

By Senator Gutman

34-1016A-98

See HJR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Senate Joint Resolution No. ____

A joint resolution proposing amendments to Sections 1, 2, and 3 of Article V of the State Constitution relating to the judicial branch of government.

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

That the amendments to Sections 1, 2, and 3 of Article V of the State Constitution set forth below are agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 1998:

SECTION 1. Courts; review of criminal cases and juvenile delinquency cases.--

(a) The judicial power shall be vested in a supreme court, a court of criminal appeals, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices. The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions.

(b) Notwithstanding any provision in this article, a state court shall not review or examine the legality of a judgment or sentence imposed in a criminal case or a juvenile delinquency case by a court of competent jurisdiction, except pursuant to a direct appeal of the judgment or sentence to the

1 court having appellate jurisdiction over that criminal case or
2 juvenile delinquency case.

3 SECTION 2. Administration; practice and procedure.--

4 (a) The supreme court shall adopt rules for the
5 practice and procedure in all courts except as provided in
6 Section 3, including the time for seeking appellate review,
7 the administrative supervision of all courts except for the
8 court of criminal appeals, the transfer to the court having
9 jurisdiction of any proceeding when the jurisdiction of
10 another court has been improvidently invoked, and a
11 requirement that no cause shall be dismissed because an
12 improper remedy has been sought. These rules may be repealed
13 by general law enacted by two-thirds vote of the membership of
14 each house of the legislature.

15 (b) The chief justice of the supreme court shall be
16 chosen by a majority of the members of the court. He shall be
17 the chief administrative officer of the judicial system,
18 excluding the court of criminal appeals. He shall have the
19 power to assign justices or judges, including consenting
20 retired justices or judges, to temporary duty in any court for
21 which the judge is qualified, excluding the court of criminal
22 appeals, and to delegate to a chief judge of a judicial
23 circuit the power to assign judges for duty in his respective
24 circuit.

25 (c) A chief judge for each district court of appeal
26 shall be chosen by a majority of the judges thereof or, if
27 there is no majority, by the chief justice. The chief judge
28 shall be responsible for the administrative supervision of the
29 court.

30 (d) A chief judge in each circuit shall be chosen from
31 among the circuit judges as provided by supreme court rule.

1 The chief judge shall be responsible for the administrative
2 supervision of the circuit courts and county courts in his
3 circuit.

4 SECTION 3. Supreme court; court of criminal appeals.--

5 (a) SUPREME COURT.--

6 (1)~~(a)~~ Organization.--The supreme court shall consist
7 of seven justices. Of the seven justices, each appellate
8 district shall have at least one justice elected or appointed
9 from the district to the supreme court who is a resident of
10 the district at the time of the justice's ~~his~~ original
11 appointment or election. Five justices shall constitute a
12 quorum. The concurrence of four justices shall be necessary
13 to a decision. When recusals for cause would prohibit the
14 court from convening because of the requirements of this
15 section, judges assigned to temporary duty may be substituted
16 for justices.

17 (2)~~(b)~~ Jurisdiction.--Except as provided herein,the
18 supreme court:

19 a.~~(1)~~ Shall hear appeals ~~from final judgments of trial~~
20 ~~courts imposing the death penalty and~~ from decisions of
21 district courts of appeal declaring invalid a state statute or
22 a provision of the state constitution.

23 b.~~(2)~~ When provided by general law, shall hear appeals
24 from final judgments entered in proceedings for the validation
25 of bonds or certificates of indebtedness and shall review
26 action of statewide agencies relating to rates or service of
27 utilities providing electric, gas, or telephone service.

28 c.~~(3)~~ May review any decision of a district court of
29 appeal, except in a criminal case or juvenile delinquency
30 case, that expressly declares valid a state statute, or that
31 expressly construes a provision of the state or federal

1 constitution, or that expressly affects a class of
2 constitutional or state officers, or that expressly and
3 directly conflicts with a decision of another district court
4 of appeal or of the supreme court on the same question of law.

5 d.(4) May review any decision, except in a criminal
6 case or juvenile delinquency case, of a district court of
7 appeal that passes upon a question certified by it to be of
8 great public importance, or that is certified by it to be in
9 direct conflict with a decision of another district court of
10 appeal.

11 e.(5) May review any order or judgment, except in a
12 criminal case or juvenile delinquency case, of a trial court
13 certified by the district court of appeal in which an appeal
14 is pending to be of great public importance, or to have a
15 great effect on the proper administration of justice
16 throughout the state, and certified to require immediate
17 resolution by the supreme court.

18 f.(6) May review a question of law, except in a
19 criminal case or juvenile delinquency case, certified by the
20 Supreme Court of the United States or a United States Court of
21 Appeals which is determinative of the cause and for which
22 there is no controlling precedent of the supreme court of
23 Florida.

24 g.(7) May issue writs of prohibition to courts and all
25 writs necessary to the complete exercise of its jurisdiction.

26 h.(8) May issue writs of mandamus and quo warranto to
27 state officers and state agencies.

28 i.(9) May, or any justice may, issue writs of habeas
29 corpus returnable before the supreme court or any justice of
30 the supreme court, a district court of appeal or any judge
31 thereof, or any circuit judge.

1 ~~j.(10)~~ Shall, when requested by the attorney general
2 pursuant to the provisions of Section 10 of Article IV, render
3 an advisory opinion of the justices, addressing issues as
4 provided by general law.

5 (b) COURT OF CRIMINAL APPEALS.--

6 (1) Organization.--There shall be a court of criminal
7 appeals. The court of criminal appeals shall be established as
8 provided by general law. The court of criminal appeals may sit
9 for the transaction of business at any time during the year,
10 and each term shall begin and end with each calendar year.
11 Five judges shall constitute a quorum, and the concurrence of
12 four judges shall be necessary for a decision. The court of
13 criminal appeals may appoint judges for temporary duty and
14 commissioners in aid of the court of criminal appeals as
15 provided by general law.

16 (2) Justices.--The court of criminal appeals shall
17 consist of seven justices. For each appellate district, one
18 justice, who resides in the district at the time of
19 appointment, shall be appointed to the court of criminal
20 appeals. The remaining two justices shall be appointed
21 statewide, and may reside anywhere in the state at the time of
22 original appointment. Each justice shall be nominated and
23 appointed by the governor, with the nomination to be confirmed
24 by the senate; however, justices who are required to reside in
25 the district at the time of appointment must be elected for
26 any subsequent term. The justices appointed statewide by the
27 governor may be reappointed for a subsequent term by the
28 governor, subject to confirmation by the senate. The justices
29 shall have four-year terms concurrent with the term of the
30 office of governor. The time and manner of the elections for
31 the justices shall be provided by general law; however, such

1 elections shall be contested and may not be retention
2 elections. The governor shall designate a chief justice of the
3 court within ninety days of the general election, or as
4 provided by general law. When a vacancy in office occurs
5 before the expiration of the term of office, the governor
6 shall appoint a justice to serve the remaining portion of the
7 term, subject to confirmation by the senate. The
8 qualifications for office and amount of compensation for each
9 justice shall be the same as those for a justice of the
10 supreme court. In cases of demonstrated unfitness to hold
11 office or other judicial misconduct by a justice of the court
12 of criminal appeals, the justice shall be subject to those
13 disciplinary sanctions, including removal from office in
14 appropriate cases, that would be applicable to a justice of
15 the supreme court.

16 (3) Jurisdiction.--The court of criminal appeals shall
17 have final jurisdiction in any appellate case or controversy
18 involving criminal law, criminal penalties, criminal
19 procedure, juvenile delinquency law, juvenile delinquency
20 sanctions, juvenile delinquency procedure, or related actions
21 regarding the interpretation or resolution of matters directly
22 affecting the criminal law or juvenile delinquency law. The
23 court of criminal appeals shall have final appellate
24 jurisdiction and rulemaking authority coextensive with the
25 limits of the state, and its determinations shall be final, in
26 all criminal cases and juvenile delinquency cases, with such
27 exceptions and under such provisions as may be provided herein
28 or by general law enacted by majority vote. The appeal of all
29 cases in which the death penalty has been assessed shall be
30 from the trial court to the court of criminal appeals. In
31 addition, the court of criminal appeals:

1 a. May review any decision in a criminal case or
2 juvenile delinquency case of a district court of appeal with
3 such exceptions as may be provided by general law.

4 b. May review any order or judgment of a trial court
5 in a criminal case or juvenile delinquency case certified by
6 the district court of appeal in which an appeal is pending to
7 be of great public importance, or to have a great effect on
8 the proper administration of justice throughout the state, and
9 certified to require immediate resolution by the court of
10 criminal appeals.

11 c. May review a question of law in a criminal case or
12 juvenile delinquency case certified by the Supreme Court of
13 the United States or a United States Court of Appeals which is
14 determinative of the cause and for which there is no
15 controlling precedent of the supreme court of Florida or court
16 of criminal appeals of Florida.

17 d. May issue writs of prohibition to courts and all
18 writs necessary to the complete exercise of its jurisdiction.

19 e. May issue writs of mandamus and quo warranto to
20 state officers and state agencies.

21 f. May, or any justice may, issue writs of habeas
22 corpus returnable before the court of criminal appeals or any
23 justice of the court of criminal appeals, a district court of
24 appeal or any judge thereof, or any circuit judge.

25 (4) Rules of court.--The court of criminal appeals
26 shall have the final and exclusive authority to adopt and
27 interpret the rules of criminal procedure and juvenile
28 delinquency procedure, and any other rules affecting criminal
29 proceedings or juvenile delinquency proceedings. Any rules
30 adopted by the court of criminal appeals may be repealed by
31 general law enacted by majority vote. The Florida Rules of

1 Criminal Procedure, the Florida Rules of Juvenile Procedure,
2 and any other rules of criminal procedure or juvenile
3 delinquency procedure of this state shall remain in effect
4 until they are superseded by rules adopted by the court of
5 criminal appeals.

6 (c) CLERK AND MARSHAL.--The supreme court shall
7 appoint a clerk and a marshal, and the court of criminal
8 appeals shall appoint a clerk and a marshal. The clerk and
9 marshal of each court ~~who~~ shall hold office during the
10 pleasure of the court and perform such duties as the court
11 directs. Their compensation shall be fixed by general law.
12 The marshal of each court shall have the power to execute the
13 process of the court throughout the state, and in any county
14 may deputize the sheriff or a deputy sheriff for such purpose.

15 BE IT FURTHER RESOLVED that in accordance with the
16 requirements of section 101.161, Florida Statutes, the title
17 and substance of the amendment proposed herein shall appear on
18 the ballot as follows:

19 LIMITATION ON CRIMINAL AND JUVENILE DELINQUENCY
20 APPEALS AND CREATION OF COURT OF CRIMINAL APPEALS

21 Proposing amendments to Sections 1, 2, and 3 of Article
22 V of the State Constitution limiting criminal and juvenile
23 delinquency appeals; transferring criminal and juvenile
24 delinquency jurisdiction of the Florida Supreme Court to a
25 newly created court of criminal appeals; providing for the
26 appointment or election of justices and officers of such
27 court; and transferring rulemaking authority relating to
28 criminal and juvenile delinquency matters from the Supreme
29 Court to the court of criminal appeals.

30
31