

BILL ANALYSIS

Senate Research Center
78R6052 SLO-D

S.J.R. 40
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Jurisprudence
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DIGEST AND PURPOSE

As proposed, S.J.R. 40 submits a constitutional amendment abolishing the court of criminal appeals and establishing one supreme court with both civil and criminal appellate jurisdiction.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 12 (Section 32, Article V, Texas Constitution) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subsection (a), Section 11a, Article I, Texas Constitution, to provide that the right to appeal to the supreme court, rather than the court of criminal appeals, of this state is expressly accorded the accused for a review of any judgment or order made hereunder, and said appeal must be given preference by the supreme court, rather than the court of criminal appeals.

SECTION 2. Amends Section 1, Article V, Texas Constitution, as follows:

(a) and (b) Created from existing text. Makes a conforming change.

(c) Provides that a reference in this constitution or other law to the court of criminal appeals means the supreme court, and a reference to a judge of the court of criminal appeals means a justice of the supreme court.

SECTION 3. Amends Section 1-a(8), Article V, Texas Constitution, to add new text relating to the appointment of a retired judge of the court of criminal appeals, as that court existed before January 1, 2004.

SECTION 4. Amends Section 3(a), Article V, Texas Constitution, to require the appeal of all cases in which the death penalty has been assessed to be to the supreme court. Requires the appeal of all other criminal cases to be to the courts of appeals prescribed by law. Authorizes the supreme court, in addition, on its own motion, to review a decision of a court of appeals in criminal case as provided by law. Provides that discretionary review by the supreme court is not a matter of right, but of sound judicial discretion. Adds writs of prohibition to the list of writs the supreme court is authorized to issue. Deletes text relating to an exception of jurisdiction involving criminal law matters.

SECTION 5. Amends Section 3-c, Article V, Texas Constitution, to make a conforming change.

SECTION 6. Amends Section 5a, Article V, Texas Constitution, to make a conforming change.

SECTION 7. Amends Section 5b, Article V, Texas Constitution, to make a conforming change.

SECTION 8. Amends Section 7a(b), Article V, Texas Constitution, to make a conforming change.

SECTION 9. Amends Section 11, Article V, Texas Constitution, to make a conforming change.

SECTION 10. Amends Section 28(a), Article V, Texas Constitution, to make a conforming change.

SECTION 11. Amends Section 31(c), Article V, Texas Constitution, to make a conforming change.

SECTION 12. Amends Article V, Texas Constitution, by adding Section 32, as follows:

Sec. 32. TEMPORARY PROVISION. (a) Provides that this section applies to the constitutional amendment proposed by the 78th Legislature, Regular Session, 2003, abolishing the court of criminal appeals and vesting that court's criminal jurisdiction in the supreme court. Provides that the constitutional amendment takes effect January 1, 2004.

(b) Provides that the court of criminal appeals and the positions of judge and presiding judge of the court of criminal appeals are abolished on January 1, 2004.

(c) Provides that unless otherwise provided by the supreme court under this subsection or by other law, a matter pending before the court of criminal appeals immediately before January 1, 2004, is considered pending in the supreme court on that date. Authorizes the supreme court by rule or order to make any provision necessary to ensure that a change made by the constitutional amendment described by Subsection (a) of this section or by the legislature in conformance with that constitutional amendment does not adversely affect the substantial rights of any party having a matter pending before any court on January 1, 2004.

(d) Provides that except as otherwise provided by law, rules adopted by the court of criminal appeals that are in effect immediately before January 1, 2004, are continued in effect until superseded by law or supreme court rules.

(e) Authorizes the supreme court by rule or order to adopt any additional saving or transitional procedures or provisions the supreme court considers appropriate to implement the constitutional amendment described by Subsection (a) of this section fairly and efficiently. A rule or order under this subsection may be superseded by statute.

(f) Provides that this section expires January 1, 2007.

SECTION 13. Repealer: Section 4 (Court of Criminal Appeals; Judges) and Section 5 (Jurisdiction of Court of Criminal Appeals; Terms of Court; Clerk), Article V, Texas Constitution.

SECTION 14. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 4, 2003. Requires the ballot to be printed to provide for voting for or against the proposition: "The constitutional amendment abolishing the court of criminal appeals and establishing one supreme court with civil and criminal appellate jurisdiction."