

By: Raymond

H.J.R. No. 35

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 jurisdiction.

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

5 SECTION 1. Subsection (a), Section 11a, Article I, Texas  
6 Constitution, 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. Subsection (8), Section 1-a, Article V, Texas  
3 Constitution, 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 the public censure, removal, or retirement of a person  
11 holding an office or position specified in Subsection (6) of this  
12 Section, or it may in its discretion request the Supreme Court to  
13 appoint an active or retired District Judge or Justice of a Court of  
14 Appeals, a [or] retired [Judge or] Justice of the [Court of Criminal  
15 Appeals or the] Supreme Court, or a retired Judge of the Court of  
16 Criminal Appeals, as that court existed before January 1, 2012, as a  
17 Master to hear and take evidence in any such matter, and to report  
18 thereon to the Commission. The Master shall have all the power of a  
19 District Judge in the enforcement of orders pertaining to  
20 witnesses, evidence, and procedure. If, after formal hearing, or  
21 after considering the record and report of a Master, the Commission  
22 finds good cause therefor, it shall issue an order of public censure  
23 or it shall recommend to a review tribunal the removal or  
24 retirement, as the case may be, of the person in question holding an  
25 office or position specified in Subsection (6) of this Section and  
26 shall thereupon file with the tribunal the entire record before the  
27 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. Subsection (b), Section 7a, Article V, Texas  
8 Constitution, is 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 82nd Legislature, Regular  
6 Session, 2011, 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, 2012.

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, 2012.

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, 2012, 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, 2012.

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, 2012, 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, 2015.

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 8, 2011.  
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."