

By the Committee on Style and Drafting

350-00431-17

20176001__

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

REVISION 1

A proposal to amend Section 16 of Article I of the State Constitution to revise and establish additional rights of victims of crime; create Section 21 of Article V of the State Constitution to require a state court or an administrative law judge to interpret a state statute or rule de novo in litigation between an administrative agency and a private party and not merely defer to the administrative agency's interpretation; and amend Section 8 of Article V and to create a new section in Article XII of the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office.

Be It Proposed by the Constitution Revision Commission of Florida:

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 demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or

350-00431-17

20176001__

33 more counties conjunctively and proof that the crime was
34 committed in that area shall be sufficient; but before pleading
35 the accused may elect in which of those counties the trial will
36 take place. Venue for prosecution of crimes committed beyond the
37 boundaries of the state shall be fixed by law.

38 (b) To preserve and protect the right of crime victims to
39 achieve justice, ensure a meaningful role throughout the
40 criminal and juvenile justice systems for crime victims, and
41 ensure that crime victims' rights and interests are respected
42 and protected by law in a manner no less vigorous than
43 protections afforded to criminal defendants and juvenile
44 delinquents, every victim is entitled to the following rights,
45 beginning at the time of his or her victimization:

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

48 (2) The right to be free from intimidation, harassment, and
49 abuse.

50 (3) The right, within the judicial process, to be
51 reasonably protected from the accused and any person acting on
52 behalf of the accused. However, nothing contained herein is
53 intended to create a special relationship between the crime
54 victim and any law enforcement agency or office absent a special
55 relationship or duty as defined by Florida law.

56 (4) The right to have the safety and welfare of the victim
57 and the victim's family considered when setting bail, including
58 setting pretrial release conditions that protect the safety and
59 welfare of the victim and the victim's family.

60 (5) The right to prevent the disclosure of information or
61 records that could be used to locate or harass the victim or the

350-00431-17

20176001__

62 victim's family, or which could disclose confidential or
63 privileged information of the victim.

64 (6) A victim shall have the following specific rights upon
65 request:

66 a. The right to reasonable, accurate, and timely notice of,
67 and to be present at, all public proceedings involving the
68 criminal conduct, including, but not limited to, trial, plea,
69 sentencing, or adjudication, even if the victim will be a
70 witness at the proceeding, notwithstanding any rule to the
71 contrary. A victim shall also be provided reasonable, accurate,
72 and timely notice of any release or escape of the defendant or
73 delinquent, and any proceeding during which a right of the
74 victim is implicated.

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

79 c. The right to confer with the prosecuting attorney
80 concerning any plea agreements, participation in pretrial
81 diversion programs, release, restitution, sentencing, or any
82 other disposition of the case.

83 d. The right to provide information regarding the impact of
84 the offender's conduct on the victim and the victim's family to
85 the individual responsible for conducting any presentence
86 investigation or compiling any presentence investigation report,
87 and to have any such information considered in any sentencing
88 recommendations submitted to the court.

89 e. The right to receive a copy of any presentence report,
90 and any other report or record relevant to the exercise of a

350-00431-17

20176001__

91 victim's right, except for such portions made confidential or
92 exempt by law.

93 f. The right to be informed of the conviction, sentence,
94 adjudication, place and time of incarceration, or other
95 disposition of the convicted offender, any scheduled release
96 date of the offender, and the release of or the escape of the
97 offender from custody.

98 g. The right to be informed of all postconviction processes
99 and procedures, to participate in such processes and procedures,
100 to provide information to the release authority to be considered
101 before any release decision is made, and to be notified of any
102 release decision regarding the offender. The parole or early
103 release authority shall extend the right to be heard to any
104 person harmed by the offender.

105 h. The right to be informed of clemency and expungement
106 procedures, to provide information to the governor, the court,
107 any clemency board, and other authority in these procedures, and
108 to have that information considered before a clemency or
109 expungement decision is made; and to be notified of such
110 decision in advance of any release of the offender.

111 (7) The rights of the victim, as provided in subparagraph
112 (6)a., subparagraph (6)b., or subparagraph (6)c., that apply to
113 any first appearance proceeding are satisfied by a reasonable
114 attempt by the appropriate agency to notify the victim and
115 convey the victim's views to the court.

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

118 (9) The right to full and timely restitution in every case
119 and from each convicted offender for all losses suffered, both

350-00431-17

20176001__

120 directly and indirectly, by the victim as a result of the
121 criminal conduct.

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

125 a. The state attorney may file a good faith demand for a
126 speedy trial and the trial court shall hold a calendar call,
127 with notice, within fifteen days of the filing demand, to
128 schedule a trial to commence at a date at least five days but no
129 more than sixty days after the date of the calendar call unless
130 the trial judge enters an order with specific findings of fact
131 justifying a trial date more than sixty days after the calendar
132 call.

133 b. All state-level appeals and collateral attacks on any
134 judgment must be complete within two years from the date of
135 appeal in non-capital cases and five years in capital cases,
136 unless a court enters an order with specific findings as to why
137 the court was unable to comply with this subparagraph and the
138 circumstances causing the delay. Each year, the chief judge of
139 any district court of appeal or the chief justice of the supreme
140 court shall report on a case-by-case basis to the speaker of the
141 house of representatives and the president of the senate all
142 cases where the court entered an order regarding inability to
143 comply with this subparagraph. The legislature may enact
144 legislation to implement this subparagraph.

145 (11) The right to be informed of these rights, and to be
146 informed that victims can seek the advice of an attorney with
147 respect to their rights. This information shall be made
148 available to the general public and provided to all crime

350-00431-17

20176001__

149 victims in the form of a card, or other means that is intended
150 to effectively advise the victim of their rights under this
151 section.

152 (c) The victim, the retained attorney of the victim, a
153 lawful representative of the victim, or the office of the state
154 attorney upon request of the victim, may assert and seek
155 enforcement of the rights enumerated in this section and any
156 other right afforded to a victim by law in any trial or
157 appellate court, or before any other authority with jurisdiction
158 over the case, as a matter of right. The court or other
159 authority with jurisdiction shall act promptly on such a
160 request, affording a remedy by due course of law for the
161 violation of any right. The reasons for any decision regarding
162 the disposition of a victim's right shall be clearly stated on
163 the record.

164 (d) The granting of these rights enumerated in this section
165 to victims may not be construed to deny or impair any other
166 rights possessed by victims. The provisions of this section
167 apply throughout criminal and juvenile justice processes are
168 self-executing and do not require implementing legislation. This
169 section may not be construed to create any cause of action for
170 damages against the state or a political subdivision of the
171 state, or any officer, employee, or agent of the state or its
172 political subdivisions.

173 (e) As used in this section, a "victim" is a person who
174 suffers direct or threatened physical, psychological, or
175 financial harm as a result of the commission or attempted
176 commission of a crime or delinquent act or against whom the
177 crime or delinquent act is committed. The term "victim" includes

350-00431-17

20176001__

178 the victim's lawful representative, the parent or guardian of a
 179 minor, or the next of kin of a homicide victim, except upon a
 180 showing that the interest of such individual would be in actual
 181 or potential conflict with the interests of the victim. The term
 182 "victim" does not include the accused. The terms "crime" and
 183 "criminal" include delinquent acts and conduct ~~Victims of crime~~
 184 ~~or their lawful representatives, including the next of kin of~~
 185 ~~homicide victims, are entitled to the right to be informed, to~~
 186 ~~be present, and to be heard when relevant, at all crucial stages~~
 187 ~~of criminal proceedings, to the extent that these rights do not~~
 188 ~~interfere with the constitutional rights of the accused.~~

189
 190 Section 8 of Article V of the State Constitution is
 191 amended, and section 21 is added to that article, to read:

ARTICLE V

JUDICIARY

194 SECTION 8. Eligibility.—No person shall be eligible for
 195 office of justice or judge of any court unless the person is an
 196 elector of the state and resides in the territorial jurisdiction
 197 of the court. No justice or judge shall serve after attaining
 198 the age of seventy-five ~~seventy~~ years except upon temporary
 199 assignment ~~or to complete a term, one-half of which has been~~
 200 ~~served~~. No person is eligible for the office of justice of the
 201 supreme court or judge of a district court of appeal unless the
 202 person is, and has been for the preceding ten years, a member of
 203 the bar of Florida. No person is eligible for the office of
 204 circuit judge unless the person is, and has been for the
 205 preceding five years, a member of the bar of Florida. Unless
 206 otherwise provided by general law, no person is eligible for the

350-00431-17

20176001__

207 office of county court judge unless the person is, and has been
208 for the preceding five years, a member of the bar of Florida.
209 Unless otherwise provided by general law, a person shall be
210 eligible for election or appointment to the office of county
211 court judge in a county having a population of 40,000 or less if
212 the person is a member in good standing of the bar of Florida.

213 SECTION 21. Judicial interpretation of statutes and rules.-
214 In interpreting a state statute or rule, a state court or an
215 officer hearing an administrative action pursuant to general law
216 may not defer to an administrative agency's interpretation of
217 such statute or rule, and must instead interpret such statute or
218 rule de novo.

219
220 A new section is added to Article XII to the State
221 Constitution to read:

ARTICLE XII

SCHEDULE

224 Eligibility of justices and judges.-The amendment to
225 Section 8 of Article V, which increases the age at which a
226 justice or judge is no longer eligible to serve in judicial
227 office except upon temporary assignment, shall take effect July
228 1, 2019.

229
230 BE IT FURTHER PROPOSED that the following statement be placed on
231 the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE I, SECTION 16

ARTICLE V, SECTIONS 8, 21

350-00431-17

20176001__

236
237
238
239
240
241
242
243
244
245
246

ARTICLE XII, NEW SECTION

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