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CRC ACTION

Commissioner .
Comm: FAV .
04/05/2018 .
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. .
. .

The Committee on Style and Drafting (Jordan) recommended the following:

CRC Amendment (with title amendment)

Delete everything after the proposal clause
and insert:

Section 16 of Article I of the State Constitution is
amended to read:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 16. Rights of accused and of victims.—

(a) In all criminal prosecutions the accused shall, upon



11 demand, be informed of the nature and cause of the accusation,
12 and shall be furnished a copy of the charges, and shall have the
13 right to have compulsory process for witnesses, to confront at
14 trial adverse witnesses, to be heard in person, by counsel or
15 both, and to have a speedy and public trial by impartial jury in
16 the county where the crime was committed. If the county is not
17 known, the indictment or information may charge venue in two or
18 more counties conjunctively and proof that the crime was
19 committed in that area shall be sufficient; but before pleading
20 the accused may elect in which of those counties the trial will
21 take place. Venue for prosecution of crimes committed beyond the
22 boundaries of the state shall be fixed by law.

23 (b) To preserve and protect the right of crime victims to
24 achieve justice, ensure a meaningful role throughout the
25 criminal and juvenile justice systems for crime victims, and
26 ensure that crime victims' rights and interests are respected
27 and protected by law in a manner no less vigorous than
28 protections afforded to criminal defendants and juvenile
29 delinquents, every victim is entitled to the following rights,
30 beginning at the time of his or her victimization:

31 (1) The right to due process and to be treated with
32 fairness and respect for the victim's dignity.

33 (2) The right to be free from intimidation, harassment, and
34 abuse.

35 (3) The right, within the judicial process, to be
36 reasonably protected from the accused and any person acting on
37 behalf of the accused. However, nothing contained herein is
38 intended to create a special relationship between the crime
39 victim and any law enforcement agency or office absent a special



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40 relationship or duty as defined by Florida law.

41 (4) The right to have the safety and welfare of the victim
42 and the victim's family considered when setting bail, including
43 setting pretrial release conditions that protect the safety and
44 welfare of the victim and the victim's family.

45 (5) The right to prevent the disclosure of information or
46 records that could be used to locate or harass the victim or the
47 victim's family, or which could disclose confidential or
48 privileged information of the victim.

49 (6) A victim shall have the following specific rights upon
50 request:

51 a. The right to reasonable, accurate, and timely notice of,
52 and to be present at, all public proceedings involving the
53 criminal conduct, including, but not limited to, trial, plea,
54 sentencing, or adjudication, even if the victim will be a
55 witness at the proceeding, notwithstanding any rule to the
56 contrary. A victim shall also be provided reasonable, accurate,
57 and timely notice of any release or escape of the defendant or
58 delinquent, and any proceeding during which a right of the
59 victim is implicated.

60 b. The right to be heard in any public proceeding involving
61 pretrial or other release from any form of legal constraint,
62 plea, sentencing, adjudication, or parole, and any proceeding
63 during which a right of the victim is implicated.

64 c. The right to confer with the prosecuting attorney
65 concerning any plea agreements, participation in pretrial
66 diversion programs, release, restitution, sentencing, or any
67 other disposition of the case.

68 d. The right to provide information regarding the impact of



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69 the offender's conduct on the victim and the victim's family to
70 the individual responsible for conducting any presentence
71 investigation or compiling any presentence investigation report,
72 and to have any such information considered in any sentencing
73 recommendations submitted to the court.

74 e. The right to receive a copy of any presentence report,
75 and any other report or record relevant to the exercise of a
76 victim's right, except for such portions made confidential or
77 exempt by law.

78 f. The right to be informed of the conviction, sentence,
79 adjudication, place and time of incarceration, or other
80 disposition of the convicted offender, any scheduled release
81 date of the offender, and the release of or the escape of the
82 offender from custody.

83 g. The right to be informed of all postconviction processes
84 and procedures, to participate in such processes and procedures,
85 to provide information to the release authority to be considered
86 before any release decision is made, and to be notified of any
87 release decision regarding the offender. The parole or early
88 release authority shall extend the right to be heard to any
89 person harmed by the offender.

90 h. The right to be informed of clemency and expungement
91 procedures, to provide information to the governor, the court,
92 any clemency board, and other authority in these procedures, and
93 to have that information considered before a clemency or
94 expungement decision is made; and to be notified of such
95 decision in advance of any release of the offender.

96 (7) The rights of the victim, as provided in subparagraph
97 (6)a., subparagraph (6)b., or subparagraph (6)c., that apply to



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98 any first appearance proceeding are satisfied by a reasonable
99 attempt by the appropriate agency to notify the victim and
100 convey the victim's views to the court.

101 (8) The right to the prompt return of the victim's property
102 when no longer needed as evidence in the case.

103 (9) The right to full and timely restitution in every case
104 and from each convicted offender for all losses suffered, both
105 directly and indirectly, by the victim as a result of the
106 criminal conduct.

107 (10) The right to proceedings free from unreasonable delay,
108 and to a prompt and final conclusion of the case and any related
109 postjudgment proceedings.

110 a. The state attorney may file a good faith demand for a
111 speedy trial and the trial court shall hold a calendar call,
112 with notice, within fifteen days of the filing demand, to
113 schedule a trial to commence at a date at least five days but no
114 more than sixty days after the date of the calendar call unless
115 the trial judge enters an order with specific findings of fact
116 justifying a trial date more than sixty days after the calendar
117 call.

118 b. All state-level appeals and collateral attacks on any
119 judgment must be complete within two years from the date of
120 appeal in non-capital cases and five years in capital cases,
121 unless a court enters an order with specific findings as to why
122 the court was unable to comply with this subparagraph and the
123 circumstances causing the delay. Each year, the chief judge of
124 any district court of appeal or the chief justice of the supreme
125 court shall report on a case-by-case basis to the speaker of the
126 house of representatives and the president of the senate all



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127 cases where the court entered an order regarding inability to
128 comply with this subparagraph. The legislature may enact
129 legislation to implement this subparagraph.

130 (11) The right to be informed of these rights, and to be
131 informed that victims can seek the advice of an attorney with
132 respect to their rights. This information shall be made
133 available to the general public and provided to all crime
134 victims in the form of a card, or other means that is intended
135 to effectively advise the victim of their rights under this
136 section.

137 (c) The victim, the retained attorney of the victim, a
138 lawful representative of the victim, or the office of the state
139 attorney upon request of the victim, may assert and seek
140 enforcement of the rights enumerated in this section and any
141 other right afforded to a victim by law in any trial or
142 appellate court, or before any other authority with jurisdiction
143 over the case, as a matter of right. The court or other
144 authority with jurisdiction shall act promptly on such a
145 request, affording a remedy by due course of law for the
146 violation of any right. The reasons for any decision regarding
147 the disposition of a victim's right shall be clearly stated on
148 the record.

149 (d) The granting of these rights enumerated in this section
150 to victims may not be construed to deny or impair any other
151 rights possessed by victims. The provisions of this section
152 apply throughout criminal and juvenile justice processes are
153 self-executing and do not require implementing legislation. This
154 section may not be construed to create any cause of action for
155 damages against the state or a political subdivision of the



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156 state, or any officer, employee, or agent of the state or its
157 political subdivisions.

158 (e) As used in this section, a "victim" is a person who
159 suffers direct or threatened physical, psychological, or
160 financial harm as a result of the commission or attempted
161 commission of a crime or delinquent act or against whom the
162 crime or delinquent act is committed. The term "victim" includes
163 the victim's lawful representative, the parent or guardian of a
164 minor, or the next of kin of a homicide victim, except upon a
165 showing that the interest of such individual would be in actual
166 or potential conflict with the interests of the victim. The term
167 "victim" does not include the accused. The terms "crime" and
168 "criminal" include delinquent acts and conduct ~~Victims of crime~~
169 ~~or their lawful representatives, including the next of kin of~~
170 ~~homicide victims, are entitled to the right to be informed, to~~
171 ~~be present, and to be heard when relevant, at all crucial stages~~
172 ~~of criminal proceedings, to the extent that these rights do not~~
173 ~~interfere with the constitutional rights of the accused.~~

174
175 Section 8 of Article V of the State Constitution is
176 amended, and section 21 is added to that article, to read:

177 ARTICLE V

178 JUDICIARY

179 SECTION 8. Eligibility.—No person shall be eligible for
180 office of justice or judge of any court unless the person is an
181 elector of the state and resides in the territorial jurisdiction
182 of the court. No justice or judge shall serve after attaining
183 the age of seventy-five ~~seventy~~ years except upon temporary
184 assignment ~~or to complete a term, one-half of which has been~~



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185 ~~served~~. No person is eligible for the office of justice of the
186 supreme court or judge of a district court of appeal unless the
187 person is, and has been for the preceding ten years, a member of
188 the bar of Florida. No person is eligible for the office of
189 circuit judge unless the person is, and has been for the
190 preceding five years, a member of the bar of Florida. Unless
191 otherwise provided by general law, no person is eligible for the
192 office of county court judge unless the person is, and has been
193 for the preceding five years, a member of the bar of Florida.
194 Unless otherwise provided by general law, a person shall be
195 eligible for election or appointment to the office of county
196 court judge in a county having a population of 40,000 or less if
197 the person is a member in good standing of the bar of Florida.

198 SECTION 21. Judicial interpretation of statutes and rules.-
199 In interpreting a state statute or rule, a state court or an
200 officer hearing an administrative action pursuant to general law
201 may not defer to an administrative agency's interpretation of
202 such statute or rule, and must instead interpret such statute or
203 rule de novo.

204
205 A new section is added to Article XII to the State
206 Constitution to read:

207 ARTICLE XII

208 SCHEDULE

209 Eligibility of justices and judges.-The amendment to
210 Section 8 of Article V, which increases the age at which a
211 justice or judge is no longer eligible to serve in judicial
212 office except upon temporary assignment, shall take effect July
213 1, 2019.



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214
215 BE IT FURTHER PROPOSED that the following statement be placed on
216 the ballot:

217
218 RIGHTS OF CRIME VICTIMS; JUDGES.—Creates constitutional
219 rights for victims of crime; requires courts to facilitate
220 victims' rights; authorizes victims to enforce their rights
221 throughout criminal and juvenile justice processes. Requires
222 judges and hearing officers to independently interpret statutes
223 and rules rather than deferring to government agency's
224 interpretation. Raises mandatory retirement age of state judges
225 from seventy to seventy-five years; deletes authorization for
226 judges to complete term if one-half of term has been served by
227 retirement age.

228
229 ===== T I T L E A M E N D M E N T =====

230 And the title is amended as follows:

231 Delete everything before the proposal clause
232 and insert:

233 REVISION 1

234
235 A proposal to amend Section 16 of Article I of the
236 State Constitution to revise and establish additional
237 rights of victims of crime; create Section 21 of
238 Article V of the State Constitution to require a state
239 court or an administrative law judge to interpret a
240 state statute or rule de novo in litigation between an
241 administrative agency and a private party and not
242 merely defer to the administrative agency's



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243 interpretation; and amend Section 8 of Article V and
244 to create a new section in Article XII of the State
245 Constitution to increase the age after which a justice
246 or judge may no longer serve in a judicial office.