

By: Raymond

H.J.R. No. 90

A JOINT RESOLUTION

1 proposing a constitutional amendment to abolish the court of
2 criminal appeals and establish one supreme court with civil and
3 criminal appellate jurisdiction.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 11a(a), Article I, Texas Constitution,
6 is amended to read as follows:

7 (a) Any person (1) accused of a felony less than capital in
8 this State, who has been theretofore twice convicted of a felony,
9 the second conviction being subsequent to the first, both in point
10 of time of commission of the offense and conviction therefor, (2)
11 accused of a felony less than capital in this State, committed while
12 on bail for a prior felony for which he has been indicted, (3)
13 accused of a felony less than capital in this State involving the
14 use of a deadly weapon after being convicted of a prior felony, or
15 (4) accused of a violent or sexual offense committed while under the
16 supervision of a criminal justice agency of the State or a political
17 subdivision of the State for a prior felony, after a hearing, and
18 upon evidence substantially showing the guilt of the accused of the
19 offense in (1) or (3) above, of the offense committed while on bail
20 in (2) above, or of the offense in (4) above committed while under
21 the supervision of a criminal justice agency of the State or a
22 political subdivision of the State for a prior felony, may be denied
23 bail pending trial, by a district judge in this State, if said order
24 denying bail pending trial is issued within seven calendar days

1 subsequent to the time of incarceration of the accused; provided,
2 however, that if the accused is not accorded a trial upon the
3 accusation under (1) or (3) above, the accusation and indictment
4 used under (2) above, or the accusation or indictment used under (4)
5 above within sixty (60) days from the time of his incarceration upon
6 the accusation, the order denying bail shall be automatically set
7 aside, unless a continuance is obtained upon the motion or request
8 of the accused; provided, further, that the right of appeal to the
9 Supreme Court [~~of Criminal Appeals~~] of this State is expressly
10 accorded the accused for a review of any judgment or order made
11 hereunder, and said appeal shall be given preference by the Supreme
12 Court [~~of Criminal Appeals~~].

13 SECTION 2. Section 1, Article V, Texas Constitution, is
14 amended to read as follows:

15 Sec. 1. (a) The judicial power of this State shall be vested
16 in one Supreme Court, [~~in one Court of Criminal Appeals,~~] in Courts
17 of Appeals, in District Courts, in County Courts, in Commissioners
18 Courts, in Courts of Justices of the Peace, and in such other courts
19 as may be provided by law.

20 (b) The Legislature may establish such other courts as it
21 may deem necessary and prescribe the jurisdiction and organization
22 thereof, and may conform the jurisdiction of the district and other
23 inferior courts thereto.

24 (c) A reference in this constitution or other law to the
25 Court of Criminal Appeals means the Supreme Court, a reference to a
26 judge of the Court of Criminal Appeals means a justice of the
27 Supreme Court, and a reference to the presiding judge of the Court

1 of Criminal Appeals means the chief justice of the Supreme Court.

2 SECTION 3. Section 1-a(8), Article V, Texas Constitution,
3 is amended to read as follows:

4 (8) After such investigation as it deems necessary, the
5 Commission may in its discretion issue a private or public
6 admonition, warning, reprimand, or requirement that the person
7 obtain additional training or education, or if the Commission
8 determines that the situation merits such action, it may institute
9 formal proceedings and order a formal hearing to be held before it
10 concerning a person holding an office or position specified in
11 Subsection (6) of this Section, or it may in its discretion request
12 the Supreme Court to appoint an active or retired District Judge or
13 Justice of a Court of Appeals, a ~~or~~ retired ~~Judge or~~ Justice of
14 the ~~[Court of Criminal Appeals or the]~~ Supreme Court, or a retired
15 Judge of the Court of Criminal Appeals, as that court existed before
16 January 1, 2016, as a Master to hear and take evidence in the
17 matter, and to report thereon to the Commission. The Master shall
18 have all the power of a District Judge in the enforcement of orders
19 pertaining to witnesses, evidence, and procedure. If, after formal
20 hearing, or after considering the record and report of a Master, the
21 Commission finds good cause therefor, it shall issue an order of
22 public admonition, warning, reprimand, censure, or requirement
23 that the person holding an office or position specified in
24 Subsection (6) of this Section obtain additional training or
25 education, or it shall recommend to a review tribunal the removal or
26 retirement, as the case may be, of the person and shall thereupon
27 file with the tribunal the entire record before the Commission.

1 SECTION 4. Section 3, Article V, Texas Constitution, is
2 amended by amending Subsection (a) and adding Subsections (c) and
3 (d) to read as follows:

4 (a) The Supreme Court shall exercise the judicial power of
5 the state except as otherwise provided in this Constitution. Its
6 jurisdiction shall be co-extensive with the limits of the State and
7 its determinations shall be final [~~except in criminal law matters~~].
8 Its appellate jurisdiction shall be final and shall extend to all
9 cases except [~~in criminal law matters and~~] as otherwise provided in
10 this Constitution or by law. The Supreme Court and the Justices
11 thereof shall have power to issue writs of habeas corpus, as may be
12 prescribed by law, and under such regulations as may be prescribed
13 by law, the said courts and the Justices thereof may issue the writs
14 of mandamus, procedendo, prohibition, certiorari and such other
15 writs, as may be necessary to enforce its jurisdiction. The
16 Legislature may confer original jurisdiction on the Supreme Court
17 to issue writs of quo warranto and mandamus in such cases as may be
18 specified, except as against the Governor of the State.

19 (c) The appeal of all cases in which the death penalty has
20 been assessed shall be to the Supreme Court. The appeal of all
21 other criminal cases shall be to the Courts of Appeals as prescribed
22 by law. In addition, the Supreme Court may, on its own motion,
23 review a decision of a Court of Appeals in a criminal case as
24 provided by law. Discretionary review by the Supreme Court is not a
25 matter of right, but of sound judicial discretion.

26 (d) For the purpose of hearing criminal cases, the Supreme
27 Court may sit in panels of three Justices designated in accordance

1 with rules established by the court. In a panel of three Justices,
2 two Justices constitute a quorum and the concurrence of two
3 Justices is required for a decision. The Chief Justice, under rules
4 established by the court, may convene the court en banc for the
5 purpose of hearing criminal cases. The court must sit en banc
6 during proceedings involving capital punishment and other cases as
7 required by law. When convened en banc, five Justices constitute a
8 quorum and the concurrence of five Justices is required for a
9 decision. The Supreme Court may appoint Commissioners in aid of the
10 court as provided by law.

11 SECTION 5. Section 3-c, Article V, Texas Constitution, is
12 amended to read as follows:

13 Sec. 3-c. (a) The supreme court has [~~and the court of~~
14 ~~criminal appeals have~~] jurisdiction to answer questions of state
15 law certified from a federal appellate court.

16 (b) The supreme court [~~and the court of criminal appeals~~]
17 shall promulgate rules of procedure relating to the review of those
18 questions.

19 SECTION 6. Section 5a, Article V, Texas Constitution, is
20 amended to read as follows:

21 Sec. 5a. The Supreme Court [~~, Court of Criminal Appeals,~~]
22 and each Court of Appeals shall each appoint a clerk of the court,
23 who shall give bond in the manner required by law, may hold office
24 for four years subject to removal by the appointing court for good
25 cause entered of record on the minutes of the court, and shall
26 receive such compensation as the legislature may provide.

27 SECTION 7. Section 5b, Article V, Texas Constitution, is

1 amended to read as follows:

2 Sec. 5b. The Supreme Court [~~and the Court of Criminal~~
3 ~~Appeals~~] may sit at any time during the year at the seat of
4 government or, at the court's discretion, at any other location in
5 this state for the transaction of business, and each term [~~of either~~
6 ~~court~~] shall begin and end with each calendar year.

7 SECTION 8. Section 7a(b), Article V, Texas Constitution, is
8 amended to read as follows:

9 (b) The membership of the board consists of the Chief
10 Justice of the Texas Supreme Court who serves as chairman, [~~the~~
11 ~~presiding judge of the Texas Court of Criminal Appeals,~~] the
12 presiding judge of each of the administrative judicial districts of
13 the state, the president of the Texas Judicial Council, and one
14 person who is licensed to practice law in this state appointed by
15 the governor with the advice and consent of the senate for a term of
16 four years. In the event of a vacancy in the appointed membership,
17 the vacancy is filled for the unexpired term in the same manner as
18 the original appointment.

19 SECTION 9. Section 11, Article V, Texas Constitution, is
20 amended to read as follows:

21 Sec. 11. (a) No judge shall sit in any case wherein the
22 judge may be interested, or where either of the parties may be
23 connected with the judge, either by affinity or consanguinity,
24 within such a degree as may be prescribed by law, or when the judge
25 shall have been counsel in the case. When the Supreme Court or [~~7~~
26 ~~the Court of Criminal Appeals,~~] the Court of Appeals[~~7~~] or any
27 member of [~~any of~~] those courts shall be thus disqualified to hear

1 and determine any case or cases in said court, the same shall be
2 certified to the Governor of the State, who shall immediately
3 commission the requisite number of persons learned in the law for
4 the trial and determination of such cause or causes. When a judge
5 of the District Court is disqualified by any of the causes above
6 stated, the parties may, by consent, appoint a proper person to try
7 said case; or upon their failing to do so, a competent person may be
8 appointed to try the same in the county where it is pending, in such
9 manner as may be prescribed by law.

10 (b) The ~~[And the]~~ District Judges may exchange districts, or
11 hold courts for each other when they may deem it expedient, and
12 shall do so when required by law. This disqualification of judges
13 of inferior tribunals shall be remedied and vacancies in their
14 offices filled as may be prescribed by law.

15 SECTION 10. Section 28(a), Article V, Texas Constitution,
16 is amended to read as follows:

17 (a) A vacancy in the office of Chief Justice, Justice, or
18 Judge of the Supreme Court, ~~[the Court of Criminal Appeals,]~~ the
19 Court of Appeals, or the District Courts shall be filled by the
20 Governor until the next succeeding General Election for state
21 officers, and at that election the voters shall fill the vacancy for
22 the unexpired term.

23 SECTION 11. Section 31(c), Article V, Texas Constitution,
24 is amended to read as follows:

25 (c) The legislature may delegate to the Supreme Court ~~[or~~
26 ~~Court of Criminal Appeals]~~ the power to promulgate such other rules
27 as may be prescribed by law or this Constitution, subject to such

1 limitations and procedures as may be provided by law.

2 SECTION 12. The following temporary provision is added to
3 the Texas Constitution:

4 TEMPORARY PROVISION. (a) This section applies to the
5 constitutional amendment proposed by the 84th Legislature, Regular
6 Session, 2015, abolishing the court of criminal appeals and vesting
7 that court's criminal jurisdiction in the supreme court. The
8 constitutional amendment takes effect January 1, 2016.

9 (b) The court of criminal appeals and the positions of judge
10 and presiding judge of the court of criminal appeals are abolished
11 on January 1, 2016.

12 (c) Unless otherwise provided by the supreme court under
13 this subsection or by other law, a matter pending before the court
14 of criminal appeals immediately before January 1, 2016, is
15 considered pending in the supreme court on that date. The supreme
16 court by rule or order may make any provision necessary to ensure
17 that a change made by the constitutional amendment described by
18 Subsection (a) of this section or by the legislature in conformance
19 with that constitutional amendment does not adversely affect the
20 substantial rights of any party having a matter pending before any
21 court on January 1, 2016.

22 (d) Except as otherwise provided by law, rules adopted by
23 the court of criminal appeals that are in effect immediately before
24 January 1, 2016, are continued in effect until superseded by law or
25 supreme court rules.

26 (e) The supreme court by rule or order may adopt any
27 additional saving or transitional procedures or provisions the

1 supreme court considers appropriate to implement the
2 constitutional amendment described by Subsection (a) of this
3 section fairly and efficiently. A rule or order under this
4 subsection may be superseded by statute.

5 (f) This section expires January 1, 2019.

6 SECTION 13. Sections 4 and 5, Article V, Texas
7 Constitution, are repealed.

8 SECTION 14. This proposed constitutional amendment shall be
9 submitted to the voters at an election to be held November 3, 2015.
10 The ballot shall be printed to provide for voting for or against the
11 proposition: "The constitutional amendment to abolish the court of
12 criminal appeals and establish one supreme court with civil and
13 criminal appellate jurisdiction."