire from jurors?

20 PRESIDENT PASSIDOMO: Senator Ingoglia.

21 MR. INGOGLIA: Thank you, Madam President. Look, I'm
22 always willing to look at future legislation that will help the
23 process. But as far as this legislation, that doesn't address
24 jury selection process.

25 PRESIDENT PASSIDOMO: Senator Pizzo.

1 MR. PIZZO: Thank you. How many different stages of a
2 criminal trial would an activist juror have the ability to hold
3 up a unanimous finding?

4 PRESIDENT PASSIDOMO: Senator Ingoglia.

5 MR. INGOGLIA: Thank you, Madam President. You know
6 the answer to that already. Three. I'll play along. Go ahead.

7 PRESIDENT PASSIDOMO: Senator Pizzo, you're not going
8 to win.

9 MR. PIZZO: No, I'm just going to talk to myself overo
10 here in the corner. No, but here's -- here's what I'm -- here's
11 what I'm trying to ask. Again, and this pains me, because I'm
12 with you on this. And I think a lot of people watching this, my
13 concern is that they think we're talking about the actual
14 verdict, right? You're nodding, Senator Ingoglia. These are
15 leading questions at this point.

16 PRESIDENT PASSIDOMO: I noticed.

17 MR. PIZZO: I'll concede. But I think that they think
18 we're talking about the verdict. And that verdict has to be
19 unanimous, right??

20 PRESIDENT PASSIDOMO: Senator Ingoglia, you're
21 recognized.

22 MR. INGOGLIA: Madam President, to your point, I'll
23 explain. So in order to get to a recommendation of death two
24 things have to happen precedent, preceding that. One is they
25 have to be found by a jury of their peers to have committed the

1 crime, capital murder. The second is unanimously. Then the
2 second is they unanimously have to find at least one aggravating
3 factor. And then under current law, it has to -- they have to
4 be found unanimously, all 12 to recommend the death sentence to
5 a judge. So it's three phases: unanimous, unanimous, and
6 unanimous.

7 PRESIDENT PASSIDOMO: Senator Pizzo.

8 MR. PIZZO: See, you got it. They have three
9 attempts. Here is my question. They have to be so -- this
10 activist has to be so calculating. And I would argue three or
11 more would actually have to be in collusion. But they have to
12 be so activist and calculating and conniving in this situation
13 to weight not just the first phase, the guilt phase, not just
14 the finding of an aggravator also unanimous. They'd have to
15 wait until the very, very end as a group is your assertion, is
16 what I understand, is your assertion, they'd have to wait until
17 the very end, to the third phase before they exercised that --
18 that advocacy against the process?

19 PRESIDENT PASSIDOMO: Senator Ingoglia.

20 MR. INGOGLIA: Thank you, Madam President. To your
21 point, I do believe that. I believe that if somebody -- two
22 things can be true at the same time. You can have a juror who
23 realizes that this was a heinous crime and they should pay for
24 their crimes and so find them guilty on the first two phases and
25 join with the other 11 in unanimity, but still at the same time

1 having both happen at the same time be just ideologically
2 opposed to the death penalty. I do believe that.

3 PRESIDENT PASSIDOMO: Senator Pizzo.

4 MR. PIZZO: So here is actually my last question, like
5 if it's like a yes or a no or, you know, but there's like a four
6 multiple. So every word you say, I'll come back with four.
7 Now, here's my question. On the verdict form, where do the
8 mandatory lessers that have to be included when someone is
9 charged with a capital murder case?

10 PRESIDENT PASSIDOMO: Senator Ingoglia.

11 MR. INGOGLIA: I'm not familiar with that, but we can
12 get -- I'm assuming that you know that. I'm not an attorney. I
13 haven't prosecuted these cases. So I'm not familiar with that.

14 PRESIDENT PASSIDOMO: Senator Pizzo.

15 MR. PIZZO: And I see Ms. Jones is behind you. She
16 can probably give you a head -- but accept these if you will and
17 look for a nod I guess from staff. But -- and you're not
18 supposed to know this. This is very nuanced. But if someone is
19 charged with capital murder, there are a number of crimes that
20 are lesser crimes that have to be included on the verdict form.
21 Some are discretionary, usually a conference between defense and
22 the State. But there are mandatory lessors. So if someone is
23 charged with first-degree capital murder, absolutely it
24 naturally follows. The verdict form is also going to give --
25 because I know, I'm getting there, I'm getting there, I'm

1 getting there.

2 PRESIDENT PASSIDOMO: Put a question mark somewhere.

3 MR. PIZZO: I will. It's in my head. First-degree
4 murder, second-degree murder is going to be on that verdict form
5 and probably manslaughter.

6 Here is my question if someone on that jury is dead
7 set against the penalty of death, they don't have to wait until
8 the end of the first, to the second stage, or the third. Would
9 it just be easier to guarantee that the defendant in that case
10 would never face the death penalty by just voting for
11 second-degree murder?

12 PRESIDENT PASSIDOMO: Senator Ingoglia.

13 MR. INGOGLIA: Thank you, Madam President. I think I
14 understand. But I think when you look at the -- what happened
15 in the Parkland case, you know, I would ask why didn't that
16 happen in the Parkland case and why did they wait until the last
17 phase where three of them deviated and broke away from the
18 unanimity?

19 So while I understand all this, I think I understand
20 your question. I think that the Parkland trial really exposed
21 some of the -- the problems with -- with unanimity. So, look, I
22 think I -- I think I get what -- what I -- what -- but I think
23 that actually happened in the Parkland case. It actually came
24 out to the converse of what you're saying. They actually went
25 through first phase, went through first phase and then when it

1 came to that -- when they're sitting in the jury room and
2 they're deliberating, I just think that three people were just
3 ideologically opposed.

4 And, look, when you're dealing with -- and you know
5 this. You're down from that area. It was -- it was a pressure
6 cooker down there. Everyone was watching the trials. I think
7 they just got to the point where they said, okay, yes, yes, not
8 so sure about it, in fact, no, because I just don't agree with
9 it.

10 PRESIDENT PASSIDOMO: Senator Pizzo.

11 MR. PIZZO: And this is sort of a question and I think
12 you're probably going to agree. When you said two things can be
13 true, do you think the Parkland trial was a situation where --
14 this is sort of a conversation -- it's not -- do you think
15 Parkland was a situation where people locally felt the pressure
16 to be yes, yes, yes, yes, because it was so obvious, right? I
17 mean we were talking about -- when Senator Jones and I were
18 talking about cases, shootings, homicides, we're talking about
19 there's no video, right? There's no confession. There's no --
20 suspects are rarely caught. Do you think it was pressure,
21 pressure, pressure, and then when the penal -- ultimate kind of
22 situation arose that it's like, okay, the next decision actually
23 does end in death or result in death that that's when the sort
24 of activist jurors kind of kicked in and said, I'll go as far as
25 I possibly can, but I can't go any further?

1 PRESIDENT PASSIDOMO: Senator Ingoglia.

2 MR. INGOGLIA: Thank you, Madam President. I don't
3 answer -- I don't know the answer to that question, because I
4 don't know what their thought process. I wasn't inside the
5 courtroom. I wasn't part of jury selection. So I don't know
6 what their -- how they answered the questions. I just can't
7 answer that question, what their thought process was.

8 PRESIDENT PASSIDOMO: Senator Pizzo.

9 MR. PIZZO: Then how do we know outside of the
10 absolute, complete injustice that was -- that we saw down there?
11 Because here -- because here -- I'll let you in on something.
12 Almost all of my members in our caucus would have voted or
13 though Nikolas Cruz should have died. And yet I don't know that
14 they're comfortable at eight/four. So I'm trying to get us all
15 to cover. That was the intention of the amendment, right? And
16 you don't know. And there are times when I will admit to you I
17 lost a trial and I'm walking out and I'm going how did these
18 people not just under --

19 PRESIDENT PASSIDOMO: Senator Pizzo, that's debate.

20 MR. PIZZO: It is.

21 PRESIDENT PASSIDOMO: I know. Can you do that
22 tomorrow?

23 MR. PIZZO: Madam President, candidly and
24 transparently, I'm trying to get as many members to be on board
25 with this. And sometimes it's necessary to give these kind of

1 examples, I think you would agree, and walk through this out
2 loud so everyone could be very deliberate with this decision.
3 But I'll stop.

4 PRESIDENT PASSIDOMO: Senator Ingoglia.

5 MR. INGOGLIA: Thank you, Madam President. I think I
6 see what you're getting at. But, remember, eight/four gives
7 the judge the option. Right? The judge can still deviate.
8 Parkland was nine/three. At ten/two, Nikolas Cruz would have
9 not had a recommendation of death. At the very least at
10 eight/four, there is the option for the judge where she or he
11 could take it and recommend death or not. Maybe judges in the
12 future don't like eight/fours and maybe they're just going to be
13 like, okay, it has to be really egregious as in the Parkland
14 case where I would take a death sentence at -- a death sentence
15 recommendation at eight/four. But in the absence of that and
16 not giving the flexibility and not going down to a super
17 majority at eight/four, the most heinous of heinous crimes,
18 ah-wa, Nikolas Cruz, they escaped the death penalty.

19 PRESIDENT PASSIDOMO: Any other questions?
20 Senator Stewart.

21 MS. STEWART: I just have one and that is to get to
22 the bottom line. Do you think the eight/four would have
23 prevented the Stoneman Douglas verdict?

24 PRESIDENT PASSIDOMO: Senator Ingoglia.

25 MR. INGOGLIA: Thank you, Madam President. I believe

1 yes. I mean it would depend upon the judge. The judge could
2 have deviated. But I do think that Nikolas Cruz would have been
3 sentenced to death if this law was on the books during that --
4 during that trial.

5 PRESIDENT PASSIDOMO: Any other questions? Okay.
6 Pursuant to Rule 4.19, the bill is placed on the calendar of
7 bills on third reading.

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9 (The hearing was concluded.)

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CERTIFICATE OF TRANSCRIBER

1 STATE OF FLORIDA)

2 COUNTY OF POLK)

3 I, ELAINE TURNER-WOOD, Stenographic Court Reporter and
4 Notary Public, certify that I was authorized to and did
5 transcribe the foregoing Senate Session and that the transcript
6 is a true and accurate transcription of the record.
7

8 DATED this 2nd day of May, 2023.
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12



Elaine Turner-Wood,
Notary Public, State of Florida
My Commission No. HH 200728
Expires: March 19, 2026

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ORIGINAL

SENATE SESSION

3/30/23

TRANSCRIBED BY: Elaine Turner-Wood
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1 THEREUPON, the following took place:

2

3 PRESIDENT PASSIDOMO: Read the next bill.

4 SECRETARY: Committee Substitute for Committee
5 Substitute for Senate Bill 450, a bill to be entitled An Act
6 Relating to the Death Penalty.

7 PRESIDENT PASSIDOMO: Senator of the Eleventh
8 District, Senator Ingoglia is recognized to explain the bill.

9 MR. INGOGLIA: Thank you, Madam President. This is
10 the bill on the death penalty that we spoke of yesterday.

11 PRESIDENT PASSIDOMO: Are there amendments?

12 SECRETARY: None on the desk, Madam President.

13 PRESIDENT PASSIDOMO: Is there debate on the bill?
14 Senator Pizzo.

15 MR. PIZZO: Thank you, Madam President.
16 Senator Ingoglia, you had me at ten/two. But here is the
17 situation that we find ourselves in. When we were in Criminal
18 Justice Committee chaired by Senator Martin, you recall that
19 State Attorney Bill Gladson appeared and spoke on the bill. And
20 what he had said was and what he featured was that -- I think it
21 was in the last three capital death penalty cases he had, that
22 in all three of the last cases, they were 12/0, 12/0, and 12/0.

23 And his largest gripe -- and I remember speaking to
24 you over a few weekends ago that my biggest concern was what he
25 expressed in the meeting. I think you and I spoke before he

1 appeared at the meeting. It was like a Saturday I think or a
2 Sunday before our Monday meeting in Criminal Justice or Tuesday
3 meeting in Criminal Justice. And it's the following. My
4 biggest concern were activist judges. That the greatest
5 injustice for this body would have been had we been standing
6 here or sitting here after a 12/0 unanimous verdict against
7 Nikolas Cruz and the judge would retain the power to go ahead
8 and render a life sentence with unanimity on verdict, on
9 aggravator, on penalty, with the whole entire thing. And that
10 my concern was weren't addressing that.

11 And I think that was the State Attorney's biggest
12 concern, too. And so the greatest part about your bill was that
13 there are certain mandatory things that must happen, because
14 it's overwhelmingly the will of our peers on 12/0. I would
15 argue 11/one and I would say ten/two as well.

16 But when you get in a situation where by your
17 hypothetical -- and you're not, you know, obligated to be
18 imparted with certain wisdom or the things of the court and the
19 process and we were talking about mandatory lessors yesterday
20 and everything -- but if effectively 33 percent of that body
21 that is there -- and I will tell you as part of debate -- you're
22 not supposed to know this either. But appellate courts when
23 someone appeals something has great deference for the trial
24 court for the very simple reason that they weren't there and
25 they cannot replace and substitute what they're getting

1 secondhand basically, for what the trial court judge as the
2 tryer of law, the jury is the tryer of fact. I mean this is
3 Jerry Maguire cheesy, but you had me at hello. And that hello
4 is ten/two.

5 We took what just recently happened, most recently
6 happened, most glaringly conspicuously happened and said let's
7 just for safe measure make sure we come in one more just -- just
8 for a little bit of cushion. And I hate to demeanitize it so
9 much, but that's where we are.

10 I assure you and I take you to be intellectually
11 honest with this body that if the Nikolas Cruz verdict was
12 ten/two, you'd be nine/three. If it was 11/one, we'd be
13 ten/two.

14 If we were ten/two, I think you'd have an overwhelming
15 majority of the people in here. It's just an imperfect system.
16 Senator Hooper said it. Others have said it. Senator Perry has
17 said it in the past. We don't ever pass perfect bills here.
18 Our system is not perfect, but it is the best in the world. If
19 you're the accused, if you're a victim, it is the best system in
20 the world. I choose to live here. You're stuck with me.

21 But when 33 percent of a body of your peers who are
22 there and seeing the evidence -- and I'll tell you something
23 else that Senator Martin has to agree with me -- sometimes we
24 don't do our job. My very first case was a bench trial. The
25 court dismissed it, because I forgot ID on venue -- on ID venue

1 and the elements. I forgot it. Judge Andrew Hague, he
2 dismissed it. Sometimes the State doesn't do their job. But
3 I've seen a lot of cases that were very serious where the State
4 didn't do their job.

5 In making the assumption, I think, or the supposition
6 is that in a perfect format, all of the elements are satisfied
7 by the State. Sometimes they're not. They're human. Sometimes
8 witnesses don't show up. Three types of evidence: testimonial,
9 circumstantial. Juries now more and more want to see physical
10 evidence. They want to see DNA. And they want to see
11 fingerprints.

12 So I'm just here to tell you this. I don't even know
13 what button I'm pushing. Because Nikolas Cruz -- and I said
14 this in the committee and I saw you nod your head -- a law
15 professor told me that when you truly get to understand criminal
16 procedure and criminal law you will recognize the difference
17 that most lay people will not understand which is there is a
18 stark difference between two things, those who don't deserve to
19 live and there are those who deserve to die. And those are not
20 the same.

21 And I know that some of my colleagues regardless of
22 what button they push today believe Nikolas Cruz should have
23 been given the death penalty even though it was nine/three. And
24 I guess to support members on your side and members on my side,
25 we should all in a nonpartisan fashion protect the position on

1 this bill. So if you vote for it, I have your back. If you
2 vote against, I have your back. Because we can spend all day --
3 we can go on a retreat together and have a conver -- you don't
4 want to go on a retreat with us? Come on, I cook,
5 Senator Garcia.

6 But this is what I'm saying, vote how you want to
7 vote, because even those that may vote no today I want people
8 watching to know as well and families at home and our
9 constituents that they would have voted, they would have wanted
10 to render a verdict and they thought that Nikolas Cruz should
11 have been executed for the most heinous crimes.

12 I do have faith in the system. Nikolas Cruz killed 17
13 people. It wasn't an accidental, heat of the passion single
14 pull. It wasn't two. It wasn't three. It wasn't four. It
15 wasn't five. And a deranged animal, a rapid dog knows when to
16 stop. And he did it. And he deserves neither to live and he
17 deserved to die.

18 But again this deliberate body can't just immediately
19 react to one particular horrific case. Because, folks, another
20 crazy nut is going to take the lives of more people maybe
21 tomorrow or maybe next week or maybe next month. And if it
22 happens in one of our districts and the jury comes back
23 seven/five, and we're like they had video and DNA and they had
24 this and they had that and they had this and they had that, what
25 an injustice. I think O.J. did it. I do.

1 So vote how you want to vote. You're not going to get
2 criticism from me. I can make the argument on either side. But
3 let's just be intellectually honest about why we're doing it.
4 If that verdict didn't happen, we would be -- we wouldn't be
5 having this bill. We would have a bill where a judge took a
6 12/0 unanimous verdict, penalty, aggravated finding, and we
7 would be going to a three-judge panel to make sure that those
8 activist judges who are elected don't pull that injustice and
9 give it a life sentence. That's my position.

10 PRESIDENT PASSIDOMO: Any other debate? Senator of
11 the Environment District, Senator Ingoglia is recognized to
12 close.

13 MR. INGOGLIA: Thank you, Madam president. Senators,
14 what happened in Parkland was abhorrent. What happened in
15 Parkland was a tragedy that will forever stain this state. We
16 all grieve for the families of Parkland and that community. But
17 what that verdict did do was expose a flaw in the current
18 system. That verdict shocked the conscience not only of the
19 people of Parkland, not only the people in Florida, but people
20 across the United States of America.

21 Under current law you need three things to happen in
22 order to impose the death penalty. You need unanimity of guilt,
23 you need unanimity of at least one aggravating factor, and you
24 need unanimity for a jury to recommend the sentence of death.
25 That is such a high bar. It is too high. You're giving all of

1 the power to one activist juror, a protest juror, and that one
2 juror can then impose her or his will and ideology upon the
3 whole system. I would argue that there is something wrong with
4 that system and that system needs to be changed.

5 And speaking of unanimity, Nikolas Cruz didn't bother
6 with unanimity. He didn't care about the community. He didn't
7 care about the families. He didn't care about the kids.
8 Nikolas Cruz acted as judge, jury, and unfortunately
9 executioner, also. If a monster like that who commits heinous
10 crimes like that does not deserve and get the death penalty,
11 then what do we have a death penalty for?

12 I would ask for your favorable support and send the
13 message that the State of Florida will not stand for heinous
14 crimes like that which was committed upon the Parkland families.
15 I ask for your favorable support.

16 PRESIDENT PASSIDOMO: The secretary will unlock the
17 board and senators will proceed to vote. Have all senators
18 voted? Lock the board and record the vote.

19 SECRETARY: 29 yeas, 10 nays, Madam President.

20 PRESIDENT PASSIDOMO: Show the bill passes.

21

22 (The hearing was concluded.)

23

24

25

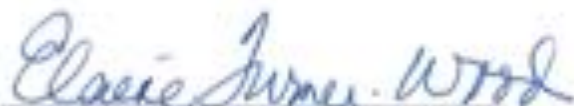
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2 COUNTY OF POLK)

3 I, ELAINE TURNER-WOOD, Stenographic Court Reporter and
4 Notary Public, certify that I was authorized to and did
5 transcribe the foregoing Senate Session and that the transcript
6 is a true and accurate transcription of the record.
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8 DATED this 4th day of May, 2023.
9
10
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12



Elaine Turner-Wood,
Notary Public, State of Florida
My Commission No. HH 200728
Expires: March 19, 2026



ORIGINAL

1

HOUSE JUDICIARY COMMITTEE

3/31/23

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1 THEREUPON, the following took place:

2

3 CHAIR OVERDORF: The next bill for consideration today
4 is CS for HB 555, Sentencing Proceedings in Death Penalty Cases
5 by Representative Jacques. Representative Jacques, you are
6 recognized to present your bill.

7 MR. JACQUES: Thank you, Mr. Chairman. This bill
8 reforms our death penalty statute. Currently in Florida in
9 order for somebody to receive the death penalty at the last
10 phase all 12 jurors have to recommend the death penalty for an
11 individual to receive the death penalty. This would reform that
12 to make it a super majority, eight out of the 12 jurors.

13 And we want to be very clear about the proceedings.
14 To be convicted of a crime that would make somebody eligible for
15 the death penalty, all 12 jurors would still have to agree to
16 convict somebody of the crime. And then when we go to the
17 penalty phase, all 12 jurors would still have to meet the
18 threshold that the defendant has met an aggravating factor, that
19 an aggravating factor exists that will make them eligible for
20 the death penalty. And so we're just discussing that last
21 portion when the jury provides a recommendation changing that
22 from unanimous to eight. And that is the bill, Mr. Chair.

23 CHAIR OVERDORF: Representative Jacques having
24 explained his bill. Well, there is an amendment, members, but I
25 will allow for questions now if there are questions.

1 Representative Gottlieb, you are recognized.

2 MR. GOTTLIEB: Thank you, Chair. Rep. Jacques, can
3 you -- there's a recent line of Supreme Court cases that say
4 that death penalty scheme should be narrowing the number of
5 death penalty verdicts. Can you explain how this reform as
6 you're calling it is consistent with the line of Supreme Court
7 cases?

8 CHAIR OVERDORF: You're recognized.

9 MR. JACQUES: Thank you, Mr. Chair. This -- this bill
10 is very consistent with the recent line of Supreme Court cases
11 particularly the ones here in Florida. In 2020 in the case of
12 Poole, the Supreme Court overruled its previous decision that
13 the current law is based off of. So back in 2017, this
14 legislature responded to the Florida Supreme Court that said
15 that the recommendations had to be unanimous. They then
16 several -- a few years later in 2020 came back and said we got
17 that portion wrong. And they overturned their decision in Perry
18 and Hurst and said that that last portion does not have to be
19 unanimous. But they still maintain that we still have to have
20 unanimous findings that the defendant is eligible, that is, that
21 they found at least one aggravating factor exists, but that the
22 last portion does not have to be unanimous. So this is very
23 consistent with the Supreme Court cases that are coming out on
24 this issue.

25 CHAIR OVERDORF: Representative Gottlieb.

1 MR. GOTTLIEB: Do you believe it's also consistent
2 with Ramos versus Louisiana?

3 CHAIR OVERDORF: Representative Jacques.

4 MR. JACQUES: Yes, it is. In fact, under our fact
5 pattern of what we're trying to do, it's not exactly in line
6 with Ramos, but it does not run afoul of Ramos either.

7 CHAIR OVERDORF: Representative Gottlieb.

8 MR. GOTTLIEB: Thank you, Mr. Chair. How about lines
9 58 to 63, is that consistent with the opinion in Apprendi?

10 CHAIR OVERDORF: Representative Jacques, you're
11 recognized to answer.

12 MR. JACQUES: Thank you, Mr. Chair. Give me some time
13 as I read the lines.

14 CHAIR OVERDORF: Certainly.

15 MR. JACQUES: And will you clarify which lines?

16 MR. GOTTLIEB: Mr. Chair?

17 CHAIR OVERDORF: Yes, You're recognized.

18 MR. GOTTLIEB: 58 to 63.

19 CHAIR OVERDORF: Representative Jacques.

20 MR. GOTTLIEB: I may have jumped the gun. That may be
21 on the amendment.

22 MR. JACQUES: This is -- this is on the amendment
23 or --

24 CHAIR OVERDORF: Representative Gottlieb, while you're
25 gathering your information, are there other questions? Other

1 questions from other members? Seeing no other,
2 Representative Gottlieb, have you got your question or do you
3 want me to move on?

4 MR. GOTTLIEB: It was to the amendment, so I'll
5 reserve it for when we're there. Chair, sorry about that.

6 CHAIR OVERDORF: Seeing no more questions on the bill,
7 we are going to move onto the amendment. And there is one
8 amendment. So you are recognized to explain amendment bar code
9 number 295837. Representative Jacques, you are recognized.

10 MR. JACQUES: Thank you. Under the current bill,
11 there is a shall language. So whatever the jury recommends, the
12 judge shall impose that sentence. This amendment would allow
13 the judge to deviate if in the event that the jury recommends
14 death, that they can impose a sentence of life, but they have to
15 put their findings in a written order and so -- to write it out
16 so individuals can know why they chose to go against the jury's
17 recommendation. This puts it in line with an amendment that was
18 offered in the senate version as well.

19 CHAIR OVERDORF: Representative Jacques having
20 explained his amendment. Are there questions on the amendment?
21 Oh, Representative Gottlieb has a question.

22 MR. GOTTLIEB: Thank you, Chair.
23 Representative Jacques, do you agree that this could actually
24 make it easier for individuals to vote for the death penalty
25 with the hope or expectation that a judge may engage in an

1 override?

2 CHAIR OVERDORF: Representative Jacques.

3 MR. JACQUES: I don't agree with that.

4 CHAIR OVERDORF: Representative Gottlieb.

5 MR. GOTTLIEB: Do you have any data suggesting that
6 this amendment will reduce the wrongful number of convictions in
7 the State of Florida?

8 CHAIR OVERDORF: Representative Jacques, if you can
9 answer that.

10 MR. JACQUES: Well, this is very speculative. What I
11 will say, it adds an additional layer to the decision. So where
12 a jury may recommend death, a judge can then review it and then
13 maybe go the other way. And so for the defendant, it adds an
14 additional layer of review. Not to mention the review that
15 they'll get immediately in the event that they do get the death
16 penalty, a direct appeal to the Supreme Court, but now you're
17 getting a second set of eyes after the jury makes their
18 recommendation.

19 CHAIR OVERDORF: Representative Gottlieb, for a
20 question.

21 MR. GOTTLIEB: Thank you, Chair. Given that Florida
22 has I think it's 30 death row exonerees, how did you determine
23 that the standard of eight to four and this new standard in the
24 amendment would ensure fairness in capital cases when we were
25 under a different, a more stringent scheme previously?

1 CHAIR OVERDORF: Representative Jacques.

2 MR. JACQUES: Well, to answer that question, it's
3 important to also conceptualize it. It wasn't that long ago for
4 decades that all you needed here in the State of Florida was a
5 simple majority, seven/five. And, in fact, when I served as an
6 Assistant State Attorney, as a prosecutor from 2012 to 2016, not
7 that long ago, you just needed a simple majority. It moved to
8 unanimous based on this court decision that the Supreme Court
9 later came back and said we got it wrong.

10 In the meantime, we've seen a lot of miscarriages of
11 justice in the eyes of many people in the community including
12 those most recently down in Parkland where an activist juror can
13 then convince maybe one or two to really screech and halt the
14 full administration of justice in a case where everybody agrees
15 is -- is deserving of the death penalty. And in that situation
16 down in south Florida, nobody was in doubt of this person's
17 guilt. This went straight to the guilt phase. The defendant
18 himself acknowledges his guilt. All of the jurors found that an
19 aggravating factor was met, so they all agreed that he is
20 eligible for the death penalty. And to have just a small
21 handful of jurors derail the full administration of justice is
22 something that -- that shocked Floridians and Americans all
23 across our land. And so this would impose a super majority in
24 order for that recommendation to be taken into consideration.

25 CHAIR OVERDORF: Are there further questions other

1 than Representative Gottlieb? Further questions other than
2 Representative Gottlieb, having no other questions other
3 Representative Gottlieb, Representative Gottlieb, you're
4 recognized for a question.

5 MR. GOTTLIEB: Thank you, Mr. Chair. Is there
6 anything in your bill that prohibits or protects juries moving
7 forward from what you call activist juror?

8 CHAIR OVERDORF: You're recognized.

9 MR. JACQUES: The bill does that, because it doesn't
10 leave it to a small number of individuals from doing that
11 because you have a situation where some jurors, they'll tell you
12 all the right things. When push comes to shove for whatever
13 reason, it may be activism, it may be that they have a -- just a
14 moral conviction that they didn't realize and it kicked in when
15 it came down to make the decision. But why should justice
16 suffer because of that situation? And so this bill in its
17 entirety prevents this situation with activist jurors or any
18 juror that seems to want to deviate from the law, especially
19 when it's obvious to all involved that the person deserves the
20 ultimate measure of justice.

21 CHAIR OVERDORF: Representative Chambliss.

22 MR. CHAMBLISS: Thank you, Mr. Chair. It was the line
23 of questioning that created a question. I appreciate it. If
24 you could for, you know, us nonlaw students, you had made a
25 comment that there was a case in which there was a court ruling

1 and then the court came back and said they got it wrong. Could
2 you kind of describe that more, you know, like what was the
3 case, what did they feel they got wrong?

4 CHAIR OVERDORF: Sure. Absolutely.
5 Representative Jacques.

6 MR. JACQUES: Thank you, Mr. Chair. So going back as
7 I mentioned, not that long ago Florida just needed a simple
8 majority, you know, from the jury to recommend the death
9 penalty, seven. There was a case that challenged the Florida
10 Supreme Court -- excuse me -- a jury recommendation scheme based
11 on the fact that it actually gave too much power to the judge in
12 finding the aggravators. And so although it was a simple
13 majority in finding the aggravators, a judge could really make
14 that determination and a jury didn't have to unanimously say
15 this person meets the threshold. And so they said Florida's
16 sentencing schemes for the death penalty was wrong on that
17 basis. It went back to the State of Florida. And the State
18 Supreme Court then took that opinion to mean more than it
19 actually did. It said, yes, not only does it require the jury
20 to make the determination for the aggravating factors, it then
21 also needed unanimous or the recommendation. And so they did
22 that in the Hurst version when it came back to the State of
23 Florida and also in a case titled Perry that also overturned
24 Florida's death penalty statute based on that.

25 A few years later in 2020 -- this was in 2017, around

1 2016, 2017 this was occurring. In 2020, the Supreme Court came
2 back and said the court had it right on the fact that the judge
3 had too much power in aggravators, because it's a finding of
4 fact. A jury has to make that decision. And so, yes, all 12
5 jurors must still determine that the person is eligible for the
6 death penalty by seeing that they met at least one aggravator.

7 But where the court got it wrong is in that last
8 portion. This is not a finding of fact. Because by then, all
9 agreed that the person is guilty of a first-degree capital
10 offense. All agreed that this individual is eligible for the
11 death penalty. But in that third portion, it's no longer a
12 finding of fact. And so that no longer has to be unanimous.
13 And so they put the ball back in the legislature's court.

14 CHAIR OVERDORF: Representative Hinson.

15 MS. HINSON: Thank you, Mr. Chair. Good morning,
16 Representative. I think we all agree with you on the Parkland
17 shooting, that they got it wrong. My question is do they allow
18 a juror, a potential juror to proceed if they avow a disbelief
19 in the death penalty?

20 CHAIR OVERDORF: That's a little bit outside of the
21 amendment, but in the context we didn't have a lot of questions
22 before. I'll allow it, so Representative Jacques.

23 MR. JACQUES: The amendment -- the amendment does not
24 contemplate that.

25 CHAIR OVERDORF: Representative Jacques, if you would

1 answer the overall question, that would be great, outside of the
2 amendment. That's fine. Thank you.

3 MR. JACQUES: Under -- when you're picking a jury,
4 during the jury selection process, you go through a lot of
5 inquiry. And so one of the main questions you would ask a
6 potential juror is whether or not you can follow the law despite
7 your own personal convictions or not, can you follow the law if
8 the State meets their burden beyond and to the exclusion of
9 every reasonable doubt. And so affirmatively those were
10 selected are assumed to have -- are going to do just that. But
11 as we know and as practitioners will tell you, that's not always
12 the case. Some jurors will not be honest, quite frankly, and
13 will say a certain -- give you a certain answer that they think
14 you might want to hear. And when it comes down to make a
15 decision, they will act on that bias that they said that -- that
16 they didn't have.

17 And so this statute protects our victims. It protects
18 the rule of law to not allow a small number of those jurors who
19 would deviate from what they told the attorneys and the court
20 prior to make sure that the full administration of justice is
21 not derailed.

22 CHAIR OVERDORF: Thank you for that.
23 Representative Hinson.

24 MS. HINSON: Sorry, Mr. Chair, for taking this out of
25 order. However -- sorry.

1 CHAIR OVERDORF: You're okay. Ask your question.

2 MS. HINSON: However, is that a no or a yes?

3 CHAIR OVERDORF: Representative Jacques,

4 MS. HINSON: Do they allow a juror to proceed in
5 process? Do they allow a potential juror to proceed if they
6 avow a disbelief in the death penalty?

7 CHAIR OVERDORF: Representative Jacques, apparently if
8 you can answer that in less of a verbose manner than previously,
9 that would be fantastic. Thank you, sir.

10 MR. JACQUES: Well, it's very nuance, because somebody
11 on a jury can say they don't believe in the death penalty, but
12 then also say that they can follow the law. And there are
13 certain circumstances where that person could still be on the
14 jury as long as they affirmatively, and everybody is convinced
15 that they can still follow the law even though if they don't
16 believe in the death penalty. So it's a balancing test for the
17 lawyers involved.

18 CHAIR OVERDORF: Representative Hinson, I think that
19 it would be great to get with the bill sponsor after this and to
20 work through that. Thank you so much.

21 Representative Payne has a question.

22 Representative Payne.

23 MR. PAYNE: Thank you. Not specifically related to
24 the amendment, but in general, isn't it true that once a verdict
25 is handed down in a death penalty case that there's an automatic

1 appeal to the Supreme Court?

2 CHAIR OVERDORF: Representative Jacques.

3 MR. JACQUES: That is correct.

4 CHAIR OVERDORF: Seeing no addition -- oh,
5 Representative Maney with a question on the amendment.

6 MR. MANEY: Yes. Thanks for the amendment to this
7 bill. Based on the questions that Representative Hinson
8 propounded, is it true or not true that both sides have
9 preemptive challenges in selecting the jurors to try the case
10 from the jury pool, so if one side or the other wants to
11 disqualify a jury, that can -- that can happen? Each side has
12 preemptive challenges, plus challenges for cause.

13 CHAIR OVERDORF: Representative Jacques.

14 MR. JACQUES: Yes, that's very accurate. There's
15 challenges for cause and then preemptive as well in that -- in
16 that selection process. Yes, sir.

17 CHAIR OVERDORF: Any -- Representative Brannan for a
18 question.

19 MR. BRANNAN: Thank you. And I understand we won't
20 get a chance to ask a question later. I'll ask it now.

21 CHAIR OVERDORF: Yes, sir.

22 MR. BRANNAN: Because of the recent Parkland jury
23 verdict, I think we've become focused on that and maybe we're --
24 Sometimes we get too worried about the perpetrator, but as far
25 as victims' rights goes, would you tell them real quick about a

1 case in Jacksonville that was really a miscarriage of justice as
2 far as it came to the penalty phase?

3 CHAIR OVERDORF: Representative Brannen, it sounds a
4 little bit like a debate, but I'll allow that question.
5 Representative Jacques.

6 MR. JACQUES: Absolutely. So since Florida changed
7 its laws for that threshold to be unanimous based on this
8 wrongly decided court decision, we've seen a lot of miscarriages
9 of justice as it pertains to a lot of victims across our state.
10 Yes, the Parkland case shed light on this in a very high profile
11 way. But throughout our state we've been seeing instances of
12 injustice. In my county, as well in Pinellas, and then in
13 northeast Florida.

14 There's a case where a home invasion occurred. An
15 elderly couple was murdered during that home invasion. Not at
16 the scene. They were taken off site and buried alive. Buried
17 alive. That individual faced justice. The prosecutor sought
18 the death penalty. And even in that case where all the jurors
19 agreed that that person did that heinous crime, an elderly
20 couple buried alive, all the jurors agreed that that person
21 rightfully met the criteria, met an aggravating factor that made
22 them eligible for the death penalty, and even in that case the
23 jury was not unanimous. Even in that case. Ten/two. And so
24 that goes to show you that this is a major flaw in our system
25 where a few number of jurors that all agreed that the person did

1 it and is eligible can completely halt justice in a cases like
2 this. This is why this is so necessary. And thank you for
3 bringing that to the forefront, sir.

4 CHAIR OVERDORF: Seeing no further questions on the
5 amendment. Representative Lopez, you're recognized to ask a
6 question.

7 MS. LOPEZ: Thank you, Mr. Chair. First of all, good
8 morning and I highly appreciate the fact that you discussed with
9 me the bill. I have a lot of questions and your texting and
10 conversation, so thank you so much. Do you think that lower the
11 number of jury would have more people on death penalty?

12 CHAIR OVERDORF: I think that that's kind of been
13 answered already. Do you have another question?

14 MS. LOPEZ: No, Chair. So -- so I have another
15 question, Chair.

16 CHAIR OVERDORF: You do have another question?

17 MS. LOPEZ: Yes, sir.

18 CHAIR OVERDORF: Representative Lopez, you're
19 recognized for another question.

20 MS. LOPEZ: Thank you, Mr. Chair. So do you think
21 that then lower the number of jury guarantee fairness on both
22 sides?

23 CHAIR OVERDORF: Representative Jacques, if you can
24 opine on that one.

25 MR. JACQUES: Yes, I do think this bill will make it

1 more fair all around.

2 MS. LOPEZ: Okay.

3 CHAIR OVERDORF: Representative Hinson, for another
4 bite at the apple.

5 MS. HINSON: Thank you. I think the question is by
6 lowering the number of jurors needed to decide, will there be an
7 increase in the number of death penalties?

8 CHAIR OVERDORF: Representative Hinson, I think
9 that's -- we went through that a couple of times already. We
10 have some questions with Representative Gottlieb and others. So
11 I think that we've already answered that question. Any
12 additional questions on the amendment? Representative Lopez.

13 MS. LOPEZ: Thank you, Mr. Chair. You know, I -- do
14 you think that -- because this is the even number -- the even
15 number is -- and this is just me asking as a mother, teacher,
16 you know, not an expert on -- on law maybe. It's a simple
17 question. But is there any -- any feedback on having an even
18 number, eight, 12, you know? I'm not clear on that. I'm sorry
19 about that question. It is not appropriate, but it's just a --

20 CHAIR OVERDORF: Representative Lopez, are you asking
21 is there any feedback on the number of juries (indiscernible)?

22 MS. LOPEZ: Yes, is there a reason behind --

23 CHAIR OVERDORF: Is there a number that's outside of
24 12?

25 MS. LOPEZ: Yes, yes.

1 CHAIR OVERDORF: I believe that's beyond the scope of
2 this bill.

3 MS. LOPEZ: And even eight?

4 CHAIR OVERDORF: I believe -- whatever number that we
5 talk about besides 12 is beyond the scope of this bill.

6 MS. LOPEZ: So there is no reason behind eight either?

7 CHAIR OVERDORF: I think that we have answered why
8 we're looking at eight jurors several times during the line of
9 this questioning.

10 MS. LOPEZ: Okay. Thank you so much. I still have
11 those questions in my mind. Thank you.

12 CHAIR OVERDORF: I have every confidence that the bill
13 sponsor will get with you afterwards. Thank you. Is there any
14 additional questions on the amendment?

15 Is there any public testimony on the amendment?
16 Seeing no public testimony, is there debate on the amendment?
17 Seeing no debate on the amendment, Representative Jacques, on
18 the amendment. Representative Jacques, you are welcome to close
19 on your amendment.

20 MR. JACQUES: Thank you, Mr. Chair. Regarding this
21 amendment, it's truly a sign of this process being very
22 deliberative and very collaborative. As I mentioned under my
23 current bill, there was a shall language. It didn't give the
24 judge any wiggle room. The judge had to impose whatever the
25 jury recommended. And from hearing from a lot of my colleagues,

1 both sides of the aisle regarding that, a lot said they would be
2 comfortable having a level of judicial discretion. We took that
3 under advisement. And this is what was borne out of that. And
4 so I ask for a favorable support on this amendment.

5 CHAIR OVERDORF: Representative Jacques having closed
6 on his amendment. If you favor the adoption of the amendment,
7 signify by saying yea.

8 (A response of yeas.)

9 CHAIR OVERDORF: if you oppose, no.

10 (A response of nos.)

11 CHAIR OVERDORF: By your vote, the amendment is
12 adopted. We are back on the bill as amendment -- as amended,
13 excuse me. Is there any public testimony on the bill?
14 Matthew Dunnigan waives in support. Maria Deliberato waives n
15 opposition. Christy Arnold from the Florida Conference of
16 Catholic Bishops wishes to speak as an opponent. Ma'am, you're
17 recognized.

18 MS. ARNOLD: Good morning, Mr. Chair, committee
19 members. My name is Christy Arnold with the Florida Conference
20 of Catholic Bishops. We oppose HB 555, because we oppose making
21 it easier to execute people. In general, we oppose the use of
22 the death penalty as it is plagued with error. It undermines
23 human dignity, perpetuates cycles of violence, and is not proven
24 to deter criminal acts compared with alternative punishments
25 such as life imprison.

1 We are concerned that this bill will lead to more
2 death sentences by eliminating the jury unanimity requirement to
3 only require a super majority vote. Retaining the jury
4 unanimity requirement would actually better serve justice,
5 because unanimity helps ensure the process is as reliable and as
6 fair as possible. Unanimity promotes deliberation and engages
7 every juror in the process.

8 Florida already has the highest number of death
9 penalty exonerations in the nation. We've had 30 since 1973.

10 In light of this, we believe it is unwise to erode
11 safeguards around the death penalty. A death sentence is the
12 most severe penalty that society can impose. And as such,
13 Florida should preserve the highest standard possible for its
14 applications.

15 For these reasons, we oppose HB 555 and we urge you to
16 vote no. Thank you.

17 CHAIR OVERDORF: Thank you, ma'am. Next up,
18 Tony Montalto who is a proponent of the bill and wishes to
19 speak. Sir, you are recognized.

20 MR. MONTALTO: Morning, everyone. Thank you,
21 Mr. Chairman, for allowing me to address this committee. And
22 thank you, Representative Jacques, for presenting this bill.

23 I'm here as a victim. My forever 14 year-old daughter
24 Gina was murdered in the Parkland School massacre. We miss her
25 bright smile and her cheerful voice every day. To be clear, in

1 my opinion not every murder case deserves the death penalty, but
2 some do. This bill is about victims' rights plain and simple.
3 Sadly, my family has seen how a jury can be misled into denying
4 justice for the victims. A few months ago, we witnessed a
5 tragic failure of the justice system when the jury in the
6 penalty phase of the convicted Parkland shooter chose to
7 sentence him to life in prison. This admitted mass murderer
8 chose to pull the trigger 139 separate times including the time
9 when he put the gun to my daughter's chest and shot her. He
10 chose to take her life, to deny her a chance to grow up, to grow
11 old.

12 The misguided decision by that jury reverberated
13 through the victims' families, our community, and our state. My
14 father-in-law, a retired captain from the Miami Dade Fire
15 Department, struggled with the failure to punish his
16 granddaughter's murderer to the fullest extent of the law. This
17 stress contributed to a fatal heart attack shortly after that
18 verdict.

19 Although the Parkland jury unanimously found multiple
20 of the court's aggravating factors, were proven beyond a
21 reasonable doubt, a single juror who later wrote a note to the
22 judge stopped the deliberations process. This bill will prevent
23 that from happening, from allowing a single activist juror to
24 disrupt the justice system. This bill does not absolve the
25 burden on the prosecution to prove its case beyond a reasonable

1 doubt. It still requires the mandatory appeals to ensure fair
2 treatment for the convicted murderers.

3 I am in favor of this bill, because it will provide a
4 better opportunity for the victims of a murderer to receive
5 justice. My kind and caring daughter Gina, her schoolmates and
6 her teachers deserve justice. They didn't get it. This bill
7 will allow future victims of atrocious, cruel, and heinous
8 crimes an opportunity to have the justice system work for them
9 to see the perpetrators punished to the fullest extent of the
10 law. I urge you to vote yes on this bill. Vote for the rights
11 of victims. Thank you.

12 CHAIR OVERDORF: Mr. Montalto, thank you. And on
13 behalf of the entire Florida House, we are sorry for your loss.

14 MR. MONTALTO: Thank you.

15 CHAIR OVERDORF: The next person we have is
16 Herman Lindsey, Witness to Innocence, who wishes to speak.
17 Mr. Lindsey, you are recognized.

18 MR. LINDSEY: Thank you for having me and letting me
19 talk. You know, right now I have been listening to the debate.
20 I first came and listened to the debate in the Senate and --

21 MALE VOICE: Can you turn the microphone on?

22 MR. LINDSEY: Can you hear me now? First of all, my
23 name is Herman Lindsey. I'm a Florida death row exoneree. I'm
24 one of the 30 that you-all guys was talking about. And my thing
25 is I've been listening. I've been following this bill in the

1 Senate and the House. I was present in the Senate. And I feel
2 like I was in court being retried when I was being tried for my
3 murder case that I was wrongfully convicted. You know,
4 information has been thrown around and you can't say, "No,
5 that's not right, that's not right." You know, I feel like that
6 way. So I feel like -- I understand the legislation wanting to
7 hold people accountable. I get that. So I'm asking everybody
8 to take out -- let's take out the Parkland case. Let's take out
9 our belief of whether the death penalty should be in or out.
10 Let's take that out. Let's look at the problem that we are here
11 addressing.

12 First of all, if I was to ask the question of -- to
13 any of you and ask you why do we have 30 death row exonerees?
14 If I asked that question of how -- what reason would you say
15 caused them wrongful convictions? Some people would say
16 prosecutor misconduct, point it at the law enforcement, you
17 know, point it every way else. But in reality is the jury got
18 it wrong. The jury got it wrong, because the jury is under
19 educated. They're -- half of them don't even want to be there.
20 And that is our issue in our justice system. Prosecutors could
21 make misconduct. Defense attorneys could make ineffective
22 decisions.

23 But guess what, the jury has to render the verdict.
24 And if you think about it, we -- we don't really have this issue
25 here in Florida where people escape the death penalty as it's

1 being said here. Because guess what? Majority of people that
2 commits these crimes, they either kill themselves or have
3 someone else kill them. They either kill theirself or let the
4 police kill them.

5 The problem that we need to do is if we're going to
6 have the death penalty here in Florida, we need to step back and
7 reevaluate our system. And we need to start right at the heart
8 of it, of the jury. Because this bill would not fix it.
9 Because I agree that we would -- there's people that can say
10 that I'm not for the death penalty and be on the jury. You
11 know, I agree. We have all these -- these big problems, you
12 know, in this, having the death penalty here.

13 So when we talk about justice, some people believe in
14 death penalty, say he didn't get -- justice wasn't served. Some
15 people say justice was served. We also here -- everything is
16 talked about is the aggravators. But we have a system intact
17 that the jury must follow to say do the mitigators outweigh the
18 aggravators? But tell me the truth. Do you think the jury
19 really understands what the mitigators and aggravators really
20 are? Half of them don't even understand beyond a reasonable
21 doubt.

22 So passing this bill is not the answer to it. What
23 the answer to it is maybe -- maybe even if you would have put in
24 there -- because we have to have death qualified judges. We
25 have to have death qualified attorneys. We have to death

1 qualify the jury. How about making them watch a movie, a video
2 of what their responsibility is, so they can understand the
3 process they're in. Because some of this law confused them. So
4 passing this bill, yes, it will create more innocent people
5 going to death row. Yes, it will. It will.

6 If you look at the vote count is -- my vote count was
7 eight to four. And we don't even understand how my jury even
8 reached the verdict of guilty. But the jury get it wrong. And
9 that's what our system depend on, the jury. And right now, what
10 we need to do is find a way to make our jury system better, not
11 favoritism where it favors one person's belief and this other
12 person's belief. You know, because think about this.

13 CHAIR OVERDORF: I apologize, sir. We're going to
14 need to wrap it up.

15 MR. LINDSEY: I'm fixing to wrap it up.

16 CHAIR OVERDORF: Yes, sir.

17 MR. LINDSEY: Think about this. When the jury got it
18 wrong in my case and the Florida Supreme Court rules unanimously
19 that I shouldn't have been convicted, there was no bill on this
20 desk to compensate me or give me my rights back. The jury got
21 it wrong then. And I don't think it's fair that we change the
22 law now. I think what we need to do is find a way to fix our
23 system, not continue to break it.

24 CHAIR OVERDORF: Thank you, sir. That's all the
25 public testimony that we have. And now we are moving into

1 debate. Members wishing to debate. Representative Gottlieb.

2 MR. GOTTLIEB: Thank you, Chair. First, as I think
3 many of you know, obviously I'm a criminal defense lawyer.
4 Second, born and raised in Broward County. Both of my kids were
5 in middle school and high school when the unfortunate Parkland
6 massacre took place. And I know many of the victims including
7 Mr. Montalto. And he and I have had many conversations. And
8 there's no doubt -- and this is the courthouse by the way, the
9 Broward County Courthouse, where this jury was held is where I
10 practice every day. I know the attorneys on both sides. I
11 started my career under Mike Satz who was the prosecutor who
12 handled this case and I work with the defense attorneys.

13 And there's -- there's no doubt that Nikolas Cruz
14 deserved the death penalty. There's no doubt that this jury
15 made a travesty of justice. There's no doubt that they got it
16 wrong. But I don't know that simply because a jury who was
17 properly death qualified -- and that was the Q and A that
18 Rep. Hinson was talking to you about, Rep. Jacques. The jury
19 was properly qualified. And that was brought up by other
20 members of this panel. We have preemptive strikes, but we also
21 have cause challenges where we can say the juror -- even though
22 we understand how the juror is asking or answering the question,
23 we don't believe the juror is doing it truthfully. And we can
24 move to strike that person for cause. And if the cause
25 challenge fails, we can move for a preemptory challenge. And I

1 think that the judges do everything in their power to try to
2 ensure a fair and honest jury panel moving forward. But because
3 a juror becomes an activist throughout the process after hearing
4 months and months and months of testimony of aggravating factors
5 and months and months and months of testimonies -- and what I
6 think was unbelievably unfair and I've said it before and I'll
7 say it again -- what was unbelievably unfair about the Parkland
8 trial was the time, money, and resources I think that the public
9 defender devoted to one case and that they don't devote to every
10 case. And I do condemn them for that. And I think that we saw
11 that likely in the Governor's proposed budget. And I applaud
12 the House for landing in the right spot on the budge and the GAA
13 as it relates to public defenders and State Attorneys.

14 But, you know, I think what happened there on that --
15 I believe it was a Friday that that verdict was rendered, but on
16 a Wednesday of that same week in that same courthouse there was
17 a death penalty verdict handed down in Broward County.

18 So I think, you know, you can't take one example and
19 say, well, the system is working here and then take another and
20 say it's not working and we're going to change the entire system
21 because of one absolutely horrific, horrific result.

22 That's going to in my opinion result in increased
23 appeals, increased financial responsibility to the State. I do
24 think that the scheme that you've proposed is inconsistent with
25 Ramos and unanimity, inconsistent with the Hurst opinion, Ring

1 and Apprendi. And again while the system did not work -- and
2 let me use a better term -- the system failed the Parkland
3 families, the system failed Broward County, the State of
4 Florida, and the United States as it relates to Nikolas Cruz.
5 But that one failure should not be the impetus for changing an
6 entire scheme that is currently solidly constitutional and that
7 is working and instead instituting a scheme that invites abuse
8 and litigation.

9 CHAIR OVERDORF: Representative Bracy Davis, you're
10 recognized in debate.

11 MS. BRACY DAVIS: Thank you, Mr. Chair. First, let
12 me -- let me speak to Gina's dad. Thank you so much for coming.
13 Thank you so much for sharing your story. I really don't have
14 the words of comfort. I agree with my colleagues that this
15 was -- this was wrong. You are in all of our prayers and
16 sentiments and we're sorry.

17 But just as I want to talk to you today, I also want
18 to talk to Mr. Herman Lindsey. I thank you for being here
19 today. And when I say "here", I don't mean here in the Capitol.
20 I mean here, meaning alive. I am thankful for your life. You
21 are the evidence that the State of Florida gets it wrong. So I
22 appreciate you being here and I appreciate your life. Because
23 if it was up to the State of Florida, you would not be here.

24 I'd like to talk to Representative Jacques. First of
25 all, thank you for your due diligence. I have seen this bill on

1 every single committee stop. And you've done your due
2 diligence. I have been unwavering on -- on my opinion on this,
3 but every single time this bill has come you've asked to talk
4 about it even though my thoughts have not changed one bit.

5 And thank you for listening to me as I consistently
6 let you know how I feel. And I'll say what I've said in the
7 other committee stops, but I'll be brief. Death is final.
8 There are no do overs. It's final. It is final. So why would
9 we not want to be as right as we possibly could be? And it has
10 been said a couple of times today that there are 30 reasons why
11 we should vote down on this bill. And one of those reasons is
12 right here, Mr. Herman Lindsey.

13 And so why would we open ourselves for more mistakes?
14 I don't understand that. So for that reason I am voting down
15 emphatically on this bill.

16 CHAIR OVERDORF: Representative Hinson is recognized
17 in debate.

18 MS. HINSON: Thank you so much, Mr. Chair. And I too
19 would like to thank both testimonies. They were powerful. And
20 being the victim of a murdered brother whose murderer did not
21 get the death penalty either, I know we get it wrong. But
22 having to live with that and have peace with that as well as
23 reconcile with that creates a well-healed person, as I hope I
24 am, although I question it myself sometimes.

25 This bill is plainly unconstitutional. It's in direct

1 confrontation with Hurst versus Florida and Hurst versus the
2 State which hold that the final recommendation of life or death,
3 which should be in the power of God, must be unanimous. Those
4 cases are based in part on the sixth amendment, trial by jury.

5 This bill would make Florida the only state in the
6 country that allows people to be executed with only eight jurors
7 voting in favor. Alabama is the only state that does something
8 like this. And even they require ten votes. Florida leads the
9 country in death row exonerations. We have one here today,
10 alive and well to testify. 30 since 1973. And in 21 out of the
11 23 exonerations in which the jury vote is known, at least one
12 jury voted for life. That's at least 21 out of 30. 17 out of
13 the 30 exonerations were black people, more than all
14 exonerations in Texas. That's more than 50 percent even though
15 they only make up 20 percent of Florida's population. That
16 means more black people in Florida have been exonerated than all
17 people exonerated from Texas' death row combined.

18 This will create a perverse situation in courtrooms
19 where all the agreement of 12 jurors, everybody knows there
20 should be 12, is needed to convict someone of a crime. But only
21 eight to put them to death. That's precedent. 102 people have
22 been killed by the State of Florida since 1979 from
23 John Spenkeliink to Donald Dillbeck. We have no way of knowing
24 how many of those people were actually innocent. But it would
25 be naive to say that number is zero. Thank you, Mr. Chair.

1 MR. OVERDORF: Representative Stark, you're recognized
2 in debate.

3 MS. STARK: Thank you, Mr. Chair.
4 Representative Jacques, I just want to thank you. I know we've
5 been texting back and forth and you've been answering my
6 questions, because I had concerns with this bill as well. But I
7 do appreciate the fact that you've brought the amendment forward
8 that has made me feel a little more comfortable about the whole
9 process and the decision. And I shared with everyone else the
10 really good answers you've given to all of the tough questions
11 today. So I will be up on this bill. I just wanted to let you
12 know that, because I know we didn't get that final yes last
13 night on the phone because it died. So I wanted you to know.
14 Thank you.

15 CHAIR OVERDORF: Members, just be aware that we still
16 have nine bills and we have an hour and 20 minutes on the -- on
17 the docket. So just be aware of that as you debate, please.
18 And we have several other bills, but Representative Chambliss,
19 you are recognized to debate.

20 MR. CHAMBLISS: Yes, sir. Definitely thank you for
21 the testimonies. That's an important part of this conversation,
22 personal stories, how it affects real -- real life people
23 besides our own -- our own personal experience. I thank you for
24 bringing this bill, because this I'm sure was a difficult bill
25 to carry. It is a serious subject. And the result will

1 literally affect people's lives almost in the immediate.

2 When we talked about this bill, I told you that, you
3 know, many time like my instinct was up on the bill. And I just
4 wanted to explain the reason why. And then I'll finish up,
5 Mr. Chair.

6 The reasons why was because, number one, I'm not
7 opposed against the death penalty. I'll make that very clear.
8 I'm not against it. And I know that we have monsters in our
9 society. Monsters do exist. And we have to -- we have to face
10 that reality and we have to react or act accordingly. And then
11 when I think about the -- the Parkland situation and you
12 mentioned another situation which was very, very horrific. And
13 I think about, you know, the monsters in my community, you know
14 who -- who prey on the weak and terrorize our community on a
15 weekly basis. And I ask myself like, well, something has to be
16 done.

17 But I did also mention to you that it was that number
18 that had me wavering. It was that eight. You mentioned the
19 case that was, you know, ten to two. And it was that eight
20 going -- making such a large jump out of a number of 12.
21 That's -- that's what was concerning, because again we know that
22 we get it wrong.

23 And so I'd be really interested in seeing how this
24 progresses after this bill moves and times goes on, because I
25 think that that number -- that number ten gives us so much more

1 certainty that -- that we are doing everything with the
2 information given to us to act accordingly to what a juror has
3 described as a monster. Because it is monsters who deserve the
4 death penalty. So I can't support it. I can't support it. And
5 that's the reason why. It's that number. I think that going to
6 eight is a big jump.

7 But also I think that we were talking about one
8 person, you know, stopping the process. I'd be comfortable with
9 saying we don't want two people stopping the process and that
10 ten would be the place where I would feel comfortable that we
11 have identified a monster and that we are terminating a monster.
12 But -- so unfortunately I can't support the bill today. But
13 again, this is a tough bill. Thank you for your due diligence.
14 Yeah. Thank you, Mr. Chair.

15 CHAIR OVERDORF: Representative Lopez in debate.

16 MS. LOPEZ: Thank you, Mr. Chair. There is a reason
17 to choose eight jurors. And for me the reason is to send a
18 human being to the death penalty as soon as possible. I am also
19 concerned about having more homicide justifying through the
20 death penalty. We cannot end violence with violence. We cannot
21 be prolife on one side and prodeath on the other side. And for
22 this reason, I'm going to vote against of this bill. Thank you.

23 CHAIR OVERDORF: Representative Robinson in debate.

24 MR. ROBINSON: Thank you, Mr. Chair. I don't know in
25 my five years if I've struggled more with a bill than this one.

1 You know, on one hand you have Nikolas Cruz who should have been
2 put to death. There's no doubt about it. And the testimony
3 we've heard today, especially about your beautiful daughter and
4 the 16 other victims in Parkland, I'm struggling on that and --
5 and then on the other end with my faith. You know, for six
6 years I walk into Catholic School and see crucifixion and my
7 Savior on there. Every time I go to church I see the same
8 thing.

9 So I've always had an uncomfortable relationship with
10 death penalty, but it is the law and I'm bound to defend the
11 law. And I agree that we should have the death penalty in
12 certain circumstances when we can't protect society or other
13 lives are at stake. And we've had some great conversations
14 about -- about this bill. Representative, I really appreciate
15 the soberness you've taken to it. It's a very -- one of our
16 most serious issues in society and you've had handled it with
17 distinction and class and answered all of our questions.

18 Just for me, the eight/four is too wide of a gulf for
19 me. I certainly wouldn't want one juror held out or possible
20 two. So that could maybe be something where personally I could
21 land. But for me, the eight/four is a bit too much for me. And
22 so for today, I'm going to be down.

23 CHAIR OVERDORF: Representative Payne in debate.

24 MR. DEBATE: Thank you, Chair, and thank you for
25 bringing the bill forward and to those who have suffered a loss

1 that we've heard from other colleagues, we apologize and we're
2 sorry for what you've had to suffer through.

3 Members, I want to remind you that the bill retains
4 requirements for a jury to unanimously find at least one
5 aggravating factor which proven beyond a reasonable doubt,
6 beyond a reasonable doubt, to make a defendant eligible for the
7 death penalty. That's in the bill. That stays in the bill.
8 And then there's extra steps such as an automatic appeal to the
9 Supreme Court. I think our sponsor is really trying to find a
10 good spot to make sure that we're talking about the thoughts
11 that relate to the victims and the victims' family. So those
12 miscarriages of justice are what we're seeking here. So thank
13 you for having the bill today. I'm up on it.

14 CHAIR OVERDORF: Representative Brannan in debate.

15 MR. BRANNAN: Thank you, Mr. Chairman. Folks, I'm
16 on -- and I'm going to fail at doing this. I'm going to try to
17 bring this down to the level you can understand. And it's about
18 that dad sitting right there. But let me tell you, that's not
19 the only case. He told you about another case. And I was
20 involved in that case.

21 Three thugs went to someone's home. It was just like
22 my grandma and your grandpa. The granddaddy was crippled, in a
23 wheelchair. All they wanted was their credit cards. And they
24 took them and they put them in the trunk of their Lincoln Town
25 car, drove them out into the country, got them out, dug a hole

1 and buried them alive. Now, I found that car about a week
2 before we found their bodies. That morning we found one of the
3 suspects. The other two had fled to South Carolina. This is a
4 Jacksonville case, but they were buried out in my area. We had
5 an interview and we had a come to Jesus meeting. And he decided
6 to show us where they were. And I guarantee you, if I could
7 take anyone of you-all and get in the car with me that day and
8 ride out there with him and let him take you out into the
9 country, turn down a graded dirt road, get out in the drizzling
10 rain and walk through the woods and let him show you where he
11 buried your grandmother and grandfather alive, he didn't kill
12 them, buried them alive. If there was ever a case where the
13 death penalty needed to be applied, this was it.

14 This bill, folks, we still have a unanimous -- you're
15 missing the point. We still have a unanimous jury verdict for
16 the conviction. That's still unanimous. He's only -- can you
17 please quit talking when I'm talking? Please.

18 All he -- Mr. Chairman. All he's asking is that
19 two-thirds of the people agree to recommend the death penalty.
20 We talked about uneducated people. I heard from the audience
21 being on a jury. Well, the justice system we have. We want a
22 jury of our peers. We don't want 12 lawyers on a jury. We want
23 a jury of our plumbers, our pipefitters, our auto mechanics,
24 whoever. But guess what? That's just a two-thirds
25 recommendation. An educated, qualified circuit judge would

1 deliver that penalty. That's all that bill asks for. This bill
2 is not about perpetrators. This bill is about victims. Thank
3 you.

4 CHAIR OVERDORF: Representative Altman in debate.
5 Altman.

6 MR. ALTMAN: I just want to say a few words. Having
7 worked on unanimous jury legislation, things that I disagree
8 with that have been said, one is we really as humans cannot say
9 that the death penalty is a full measure of justice. Because we
10 don't know what happens when we put somebody to death. We may
11 be putting them in a better place. So I don't -- for me, this
12 is not about justice. I have great concerns with the death
13 penalty. It's not a deterrent. Many countries outlawed the
14 death penalty and they have a lower crime rate. So I don't -- I
15 don't approach this from what I think is a delusion to think
16 that we are remedying justice or we're reducing crime.

17 I'm approaching it -- so I have a lot of concern with
18 this bill. And I'm also one of the few Republicans that stood
19 out and supported the Parkland law. I got a lot of criticism
20 for it, because of some of the measures it took. But I think we
21 did the right thing.

22 When I think of the victims and what they're going
23 through and the hardship that they endure when they've lost
24 loved ones. So I'm voting in favor of this bill, not because I
25 agree with it 100 percent, not because I don't have problems

1 with the death penalty, I am voting for the victims in
2 supporting this bill.

3 CHAIR OVERDORF: Representative Hart for a really
4 quick short debate.

5 MS. HART: Thank you, Mr. Chair. Rep, I cannot
6 support this bill, because my heart bleeds for those families.
7 My son-in-law was killed five years ago and nobody has ever even
8 been charged, neither have they really continued to look for
9 them. But you have a gentleman sitting here whose life would
10 have been taken because a jury got it wrong. So how do we
11 balance it? How do we balance our injustices that we're doing
12 to people who are really not guilty to those who are? I agree
13 with you. The guy who did the Parkland was a monster. But we
14 have to be willing to -- if you're going to accept the jury's
15 verdict over here for this gentleman who was charged and he was
16 not even guilty, then you have to be willing to accept the
17 jury's on the other side.

18 So for me I can't possibly -- and I don't believe in
19 the death penalty anyway. Even when they murdered my own son-
20 in-law. But for me, you-all, we've got to figure this out. And
21 I don't know how we figure it out. But trying to say whether or
22 not we should have 12 or ten, we've got to just support whatever
23 the juries hand down and we have to live with that, just as this
24 gentleman has got to live with however many years he was in
25 prison and it was not correct.

1 CHAIR OVERDORF: Seeing no further debate,
2 Representative Jacques, I just wanted to thank you for your --
3 your work on this bill and taking it with the seriousness that
4 it deserves, for your coordination with all the members. And I
5 just can't thank you enough for all the work that you've done.
6 And specifically I thank you for also working on this amendment
7 with the staff here as well as other members.

8 So, Representative Jacques, you're recognized to close
9 on your bill.

10 MR. JACQUES: Thank you, Mr. Chairman. And in the
11 interest of time, I will be brief. I just want to start by
12 acknowledging all who worked with me on this bill for -- for
13 months now, whether it was staff, Trina, Whitney, the Chair,
14 Chair Gregory, the members who were open to discussing with me
15 even when you didn't waver, but you gave me the courtesy of
16 hearing me out, those who came to public testimony, you know,
17 Mr. Lindsey, Mr. Montalto. You know, it has been such a joy to
18 work with the families who suffered this unimaginable
19 circumstance.

20 And it really conceptualizes why we're here. We
21 simply cannot allow a small handful of activist jurors who veer
22 from what's right in front of all of us. And what's right in
23 front of us is that these individuals are guilty beyond a
24 reasonable doubt. No one disagrees with that in that
25 proceeding. These individuals meet the qualifications for the

1 death penalty beyond a reasonable doubt, because all those 12
2 jurors found that an aggravator existed. And to have just a
3 small number derail the full administration of justice is simply
4 a travesty. And with you vote today, we will end that and send
5 it to the floor. Thank you, Mr. Chair.

6 CHAIR OVERDORF: Representative Jacques having closed
7 on his bill. Lindsey, please call the roll on CS for HB 555 and
8 announce the vote.

9 LINDSEY: Representative Altman.

10 MR. ALTMAN: Yes.

11 LINDSEY: Arrington. Barnaby.

12 MR. BARNABY: Yes.

13 LINDSEY: Bracy Davis.

14 MS. BRACY DAVIS: No.

15 LINDSEY: Brannan:

16 MR. BRANNAN: Yes.

17 LINDSEY: Chambliss.

18 MR. CHAMBLISS: No.

19 LINDSEY: Fabricio.

20 MR. FABRICIO: Yes.

21 LINDSEY: Giallombardo.

22 MR. GIALLOMBARDO: Yes.

23 LINDSEY: Gottlieb.

24 MR. GOTTLIEB: No.

25 LINDSEY: Hart.

1 MS. HART: No.
2 LINDSEY: Hinson.
3 MS. HINSON: No.
4 LINDSEY: Jacques.
5 MR. JACQUES: Yes.
6 LINDSEY: Leek has been excused. Lopez.
7 MS. LOPEZ: No.
8 LINDSEY: Maggard.
9 MR. MAGGARD: Yes.
10 LINDSEY: Maney.
11 MR. MANEY: Yes, ma'am.
12 LINDSEY: Overdorf.
13 CHAIR OVERDORF: Yes, ma'am.
14 LINDSEY: Payne.
15 MR. PAYNE: Yes.
16 LINDSEY: Robinson.
17 MR. ROBINSON: No.
18 LINDSEY: Snyder.
19 MR. SNYDER: Yes.
20 LINDSEY: Stark.
21 MS. STARK: Yes.
22 LINDSEY: Tramont.
23 MR. TRAMONT: Yes.
24 LINDSEY: Truenow.
25 MR. TRUENOW: Yes.

1 LINDSEY: Chair Gregory. 14 yeas, 7 nays, Mr. Chair.

2 CHAIR OVERDORF: Show CS for HB 555 reported

3 favorably. Thank you.

4

5 (The hearing was concluded.)

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CERTIFICATE OF TRANSCRIBER

1 STATE OF FLORIDA)

2 COUNTY OF POLK)

3 I, ELAINE TURNER-WOOD, Stenographic Court Reporter and
4 Notary Public, certify that I was authorized to and did
5 transcribe the foregoing House Judiciary Committee and that the
6 transcript is a true and accurate transcription of the record.
7

8 DATED this 29th day of April, 2023.
9
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12



Elaine Turner-Wood,
Notary Public, State of Florida
My Commission No. HH 200728
Expires: March 19, 2026



ORIGINAL

1

HOUSE SESSION

4/13/23

TRANSCRIBED BY: Elaine Turner-Wood
Stenographic Court Reporter
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1 THEREUPON, the following took place:

2

3 SPEAKER RENNER: By Rules Criminal Justice and
4 Senator Ingoglia and others, CS for CS for Senate Bill 450, a
5 bill to be entitled An Act Relating to the Death Penalty.
6 Representative Jacques, you're recognized to explain the senate
7 bill.

8 MR. JACQUES: Thank you, Mr. Speaker. This bill
9 reforms our death penalty law by no longer requiring a unanimous
10 jury recommendation for the death penalty, but instead
11 substitutes that with a super majority recommendation from the
12 jury, eight out of 12 jurors.

13 To be clear, a unanimous threshold is still required
14 to convict an individual of the crime. And a jury would still
15 have to unanimously find that an aggravating factor exists that
16 would make the individual eligible for the death penalty.

17 This bill also provides for a judicial discretion in
18 the event that the jury recommends death. But if the judge goes
19 against the jury's recommendation, they must put their findings
20 in writing.

21 And that is the bill, Mr. Speaker.

22 SPEAKER RENNER: Representative Jacques having
23 explained this bill. Are there questions of the sponsor?
24 Questions of the sponsor? Representative Gottlieb, you're
25 recognized for a question.

1 MR. GOTTLIEB: Thank you, Mr. Speaker.
2 Representative Jacques, my question is that the -- the United
3 Supreme Court and even the Florida Supreme Court in recent
4 rulings have indicated that as it relates to death penalty
5 cases, the scheme should be narrowed. Do you have any case law
6 supporting this scheme which goes from unanimous in the State of
7 Florida which was working down to eight to four?

8 SPEAKER RENNER: Representative Jacques, you're
9 recognized for an answer.

10 MR. JACQUES: Yes, I do, Representative. The case of
11 Perry, State v. Perry which struck down Florida's recent death
12 penalty statute in 2016 was then overruled four years later by
13 Poole v. State. The law -- the Supreme Court case that said no
14 longer do we need a unanimous threshold to recommend the death
15 penalty. And that was a direct overturning of the law that said
16 that we needed it. And so that is what a legal basis, a Supreme
17 Court, the highest court in our land that I can point you to
18 that gives us basis for this bill.

19 SPEAKER RENNER: Representative Gottlieb for a
20 follow-up.

21 MR. GOTTLIEB: Thank you, Mr. Speaker. Would you
22 agree that that's inconsistent with Hurst v. Florida in which
23 the court struck down as unconstitutional our then capital
24 sentencing scheme and as well that your bill makes -- the judge
25 has to make recommendations and therefore is inconsistent with

1 Hurst and its progeny?

2 SPEAKER RENNER: Representative Jacques, you're
3 recognized.

4 MR. JACQUES: No, I would not agree with that. Hurst
5 is the case that Perry based their decision on when they said
6 that a unanimous recommendation was needed. And so when Poole
7 overturned Perry, it also overturned the principles in Hurst
8 that erroneously said we needed a unanimous threshold. And the
9 court specifically said that that is no longer required and
10 thereby put the ball back in the legislature's court to do what
11 we will with that. And today we're proposing to bring it down
12 to a super majority.

13 SPEAKER RENNER: Representative Gottlieb, for a
14 question.

15 MR. GOTTLIEB: Thank you, Mr. Speaker. So how do you
16 reconcile that, Representative Jacques, with the United States
17 Supreme Court indicating that a judge sentencing violated the
18 sixth amendment?

19 SPEAKER RENNER: Representative Jacques, you're
20 recognized for an answer.

21 MR. JACQUES: Thank you, Mr. Speaker. May I get a --
22 can you clarify that question?

23 SPEAKER RENNER: Restate the question,
24 Representative Gottlieb.

25 MR. GOTTLIEB: Of course. So in your bill, the judge

1 as I understand it, my reading of your bill, the judge can --
2 the jury is making a recommendation eight to four and then it --
3 and then it bounces the ball back to the judge in terms of
4 discretion. That seems to be inconsistent with what I
5 understand in terms of Hurst and inconsistent with the sixth
6 amendment.

7 SPEAKER RENNER: Representative Jacques.

8 MR. JACQUES: Thank you, Mr. Speaker. It is
9 consistent with the juris prudence and the Supreme Court does
10 not disallow the judge to make sentencing on the death penalty.
11 In fact, some states only require the judge to make the decision
12 after the jury finds an aggravating factor exists. They leave
13 the room and then the judge solely makes that decision.

14 What Hurst took issue with regarding the judge's
15 discretion was when it came to the aggravating factors, the
16 Hurst court said that we gave too much power to the court to
17 determine a finding of fact that the person was eligible for the
18 death penalty. And so they struck it down on that basis and
19 said that a jury must make that determination beyond and to the
20 exclusion of every reasonable doubt. And our bill still
21 maintains that. A jury would still make that determination
22 unanimously, not a judge. And so it is not inconsistent with
23 the juris prudence.

24 SPEAKER RENNER: Representative Gottlieb, you're
25 recognized for a question.

1 MR. GOTTLIEB: Thank you, Mr. Speaker.

2 Representative Jacques, do you have any data to suggesting this
3 bill will reduce the number of wrongful capital convictions in
4 the State of Florida especially since we're going from unanimous
5 which ensured a tighter verdict down to eight to four?

6 SPEAKER RENNER: Representative Jacques, you're
7 recognized.

8 MR. JACQUES: Thank you, Mr. Speaker. What I can say
9 is that this bill has several safeguards in place that would
10 prevent what you are concerned about. It's important to note
11 that going back to the very beginning of a capital case where
12 somebody is facing a death as a punishment, prior to that case
13 being filed, it's not a decision solely of a prosecutor like
14 most of our cases where a prosecutor can file the case by what's
15 called information, by just signing the document. A grand jury
16 has to be impaneled to first indict the individual. And if it
17 goes to a trial, 12 jurors -- and typical as you know,
18 Representative, in most trials you just need six jurors, but in
19 a capital case 12 jurors have to be impaneled and then they have
20 to find the defendant guilty beyond and to the exclusion of
21 every reasonable doubt. It then goes to a penalty phase where
22 they deliberate again and then have to find that an aggravating
23 factor exists. And that is what makes the person eligible for
24 the death penalty. And they have to find that aggravating
25 factor unanimously, all 12. And then they give the

1 recommendation. And our bill says that a super majority can
2 make that recommendation. It goes back to the judge who can
3 then exercise discretion which offers another layer of
4 protection. And, of course, as you know, there is a direct
5 appeal to the Florida Supreme Court.

6 SPEAKER RENNER: Representative Gottlieb, you're
7 recognized for a question.

8 MR. GOTTLIEB: Thank you, Mr. Speaker. So,
9 Representative Jacques, everything that you talked about that
10 you're calling a safeguard already exists in Florida law. So
11 what are the additional safeguards that a defendant is going to
12 have to ensure that the verdict is a correct verdict? Because
13 you said there were safeguards. Can you point me to where in
14 your bill you have safeguards that don't currently exist in
15 Florida law that this bill adds to a criminal defendant?

16 SPEAKER RENNER: Representative Jacques.

17 MR. JACQUES: Thank you, Mr. Speaker. One additional
18 safeguard that our bill provides is under current Florida law
19 the judge can override the jury's recommendation for death. But
20 the issue is they don't even have to give a reason as to why
21 they departed or didn't go with the recommendation. So, in
22 essence, the judge can simply say I'm giving life, walks off the
23 bench with no kind of accountability.

24 Our bill adds a provision that they must put their
25 findings in writing as to why they would deviate from the jury's

1 recommendation. And this adds another safeguard not just for
2 our system, but also for victims and their right to be heard and
3 to be made -- in a way to receive justice when you can have an
4 activist judge who can totally go against the jury's
5 recommendation without saying a word why. This adds another
6 safeguard that is not in current Florida law.

7 SPEAKER RENNER: Representative Gottlieb, for a
8 follow-up.

9 MR. GOTTLIEB: Thank you, Mr. Speaker. I'm having a
10 hard time understanding how it's considered to be a safeguard
11 that a judge can go from death down to life. The concern I'm
12 having is as to wrongful convictions. And you indicated that
13 there were safeguards in the bill, because my previous question
14 was do you have any data suggesting that this bill will reduce
15 the number of wrongful capital convictions in the State of
16 Florida. And you indicated that there were safeguards that were
17 built into the bill.

18 So my next question was: can you tell us any of the
19 safeguards that are in this bill that didn't exist in previous
20 Florida law to ensure that there won't be wrongful convictions?

21 SPEAKER RENNER: I think you answered that when you
22 mentioned there was a unanimous jury verdict for capital
23 punishment, but answer if you can.

24 MR. JACQUES: Yes. So all of the existing safeguards
25 are maintained and then an additional one that adds another

1 safeguard for the integrity of that decision which is placing
2 the findings in writing. And so the bill maintains that
3 unanimously the jury must find that an aggravating factor
4 exists. Still you have to convict somebody unanimously. And
5 then, of course, the judge will have discretion under our bill.
6 And so we are not concerned with the issue that you're concerned
7 about. I think, you know, a lot of it is speculative, but there
8 are safeguards in the system that would prevent that in our
9 bill.

10 SPEAKER RENNER: Leader Driskell, you're recognized
11 for a series of questions.

12 MS. DRISKELL: Thank you, Mr. Speaker. I appreciate
13 that. How did you determine that an eight juror standard will
14 ensure fairness in capital cases?

15 SPEAKER RENNER: Representative Jacques, you're
16 recognized.

17 MR. JACQUES: So by -- to answer that -- thank you,
18 Representative, for the question. As to have some historical
19 context, for decades in Florida since the 1970s right up until
20 2017, all you needed was a simple majority in Florida to
21 recommend -- for the jury to recommend the sentence of death.
22 And so when I served as a prosecutor just less than ten years
23 ago, that was the case.

24 So it wasn't until 2017 when the law changed based on
25 this flawed Supreme Court case that said it required a unanimous

1 threshold that made it the case that you needed all 12 jurors.
2 And so eight is actually -- obviously more than a simply
3 majority. We're offering a super majority and additional
4 safeguards in the system to make sure that rogue jurors or an
5 activist juror, a small amount, will not derail the
6 administration of justice in a penalty phase in a death penalty
7 case.

8 SPEAKER RENNER: Leader Driskell, you're recognized.

9 MS. DRISKELL: Thank you, Mr. Speaker. How do you
10 define "activist juror"?

11 SPEAKER RENNER: You're recognized.

12 MR. JACQUES: An activist juror would be a juror that
13 decides to act outside the law and then places their own
14 personal beliefs above what is required in the law. And so that
15 would be an activist juror, just like an activist judge is one
16 that deviates from the law. And so what you end up having in
17 Florida is -- when we get to the point of the last state of the
18 recommendation, all 12 jurors have already agreed that the
19 person -- if it went to a trial, all 12 had agreed that the
20 person is guilty beyond a reasonable doubt. And then they all
21 12 have agreed that the person met the -- at least one
22 aggravating factor that makes them eligible for the death
23 penalty. And so when you get to that last phase, when you get a
24 small number of jurors -- and each can have their own
25 motivations -- but sometimes you can have a potential situation

1 when there's an activist juror, who sees the law and the facts
2 right before them, can then say they do not recommend the death
3 penalty based on a personal opinion and not one based on law,
4 thereby robbing victims and victim families of justice.

5 SPEAKER RENNER: Leader Driskell, you're recognized.

6 MS. DRISKELL: Thank you, Mr. Speaker. But based on
7 that definition and understanding, doesn't your bill actually
8 facilitate activist jurors to get their way? And what I mean by
9 that is it's a more difficult standard for a jury verdict to
10 have to be -- or the sentencing decision to have to be
11 unanimous, right? There's got to be tussling. We've got to get
12 a consensus as opposed to what I understand from your bill --
13 and you can please correct me if I'm wrong -- what I understand
14 in your bill is that it's reducing it from unanimous down to an
15 eight to four. So it would seem to me that it would be easier
16 for activist jurors, using your definition, to get their way
17 because now they don't have to reach that unanimous decision
18 with what the majority of jurors want to do. Would you agree
19 with that? And if not, could you please explain why.

20 SPEAKER RENNER: Representative Jacques.

21 MR. JACQUES: Mr. Speaker. No, I would not agree with
22 that assessment. Currently, an activist juror, just one, can
23 derail the whole case in the sense that the death penalty would
24 not be given out.

25 So under our law, there is leeway for activist jurors

1 to act out and justice to still be enacted.

2 SPEAKER RENNER: Leader Driskell, you're recognized.

3 MS. DRISKELL: Thank you, Mr. Speaker. Well, then why
4 not try to pursue something to refine the voir dire process
5 where jurors are selected? Why focus on the death penalty here
6 if the concern is that there may be an activist juror that slips
7 through the jury selection process?

8 SPEAKER RENNER: Representative Jacques.

9 MR. JACQUES: That could -- thank you, Mr. Speaker.
10 That could be the subject of another bill maybe next session. I
11 would invite your co-sponsorship on that. But regarding this
12 bill, it addresses the issue of an activist juror on the penalty
13 phase. This is what this bill is dealing with. Just the
14 penalty phase in a capital offense trial.

15 SPEAKER RENNER: Leader Driskell, you're recognized.

16 MS. DRISKELL: Thank you, Mr. Speaker. Can you speak
17 to any evidentiary or procedural issues that might impact
18 whether a jury is more or less likely to recommend death?

19 SPEAKER RENNER: Representative Jacques.

20 MR. JACQUES: No, I can't speak to that. I think --

21 SPEAKER RENNER: Follow-up, Leader Driskell?

22 MS. DRISKELL: (Shakes head.)

23 SPEAKER RENNER: Representative Hinson, you're
24 recognized for a series of questions.

25 MS. HINSON: Thank you, Mr. Speaker. This will be

1 brief. Representative Jacques, do you know how many people on
2 death row have been exonerated?

3 SPEAKER RENNER: You're recognized.

4 MR. JACQUES: I don't have the exact number, but maybe
5 you can enlighten me.

6 SPEAKER RENNER: Representative Hinson, you have
7 another question?

8 MS. HINSON: Thank you so much, Mr. Speaker. I
9 remember it from Committee. I didn't know either. It was 30
10 people, one of whom was in the audience that day.

11 SPEAKER RENNER: Well, then, Representative Hinson,
12 you already knew the question -- answer before you asked the
13 question. Do you have another question that you don't know the
14 answer to?

15 MS. HINSON: So do you think the jury got it wrong?

16 SPEAKER RENNER: Do you have another question,
17 Representative Hinson?

18 MS. HINSON: Okay. I've got to run them through you
19 first. Let me ask you.

20 SPEAKER HINSON: Yes, ma'am.

21 MS. HINSON: Is this a question? Do they allow a
22 juror to proceed if the juror admits a disbelief in the death
23 penalty?

24 SPEAKER RENNER: Representative Jacques.

25 MS. HINSON: Thank you.

1 MR. JACQUES: Thank you, Mr. Speaker. It really
2 depends. It's a very nuance question. One you asked in
3 Committee. It's not so much whether or not the jury does not
4 believe in the death penalty. It's whether or not that belief
5 would prevent them from following the law. And so, you know, in
6 a common sense scenario, I think most -- a prosecutor probably
7 would not want that individual on their jury. But that alone
8 does not disqualify them. There would have to be an additional
9 inquiry. And if that person maintains that they can follow the
10 law despite their own personal belief, that person could
11 potentially serve on a jury.

12 SPEAKER RENNER: Representative Hinson.

13 MS. HINSON: So finally there would be no need for
14 this change if everyone that ends up on the jury based on
15 inquiry could follow the law?

16 SPEAKER RENNER: You're recognized.

17 MR. JACQUES: No, I disagree with that. This law is
18 necessary.

19 MS. HINSON: Thank you, Mr. Speaker.

20 SPEAKER RENNER: Representative Rayner.

21 MS. RAYNER-GOOLSBY: Thank you so much, Mr. Speaker.
22 And, Representative Jacques, we have had the opportunity to kind
23 battle each other in court. And so I do respect your acumen.
24 Unlike you, I am just a simple country lawyer. I know that
25 you-all will laugh when I say that, but I really am. So if you

1 could just walk me through how your bill comports to Ramos v.
2 Louisiana and what -- the constitutionality really surrounding
3 that. If you could walk me through that.

4 SPEAKER RENNER: Representative Jacques.

5 MR. JACQUES: Thank you, Mr. Speaker. And thank you
6 for the question, Representative. Gladly, so the Ramos case,
7 that was something that is totally different than what we're
8 dealing with here. Ramos dealt with two states initially that
9 had a threshold of a nonunanimous threshold to actually convict
10 somebody of a crime. Those two states were Louisiana and
11 Oregon. Louisiana ended up amending their law to require
12 unanimous jury verdict for a conviction. But Oregon still
13 allowed for nonunanimous jury sentence -- excuse me -- a verdict
14 for a conviction.

15 And so what the Supreme Court said, the United States
16 Supreme Court said to convict somebody that it had to be
17 unanimous and therefore overturned and invalidated Oregon's
18 death penalty or just statutory framework when it comes to
19 convictions.

20 We're not talking about that in our bill, because our
21 bill in Florida for as long as I can remember from decades
22 required a unanimous verdict to convict somebody of a crime.
23 Our bill still maintains that. We're just talking about the
24 penalty phase, the last portion, which is the recommendation for
25 death.

1 SPEAKER RENNER: Representative Rayner-Goolsby, you're
2 recognized for a series of questions.

3 MS. RAYNER-GOOLSBY: Thank you, Mr. Speaker. I don't
4 know if I have a series, but I will see what I can do. So,
5 Representative Jacques, thank you for that answer. So I want to
6 kind of just like level set. You indicated that the threshold
7 for conviction, that was -- that had to be unanimous. And then
8 we wanted to also go to -- we also wanted to go to -- we're
9 thinking about the threshold for conviction must be unanimous.
10 So now we're thinking about possibly take -- the State taking
11 someone's life. Could you walk me through the analysis, the
12 legal analysis of why the threshold for taking someone's life
13 should be lower than an actual conviction of a crime?

14 SPEAKER RENNER: Representative Jacques.

15 MR. JACQUES: Thank you, Mr. Speaker. Representative,
16 the threshold is not lower under this bill. In fact, it
17 maintains the current requirement that to convict somebody of
18 the crime that would make somebody, you know, even go to the
19 penalty phase has to be unanimous, all 12 jurors. In fact, as
20 you know, most -- as I alluded to earlier, most cases in court
21 only require six jurors. But in capital offenses, you need 12.
22 So it's actually twice as hard. You're convincing twice as many
23 people to convict somebody. It then goes to the penalty phase
24 where then you still have to convince, a prosecutor, all 12
25 jurors that there is an aggravating factor that exists that

1 would make the person eligible for the death penalty. What
2 we're discussing is that last portion when the jury is simply
3 giving a recommendation. And the difference is -- the reason
4 why the courts said that that portion doesn't have to be
5 unanimous is because it's no longer a finding of fact. Whenever
6 a jury is engaged in a finding of fact, they have to determine
7 it unanimously. And the recommendation is no longer a finding
8 of fact. It's the jury giving their recommendation as to what
9 they want to see done, but it's not something that is based in
10 fact analysis. That is the difference. And those safeguards
11 still apply. And it does not lower the threshold.

12 SPEAKER RENNER: Representative Rayner-Goolsby, you're
13 recognized for a question.

14 MS. RAYNER-GOOLSBY: Thank you, Mr. Speaker. And then
15 I'm going to defer to my colleagues. And so,
16 Representative Jacques, and once again, you know, I am not the
17 most learned lawyer in this -- in this building, but I
18 understand that you're talking about a finding of fact in a
19 conviction. And I've done a penalty phase before. And so could
20 you agree -- could we agree that when you -- when the jurors
21 have to find the aggravating factors or mitigating factors, they
22 are still making somewhat a finding of fact, correct? Could we
23 agree to that?

24 SPEAKER RENNER: Representative Jacques.

25 MR. JACQUES: Yes, that is correct and our bill still

1 says they all have to agree. It's still a unanimous threshold
2 when they have to find an aggravating factor exists.

3 MS. RAYNER-GOOLSBY: I'm going to defer to my
4 colleagues.

5 SPEAKER RENNER: Other questions?
6 Representative Gantt, you're recognized for a question or two or
7 six.

8 MS. GANTT: Thank you, Mr. Speaker. My question is in
9 regards to the activist juror that you mentioned earlier. Is it
10 your assertion that jury nullification is not a recognized
11 practice in our judicial system?

12 SPEAKER RENNER: Representative Gantt, that's not
13 germane to this, but if you have other questions.

14 MS. GANTT: Thank you, Mr. Speaker. Well, I believe
15 that Representative Jacques' point to activist juror, in his
16 previous responses he indicated that the law doesn't require or
17 the law doesn't permit opinions from the jurors. However, jury
18 nullification is a recognized practice in jury trials. So that
19 was the basis of my question.

20 SPEAKER RENNER: Representative Jacques.

21 MR. JACQUES: Thank you, Mr. Speaker. I would
22 disagree. Jury nullification is highly discouraged in legal
23 practice. And voir dire and jury selection is highly emphasized
24 that you must follow the law. And, in fact, before the jury
25 gets impaneled they actually raise their right hand and take an

1 oath that they will base their decision based on the facts
2 and -- and nothing other than that. They can't base it on
3 anything outside of what has happening in that courtroom. And
4 so to have jury nullification would be a deviation from that and
5 a violation of their oath, thus making them an activist juror
6 which is highly discouraged in our legal system.

7 SPEAKER RENNER: Representative Gantt for a follow-up.

8 MS. GANTT: Thank you. Thank you, Mr. Speaker. I
9 don't think that was responsive. I asked you specifically is
10 it -- are you asserting that it is not a recognized practice,
11 which it is, even though it may not be encouraged? I'm asking
12 is it a recognized practice or does it occur in jury trials
13 currently?

14 SPEAKER RENNER: I'll allow it, but I want to bring
15 this back to the topic about the bill in front of us.
16 Representative Jacques.

17 MR. JACQUES: Thank you, Mr. Speaker. Yes, a jury
18 activism exists and this is what this bill is trying to address.
19 It shouldn't exist in something as important as seeking justice
20 for families who have had family members killed in the most
21 heinous ways. It should not exist there at all. And this is
22 what this bill seeks to address and stop.

23 SPEAKER RENNER: Representative Gantt for another
24 question.

25 MS. GANTT: Thank you, Mr. Speaker. So is it your

1 position that the right to a jury trial does not apply to a
2 sentencing phase? That's a different topic on the same bill. I
3 moved away from jury nullification.

4 SPEAKER RENNER: Do your best. You're recognized.

5 MR. JACQUES: Thank you, Mr. Speaker. No, that's not
6 my position. In fact, our bill allows for a robust jury
7 participation within the penalty phase. They have to find that
8 an aggravating factor exists unanimously and then they have to
9 give a recommendation as to whether death or life. And so the
10 jury is very much involved in that phase.

11 SPEAKER RENNER: Representative Gantt, for a question.
12 You're recognized.

13 MS. GANTT: Thank you, Mr. Speaker. Thank you for
14 that response. So based on that, on your response, what is the
15 justification for not requiring unanimity in a jury's verdict in
16 a sentencing phase for death?

17 SPEAKER RENNER: That's been asked and answered,
18 Representative. Do you have another question?

19 MS. GANTT: No, I don't have any more questions.
20 Thank you.

21 SPEAKER RENNER: Any other questions?
22 Representative Gottlieb, you're recognized for a question.

23 MR. GOTTLIEB: Thank you, Mr. Speaker. So,
24 Representative Jacques, I want to make sure I understand what
25 you're saying in reference to Poole. Poole, you would agree, is

1 a state court case, State Supreme Court case?

2 SPEAKER RENNER: You're recognized.

3 MR. JACQUES: Yes.

4 SPEAKER RENNER: Representative Gottlieb, for a
5 follow-up.

6 MR. GOTTLIEB: Thank you, Mr. Speaker. So you would
7 agree that that -- the rationale of that 2019 Florida Supreme
8 Court has not been challenged by higher courts at this point in
9 time?

10 SPEAKER RENNER: Representative Jacques.

11 MR. JACQUES: Thank you, Mr. Speaker. Yes, Poole
12 still stands. It's good law. It has not been challenged. It
13 has not been overturned. And there's no other cases to the
14 contrary of its findings that says a unanimous recommendation is
15 not required constitutionally in the penalty phase.

16 SPEAKER RENNER: Representative Gottlieb.

17 MR. GOTTLIEB: But essentially -- thank you,
18 Mr. Speaker, my apologies. But essentially what happened in
19 that activist court is that the court found that a jury
20 shouldn't be considering mitigation, because they found that
21 that was mercy; is that correct?

22 SPEAKER RENNER: Is there a question in there?

23 MR. GOTTLIEB: Yes, that's why I said, "Is that
24 correct?"

25 SPEAKER RENNER: You're recognized.

1 MR. JACQUES: Thank you, Mr. Speaker. No, I disagree
2 with your assessment and I disagree that it was an activist
3 court as well.

4 SPEAKER RENNER: Representative Gottlieb, you're
5 recognized.

6 MR. GOTTLIEB: Thank you, Mr. Speaker. But a reading
7 of the Poole opinion indicates that the court stated that
8 weighing aggravating and mitigating circumstances involve
9 judgments of mercy, which is exactly what mitigation is there
10 for. So it seems like the 2019 opinion from the Poole court is
11 saying jurors should not consider mitigating factors and that's
12 exactly what makes them an activist court in my opinion. But
13 why -- why is that correct and not in contravention with the
14 United States Supreme Court Hurst opinion?

15 SPEAKER RENNER: Representative Jacques.

16 MR. JACQUES: Thank you, Mr. Speaker. The Poole case
17 simply says that whenever there's a finding of fact, that is
18 when the unanimous threshold is triggered. And so when you're
19 doing a recommendation that's no longer based in a finding of a
20 fact, it then simply becomes a recommendation that -- and again,
21 you know, some states don't even have that portion. You know,
22 if the trial happens, they convict. They go to the penalty
23 phase. They find that an aggravating factor exists. And then
24 it's all up to the judge. Because the courts have realized that
25 that portion is no longer a portion where a jury is necessary,

1 because it's no longer a finding of fact.

2 SPEAKER RENNER: Representative Gottlieb, you're
3 recognized.

4 MR. GOTTLIEB: Thank you, Mr. Speaker. So under your
5 new scheme where you have a recommendation going to a judge, how
6 do you reconcile that with Apprendi?

7 SPEAKER RENNER: Representative Jacques.

8 MR. JACQUES: Thank you, Mr. Speaker. It's not
9 inconsistent with Apprendi. I don't see how it is.

10 SPEAKER RENNER: Representative Gottlieb.

11 MR. GOTTLIEB: Representative Jacques -- I'm sorry.
12 Thank you, Mr. Speaker. My apologies. Representative Jacques,
13 doesn't Apprendi indicate that every fact for an offense that
14 relates to the penalty must be proved beyond a reasonable doubt
15 and submitted to the jury? And in this case you're allowing the
16 judge to make some of those findings by kicking it -- the
17 recommendation to the judge.

18 SPEAKER RENNER: Representative Jacques.

19 MR. JACQUES: Thank you, Mr. Speaker. The bill does
20 not do that. In fact, it's to the contrary. It specifically
21 states that when there is a finding of fact, the jury is
22 involved. When it's not, they can make a recommendation and the
23 judge will then impose a sentence. If it's a recommendation of
24 death, the judge can give life or death. And so the judge is
25 not making any determination of fact. That is all up to the

1 jury by the time it gets to that last portion of the penalty
2 phase.

3 SPEAKER RENNER: Representative Gottlieb, you're
4 recognized.

5 MR. GOTTLIEB: Thank you, Mr. Speaker. But
6 ultimately, Representative Jacques, your bill is a jury
7 recommendation to the judge and then the judge is the ultimate
8 finder, correct?

9 SPEAKER RENNER: Representative Gottlieb, you asked
10 the question. Representative Jacques, you can answer. There we
11 go.

12 MR. JACQUES: Thank you, Mr. Speaker. The bill
13 recognizes that the judge is responsible for sentencing. And so
14 this is what the judge is doing in our scheme is exercising
15 their ultimate prerogative as the sentencing person in the
16 courtroom.

17 SPEAKER RENNER: Are there any other questions of the
18 sponsor in the last two minutes? Any other questions of the
19 sponsor? One last bite at the apple. Seeing no --
20 Representative Gantt, do you have another question?

21 All right. Seeing no other questions, are there any
22 amendments?

23 SECRETARY: On the desk, Mr. Speaker.

24 SPEAKER RENNER: Read the first amendment.

25 SECRETARY: Representative Rayner-Goosby offered the

1 following amendment with title Amendment Barcode 270595, between
2 lines 25 and 26 insert an amendment.

3 SPEAKER RENNER: Representative Rayner-Goolsby, you're
4 recognized to explain your amendment.

5 MS. RAYNER-GOOLSBY: Thank you so much, Mr. Speaker.
6 Members, this is to repeal the death qualification as defined by
7 Florida Statutes 913.13. And that is the amendment.

8 SPEAKER RENNER: Having explained her amendment, any
9 questions of the sponsor? Any questions of the sponsor for the
10 amendment? Seeing no questions of the sponsor, are there any
11 amendments to the amendment? Are there any amendments to the
12 amendment?

13 SECRETARY: None on the desk, Mr. Speaker.

14 SPEAKER RENNER: Any substitute amendments?

15 SECRETARY: None on the desk, Mr. Speaker.

16 SPEAKER RENNER: We will open debate. Is there debate
17 for this amendment? Any member wishing to debate? We are on
18 barcode 270595. Seeing no debate, you're recognized to close on
19 your amendment.

20 MS. RAYNER-GOOLSBY: Thank you, Mr. Speaker. And,
21 members, I just kind of want to walk through what 913.13 is.
22 This is the death qualification for jurors. The practice
23 results in juries that are more prone to convict and more likely
24 to sentence someone to death than a random cross-section of the
25 community as the juries was intended since the 1600s.

1 And I want to also be very clear for you. Like I have
2 massive problems with the Criminal Justice System here in the
3 State of Florida and in the country. But this is the best
4 system in the world. It is literally the best system in the
5 world. And I feel like we can make it better. Right?

6 And so one study of 12 trials conducted in Duval
7 County from 2010 to 2018, death makes up roughly 30 percent of
8 the county. In particular in every model examined, black folks
9 where other jurors of color were excluded at rates more than --
10 more than the twice of white jurors. In 1968, the Supreme Court
11 of the United States held that the jury composed after the
12 dismissal of all those who oppose the death sentence was biased
13 in favor of death. Such a jury was not impartial and thus
14 violated the sixth and 14th amendment.

15 So 913.13 says that if you have an opposition to
16 death, you cannot serve. Well, actually, members, that makes
17 that you are actually biasing the jury towards death. And we
18 need to have a cross-section of jurors that are able to serve
19 that are death qualified. And you never know depending if the
20 factors are egregious enough, maybe someone who would normally
21 be opposed to the death penalty would actually find themselves
22 voting in favor or -- voting in favor of sentencing someone to
23 death. But the constitution holds as juries are made up. And
24 being a jurist is a sacred job that we have in the justice
25 system that it should be a cross-section of our community.

1 So, members, I would just ask that you would be with
2 me on this, that you would agree to repeal this and that we
3 would make sure that if we're going to go to eight to four that
4 we actually have a cross-section of our community. So I hope
5 for your favorable support. I think it's a friendly amendment,
6 so I hope for your favorable support. Thanks.

7 SPEAKER RENNER: Representative Rayner-Goolsby having
8 closed on her Amendment Barcode 270595, members, all those in
9 favor of amendment, please say yea.

10 (Members voted yea.)

11 SPEAKER RENNER: All those opposed say no.

12 (Members voted no.)

13 SPEAKER RENNER: Show the amendment fails. Read the
14 next amendment.

15 SECRETARY: Representative Joseph offered the
16 following amendment with title Amendment Barcode 645381, remove
17 lines 55 through 140 and insert an amendment.

18 SPEAKER RENNER: Representative Harris, you're
19 recognized to explain Representative Joseph's amendment.

20 MS. HARRIS: Thank you, Mr. Speaker. So this
21 amendment changes the requirement of eight jurors to ten jurors
22 instead to recommend a life sentence.

23 SPEAKER RENNER: Representative Harris, having
24 explained the amendment, are there any questions on this
25 amendment? Any questions on this amendment? Seeing no

1 questions, are there any amendments to the amendment?

2 SECRETARY: None on the desk, Mr. Speaker.

3 SPEAKER RENNER: Are there any substitute amendments?

4 SECRETARY: None on the desk, Mr. Speaker.

5 SPEAKER RENNER: All right. Debate, we're open for
6 debate. Anyone want to debate? Representative Harris, you're
7 recognized to close on Representative Joseph's amendment.

8 MS. HARRIS: Thank you, Mr. Speaker. So only three
9 states out of the 27 that impose the death penalty do not
10 require unanimity. And most allow for -- that don't, allow for
11 ten to two decision. If the aim of unanimity for the death
12 penalty is for the jury to demonstrate such conviction of their
13 recommendations that it mitigates any doubt, then we are
14 dramatically violating that aim. So I think this is a good
15 amendment. It's a compromise and I think it should be voted up.

16 SPEAKER RENNER: Representative Harris having closed
17 on Amendment Barcode 645381, all those in favor say yea.

18 (Members voted yea.)

19 SPEAKER RENNER: All those opposed say no.

20 (Members voted no.)

21 SPEAKER RENNER: Show the amendment fails. Read the
22 next amendment.

23 SECRETARY: Representative Joseph offered the
24 following amendment with title Amendment Barcode 375617, remove
25 lines 55 through 148 and insert an amendment.

1 SPEAKER RENNER: Leader Driskell, you're recognized to
2 explain Representative Joseph's amendment.

3 MS. DRISKELL: Thank you, Mr. Speaker. So this is an
4 amendment that would try to keep some guardrails in place and
5 effectively it would require the court to order a new trial with
6 respect to sentencing if after the sentencing procedure the jury
7 was not unanimous. So we're looking for a unanimous verdict.
8 If it was unanimous, it gives the court the opportunity to order
9 a new trial. If at the second time the jury cannot come back
10 unanimous, the court would be able to impose a life sentence.
11 So still a very harsh sentence and it would be a life sentence
12 without the possibility of parole. And again just trying to
13 make sure that we maintain that standard of a unanimous verdict
14 and put that guardrail in. That's the amendment, Mr. Speaker.

15 SPEAKER RENNER: Having explained the amendment, are
16 there any questions? Any questions of the sponsor? Any
17 questions of the sponsor?

18 You're welcome to debate. Any members like to debate
19 this amendment? Seeing no debate, Leader Driskell, you're
20 welcome to close.

21 MS. DRISKELL: Thank you, Mr. Speaker. Members, this
22 amendment will preserve the need for unanimous juries and put
23 guardrails in place to ensure that the worst consequences of
24 this bill do not come to fruition. It still allows for
25 nonunanimous jury decisions provided there is at least one

1 aggravating factor in the case that has been unanimously
2 approved by the jury.

3 Florida has the most death row exonerations in the
4 nation. The most. It clearly demonstrates that there are gaps
5 in our very fine Criminal Justice System perhaps relating to law
6 enforcement, prosecutorial scrutiny, or other factors. But what
7 this means is that we get it wrong the most. I promise you this
8 is not a factor in which we want to be leading other states.

9 Considering this long and sordid history of nearly
10 condemning the innocent to die and the likely instances of it
11 actually occurring here, it's crucial to keep guardrails in
12 place to ensure our great state avoids killing innocent
13 Floridians who did not commit the crime in question.

14 In the 2020 Ramos versus Louisiana decision, the
15 United States Supreme Court wrote in the majority opinion, which
16 by the way was joined by conservative and more liberal justices
17 alike, but the court wrote that the state laws providing for
18 nonunanimous jury systems were rooted in racism allowing white
19 jurors to make the votes of minorities on juries meaningless.

20 In other words, there were no compelling policy
21 reasons to have nonunanimous jury verdicts in the first place.
22 It's a great opinion. I encourage you-all to read it.

23 And since Florida has disproportionately condemned
24 people of color to die within its Criminal Justice System,
25 unanimous juries are a guardrail to prevent the worst abuses of

1 our system.

2 In 2017, Florida statutorily required that a death
3 sentence could only be imposed if it was unanimously
4 recommended. We heard today that that was a recent change.

5 But I think though it was a recent change, it was a
6 positive one and really brought us into alignment with where our
7 policy should be.

8 The bill is also trying to reverse Florida Statute --

9 SPEAKER RENNER: Representative Driskell, time is
10 expired. Having closed on the amendment, we will proceed to
11 vote on 375617, Amendment Barcode 375617.

12 All those in favor say yea.

13 (Members voted yea.)

14 SPEAKER RENNER: All those opposed please say no.

15 (Members voted no.)

16 SPEAKER RENNER: Show the amendment fails. Read the
17 next amendment.

18 SECRETARY: Representative Gantt offered the following
19 amendment with directory and title amendments. Barcode 225051,
20 between lines 98 and 99, insert an amendment.

21 SPEAKER RENNER: Representative Gantt, you're
22 recognized to explain your amendment.

23 MS. GANTT: Thank you so much, Mr. Speaker. This
24 amendment is pretty simple even to noncriminal defense attorneys
25 or criminal practitioners. It deletes aggravating factors A, B,

1 and D, because these require no extra findings. And under this
2 bill any one of them will be sufficient for a death sentence.
3 This would add a layer of protection to ensure only truly the
4 worst offenders receive a death sentence. And that is the
5 amendment, Mr. Speaker.

6 SPEAKER RENNER: Any questions of the sponsor? Any
7 questions of the sponsor? Any debate on the amendment? Debate
8 on the amendment?

9 Seeing no debate, Representative Gantt, you're
10 recognized to close on your amendment.

11 MS. GANTT: Thank you, Mr. Speaker. The entire point
12 of aggravating factors is to separate the worst of the worst
13 offenses. These particular factors defeat the purpose of
14 aggravating factors entirely. These factors do not speak to the
15 seriousness of the capital offense at all. As such, they do not
16 belong in statute and have been used to sentence people to death
17 now that do not belong there. My amendment ensures that the
18 worst of the worst crimes that are committed in Florida receive
19 the highest level of punishment which is state sanctioned murder
20 or what you call the death penalty. And that is the amendment,
21 Mr. Speaker.

22 SPEAKER RENNER: Representative Gantt having closed on
23 her amendment, we are voting on Barcode 225051. All members in
24 favor, please say aye.

25 (Members voted aye.)

1 SPEAKER RENNER: All those in favor say no.

2 (Members voted no.)

3 SPEAKER RENNER: Members, by your vote, please show
4 the amendment fails. Read the next amendment.

5 SECRETARY: Representative Gantt offered the following
6 amendment with title Amendment Barcode 853375, remove lines 99
7 through 172 and insert an amendment.

8 SPEAKER RENNER: Representative Gantt, you're
9 recognized to explain your amendment.

10 MS. GANTT: Thank you, Mr. Speaker. My amendment
11 simply repeals the capital drug trafficking portion of the bill.
12 Drug trafficking, while you may believe that is a terrible
13 crime, it is not murder. And as such, it does not warrant the
14 death penalty. And that is the amendment, Mr. Speaker.

15 SPEAKER RENNER: Any questions of the sponsor? Any
16 questions of the sponsor?

17 Seeing no questions, are there debate? Is there any
18 debate on this amendment? Representative Jacques, you're
19 recognized for debate.

20 MR. JACQUES: Thank you, Mr. Speaker. At a time when
21 record number of young people, of our young people in our state
22 and across this nation are dying from the scourge of dangerous
23 drugs such as fentanyl making its way across the open Biden
24 borders, this is no time for us to be going soft when the drug
25 traffickers are killing our children. It must be maintained on

1 our books and they must deserve the ultimate punishment within
2 our statutes. Please vote down on this bad amendment.

3 SPEAKER RENNER: Representative Hart, you're
4 recognized in debate.

5 MS. HART: Thank you, Mr. Speaker. Representative,
6 thank you for that amendment. You know, our prisons are
7 overcrowded. Now, we're talking about killing those that are in
8 them. But what we need to do is figure out how do we allow our
9 low-level individuals to be able to be released. But I will not
10 support the death penalty. Good amendment. Thank you.

11 SPEAKER RENNER: Other members wishing to debate?
12 Other members wishing to debate, you're recog -- seeing none,
13 you're recognized to close on your amendment.

14 MS. GANTT: I do not believe that anyone has been
15 sentenced to death under this provision. And I wish we had the
16 same energy, because it is egregious that so many people are
17 dying from fentanyl use. I wish we had the same energy in the
18 '90s when the crack epidemic was happening. But it was most
19 black communities. So this part of the statute has not been
20 applied and should not be applied here especially when we are
21 not requiring unanimity in our jury sentencing phase.

22 Only eight countries in the world apply the death
23 penalty to nonviolent drug offenses. Some of those include
24 China, North Korea, and Saudi Arabia. The International
25 Covenant on Civil and Political Rights prohibits the imposition

1 of a death penalty for any but the most serious crimes. And
2 this covenant was agreed upon by the United Nations. These
3 offenses are serious, but they do -- they are not murder. If we
4 want to reserve the right or reserve the death penalty for the
5 worst of the worst crimes, this amendment is a step in the right
6 direction and a step that Florida can take into the modern
7 world. Thank you, Mr. Speaker.

8 SPEAKER RENNER: Representative Gantt having closed on
9 her Amendment Barcode 853375, members, we'll proceed to vote.
10 All those in favor say yea.

11 (Members voted yea.)

12 SPEAKER RENNER: All those opposed say no.

13 (Members voted no.)

14 SPEAKER RENNER: Members, by your vote please show the
15 amendment fails. Read the next amendment.

16 SECRETARY: Representative Joseph offered the
17 following amendment with title Amendment Barcode 161859, between
18 lines 172 and 173, insert amendment.

19 SPEAKER RENNER: Before I call on you,
20 Representative Gottlieb, please we have one announcement. A
21 very important one. Representative Tramont for announcement,
22 please, you're recognized.

23 MR. TRAMONT: Thank you, Mr. Speaker. I'd like to
24 just recognize two special people in my life in the west
25 gallery. First of all the real rockstar of the family, I'd like

1 to recognize. Give a Florida House welcome to my wife
2 Stacy Tramont up in the west gallery, please.

3 SPEAKER RENNER: Welcome to the Florida House.

4 MR. TRAMONT: And true by partisan fashion, my
5 daughter Kennedy Reagan turned seven years old today. Let's
6 please wish her a happy birthday.

7 SPEAKER RENNER: Thank you. Representative Gottlieb,
8 you're recognized to explain Representative Joseph's amendment.

9 MR. GOTTLIEB: Thank you, Mr. Speaker. This is a
10 pretty simple amendment. We allow in certain limited
11 circumstances what we call death penalty volunteers which means
12 an individual who wants to volunteer and accept the death
13 penalty. This bill does something different. And what it does
14 it allows for an individual to accept a life sentence. So
15 when -- on a death case, there's two applicable sentences, life
16 or death. This bill says that if an individual wants, they can
17 offer to plead guilty in exchange for a sentence of life without
18 the possibility of parole. Of course, there would be a hearing
19 held still where the family, friends, so on and so forth of the
20 victim can come forth and testify about the individual and have
21 an opportunity to make statements to the court. But this would
22 alleviate the necessity for a lengthy and expensive trial. The
23 individual would spend the rest of their life in jail without
24 the possibility of parole. That is the amendment, sir.

25 SPEAKER RENNER: Representative Gottlieb having

1 explained his amendment. Members, welcome back to the chamber.
2 And august former colleague of ours Senator Colleen Burton.
3 Welcome back.

4 Are there any members wishing to ask
5 Representative Gottlieb questions regarding the amendment?
6 We're open for questions. Any questions?

7 Is there any debate? Any debate? The floor is open
8 for debate. Seeing no debate, Representative Gottlieb, you're
9 recognized to close on the amendment.

10 MR. GOTTLIEB: Thank you, Mr. Speaker. So this is a
11 cost-saving measure, number one. Death penalty appeals, death
12 penalty cases cost a tremendous amount of money. They typically
13 require -- and most of them go to the public defender and
14 require two public defenders to represent an individual. Then
15 there's the appeal to the Supreme Court, capital collateral
16 attorneys, federal appeals, so on and so forth.

17 And what this does is well -- which I think is equally
18 if not more important is it gives closure immediately to -- to
19 the friends and family of the individual who was murdered. It
20 allows the -- the acceptance of that sentence of life
21 imprisonment without the possibility of parole, ends the case,
22 ends the expense, ends the time spent in court dealing with it.
23 And it's just simply something that makes sense. Also, because
24 we have so many wrongful convictions that's ended with this,
25 because the individual obviously is accepting the life sentence.

1 And I just think it makes sense when we allow death penalty
2 volunteers to allow somebody to accept a sentence of life, allow
3 the court to accept it, allow the people to have their day in
4 court, say their piece, and end the case early. That is the
5 bill, sir.

6 SPEAKER RENNER: Representative Gottlieb having
7 adroitly closed and presented Representative Joseph's Amendment
8 Barcode 161859. Members, please show your support by saying
9 yea.

10 (Members voted yea.)

11 SPEAKER RENNER: All those opposed to the bill say no.

12 (Members voted no.)

13 SPEAKER RENNER: Members, by your vote, please show
14 the amendment fails.

15 Representative Jacques, you're recognized, sir, for a
16 motion.

17 MR. JACQUES: Thank you, Mr. Speaker. I move that the
18 rules be waived in CS for CS SB 450 be read a third time by
19 title and placed on final passage.

20 SPEAKER RENNER: Representative Jacques moves that CS
21 for CS for HB 450 be substituted for CS for CS for HB 555 and
22 that the senate bill be read a second time by title. All those
23 in favor say yea.

24 (Members voted yea.)

25 SPEAKER RENNER: All those opposed say nay.

1 (Members voted nay.)

2 SPEAKER RENNER: All right. Show the amendment
3 adopted. Read the senate bill by a second time by its title.

4 SECRETARY: By Rules, Criminal Justice, and
5 Senator Ingoglia and others. CS for CS for Senate Bill 450. A
6 bill to be entitled An Act Relating to the Death Penalty.

7 SPEAKER RENNER: Representative Jacques, you're
8 recognized to explain the senate bill.

9 MR. JACQUES: Thank you, Mr. Speaker. This is the
10 bill that we've just been discussing.

11 SPEAKER RENNER: Are there any amendments?

12 SECRETARY: There are none on the desk, Mr. Speaker.

13 SPEAKER: We're going into structured debate.
14 Structured debate. We should have a script on that, but you're
15 recognized to open the first segment of that structured debate.

16 MALE: Thank you, Mr. Speaker. I'd like to yield to
17 Representative Rayner-Goolsby.

18 SPEAKER RENNER: Representative Rayner-Goolsby, to
19 begin the structured debate, you're recognized.

20 MS. RAYNER-GOOLSBY: Thank you so much, Mr. Speaker.
21 Members, I understand that our issues with the death penalty is
22 complex. I understand that when we think about folks that we
23 love and if we even try to put ourselves in the shoes of people
24 who may have lost someone tragically, it is heart wrenching. I
25 know that Representative Jacques and I -- I believe it was

1 happening -- the death happened in your district, but then the
2 child was in our district, the young child that was killed by
3 his father. His mother was killed in his district and then the
4 child was thrown to alligators in my district. And you think
5 about the death penalty and you think about the worst of the
6 worst. Right? Like I get it. I get that innate -- that innate
7 need for retribution. I get that innate need for us to do --
8 for the worst of the worst to have the worst of the worst done,
9 the final act, death.

10 And so, members, what I'm here really to discuss is
11 the unanimity portion of this. I can have a policy in
12 philosophical discussion with you why I am not in support of the
13 death penalty. And I get it. Like I -- and I really have no
14 judgment for those who are in support of it, because I get it.
15 I get like how complex it is. Right? I get what we have to
16 struggle with and deal with.

17 But I also understand that as legislators what we have
18 to do to follow the law. Especially I think the bar for lawyers
19 who are legislators is even higher. And so, members, I have a
20 hard time with this bill. And I have concerns with this bill.
21 When I think about big Hurst and I think about little Hurst and
22 I think about Poole, I think about Ramos. I think about
23 these - this cadre of rulings that seem to show that the court
24 is shifting towards unanimity when it comes to death.

25 I have a problem with even Ramos which is more

1 recently decided that the threshold for death or the threshold
2 for conviction rather, I'm sorry, threshold for a conviction
3 rather is unanimity. But somehow when we're asking people to
4 make the decision to kill somebody -- like let's call it what it
5 is -- making the decision to kill somebody, that the threshold
6 should not be as high as unanimity as well. I have a problem
7 with that. I'm concerned about that. I don't know if it would
8 cut constitutional muster. And I'm also thinking about -- when
9 we're thinking about Ramos, I believe that was decided in 2020.
10 It's really reflective of the same makeup of the Supreme Court
11 that we have now. So then the question becomes, well, the
12 Supreme Court that we have now said the conviction which is a
13 lower threshold should be unanimous. So then should the
14 mitigating and aggravating factors that are decided, should that
15 be unanimous as well?

16 And I understand that my colleague, my learned
17 colleague, he spoke about Poole. But I also want to
18 highlight -- the way that I've read Poole is that the court did
19 not hold that Florida's death penalty sentencing structure
20 should eliminate jury unanimity.

21 So that word "should" -- and I'm a big believer that
22 words mean things and especially as lawyers -- and I think the
23 lawyers can appreciate that. We will argue down what a word
24 means. So it says -- it says the death penalty scheme should
25 eliminate juror unanimity. So jurors once again we're --

1 jurors -- legislators, members, sorry, I felt like I was back in
2 court.

3 SPEAKER RENNER: Counselor, please proceed.

4 MS. RAYNER-GOOLSBY: Thank you, Your Honor. But,
5 members, we're making that decision. And I think that when
6 we're thinking about someone's life regardless of what they have
7 or have not done, that threshold has to be high. I think that,
8 you know, I remember when this first became a conversation after
9 the person that murdered people in Parkland, because I won't say
10 his name, he doesn't deserve for his name to be said in this
11 chamber, the rhetoric was -- it was one juror. And it was
12 actually three jurors that voted for life and eight jurors that
13 voted for death. And that became the basis of this bill.

14 And I know that Representative Jacques and I have
15 talked and he's actually said he's felt strongly about this well
16 before this matter. But I have a hard time dealing with this in
17 the political climate that we're in. And I also want to say to
18 my colleagues who are personally affected by this -- I
19 understand that this vote is hard for you-all,
20 Representative Daley, Representative Hunschofsky, and
21 Representative Cassel -- I understand, because this is your
22 people, this is your community.

23 I -- I really feel like we have to give meaningful
24 consideration to this. When we are asking jurors, people who --
25 I want to walk you through what it means to be a death certified

1 juror. You don't just picked to sit on a jury and you're death
2 certified. You go through a process. And when you are a juror
3 that's on a death penalty case, this is not normally most of the
4 times, bless you, most of the time you are not just there for
5 five or six days. In the case of the death sentencing process
6 with the case in Parkland, I believe that the jurors served on
7 that death -- the penalty phase for about six months.

8 You're there. You're in it. We're asking jurors,
9 we're asking people, we're asking citizens of the State of
10 Florida to hear evidence, to weigh evidence, to visit the scene,
11 to really relive trauma. And for those of you -- and if
12 Representative Campbell was here, he would tell you this. Our
13 brain doesn't really know the difference between our trauma and
14 other trauma. It's just as trauma.

15 And so the fact that we want to reduce this to eight
16 to four is concerning to me. It's concerning, because I don't
17 believe it's constitutional. I don't believe that the list of
18 cases that I've illuminated indicated that would measure up to
19 the constitutionality. I've concerns about the fiscal impact of
20 this bill, what it would actually cost fiscally when we're
21 thinking about trying death penalty cases.

22 I also have concerns about just -- Florida gets it
23 wrong a lot. Florida gets this wrong a lot. We lead the nation
24 in death penalty exonerees. And so we have not even proven to
25 get this right. And yet we want to have a lower threshold and

1 which I think would impact more people.

2 So I believe in the good faith of this process.

3 Representative Jacques, like I know your heart. I have known
4 you for a very long time. So I know that your heart is in the
5 right place. I just don't think this is the way that we get
6 there. I don't think this is the way that we get there.

7 And I said this in the committee and I'll say it now,
8 I'm also concerned that we have folks on PL level who are using
9 this and using tragedies to bolster their political ambition.
10 And, Representative Jacques, that has nothing to do with you. I
11 said the PL level. And I'm concerned about that. Because at
12 the end of the day when we think about death penalty cases,
13 we're not only thinking about the defendant, but we're thinking
14 about families that have to be retraumatized every time one of
15 these cases come up for appeal. And I believe
16 Representative Gottlieb, Representative Benjamin,
17 Representative Gantt, other -- Representative Cassel, even
18 Representative Garrison who have all practiced in the criminal
19 world will tell you when a death penalty case comes up --
20 Representative Jacques, you know this. It doesn't -- like it
21 doesn't end there. If they're -- if they are sentenced to
22 death, the appeal process is years. And we're retraumatizing
23 these families.

24 So, members, I don't see the compelling state interest
25 to move this from unanimity to eight to four. I would ask just

1 on the basis of the law -- forget your personal feelings,
2 because we all have personal feelings -- but on the basis of the
3 law that we would -- we would vote this bill down. Thank you.

4 SPEAKER RENNER: Representative Daley, you're
5 recognized in debate.

6 MR. DALEY: Thank you, Mr. Speaker. I'd like to yield
7 to Representative Valdes.

8 SPEAKER RENNER: Representative Valdes, you're
9 recognized in debate.

10 MS. VALDES: Thank you very much, Mr. Speaker. And,
11 members, I stand in opposition of this bill, because I don't
12 know if you-all have visited prisons unannounced.

13 Representative Hart and I have visited many unannounced. And
14 what we see there is not fun. And I believe that when someone
15 does a heinous crime the easy way out would be to stop their
16 suffering. Because when you die -- I don't know. No one has
17 come back and said, "Hey, it's happening over here." Right?

18 So you end that person's lack of remorse, lack of
19 punishment, because life ended. Yet stick that individual in
20 one of our correctional facilities, they're reminded each and
21 every day of the horrors that they did, because of the horrors
22 that happen inside of these correctional facilities. And the
23 horrors that happen in these correctional facilities are real.

24 So I'm down on all of these bills that are agenda
25 today regarding the death penalty, because I feel that the best

1 punishment for an individual to go through when they do a
2 heinous act is to be behind those walls with those individuals
3 that don't give a darn about you or that individual that's in
4 there for whatever crime they committed. On the contrary,
5 they'll take advantage of the fact that you're in there and do
6 some really ugly stuff to you, too. And they get away with it
7 each and every day.

8 So for that, members, I'm down on all of these death
9 penalty bills that we're here -- up here today, because I
10 believe that that's an easy way out for that individual who does
11 the crime. Thank you, Mr. Speaker.

12 SPEAKER RENNER: Representative Daley having yielded
13 the balance of his time, the floor recognizes Leader Grant.

14 MR. GRANT: Thank you, Mr. Speaker. We're going to
15 waive our time in this segment.

16 SPEAKER RENNER: Representative Daley, you're
17 recognized to kick off the next segment.

18 MR. DALEY: Thank you, Mr. Speaker. I'd recognize
19 Representative Gantt.

20 SPEAKER RENNER: Representative Gantt, you're
21 recognized for debate.

22 MS. GANTT: Thank you, Mr. Speaker. One of my heroes
23 in the legal profession is a man named Bryan Stevenson. And if
24 you've never heard of Bryan Stevenson, I recommend that you look
25 him up. He is doing amazing work and has done amazing work for

1 the American Judicial System. And what he does is he takes
2 cases of death row inmate and he investigates. If you heard of
3 a movie Just Mercy, it was -- Michael B. Jordan and Jamie Foxx
4 were in the movie. That was a true story and it was one of the
5 cases by Bryan Stevenson. I'm going to go ahead and read a
6 quote. "The power of just mercy is that it belongs to the under
7 deserving. It's when mercy is least expected that it's most
8 potent. Strong enough to break the cycle of victimization and
9 victimhood, retribution, and suffering. It has the power to
10 heal the psychic harm and injuries that lead to aggression and
11 violence, abusive power, and mass incarceration."

12 Another quote by Mr. Stevenson is, "The death penalty
13 is not about whether people deserve to die for the crimes they
14 commit. The real question of capital punishment in this country
15 is do we deserve to kill?"

16 I wanted to lead my debate off with those quotes,
17 because his story inspires me to become a better lawyer. And
18 here I am in the legislature, Lord. And I have the ability to
19 speak on behalf of Floridians who will be impacted by this. We
20 agree that the constitution gives us the sixth amendment right
21 to trial by jury which requires a unanimous verdict. How much
22 more important is it to have a unanimous verdict when we are
23 talking about taking someone's life? It has no logical
24 rationalization in my opinion to lower the standard when we are
25 talking about taking a life. And we just spent seven hours on a

1 bill and everybody talked about the importance of life. So why
2 are we now here in this bill saying that state sanctioned murder
3 via the death penalty is okay and we only need eight people to
4 decide that? The reason that we recognize jury nullification is
5 because jurors are given an oath. And that oath requires them
6 to evaluate all the facts of the evidence that are presented to
7 them. And based on those facts, they can make their own
8 independent determination.

9 That's what makes our judicial system, our jury
10 system, as heralded as it is throughout the world or maybe just
11 by Americans and that's what we say. Like we toot our own horn.
12 But jury nullification is a recognized practice, because that is
13 what justice is. It's allowing a jury to make a unanimous
14 decision not just about guilt, but about death. We are not
15 talking about sentencing someone to life imprisonment. We are
16 talking about the state injecting chemicals into a person's body
17 to take their life. And that demands the highest of the
18 threshold of a unanimous jury verdict.

19 And I just want to, you know, bring it back down a
20 level as one of my colleagues says. And I want to think
21 about -- when we think about the history of the death penalty in
22 the State of Florida, it has disproportionately impacted black
23 males. And even in Jim Crow Florida, it required a unanimous
24 jury to send somebody to the electric chair when we had it. And
25 now we are saying, no, we are this evolved preFlorida and we

1 don't need another -- we don't need a unanimous jury when we're
2 talking about killing someone. We understand punishment and we
3 understand the need to punish a person for the crimes they
4 commit, but to take their life and only require eight people out
5 of the jury to make that determination is flat out wrong. And
6 not only is it wrong, it is in contradiction to settle Supreme
7 Court law that says if we need unanimity on guilt, how much more
8 on death. It is Florida case law that says we need a unanimous
9 jury. So how can we sit here and say that our job is to make
10 laws that are beneficial to all Floridians, but say, oh, people
11 that commit crimes, your life doesn't matter and so we can lower
12 the threshold for the State to take your life.

13 I'll go back to my cameo reference. We're talking out
14 of both sides of our neck in this legislature. And this
15 lowering of the threshold, it is an insult to juries, to
16 Floridians. And we're telling them you are actually not smart
17 enough to evaluate evidence that are presented to you by
18 competent attorneys to make a decision and come upon a decision
19 of unanimity. We are saying that the longstanding judicial
20 practice or practice in the judiciary of jury nullification is
21 no longer needed, because we don't trust our citizens to be able
22 to evaluate the evidence and make a competent informed decision
23 as a juror. And this is in regards to take a person's life.

24 So we are okay with a two-thirds vote which is a 67
25 percent passing and that's not even a passing grade in school.

1 So we want a failing job by a prosecutor -- and I love
2 prosecutors, so this is not sneak dissing or hate, I'm telling
3 you, I promise you -- but we are okay with a 67 percent
4 effectiveness when we're talking about killing somebody. And we
5 can't even get a degree with a 67 percent. Like it makes
6 absolutely no sense. And so I will be down on this bill,
7 because when we are talking about taking people's lives even
8 someone we think deserves punishment we are not the creator as
9 we heard earlier. We are not God. And we should not stand in
10 judgment of someone and take their lives especially when we are
11 lowering the threshold by which we are taking their lives.
12 Thank you.

13 SPEAKER RENNER: Representative Daley, you're
14 recognized in debate.

15 MR. DALEY: Thank you, Mr. Speaker. I'd yield our
16 time to Representative Gottlieb.

17 SPEAKER RENNER: Representative Gottlieb, you're
18 recognized in debate.

19 MR. GOTTLIEB: Thank you, Mr. Speaker. First, one of
20 the things I want to comment about is I think that this bill is
21 definitely a reaction to what happened in Marjorie Stoneman
22 Douglas. And let me say that, you know, Nikolas Cruz absolutely
23 deserved the death penalty. There is no doubt about that. The
24 atrocious acts that he committed against the 17 individuals who
25 he murdered, the 17 people he hurt, and the others that he

1 sought to hurt, he absolutely the death penalty. But to say
2 that the juror in that case, because the juror found more
3 mitigation than aggravation, was an activist juror is a
4 misnomer. And the fact that that juror convinced two other
5 jurors, that's the beauty of the jury system that we have is
6 that jurors get the opportunity to deliberate and that we're not
7 part of that and that that deliberation becomes the jury's
8 verdict.

9 And that's what my colleagues are talking about, about
10 the juries have the right to a nullification. They have the
11 right to do what they want. And this bill does encourage
12 activism as one of my colleagues said that -- that what we're
13 doing is by making it not unanimous, it now becomes eight to
14 four and encourages activism on the other side to get to a death
15 penalty quicker, sooner, and without as much deliberation as we
16 would have if we had a unanimous verdict

17 It's also flawed. This bill is flawed. It's a
18 violation of the eighth amendment, because there has been a
19 longstanding United States Supreme Court case that says we only
20 kill people who are people who killed people, not drug dealers.
21 We don't kill drug dealers. Yes, drug dealers sell drugs to
22 people who develop drug problems, ultimately overdose and die.
23 Okay. But that is an indirect result of the drug dealing. It's
24 not a murder. It's not an intentional crime committed, heinous,
25 atrocious, and cruel, especially heinous, atrocious and cruel,

1 cold, calculated, premediated. The aggravating factors aren't
2 even there in that kind of case to establish a death sentence.

3 The scheme that we have here and,
4 Representative Jacques, you used the word "that's the judge's
5 prerogative", no, that's exactly what we're not supposed to be
6 doing. That is inconsistent with the sixth amendment. That is
7 inconsistent with Ramos which was decided in 2020 post Poole in
8 2019. That's why I asked about the Poole case having gone up,
9 having been tested by another or a higher court. And it hasn't
10 been.

11 At line 129 which I know where -- I wrote this when we
12 were on the house bill. I think we're on the -- I don't know if
13 we're on the house or the senate bill at this point. Senate
14 bill. So my line number is wrong. The bill is unconstitutional
15 against -- it was formerly 129. And it's unconstitutional
16 against Florida and United States Supreme Court precedent. It
17 reduces the standard down to at least eight jurors. That's a
18 tremendous mistake. It's in direct contravention to Hurst at
19 lines -- formerly lines 66 to 74, giving discretion to a judge.

20 And I've already talked about this. That's something
21 that we're trying to get out of the system. In fact, when
22 Rep. Garrison ran his bill as it related to bonds, that bill
23 dealt with the fact that we want to have a bond schedule so that
24 we have uniformity throughout the state. So why are we having
25 uniformity throughout the state as it relates to bonds, but yet

1 giving judges discretion as it relates to the ultimate
2 punishment that we possibly have. They're logically
3 inconsistent.

4 The death penalty is discriminatory. The death
5 penalty is subject to human error and has never ever anywhere
6 proved to be an adequate deterrent to crime.

7 Death penalty cases cost more. They require two
8 lawyers at each state. The appeals drag on for years. And in
9 my opinion torture the families who are looking for and seeking
10 closure.

11 Some studies have shown that death penalty sentences
12 cost three to four times more for the state and approximately
13 twenty-six million dollars per individual to implement the death
14 penalty.

15 There has often been concern for the fair
16 administration of the death penalty. And this new scheme
17 creates a system in which discretion can run wild and there will
18 be disparate sentences with continuing racial and economic
19 biases.

20 And let me address that right there. One of the major
21 problems we had in the Nikolas Cruz case which came out of my
22 courthouse, the one where I practice daily, the one where I have
23 my 30th year here today, and I don't mean to condemn the
24 current -- not today -- this year. I don't mean to condemn the
25 current public defender. But the prior public defender made a

1 decision to spend millions of dollars on the Cruz case. And
2 that doesn't happen in every other criminal case. They don't
3 get that kind of representation. They made a decision to hire
4 experts from out of the state. They made a decision to hire
5 jury consultants and they brought in people because of the
6 notoriety of the case. That doesn't happen to every single
7 other person that gets the public defender. They don't get that
8 kind of TLC that Cruz had. And it's that poor decision-making
9 by that prior public defender in my opinion that caused this
10 horrible result and led to this horrible legislation.

11 Death is irreversible. Death is different. As such
12 we should be implementing a scheme that is consistent with our
13 constitutional principles under the sixth amendment and the
14 eighth amendment. And I urge you to vote down on this bill.

15 SPEAKER RENNER: Representative Daley having yielded
16 the balance of the time in the segment. Leader Grant, you're
17 recognized for debate.

18 MR. GRANT: Thank you, Mr. Speaker. Would you
19 recognize Representative Black in debate?

20 SPEAKER RENNER: Representative Black, you're
21 recognized in debate.

22 MR. BLACK: Thank you, Mr. Speaker. And thank you,
23 Representative Jacques, for this excellent bill. I've heard a
24 lot of talk here today about how this would be a very, very
25 difficult vote. No, it's not. This is a very simple vote.

1 Representative Jacques has brought us an excellent bill that is
2 properly balanced that requires a super majority to convict, a
3 super majority -- I'm sorry -- a unanimous vote to convict based
4 on proof beyond a reasonable doubt and then a unanimous finding
5 of aggravating factors. For too long in Florida the conscience
6 of Floridians has been suffocated under an onerous and unjust
7 burden. And with your vote today, that burden will be lifted.
8 And the collective conscience of Floridians will be able to
9 righteously and justly again be expressed.

10 There are people who commit the most heinous of crimes
11 and for whom death is fitting. And I heard the discussion about
12 drug dealers and that not being appropriate. We're losing more
13 than 100,000 people a year in this country. It is as though we
14 lose a major war every single year. It is time that we rise up
15 and speak to this outrageous condition. It is time that we get
16 Floridians a voice that makes the death penalty possible for
17 that.

18 And remember, it's still a super majority vote that is
19 required. That super majority says clearly that it is
20 reflective of the voice of our people. With our votes today, we
21 will unleash that voice again and restore balance and restore
22 justice. This will indeed be an easy vote. Thank you,
23 Representative Jacques.

24 SPEAKER RENNER: Leader Grant, you're recognized in
25 debate.

1 MR. GRANT: Thank you, Mr. Speaker. We'll waive our
2 time for the remainder of this segment.

3 SPEAKER RENNER: Waiving the remainder of the segment.
4 Representative Daley, you're recognized in debate.

5 MR. DALEY: Thank you, Mr. Speaker. I'd like to yield
6 to Representative Robinson.

7 SPEAKER RENNER: Representative Robinson, F., you're
8 recognized for debate.

9 MS. ROBINSON: Thank you, Mr. Speaker. And I wasn't
10 going to speak on this topic today, but sitting here and
11 listening I just felt that I needed to say something. I really
12 have a problem with us saying that we want to take a life. We
13 talked about -- we just went through another bill and everybody
14 was saying, you know, someone that's not even born, that hasn't
15 lived on this earth, you have a problem with taking or doing
16 something there. But then this is a human being that has blood
17 that's running through them that you're now saying that you're
18 going to take their life. That's a problem.

19 Do they need to be punished? Yes. But do it need to
20 be death? Who are we to decide that we're going to kill
21 someone? God gives everyone grace and love and opportunity to
22 make a correction. This is personal for me, because I actually
23 had a relative that in North Carolina was a part of the team
24 that did execution. Could you imagine when you're on that team
25 that has to pull that electricity to kill someone? That's a

1 major mental, emotional stress on that person. People do wrong.
2 We're putting them through our correction system to correct them
3 and to try to get them right. When you take a life, although I
4 don't believe in the death penalty, but I can at least say,
5 okay, you took a life so we're going to take yours. But this
6 bill is allowing for other stuff. And that's just not right.

7 So I'm going to ask for you-all to not try to be -- to
8 have that super power. Have some humanity. We're talking about
9 human beings. They need to be punished, but is death actually
10 the result that we want to do? If we say that we're prolife on
11 everything else, then we need to be prolife on this. And I say
12 we need to vote down on this bill.

13 SPEAKER RENNER: Representative Daley, you're
14 recognized in debate.

15 MR. DALEY: Thank you, Mr. Speaker. I'd like to yield
16 to Representative Eskamani.

17 SPEAKER RENNER: Representative Eskamani, you're --
18 you're welcome. And if anybody else wants coffee, heavily
19 caffeinated, it's in the back. You're recognized.

20 MS. ESKAMANI: Thank you, Mr. Speaker. I appreciate
21 it. Real brief. I don't plan to say a lot. But I -- the issue
22 of capital punishment for me is -- is obviously complex, because
23 of all the emotions involved. And it's so personal. And for
24 some it is justice. For others it is not. And so I always lean
25 on my values. And my values tell me that Florida is a state

1 that has some of the largest numbers of exonerations. We just
2 have to be really careful. And -- and so over the years that
3 I've been in office and I've had to wrestle with this question,
4 I've leaned towards the direction that capital punishment, the
5 death penalty does not deter crime. And I think if something
6 doesn't deter crime, it's not good policy and public safety.

7 And I think Representative Gottlieb already said this.
8 But if you look at the data around capital punishment, there's
9 just no evidence to say that it reduces crime. And I do think
10 we need to be really measured and careful if it is going to
11 still exist, you know, in law and candidly I have cosponsored
12 bills in the past to end capital punishment in Florida and
13 I'm -- I feel like that would be the better policy, because
14 there's -- not only is it incredibly inhuman as I think
15 Representative Gantt mentioned, but it just doesn't work to
16 deter crime.

17 And we have solutions to deter crime and to intervene
18 and to help with rehabilitation and to really ensure that -- for
19 folks who do have an opportunity for a second chance, they are
20 able to do that. And I wish we focused more on the prevention
21 piece in public safety. Like I wish we did more work around
22 preventing someone from turning to crime and committing a crime
23 versus the aftermath where life has been impacted, where trauma
24 has been experienced and now we're trying to pick up the pieces.

25 And so I really would encourage our legislative

1 colleagues to consider what can we do more proactively on the
2 front end to prevent the tragedy from happening in the first
3 place. And again, I just have a lot of discomfort with changing
4 the makeup of the jury. And I'm not a lawyer, so my debate is
5 not very sophisticated. But I just feel like if there's no
6 evidence that capital punishment actually works to deter crime
7 and Florida has such a large number of exonerations -- and I
8 have filed claims bills before for individuals who were
9 wrongfully incarcerated. It just feels like really not the
10 direction we should go. So thank you, Mr. Speaker.

11 SPEAKER RENNER: Representative Daley, you're
12 recognized in debate.

13 MR. DALEY: Thank you, Mr. Speaker. I yield to
14 Representative Campbell.

15 SPEAKER RENNER: Representative Campbell, you're
16 recognized, sir, in debate.

17 MR. CAMPBELL: Thank you, Mr. Speaker. Members, death
18 is different. Death is irreversible. This bill is about
19 numbers, whether eight of the 12 are enough to take someone's
20 life. If you'd indulge for like -- for a few minutes to discuss
21 three other numbers. The first to consider is 30. That is the
22 number of people out of 101 exonerated since 1976 in Florida.
23 The number of people who the state was sure should die, but were
24 wrong. Who without outside intervention would have had their
25 lives robbed by this state. A state with such little regard for

1 life that they think a percentage that would be a C on a test
2 would be enough for murder for someone. Can we really tell the
3 people we'd exonerated that the standard we are going back to is
4 right? Can we tell those we've already killed?

5 The next number I want you to consider is zero.
6 That's the number of states that -- which allow for eight of 1
7 jurors to execute someone. There's a reason for the high bar
8 which is why the Supreme Court and Florida Supreme Court both
9 struck down laws allowing for majority executions. In
10 concurring opinion, the constitutionality of the death penalty
11 in this state -- and that's anything, but violates both the
12 Declaration of Independence and the eighth amendment protecting
13 against cruel and unusual punishment. They cited simply
14 reasoning in the opinion.

15 The last number is one. We have this bill here today
16 because of one case, the people versus Nikolas Cruz. The
17 shooting at Stoneman Douglas was one hideous act of violence
18 ever happened in our state. And some of us were on that -- if
19 we were on that jury would have made a unanimous for that death
20 penalty.

21 But that does not mean at the risk of the constitution
22 we have to pass this bill and change everything for one case. A
23 lot of times we pass bills and we may never directly see the
24 effects, so it is easy to press the red or green button trusting
25 those who are doing the right thing. But today pressing the

1 green button is wrong. We know exactly what will happen if this
2 bill will pass. More people will be sentenced to death whether
3 they are innocent or guilty, because the legislature decided
4 that human life can be ended by a majority. And every execution
5 that happens after today will be on the legislature's
6 conscience. I will not participate in this death penalty bill.
7 I urge you to vote down on this bill, because the words of the
8 highest court in our state, "death is different. Death is
9 irreversible." Thank you, Mr. Speaker.

10 SPEAKER RENNER: Representative Daley, you're
11 recognized in debate.

12 MR. DALEY: Thank you, Mr. Speaker. I yield to
13 Representative Hinson.

14 SPEAKER RENNER: Representative Hinson, you're
15 recognized in debate.

16 MS. HINSON: Thank you, Mr. Speaker. And may I just
17 say, personal point of privilege, this feels like an exercise in
18 futility. Nothing we say or do will impact the outcome.
19 Hopefully our constituents hear us and they know our heart. And
20 mine is pretty heavy today.

21 This bill plainly is unconstitutional and in direct
22 confrontation with the Hurst versus Florida and Hurst versus
23 State which hold that the final recommendation of life or death
24 must be unanimous. Those cases are based in part on the sixth
25 amendment right to a trial by jury. This bill will streamline

1 the process of execution, remove a lot of the individual
2 evaluation in each case and in some cases require the death
3 penalty. Mandatory death penalty laws were ruled
4 unconstitutional in Woodson versus North Carolina in 1976. And
5 giving judges' review over the jury's findings was one reason
6 why Florida was allowed to resume executions in 1979. In that
7 regard too, it is plainly unconstitutional. The bill would make
8 Florida the only state in the country that allows people to be
9 executed with only eight jurors voting in favor.

10 Alabama is the only -- do we want to be compared to
11 Alabama? Alabama is the only other state that does something
12 like this and they require ten votes. Florida leads the country
13 in death row exonerations, 30 since 1973. In 21 out of the 23
14 exonerations in which the jury vote is known at least one juror
15 voted for life. That's at least 21 out of 30. 17 out of the 30
16 exonerations were black people. More than all exonerations in
17 Texas. That's more than 50 percent. Even though they only make
18 up, that's we, only make up, that's Jacques too, only make up
19 about 20 percent of Florida's population. That means more black
20 people in Florida have been exonerated than all the people
21 exonerated from Texas' death row combined.

22 This will create a perverse situation in courtrooms
23 where all agreement of 12 jurors is needed to convict someone of
24 a crime, but only eight to put them to death. This too is
25 probably unconstitutional, because there was a case, Ramos

1 versus Louisiana. 102 people have been killed by the State of
2 Florida since 1979 from John Spenklink in 19 -- now, I had to
3 change my information, because last night at 6:15 Lewis Gaskin
4 was put to death in the State of Florida by guess what, an eight
5 to four vote. I sure hope he's not innocent. My, my God.
6 Whew.

7 We have no way of knowing how many of these people
8 were actually innocent, but it would be naive to say that that
9 number is zero. Members, please how can you be prolife on one
10 end and prodeath on the other? Thank you, Mr. Speaker.

11 SPEAKER RENNER: Representative Daley, having yielded
12 the balance of his time. Leader Grant, you're recognized in
13 debate.

14 MR. GRANT: Thank you, Mr. Speaker. Would you please
15 recognize Representative Garrison in debate?

16 SPEAKER RENNER: Representative Garrison, you are
17 recognized in debate.

18 MR. GARRISON: Thank you, Mr. Speaker. And I want to
19 take just a moment in debate and thank the good work of my
20 colleague Representative Jacques. This is a very complicated
21 legal issue. And I think everyone who practices in the field of
22 capital litigation will agree. You have handled it
23 extraordinarily well and kudos to you for your hard work and for
24 the work you've done in meeting with everyone, proponents and
25 opponents of the bill, to make sure that the final product

1 befits the seriousness of the issue which is being discussed.

2 We discuss a lot of issues in this chamber. And I've
3 talked on the death penalty a couple of times. You-all know I
4 was a capital prosecutor for a long time. I've done this work.
5 I know the work. It's extraordinarily difficult.

6 Let's take the legal arguments out of it for a second,
7 because Gottlieb and I could talk about that all day. I want to
8 talk to you just for a second in real terms for folks who don't
9 practice in -- practice law. You're not lawyers. What's
10 happening in our -- in our criminal courts as it relates to
11 death penalty litigation. It's a mess. It's a mess right now.
12 When you talk to prosecutors who handle capital cases, when you
13 talk to homicide detectives who work these cases, when you talk
14 to judges who are having to preside over these cases, when you
15 talk to defense attorneys who have to do the litigation, when
16 you talk to the post-conviction folks, when you talk to
17 everybody who is involved with it, it's a mess right now. And
18 quite frankly the unanimity requirement in the penalty phase of
19 the proceeding is a big part of the problem.

20 And while -- let me -- I'll be very candid.
21 Representative Jacques and I have talked about this. This
22 product that we're voting on today that I will be voting up on
23 and in support of, it's not how I would have done it. I would
24 have done things a little bit differently. But the insight and
25 the comments that I had were taken seriously and worked into the

1 bill. And I'm okay with it. Because whenever someone says that
2 may -- this isn't a constitutional, but let me tell you what.
3 This is a constitutional bill. Talk to lawyers and scholars who
4 do capital work, they'll tell you whether they love it or hate
5 it, they all agree that it's constitutional. You may not like
6 the policy, but it is a constitutional piece of legislation.

7 My mentor in the State Attorney's Office years ago, a
8 guy by the name of Dan Skinner, he's probably watching this
9 right now with his buddies. He's the director of the Homicide
10 Unit in Duval County -- told me long ago when he taught me how
11 to be a prosecutor when we would sit there. When you send the
12 jury out into the jury room, you pray for justice. You pray for
13 justice. Now, big -- he said there was a difference between big
14 J justice and little j justice. Big J justice is above our pay
15 grade. That's what you pray for, because that requires insight
16 and wisdom that I don't have and no one in this chamber has.
17 And then there's little j justice which is the justice that we
18 try to work through as officers of the court and people who do
19 this work to make sure that there's accountability in our courts
20 and that justice is served.

21 You know, there was a statement made in debate, how
22 can you be prolife, which I am, and pro death penalty, which as
23 much as I wish I wasn't I am? It's because I've seen the faces
24 of grieving parents. I've looked at the photos. I've seen the
25 dead bodies laying at crime scenes. The four people who were

1 shot in the face at point blank range in Middleburg, Florida.
2 The young developmentally disabled woman who was deceived,
3 car -- was robbed, taken to Jennings State Forest in Clay
4 County, beaten to death with a hammer to where her skull was
5 unrecognizable and left like a piece of meat for the birds to do
6 what they want to do with while the killer decided he was going
7 to take her debit card and run down to St. Petersburg and have a
8 good time with his other girlfriend. Those guys, those two
9 individuals who committed those heinous crimes for which the
10 ultimate penalty was imposed, they had absolutely no regard
11 whatsoever for the life of their victims. And they were true,
12 true victims. Nothing that happens to them in the capital
13 litigation, giving them the death penalty will not bring them
14 back. And it is not for me to decide what their ultimate fate
15 is. But for a system of justice for who we are as people,
16 justice, little j justice was served in their case.

17 But it is not perfect. Little j justice is little j
18 justice for a reason. There are heinous offenders in this world
19 who don't get the death penalty sometimes. And that's
20 unfortunately the way this process works. But, you know the
21 adage that big cases make bad law isn't necessarily true.
22 Because sometimes big cases and big injustices like what we as
23 the state went through in recent months down in Broward County,
24 they don't just sometimes create bad law. What they do is they
25 shine a light on injustices that otherwise we don't want to

1 necessarily look at. What that injustice down in Broward
2 County, that those poor families had to go through as a result
3 of what happened in that case, what it did was bring to light
4 what is happening here. And what is happening is not new. The
5 writer of Ecclesiastics, when he said there's nothing new under
6 the sun, he was exactly right. This is nothing new. You can
7 call it activist jurors. You can call it whatever you want.
8 But activist jurors are not new.

9 In fact, activist jurors getting involved in
10 litigation in criminal cases in not basing their decision on the
11 law and the facts is what leads to the biggest injustices we can
12 possibly imagine whether it's an all white jury in Mississippi
13 acquitting a murder because the victim was black or whether it's
14 today's situation we have.

15 It's reflected in our criminal laws. The very last
16 thing in every criminal case in the State of Florida, the very
17 last thing that a judge tells every single juror before they go
18 into the jury room is this: "Even if you do not like the laws
19 that must be applied, you must use them. For more than two
20 centuries, we have lived by the constitution and the law. No
21 juror has the right to violate rules we all share." No juror
22 has the right to violate rules that we all share.

23 Representative Jacques' legislation is the response
24 and an affirmation of that essential truth. Nothing in this
25 bill is going to make it harder -- nothing in this bill is going

1 to lessen the standard for capital litigation. When someone is
2 charged with the death penalty, the jury knows it up front. 12
3 jurors know from the very outset that this is the most serious
4 of possible cases and they render their verdict unanimously
5 beyond and to the exclusion of every single reasonable doubt.

6 But unlike every other case that we have in the
7 Criminal Justice System, a fundamental precept of our criminal
8 law is the jury decides the fact, the judge decides the
9 sentence. But death is different to my friend
10 Representative Campbell's point. Death is different. And in a
11 death penalty situation, you take those jurors, the pipefitters,
12 the plumbers, the lawyers, the doctors, whoever answer the call
13 to jury service and get on the jury, and we ask them to decide a
14 sentence. And sometimes when that happens, folks make decisions
15 based on things other than do the aggravators outweigh the
16 mitigators.

17 And so what this law does is it puts in place the
18 standards to make sure that in those cases where it's already
19 been determined beyond and to the exclusion of every reasonable
20 doubt that someone who is committed a crime that is worthy of
21 the death penalty has been convicted, that the determination,
22 the recommendation that's made is going to be made in accordance
23 with the law and that the judge is going to weed out the cases
24 that don't deserve capital punishment. And the ones that do,
25 they're going to find their place before the court where the

1 proper sentence can be imposed. It will not be perfect. It is
2 not perfect. But it's better than what it is right now.

3 Representative Jacques, thank you for this good bill.

4 SPEAKER RENNER: Leader Grant, you're recognized for
5 debate.

6 MR. GRANT: Thank you, Mr. Speaker. We waive our
7 time.

8 SPEAKER RENNER: Leader Grant having yielded the
9 remainder of his time, that concludes our debate on CS for CS
10 for SB 450. Representative Jacques, you're recognized to close
11 on your bill.

12 MR. JACQUES: Thank you, Mr. Speaker. And I want to
13 thank all the members in this chamber who weighed in such a
14 heavy topic, an issue that is very consequential in our state.
15 And I had the opportunity to sit down with a lot of you-all
16 during this process prior to every committee stop to discuss
17 what is best practices in fixing what we believe to be a very
18 flawed situation in our death penalty laws.

19 I'd like to thank the speaker for his vision and his
20 commitment to law and order here in our state and to victims'
21 rights. I'd like to thank judiciary staff, Chair Gregory for
22 working with me on this, my own staff, and
23 Representative Garrison, fellow former prosecutor, for your
24 input, and my senate colleagues, Senator Ingoglia for carrying
25 the mantle in the other chamber.

1 Five years ago, one of the most evil acts in our
2 nation's history occurred down in Parkland when an evil
3 individual planned mass murder on children and carried it out.
4 One month later in a Pinellas County courtroom, the family
5 members of Officer Charlie Kondek of Tarpon Springs were
6 devastated, were devastated when that jury came back ten to two
7 for a cop killer that everyone knew was guilty, that everyone
8 knew that he met the aggravating factors that made him eligible
9 for the death penalty, but yet two jurors, two holdouts
10 prevented the full administration of justice in that case.

11 And when the eyes of the nation were in our state,
12 were on our state in that courthouse in South Florida to
13 determine the fate of Nikolas Cruz, those Parkland families were
14 left devastated. They were left devastated, because in that
15 situation no one doubted the guilt of this evil person. I
16 hesitate calling him a person quiet honestly. No one questioned
17 his -- the fact that he met the aggravating factors that would
18 make him eligible for the death penalty. And yet one juror, one
19 activist juror who held firm and convinced two others robbed
20 those families of justice.

21 But, members, it did not have to be this way. It did
22 not have to be this way, because our current death penalty law
23 is based on a flawed Supreme Court decision, decided in 2017,
24 that said that the recommendation for death had to be unanimous.
25 And that same court, the Florida Supreme Court, four years later

1 came back and said we got it wrong. Yes, unanimous obviously to
2 convict somebody. Yes, unanimous to find that an aggravating
3 factor exists that would make somebody eligible for the death
4 penalty. But when it comes to that recommendation, that last
5 phase, there is nothing constitutionally required to demand a
6 unanimous jury recommendation. And so here we sit. All the
7 while, while this flawed Supreme Court case was in existence, it
8 made this legislature change the laws based on that. There was
9 heartache in our state. There was devastation in our state.
10 There was the robbing of true justice in our state.

11 From South Florida with the Parkland families to
12 Northeast Florida where an elderly couple were the victims of
13 one of the most heinous things I've heard. You had a situation
14 where an individual wen into their home, committed a home
15 invasion for financial gain, abducted them, took them off site
16 to the woods and buried them alive. Buried them alive. And
17 when I talk about this case that I learned from prosecutors up
18 in Northeast Florida in committee and I was shocked because
19 Chair Brannan, our own Chuck Brannan, mentioned that he was the
20 investigator in that case. And he talked about going and having
21 the defendant take him to the woods at night, go into the path
22 and seeing where these people were buried alive. And, members,
23 even in that case, even in that case, the jury was not
24 unanimous.

25 And so we come here today to right this wrong.

1 Because in our state's history the jury has gotten it right and
2 sometimes they have gotten it wrong. But what we will not
3 tolerate is when the facts are right in front of them for them
4 to play activist and derail the true administration of justice.
5 Even Ted Bundy who raped and killed his way around Tallahassee,
6 committed murders in Orlando did not get --

7 SPEAKER RENNER: Representative Jacques, time has
8 concluded on your close.

9 The question now recurs on final passage of CS for CS
10 for HB 450. The clerk will unlock the machine and the members
11 will proceed to vote. Have all members voted? Have all members
12 voted? The clerk will lock the machine and report the vote.

13 SECRETARY: 80 yeas, 30 nays, Mr. Speaker.

14 SPEAKER RENNER: Show the bill passes.

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16 [The hearing was concluded.]

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CERTIFICATE OF TRANSCRIBER

1 STATE OF FLORIDA }

2 COUNTY OF POLK }

3 I, ELAINE TURNER-WOOD, Stenographic Court Reporter and
4 Notary Public, certify that I was authorized to and did
5 transcribe the foregoing Senate Session and that the transcript
6 is a true and accurate transcription of the record.
7

8 DATED this 4th day of May, 2023.
9

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Elaine Turner-Wood,
Notary Public, State of Florida
My Commission No. NH 200728
Expires: March 19, 2026

