

CONSTITUTIONAL AMENDMENT FULL TEXT

Ballot Title: Judicial Discretion in Sentencing in Criminal Cases

Ballot Summary: Provides strict separation between legislative branch and judicial branch with respect to sentencing in all criminal cases to give sentencing judges discretion to consider certain factors before formulating appropriate sentences and provides individuals currently serving any fixed sentence or mandatory sentence a means to petition the court of original jurisdiction to obtain a resentencing hearing to allow sentencing judges discretion to consider those factors before formulating appropriate sentences.

Article and Section Being Created or Amended: Amends Article II, Section 3

Full Text of the Proposed Amendment: SECTION 3. Branches of government—

(a) The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

(b) There shall remain a strict separation between the legislative branch and the judicial branch with respect to sentencing in criminal cases. Although the legislature may provide recommended guidelines for sentencing and set statutory ranges for offenses, it shall not set by law any fixed sentence of incarceration for any offense. Sentencing judges shall be vested with all power necessary to enter an appropriate sentence, within the statutory range provided for the offense, in each case set for sentencing. Sentencing judges may take into consideration a state attorney's request for the imposition of a mandatory sentence; however, the judge retains the exclusive authority not to impose such sentence.

(c) Sentencing judges shall be tasked with considering the unique facts of each case, including the seriousness of the offense, the age of the defendant, the degree of culpability of the defendant, the remorse and responsibility demonstrated by the defendant, the defendant's need for deterrence from future criminality, the defendant's prior criminal history, and the public safety before formulating an appropriate sentence. Sentencing judges, at their discretion, may order pre-sentence investigations, order mental health evaluations, obtain victim input, and utilize any resource available in furtherance of determining an appropriate sentence in every case before the court and set for sentencing. The reason for the sentence imposed shall be reduced to writing and be a part of the record.

(d) Those individuals currently serving any fixed sentence or mandatory sentence of incarceration may petition the court of original jurisdiction to obtain a resentencing hearing before the original sentencing judge, whenever possible, to provide the sentencing judge the discretion to consider an appropriate sentence.

(e) This amendment shall take effect one year from the date it is voted into law and shall be applied retroactively.

Initiative Information

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Serial Number 22-10

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