

**Constitution Revision Commission  
Declaration Of Rights Committee  
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 34

Relating to: DECLARATION OF RIGHTS, Right to bear arms; Pretrial release and detention;  
Prosecution for crime; offenses committed by children; Taxpayers' Bill of Rights;  
Claimant's right to fair compensation

Introducer(s): Commissioner Carlton

Article/Section affected: Article I, Section(s) 8, 14, 15, 25 and 26.

Date: December 8, 2017

REFERENCE	ACTION
1. <u>DR</u>	<u>Pre-meeting</u>

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**I. SUMMARY:**

This proposal amends several provisions of Article I of the Florida Constitution – the “Declaration of Rights”. The amendments are technical and non-substantive revisions identified by the Declaration of Rights Committee to improve the clarity and organization of Article I of the Florida Constitution. The amended provisions are intended to have the same substantive meaning currently accorded to them.

If passed by the Constitution Revision Commission, the proposed technical and non-substantive revisions will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposed technical and non-substantive revisions will take effect on January 8, 2019.

**II. SUBSTANTIVE ANALYSIS:**

**A. PRESENT SITUATION:**

Article I of the Florida Constitution, the “Declaration of Rights,” comprises the basic liberties and rights guaranteed to persons in the state of Florida. The Declaration of Rights Committee, as established by the 2017-2018 Constitution Revision Commission (CRC), has the authority to examine issues and consider proposed constitutional revisions arising under or related to Article I, the Declaration of Rights.

In furtherance of the CRC constitutional mandate to “examine the state constitution,”<sup>1</sup> on October 3, 2017, the Declaration of Rights Committee met to identify and discuss potential technical and non-substantive revisions to Article I that would improve its clarity and organization.<sup>2</sup> The technical and non-substantive amendments identified and discussed by the Declaration of Rights Committee are attached hereto as “**Attachment A.**”

## **B. EFFECT OF PROPOSED CHANGES:**

This proposal adopts the following Article I technical and non-substantive amendments identified and discussed by the Declaration of Rights Committee on October, 3, 2017 (see **Attachment “A”**):

- Article I, Section 8 – Right to bear arms: This section is amended to re-organize provisions relating to the mandatory three-day waiting period for handgun purchases. Subsections (b) and (d) are combined.
- Article I, Section 14 – Pretrial release and detention: This section is amended to move the dependent clause, “unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great,” to the end of the first sentence of the section rather than the beginning.
- Article I, Section 15 – Prosecution for crime; offenses committed by children: This section is amended to re-organize provisions relating to the juvenile justice system.
- Article I, Section 25 – Taxpayers’ Bill of Rights: This section is amended to remove the effective date from the text of the Florida Constitution.
- Article I, Section 26 – Claimant’s right to fair compensation: This section is amended to remove duplicative title language and the effective date from the text of the Florida Constitution.

The Article I amendments made by this proposal are intended only as technical and non-substantive revisions to improve the clarity and organization of Article I of the Florida Constitution. The amended provisions are intended to have the same substantive meaning currently accorded to them.

If approved by the voters, the proposed technical and non-substantive revisions will take effect on January 8, 2019.<sup>3</sup>

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<sup>1</sup> FLA. CONST. art. XI, s. 2 (1968).

<sup>2</sup> *Meeting Packet*, FLORIDA CONSTITUTION REVISION COMMISSION DECLARATION OF RIGHTS COMMITTEE, October 3, 2017, available at [http://flcra.gov/PublishedContent/Committees/2017-2018/DR/MeetingRecords/MeetingPacket\\_46.pdf](http://flcra.gov/PublishedContent/Committees/2017-2018/DR/MeetingRecords/MeetingPacket_46.pdf).

<sup>3</sup> See FLA. CONST. art XI, s. 5(e) (1968) (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

**C. FISCAL IMPACT:**

The proposal does not appear to have a fiscal impact on state or local government.

**III. Additional Information:**

**A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

**B. Amendments:**

None.

**C. Technical Deficiencies:**

None.

**D. Related Issues:**

None.

**Attachment “A”**

**ARTICLE I  
THE DECLARATION OF RIGHTS  
TECHNICAL REVISIONS FOR COMMITTEE CONSIDERATION**

SECTION 8. Right to bear arms.—

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. The mandatory 3-day waiting period shall not apply to the trade in of another handgun or to holders of a concealed weapon permit as prescribed in Florida law.

(1) For the purposes of this subsection ~~section~~, “purchase” means the transfer of money or other valuable consideration to the retailer, and “handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. ~~Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.~~

(2) ~~(e)~~ The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

~~(d) This restriction shall not apply to a trade in of another handgun.~~

***Section 8 Revision Note: Combines all provisions relating to the mandatory 3-day waiting period for handgun purchases into one subsection – subsection (b).***

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SECTION 14. Pretrial release and detention.—~~Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great,~~ Every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions except persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

***Section 14 Revision Note: Stylistic and grammatical changes to clarify provisions regarding pretrial release and detention.***

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## SECTION 15. Prosecution for crime; offenses committed by children.—

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

(b) When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. A child found delinquent shall be disciplined as provided by law. Any child charged with a violation of law as an act of delinquency, so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. ~~A child found delinquent shall be disciplined as provided by law.~~

***Section 15 Revision Note: Stylistic and grammatical changes to clarify provisions regarding juvenile justice system.***

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SECTION 17. Excessive punishments; death penalty.—

(a) Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. ~~The death penalty is an authorized punishment for capital crimes designated by the legislature.~~ The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution.

(b) The death penalty is an authorized punishment for capital crimes designated by the legislature. Any method of execution shall be allowed, unless prohibited by the United States Constitution. Methods of execution may be designated by the legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid. In any case in which an execution method is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.

***Section 17 Revision Note: Revises catchline of the section to include the death penalty. Places death penalty provisions in separate subsection.***

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## SECTION 23. Right of privacy.—

(a) Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

(b) Notwithstanding a minor's right of privacy provided in subsection (a), the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification. The Legislature shall not limit or deny the privacy

right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court.

***Section 23 Revision Note: Transfers Article X, § 22 to Article I, § 23 to combine constitutional privacy provisions.***

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SECTION 25. Taxpayers' Bill of Rights.—By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state. ~~This section shall be effective July 1, 1993.~~

***Section 25 Revision Note: Removes effective date from the text of the constitution.***

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SECTION 26. Claimant's right to fair compensation.—

~~(a) Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.~~

~~(b) This Amendment shall take effect on the day following approval by the voters.~~

***Section 26 Revision Note: Removes duplicative title language and the effective date from the text of the constitution.***

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~~SECTION 27. Marriage defined.—Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.~~

***Section 27 Revision Note: Invalidated by Obergefell v. Hodges, 135 S. Ct. 2584 (2015)***