

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: SJR 1942

SPONSOR: Senator Crist

SUBJECT: Rules of Criminal, Juvenile, and Postconviction Procedure

DATE: April 5, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This joint resolution proposes to amend Article V, Section 2 of the Florida Constitution, relating to the Supreme Court's authority to adopt rules of practice and procedure. The joint resolution would amend the Florida Constitution to make the process of adopting rules of practice and procedure relating to violations of criminal law, violations of criminal law by juveniles, and postconviction proceedings, similar to the process used to create rules of practice and procedure for the federal courts. The bill would not alter the Supreme Court's authority to adopt rules of practice and procedure in other areas of the law.

The constitutional amendment would create a judicial conference to propose rules of procedure governing violations of criminal law, violations of criminal law by juveniles, and postconviction proceedings. Rules proposed by the judicial conference will be submitted to the Supreme Court for consideration. The Supreme Court will then submit proposed rules to the Legislature by November 30 of the year preceding the effective date of the proposed rule. The Legislature may adopt, reject, or amend proposed rules by general law. If the Legislature does not act by the end of the next legislative session, the proposed rule will be deemed approved.

The joint resolution also provides that a court may not require or authorize collateral or postconviction judicial review of a criminal judgment or sentence except as provided by general law or rule of procedure adopted in accordance with the amendment. It also provides that rules of practice and procedure may not be inconsistent with general law and shall not abridge, enlarge, or modify any substantive right.

If this joint resolution is passed by a 3/5 vote of both houses of the Legislature, it will be submitted to the voters in the general election in November of 2006.

## II. Present Situation:

### *Constitutional Authority*

Article V, Section 2 of the Florida Constitution, authorizes the Supreme Court to “adopt rules of practice and procedure in all courts . . .” The Florida Supreme Court has adopted rules of practice and procedure governing various subjects. For example, there are rules of civil procedure, rules of judicial administration, rules of criminal procedure, rules of worker’s compensation procedure, probate rules, rules of juvenile procedure, and rules of appellate procedure. The same section of the constitution authorizes the Legislature to repeal court rules of procedure with a 2/3 vote of the membership of both houses.

### *Separation of Powers*

Unlike the federal constitution, the Florida constitution includes a specific provision pertaining to the separation of powers among the three branches of government. Article II, Section 3 of the Florida Constitution provides: “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” The Supreme Court has held that it has exclusive authority to enact rules of practice and procedure in all courts. The Legislature’s authority to enact substantive law is also exclusive.

The Florida Supreme Court can protect itself against legislative encroachments on its authority by declaring such enactments an unconstitutional violation of the separation of powers provision. The Legislature’s means of shielding the substantive law it passes from alteration by court rule of procedure is by repealing the rule of procedure. The constitution does not preclude the Supreme Court from reenacting a rule that is similar or identical to one that the Legislature has repealed.

### *Distinguishing Substance from Procedure*

Generally speaking, “substantive law” involves matters of public policy affecting the authority of government and rights of citizens relating to life, liberty, and property. Court “rules of practice and procedure” govern the administration of courts, and the behavior of litigants within a court proceeding.

### *Comparison with the Federal System*

Federal courts have acknowledged for some time that Congress has the authority to regulate matters of practice and procedure in the federal courts. Congress delegated some of its rulemaking power to the Supreme Court of the United States in 1934 by passing the Rules Enabling Act, which gave the Supreme Court the authority to promulgate rules of practice and procedure for federal courts. Notwithstanding this delegation of authority, however, Congress plays a critical role in implementing any rule proposals offered by the Court. All rule proposals are subject to review by Congress and take effect only after the Supreme Court has presented them to Congress, and after Congress has had seven months to review proposed rules or changes. Congress uses the review period to “make sure that the action under the delegation squares with the Congressional purpose.” In fact, the federal statute currently provides that “[s]uch rules shall not abridge, enlarge or modify any substantive right.”

Although Congress has authorized the Court to exercise some legislative authority to regulate the courts, Congress may at any time amend or abridge, by statute, the Federal Rules of Civil Procedure, Rules of Appellate Procedure, Rules of Evidence, or other federal procedural rules promulgated under the Rules Enabling Act.

Rules are proposed by the Judicial Conference of the United States and reviewed by the Supreme Court who, if they approve, forward them to Congress by May 1st. If Congress does not reject, modify, or defer the rules, they take effect as a matter of law on December 1st of the year proposed.

### ***Rule-making in Florida***

The court relies in large part upon volunteer practitioners and other interested parties to study, draft and propose new rules or modifications to existing rules of practice and procedure. The court publishes proposed rules in the Florida Bar News and takes public comment and argument before deciding whether to adopt a rule, or what form it should take.

### ***The Death Penalty Reform Act of 2000***

In a special session held in 2000, the Legislature passed the Death Penalty Reform Act of 2000 (DPRA) which imposed a statute of limitations on post-conviction death penalty appeals and provided that the postconviction process would begin while the case was on direct appeal – thereby moving up the start of that part of the appeals process. The statute of limitations in the DPRA provided that appeals filed after the deadline would be time-barred.

Shortly thereafter, the Florida Supreme Court found the DPRA unconstitutional on separation of powers grounds. The court held: “. . . we find that the DPRA is an unconstitutional encroachment on this Court’s exclusive power to adopt rules for the practice and procedure in all courts.” The Court also found that the DPRA violated due process and equal protection. *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000).

## **III. Effect of Proposed Changes:**

### ***SJR 1942***

This joint resolution proposes amending Article V, section 2 of the Florida Constitution relating to the Supreme Court’s rulemaking authority. The joint resolution proposes to amend the state constitution to:

- provide for the creation of a judicial conference to propose rules of practice and procedure governing violations of criminal law, violations of criminal law for juveniles, and postconviction proceedings;
- provide that the membership of the conference is to be composed according to general law;
- provide that the conference shall adopt rules governing its proceedings and that meetings of the conference shall be open to the public and provide opportunity for comment;
- provide that rules proposed by the conference shall be submitted to the Supreme Court for consideration;
- provide that unless otherwise provided by general law, the Supreme Court shall submit proposed rules to the Legislature by November 30 of the year preceding the effective date of the proposed rule;

- authorize the Legislature to adopt, reject, or amend the proposed rules by general law, which requires a simple majority vote, rather than the two-thirds vote currently required to repeal a rule;
- provide that if the Legislature takes no action upon a proposed rule by adjournment of the next legislative session, the rule shall be deemed approved and unless and until adopted by general law or as provided by the subsection, rules proposed by judicial conference shall have no force or effect;
- provide that a court may not require or authorize collateral or postconviction judicial review of a criminal judgment or sentence except as authorized by general law or rule of postconviction procedure;
- require that rules of practice and procedure shall not be inconsistent with general law, and shall not abridge, enlarge, or modify any substantive right;
- provide that rules of practice and procedure may be repealed by general law, which requires a simple majority, rather than the current two-thirds vote.

Although the resolution would not alter the Supreme Court's authority to adopt rules of practice and procedure in other areas of the law, the Legislature's power to repeal those rules would increase. The two-thirds vote, currently required in the Constitution, would become a simple majority of both houses if the constitutional amendment passes.

If passed by the Legislature, the joint resolution would be placed before the voters for approval or rejection in the November 2006 general election, or at a special election specifically authorized by law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

As previously mentioned in the bill analysis, the Supreme Court of Florida found the Death Penalty Reform Act unconstitutional in April 2000, based largely upon separation of powers grounds. *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000).

SJR 1942, if put on the ballot and approved by voters, would shift the constitutional powers of the court to the legislature, in matters of criminal and postconviction rules of practice and procedure before the courts. This would effectively put an end to separation

of powers claims (as an encroachment on the powers of the court) in criminal and postconviction matters of practice and procedure.

It should also be noted that the balance of power is shifted toward the Legislature in another way – the elimination of the two-thirds vote requirement for repealing a rule of court. So, while the court maintains its purview over rules of practice and procedure outside the area of criminal law, the Legislature’s power to intervene is increased for those areas.

The *Allen* case explains, in detail, the history of the interplay between the constitutionally-derived right to the writ of habeas corpus and the court rules of procedure that followed. The organic right to the writ “shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.” *Art. I, sec. 13, Fla. Const.*

While it may be then, that the Legislature will be given the power to approve rules of court practice and procedure (by constitutional amendment through the approval of the Senate Joint Resolution 1942), the Legislature may not abrogate the constitutionally-derived right to seek redress through the writ of habeas corpus by the constitutional amendment proposed in SJR 1942. If this is the case, it remains to be seen whether the courts will be bound by the constitution to entertain emergency writs filed outside the time limits set forth within the rules. If the courts are so bound by the constitution, the actual effect of the joint resolution may be to inadvertently create a system where there are no time limitations for the filing of postconviction motions at all.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

None.

### **C. Government Sector Impact:**

Currently, the rule-making process is strictly a function of volunteers from the legal practitioner community and other interested parties, along with the court. It is unknown what the costs related to interjecting a legislative component might be, and likewise, whether the judicial branch will incur additional costs due to the new rule-making process proposed by the joint resolution.

## **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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