

FILED FEB 2 1972
Indreney 5-2-72

SENATE FILE 1079

By GAUDINEER and DeKOSTER

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing an intermediate court of criminal ap-
2 peals; providing for the appointment of judges thereto;
3 providing for the operation of such court; and permit-
4 ting the acceptance of federal funds to be utilized in
5 the operation of all courts of record.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Section 1. There is created an intermediate appellant
2 court of criminal appeals to be known as the court of criminal
3 appeals which shall be composed of three justices who shall
4 possess the character and qualifications of justices of the
5 supreme court. The court of criminal appeals shall have
6 initial statewide appellate jurisdiction from the district
7 court, only for the correction of errors at law in all:

8 1. Criminal cases, both felony and misdemeanor;

9 2. Post conviction procedures pursuant to chapter six
10 hundred sixty-three A (663A) of the Code;

11 3. Search warrant procedures pursuant to chapter seven
12 hundred fifty-one (751) of the Code;

13 4. Habeas corpus proceedings attacking the legality or
14 constitutionality of any imprisonment under any criminal law
15 or statute.

16 The court of criminal appeals may, upon filing of an inter-
17 locutory appeal and upon such hearings as its rules may pro-
18 vide, but not exparte, allow an appeal before final judgment
19 in such cases from an order of the district court, prior to
20 trial, materially affecting the rights of the defendant or
21 state, pursuant to rules of such court established as herein
22 provided. Additional appeals from the decision of the court
23 of criminal appeals may be taken to the supreme court of Iowa
24 as herein provided.

25 Sec. 2. Members of the original court of criminal appeals
26 and their successors shall be appointed by the governor from
27 nominations submitted to him by the state judicial nominating
28 commission in the same manner as nominations and appointments
29 are made to the supreme court. Initially, only, the commission
30 shall recommend six qualified individuals to the governor
31 for appointment as justices of the court of criminal appeals.
32 The governor shall, from such number, select one to serve
33 for a term of two years; one for a term of four years; and
34 one to serve for a term of six years and all to serve until
35 January first following the next judicial election after the

1 expiration of such term. Each justice shall stand for
2 retention in office at the judicial election prior to the
3 expiration of his initial term in the manner provided by
4 sections forty-six point seventeen (46.17) through forty-six
5 point twenty-four (46.24), of the Code, inclusive. If such
6 justice is retained in office he shall, thereafter, serve
7 successive six year terms subject to sections forty-six point
8 seventeen (46.17) through forty-six point twenty-four (46.24),
9 of the Code, inclusive. Subsequent nominations, appointments,
10 and retention of justices shall be as provided in chapter
11 forty-six (46) of the Code.

12 Sec. 3. When a justice of the court of criminal appeals
13 is unable to perform the duties of his office on account of
14 absence, sickness, disqualification, or other disability,
15 such justice or the clerk of the court shall so advise the
16 supreme court. The supreme court shall assign a justice of
17 the supreme court, a district court judge or a retired judge
18 of either the supreme court, court of criminal appeals or
19 district court to serve such time as the supreme court may
20 direct. The supreme court may from time to time, alter or
21 change such assignment between qualified justices or judges.
22 The compensation and expense allowance for such assigned
23 justice or judge shall be the same as regular justices of
24 the court of criminal appeals with proper adjustments being
25 made in the compensation of retired justices or judges, or
26 judges of the district court, when serving on the court of
27 criminal appeals, so that the maximum received by them will
28 not exceed the pay and expense of regular justices of the
29 court of criminal appeals. Supreme court justices, temporarily
30 serving on the court of criminal appeals shall not suffer
31 a reduction in pay or expenses during such temporary service.

32 Sec. 4. The court of criminal appeals shall sit in Des
33 Moines, Iowa and utilize the facilities of the supreme
34 court to the extent practical. The clerk of the supreme court
35 shall act as clerk of the court of criminal appeals. Such

1 clerk shall perform the same duties and functions with respect
2 to the court of criminal appeals as he does for the supreme
3 court. The appeal fees and court costs in the court of
4 criminal appeals shall be the same as in the supreme court.
5 The clerk of the supreme court shall not receive additional
6 compensation for services rendered to the court of criminal
7 appeals.

8 Sec. 5. The court of criminal appeals shall be a court
9 of record, and its decisions, orders, and judgments shall
10 have the same effect upon the district court and board of
11 parole as the decisions, orders, and judgments of the supreme
12 court unless superseded, reversed, or modified by the supreme
13 court. Such decisions, orders, and judgments shall become
14 final after the expiration of fifteen days from the entry,
15 subject to further action by the supreme court or the court
16 of criminal appeals upon a rehearing and shall be executed
17 by all necessary and proper writs.

18 Sec. 6. The court of criminal appeals shall, with a
19 concurrence of a majority of the justices of the Iowa su-
20 preme court, initially make and prescribe all rules of prac-
21 tice and procedure before it and all forms of process, writs,
22 and notices to implement such rules and its decisions, or-
23 ders, and judgments for the purpose of promoting the speedy
24 and efficient determination of appeals and other matters,
25 upon the merits, brought before it. Such rules and forms
26 of process, writs and notices shall not abridge or modify
27 the substantive rights of any party. Initially such rules
28 and forms of process, writs, and notices shall be effective
29 upon concurrence of the supreme court and publication as or-
30 dered by that court. However, they shall be reported to the
31 general assembly within twenty days after the commencement
32 of the next regular session, and, unless there approved by
33 a majority of the members of the committees on judiciary of
34 both houses, be null and void upon adjournment of the general
35 assembly. Such committees shall either approve or disapprove

1 such rules, forms of process, writs and notices, after a
2 public hearing, and record the vote of each member thereon
3 in their respective journals. The court of criminal appeals
4 may, with a concurrence of a majority of the members of both
5 committees, amend, modify or withdraw any such rule, process,
6 writ or notice or propose new ones prior to concurrence.
7 The general assembly may nullify, amend, or modify any such
8 rule, process, writ or notice or provide a new rule, process,
9 writ or notice in the same manner as any other bill becomes
10 law. Thereafter, the court of criminal appeals may with the
11 concurrence of a majority of the justices of the supreme
12 court, alter, nullify, amend, or modify or enact new rules,
13 processes, writs, and notices in the manner prescribed for
14 changes in the rules of civil procedure pursuant to section
15 six hundred eighty-four point nineteen (684.19) of the Code.

16 Sec. 7. The rules, forms of process, writs and notices
17 provided for in section six (6) of this Act shall, in any
18 event provide for the following:

19 1. The transcript upon such appeal shall be the court
20 file or record, exhibits introduced and refused introduc-
21 tion, and the transcript of testimony given at the trial,
22 motions made, rulings of the court, and offers of proof, as
23 reduced to writing by the court reporter; all properly cer-
24 tified by the appropriate official.

25 2. Certification to the court of appeals of all matters
26 in subsection one (1) of this section within thirty days of
27 the entry of the final judgment in the district court by the
28 official having custody of same.

29 3. Filing of the appellant's brief and argument with a
30 statement of fact on behalf of the appellant with cross ref-
31 erence to the court file or record, exhibits, and court re-
32 porter's transcript and an assignment of trial court errors
33 within thirty days of the giving of notice of the certifica-
34 tion required in subsection one (1) of this section.

35 4. Filing of the appellee's brief and argument with a

1 statement of fact on behalf of the appellee with cross ref-
2 erence to the court file or record, exhibits and court re-
3 porter's transcript within thirty days of the giving of no-
4 tice of the filing and receiving a copy of appellant's brief.

5 5. Filing of the appellant's reply brief, if any, within
6 fifteen days of the giving of notice of the filing and copy
7 of appellee's brief.

8 6. Submission of the cause, with oral argument unless
9 waived, within thirty days of the filing of appellee's brief
10 and argument, as determined by the court.

11 7. The briefs and arguments of the appellant and appel-
12 lee need not be printed but only submitted to the court in
13 compliance with its rules and upon original or duplication
14 paper that will not be easily torn or the printing thereon
15 obliterated.

16 8. The manner in which each party to the appeal shall
17 be given notice of the various matters in such appeal have
18 been received by the clerk and the manner in which each party
19 to the appeal shall be served, forwarded, or provided with
20 a copy of all matters filed by the other party to the appeal.

21 9. The court may limit the number of authorities the par-
22 ties may cite upon the various propositions or alleged errors
23 in their briefs and arguments and require that such authori-
24 ties be ranked in the order of importance assigned by each
25 party. Any such rule shall allow either party to petition
26 the court for permission to cite additional authorities if
27 the proposition to be decided is unique.

28 10. The time limits herein provided shall not be extended
29 unless a justice finds, upon hearing, not ex parte, that sub-
30 stantial injustice would result to one of the parties if such
31 extension was not granted. The hearing and affirmative find-
32 ing provided for herein shall be required even though the
33 opposing counsel consents to, concurs in, or joins in the
34 application for extension of time.

35 Sec. 8. If any case or matter connected therewith is im-

1 properly filed in the court of criminal appeals, that should
2 have been filed with the supreme court, it shall immediately
3 be transferred to and filed in such court. If any case or
4 matter connected therewith is improperly filed in the supreme
5 court that should have been filed with the court of criminal
6 appeals, it shall immediately be transferred to and filed
7 in such court.

8 Sec. 9. No delayed or untimely appeals will be enter-
9 tained and allowed unless the court finds that the failure
10 to file the initial notice of appeal within the specified
11 time limit was not due to the appellant's own negligence and
12 was, in fact, due to the malfeasance or misfeasance of his
13 attorney, the state or its agents. Facts regarding the failure
14 to timely file appeal shall be presented to the court by
15 affidavit or by such other means as the court shall prescribe.
16 If delayed appeal is allowed, the court may then admit the
17 appellant to bail pending such appeal on such terms and
18 conditions as it deems proper under the facts and circum-
19 stances. The appeal, however, shall thereafter proceed
20 forthwith in the manner provided by law. No appeal shall
21 be dismissed by reason that the appellant or appellee failed
22 to comply with the time limits for the filing of briefs and
23 arguments or other orders of the court. If either party shall
24 substantially fail to comply with such time requirements or
25 orders of the court, such failure shall constitute contempt
26 of court and be punishable pursuant to chapter six hundred
27 ninety-five (695) of the Code. The court, in such event,
28 shall make such other orders or take such other action as
29 will insure that the appeal will proceed expeditiously.

30 Sec. 10. The decisions of the United States supreme court,
31 eighth circuit court of appeals, Iowa federal district courts
32 and the Iowa supreme court shall govern the decisions, hold-
33 ings, and orders of the court of criminal appeals. The court
34 shall decide all matters materially affecting the rights of
35 the parties whether or not assigned as error. Concurrence

1 of at least two of the justices shall be necessary in order
2 to affirm, reverse, modify, or remand the decision of the
3 district court. Anything less than a concurrence of at least
4 two justices shall affirm the district court by operation
5 of law. Two justices shall constitute a quorum. The court
6 of criminal appeals shall issue its decisions in writing which
7 shall include a brief statement of the salient facts, the
8 issues raised by the appeal, the controlling case and statutory
9 law, and the decision, unless the circumstances and facts
10 of the appeal warrant the entry of a per curiam opinion.
11 A copy of each such decision shall immediately be delivered
12 to the attorneys of record, the defendant or accused, and
13 the presiding judge of the district court from which the
14 appeal was taken. The clerk of the court shall index a copy
15 in his office. Such decision shall not be published in an
16 official reporter unless ordered by the court.

17 Sec. 11. Either party, including the state, shall have
18 the right to petition the supreme court for a writ of
19 certiorari to reverse, modify or remand the decision of the
20 court of criminal appeals. The petition for writ of certiorari
21 shall be filed in the office of the clerk of the supreme court
22 within thirty days of the date of the filing of the decision
23 of the court of criminal appeals or its denial of a rehearing,
24 whichever is later. The supreme court shall grant such
25 petition as a matter of right in all cases wherein the sentence
26 imposed was imprisonment in the penitentiary for thirty years
27 or more or a city ordinance or state or federal statute was
28 held to be invalid or unconstitutional. In all other cases
29 the supreme court shall grant the petition for certiorari
30 if, upon the concurrence of at least three justices, it is
31 found that the case involves a material question of first
32 impression in Iowa; an initial construction of a provision
33 of the Iowa or United States Constitution; is in conflict
34 with prior decisions of the United States supreme court,
35 eighth circuit court of appeals, Iowa federal district courts,

1 or the Iowa supreme court; or further review is warranted
2 in the interests of justice.

3 Sec. 12. If the supreme court grants the petition for
4 writ of certiorari as provided in section eleven (11) of this
5 Act, it shall proceed to submission and determination as the
6 supreme court shall, by rule, prescribe. Concurrence of the
7 majority of a quorum shall be necessary in order to affirm,
8 reverse, modify, or remand the decision of the court of
9 criminal appeals. Anything less than concurrence of the ma-
10 jority of a quorum, shall affirm the decision of the court
11 of criminal appeals by operation of law.

12 Sec. 13. A defendant shall not be entitled to release
13 upon bail after fifteen days from the date the decision of
14 the court of criminal appeals is filed with its clerk, un-
15 less specifically provided by order of such court pending
16 its action upon a petition for rehearing. A defendant shall
17 not be entitled to release upon bail after fifteen days from
18 the date the decision of the court of criminal appeals is
19 filed with its clerk and pending the filing of his or her
20 petition for writ of certiorari, ruling upon its acceptance,
21 and submission and determination thereof by the supreme court
22 unless at least three justices of the supreme court find,
23 upon hearing, not ex parte, that the petition:

24 1. Has merit.

25 2. Is not frivolous and for the purpose of delay.

26 3. The defendant is one who will surrender himself and
27 abide by the future decisions and orders of court.

28 4. The release of the defendant would not create any
29 danger or potential harm to society.

30 If bail is thus granted the justices shall then set the amount
31 and terms thereof and the defendant shall be forthwith re-
32 leased upon posting such bail with the clerk of the district
33 court of the county wherein he was convicted, as provided
34 by law. If the state is the appellant, the defendant's bond
35 that was posted pending the determination of the court of

1 criminal appeals shall be continued; or modified, upon hear-
2 ing, not exparte, by any justice thereof.

3 Sec. 14. The justices shall choose one of their number
4 to act as chief justice. All justices shall devote their
5 full time to the discharge of their duties, not engage in
6 the practice of law, and receive an annual salary of twenty-
7 three thousand dollars.

8 Sec. 15. Section forty-six point twelve (46.12), Code
9 1971, is amended to read as follows:

10 46.12 NOTIFICATION OF VACANCY AND RESIGNATION. When a
11 vacancy occurs or will occur within sixty days in the su-
12 preme court, court of criminal appeals or district court,
13 the secretary of state shall forthwith so notify the chair-
14 man of the proper judicial nominating commission. Notifica-
15 tion of a vacancy upon the court of criminal appeals shall
16 be given to the chairman of the state judicial nominating
17 commission, which commission shall thereafter proceed to nomi-
18 nate three qualified individuals for such vacancy in accord-
19 ance with this chapter, one of whom shall be appointed to
20 fill such vacancy in the same manner as appointments to fill
21 vacancies upon the supreme court are made. The chairman shall
22 call a meeting of the commission within ten days after such
23 notice; if he fails to do so, the chief justice shall call
24 such meeting.

25 When a judge of the supreme court, court of criminal ap-
26 peals or district court resigns, he shall submit a copy of
27 his resignation to the secretary of state at the time he sub-
28 mits his resignation to the governor; and when a judge of
29 the supreme court, court of criminal appeals or district court
30 dies, the clerk of district court of the county of his resi-
31 dence shall in writing forthwith notify the secretary of state
32 of such fact.

33 Sec. 16. Section forty-six point fifteen (46.15), Code
34 1971, is amended to read as follows:

35 46.15 APPOINTMENTS TO BE FROM NOMINEES. All appoint-

1 ments to the supreme court, court of criminal appeals and
2 district court shall be made from the nominees of the respec-
3 tive judicial nominating commissions.

4 Sec. 17. Section forty-six point sixteen (46.16), Code
5 1971, is amended to read as follows:

6 46.16 TERMS OF JUDGES. Subject to the provisions of sec-
7 tions 605.24 and 605.25 and to removal for cause:

8 1. The initial term of office of judges of the supreme
9 court, court of criminal appeals and district court shall
10 be for one year after appointment and until January 1 follow-
11 ing the next judicial election after expiration of such year;
12 and

13 2. The regular term of office of judges of the supreme
14 court retained at a judicial election shall be eight years,
15 and of judges of the court of criminal appeals and district
16 court so retained shall be six years, from the expiration
17 of their initial or previous regular term as the case may
18 be.

19 Sec. 18. Section forty-six point twenty (46.20), Code
20 1971, is amended to read as follows:

21 46.20 DECLARATION OF CANDIDACY. At least ninety days
22 prior to the judicial election preceding expiration of his
23 initial or regular term of office, a judge of the supreme
24 court, court of criminal appeals or district court may file
25 a declaration of candidacy with the secretary of state, where-
26 upon such judge shall stand for retention or rejection at
27 that election. If a judge fails to file such declaration,
28 his office shall be vacant at the end of his term.

29 Sec. 19. Section forty-six point twenty-one (46.21), Code
30 1971, is amended to read as follows:

31 46.21 CONDUCT OF ELECTIONS. At least fifty-five days
32 prior to each judicial election, the secretary of state shall
33 certify to the county auditor of each county a list of the
34 judges of the supreme court, court of criminal appeals and
35 district court to be voted on in such county at that elec-

1 tion. The auditor shall place the names upon the ballot in
2 the order in which they appear in the certificate, unless
3 only one county is voting thereon. The secretary of state
4 shall rotate the names in the certificate by county, or the
5 auditor shall rotate them upon the ballot by precinct if only
6 one county is voting thereon. The names of all judges to
7 be voted on shall be placed upon one ballot, which shall be
8 in substantially the following form:

9 STATE OF IOWA
10 JUDICIAL BALLOT
11 (Date)
12

13 VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX
14 AFTER EACH NAME.

15
16 SUPREME COURT
17

18 Shall the following judges of the Supreme Court be re-
19 tained in office?

20
21 JOHN DOE YES _____ NO _____
22 RICHARD ROE YES _____ NO _____
23

24 COURT OF CRIMINAL APPEALS
25

26 Shall the following justices of the court of criminal ap-
27 peals be retained in office?

28
29 WILLIAM ALLEN YES _____ NO _____
30

31 DISTRICT COURT
32

33 Shall the following judge of the District Court be re-
34 tained in office?
35

1 JOHN SMITH YES ___ NO ___

2 Sec. 20. Section forty-six point twenty-four (46.24),
3 Code 1971, is amended to read as follows:

4 46.24 RESULTS OF ELECTION. A judge of the supreme court,
5 court of criminal appeals or district court must receive more
6 affirmative than negative votes to be retained in office.

7 When the poll is closed, the election judges shall publicly
8 canvass the vote forthwith. The board of supervisors shall
9 canvass the returns at its meeting on Monday after the elec-
10 tion, and shall promptly certify the number of affirmative
11 and negative votes on each judge to the secretary of state.

12 The state board of canvassers shall, at the time of can-
13 vassing the vote cast at a general election, open and can-
14 vass all of the returns for the judicial election. Each judge
15 of the supreme court, court of criminal appeals or district
16 court who has received more affirmative than negative votes
17 shall receive from the state board of canvassers an appro-
18 priate certificate so stating.

19 Sec. 21. Section sixty-eight point one (68.1), Code 1971,
20 is amended to read as follows:

21 68.1 IMPEACHMENT DEFINED. An impeachment is a written
22 accusation against the governor, or a judge of the supreme,
23 district, ~~or~~ superior court, court of criminal appeals, or
24 other state officer, by the house of representatives before
25 the senate, of a misdemeanor or malfeasance in office.

26 Sec. 22. Section six hundred five point twenty-four
27 (605.24), Code 1971, is amended to read as follows:

28 605.24 MANDATORY RETIREMENT. All judges of the supreme
29 court, court of criminal appeals or district court who shall
30 have reached the mandatory retirement age, shall cease to
31 hold office. The mandatory retirement age shall be seventy-
32 five years for all judges of the supreme court or district
33 court holding office on July 1, 1965. The mandatory retirement
34 age shall be seventy-two years for all judges of the supreme
35 court, court of criminal appeals or district court appointed

1 to office after July 1, 1965.

2 Sec. 23. Section six hundred five point twenty-five
3 (605.25), Code 1971, is amended to read as follows:

4 605.25 TEMPORARY SERVICE BY RETIRED JUDGES. Judges of
5 the supreme court, court of criminal appeals and district
6 court who are hereafter retired by reason of age, or who are
7 drawing benefits under section 605A.6, may with their con-
8 sent be assigned by the supreme court to temporary judicial
9 duties on any court in the state other than the supreme court.
10 No such judge shall engage in the practice of law unless he
11 shall file with the clerk of the supreme court an election
12 to practice law, in which event he shall thereafter be in-
13 eligible for assignment to temporary judicial duties at any
14 time. While serving under temporary assignment as herein
15 provided, a retired judge shall receive the compensation and
16 actual expense provided by law for judges on the court to
17 which he is assigned, but shall not receive any annuity pay-
18 ments to which he may be entitled under the judicial retire-
19 ment system. He may be authorized in the order of assignment
20 to appoint a temporary reporter, who shall receive the com-
21 pensation and actual expense provided by law for a regular
22 reporter in the court to which the judge is assigned. The
23 order of assignment shall be filed in the offices of the
24 clerks of court at the places where the judge is to serve.

25 Sec. 24. Section six hundred five point twenty-six
26 (605.26), unnumbered paragraph one (1), Code 1971, is amended
27 to read as follows:

28 605.26 RETIREMENT FOR CAUSE. A judge of the supreme
29 court, court of criminal appeal or district court may be
30 retired from office for any of the following reasons:

31 Sec. 25. Section six hundred five point twenty-seven
32 (605.27), Code 1971, is amended to read as follows:

33 605.27 PETITION. A petition for the removal of a judge
34 of the supreme court, court of criminal appeals or district
35 court may be filed in the office of the clerk of the supreme

1 court by the chief justice, the attorney general, or twenty-
2 five members of the bar of the state or district.

3 Sec. 26. Section six hundred five A point three (605A.3),
4 Code 1971, is amended to read as follows:

5 605A.3 NOTICE BY JUDGE IN WRITING. This chapter shall
6 not apply to any judge of the municipal, superior, district
7 or supreme court, or court of criminal appeals, until he gives
8 notice in writing, while serving as a judge, to the state
9 comptroller and treasurer of state, of his purpose to come
10 within its purview. Judges of the municipal and superior
11 courts shall at the same time give a copy of such notice to
12 the city treasurer and county auditor within the district
13 of such court. Such notice shall be given within one year
14 after the effective date hereof or within one year after any
15 date on which he takes oath of office as such judge.

16 Sec. 27. Section six hundred five A point four (605A.4),
17 unnumbered paragraph one (1), Code 1971, is amended to read
18 as follows:

19 605A.4 DEPOSIT BY JUDGE--DEDUCTIONS--CONTRIBUTIONS BY
20 GOVERNING BODY. Each judge coming within the purview of this
21 chapter shall, on or before retirement, pay to the state comp-
22 troller for deposit with the state treasurer to the credit
23 of a fund to be known as the "judicial retirement fund",
24 hereinafter called the "fund", a sum equal to four percent
25 of his basic salary for services as such judge for the total
26 period of service as a judge of a municipal, superior, dis-
27 trict or supreme court or court of criminal appeals before
28 the date of said notice, and after the date of the notice
29 there shall be deducted and withheld from the basic salary
30 of each judge coming within the purview of this chapter a
31 sum equal to four percent of such basic salary. Provided
32 that the maximum amount which any judge shall be required
33 to contribute for past service shall not exceed for municipi-
34 pal or superior judges thirty-five hundred dollars, for dis-
35 trict judges four thousand dollars and for supreme court and

1 court of criminal appeals judges five thousand dollars. The
2 amounts so deducted and withheld from the basic salary of
3 each said judge shall be paid to the state comptroller for
4 deposit with the treasurer of state to the credit of the
5 judicial retirement fund, and said fund is hereby appropri-
6 ated for the payment of annuities, refunds, and allowances
7 herein provided, except that the amount of such appropria-
8 tions affecting payment of annuities, refunds, and allowances
9 to judges of the municipal and superior court shall be limited
10 to that part of said fund accumulated for their benefit as
11 hereinafter provided. The judges of the municipal, superior,
12 district and supreme court or court of criminal appeals coming
13 within the provisions of this chapter shall be deemed to con-
14 sent and agree to the deductions from basic salary as pro-
15 vided herein, and payment less such deductions shall be a
16 full and complete discharge and acquittance of all claims
17 and demands whatsoever for all regular services rendered by
18 such judges during the period covered by such payment, except
19 the right to the benefits to which they shall be entitled
20 under the provisions of this chapter. The state shall
21 contribute a sum not exceeding three percent of the basic
22 salary of all judges of the district and supreme court for
23 the years 1949 and 1950 and thereafter such sums as may be
24 necessary over the amount contributed by the district and
25 supreme court judges and judges of the court of criminal ap-
26 peals to finance the system, but only to the extent that
27 the system applies to them.

28 Sec. 28. Section six hundred five A point eight (605A.8),
29 Code 1971, as amended by chapter two hundred sixty-two (262),
30 section two (2), Acts of the Sixty-fourth General Assembly,
31 First Session, is amended to read as follows:

32 605A.8 INDIVIDUAL ACCOUNTS--REFUNDING. The amounts de-
33 ducted and withheld from the basic salary of each judge of
34 the municipal, superior, district courts, court of criminal
35 appeals, or supreme court for the credit of the judicial re-

1 tirement fund and all amounts paid into such fund by each
2 judge shall be credited to the individual account of such
3 judge. In the event a judge of the municipal, superior,
4 district courts, court of criminal appeals, or supreme court
5 becomes separated from service as such judge before he
6 completes an aggregate of six years of service as a judge
7 of one or more of such courts, the total amount of his con-
8 tribution to the fund shall be returned to said judge or his
9 legal representatives, and in the event a judge who has com-
10 pleted an aggregate of six years or more of service as a judge
11 of one or more of such courts, dies before retirement, without
12 a survivor, the total amount of his contribution to the fund
13 shall be paid in one sum to his legal representatives, and
14 in the event an annuitant under this section dies without
15 a survivor, without having received in annuities an amount
16 equal to the total amount remaining to his credit at the time
17 of his separation from service, the amount remaining to his
18 credit shall be paid in one sum to his legal representatives.

19 Sec. 29. Section six hundred five A point twelve (605A.12),
20 Code 1971, is amended to read as follows:

21 605A.12 VOLUNTARY RETIREMENT FOR DISABILITY. Any judge
22 of the supreme, district, or municipal or court of criminal
23 appeals who shall have served as a judge of one or both of
24 such courts for a period of six years in the aggregate and
25 who believes he has become permanently incapacitated, physi-
26 cally or mentally, to perform the duties of his office may
27 personally or by his next friend or guardian file with the
28 state comptroller a written application for retirement. The
29 application shall be filed in duplicate and accompanied by
30 an affidavit as to the duration and particulars of his ser-
31 vice and the nature of his incapacity. The state comptroller
32 shall forthwith transmit one copy of the application and af-
33 fidavit to the chief justice who shall request the attorney
34 general in writing to cause an investigation to be made rela-
35 tive to the claimed incapacity and report back the results

1 thereof in writing. If the chief justice finds from the re-
2 port of the attorney general that the applicant is permanently
3 incapacitated, physically or mentally, to perform the duties
4 of his office he shall by his endorsement thereon declare
5 the applicant retired, and the office vacant, and shall file
6 the report in the office of the state comptroller, and a copy
7 in the office of the secretary of state. From the date of
8 such filing the applicant shall be deemed retired from his
9 office and entitled to the benefits of this chapter to the
10 same extent as if he had retired under the provisions of sec-
11 tion 605A.6.

12 Sec. 30. Section six hundred five A point fourteen
13 (605A.14), Code 1971, is amended to read as follows:

14 605A.14 FORFEITURE OF BENEFITS--REFUND. In the event
15 a judge of the supreme, district, or municipal or court of
16 criminal appeals is removed for cause other than permanent
17 disability he shall forfeit the right to any retirement
18 benefits under the system but the total amount of his
19 contribution to the fund shall be returned to him or his legal
20 representative.

21 Sec. 31. Section six hundred sixty-three A point nine
22 (663A.9), Code 1971, is amended to read as follows:

23 663A.9 APPEAL. A final judgment entered under this chap-
24 ter may be reviewed by the supreme court of this-state criminal
25 appeals on appeal, brought either by the applicant or by the
26 state within sixty days from the entry of the judgment.

27 Sec. 32. Section six hundred sixty-five point four (665.4),
28 subsection one (1), Code 1971, is amended to read as follows:

29 1. In the supreme court or court of criminal appeals,
30 by a fine not exceeding one thousand dollars or by imprison-
31 ment in a county jail not exceeding six months, or by both
32 such fine and imprisonment.

33 Sec. 33. Section six hundred eighty-five point ten
34 (685.10), Code 1971, as amended by chapter eighty (80), sec-
35 tion twelve (12), Acts of the Sixty-fourth General Assembly,

1 First Session, is amended to read as follows:

2 685.10 COURTS AFFECTED. The provisions of sections 685.6
3 to 685.9, inclusive, apply to the following courts: Supreme
4 court, court of criminal appeals, district court, superior
5 court, municipal court, police court, justice of the peace
6 court, mayor's court, and all other courts, state and local,
7 which may be established from time to time. Provided however
8 that the fees established for municipal and superior courts
9 shall be one-half of those fees established for district
10 courts.

11 Sec. 34. Section seven hundred forty-eight point one
12 (748.1), subsection one (1), Code 1971, is amended to read
13 as follows:

14 1. All judges of the supreme, district, superior, or
15 municipal courts, or court of criminal appeals throughout
16 the state.

17 Sec. 35. Section seven hundred fifty-one point one (751.1),
18 Code 1971, is amended to read as follows:

19 751.1 DEFINITION. A search warrant is an order in writ-
20 ing, in the name of the state, signed by a magistrate, other
21 than a judge of the supreme court or court of criminal ap-
22 peals, directed to a peace officer, commanding him to search
23 for personal property, and bring it before the magistrate.

24 Sec. 36. Section seven hundred sixty-two point fifty-one
25 (762.51), Code 1971, is amended to read as follows:

26 762.51 APPEAL TO SUPREME COURT--PROCEDURE. Either party
27 may appeal from the judgment of the district court to the
28 ~~supreme-court~~ court of criminal appeals in the same manner
29 as from a judgment in a prosecution by indictment, and the
30 defendant may be admitted to bail in like manner, and similar
31 proceedings shall be had on the appeal in all respects, as
32 far as applicable.

33 Sec. 37. Section seven hundred sixty-two point fifty-two
34 (762.52), Code 1971, is amended to read as follows:

35 762.52 JUDGMENT UPON APPEAL--EXECUTION. The same pro-

1 proceedings shall be had to carry into effect the judgment of
2 the court of criminal appeals or supreme court upon the appeal
3 as if it had been taken from a judgment prosecuted by
4 indictment.

5 Sec. 38. Section seven hundred sixty-three point one
6 (763.1), Code 1971, is amended to read as follows:

7 763.1 BAILABLE OFFENSES. All defendants are bailable
8 both before and after conviction pending the determination
9 of post trial motions, sentencing, and determination of any
10 appeal to the court of criminal appeals, by sufficient surety,
11 except for murder in the first degree and kidnaping for
12 ransom when the proof is evident or the presumption great.

13 Sec. 39. Section seven hundred sixty-three point nine
14 (763.9), Code 1971, is amended to read as follows:

15 763.9 BAIL ON APPEAL--CONDITIONS. After conviction, up-
16 on an appeal to the ~~supreme-court~~ court of criminal appeals,
17 the defendant must be admitted to bail, if it be from a
18 judgment imposing a fine, upon the undertaking of bail that
19 he will, in all respects, abide the orders and the judgment
20 of the supreme court upon the appeal; if from a judgment of
21 imprisonment, upon the undertaking of bail that the defendant
22 will surrender himself in execution of the judgment and
23 direction of the supreme court, and in all respects abide
24 the orders and judgment of the supreme court upon the appeal.

25 Sec. 40. Section seven hundred sixty-three point ten
26 (763.10), Code 1971, is amended to read as follows:

27 763.10 BY WHOM TAKEN. The bail may be taken, either by
28 the court where the judgment was rendered, or the district
29 court of the county in which he is imprisoned, or by the su-
30 preme court or court of criminal appeals, or a judge or clerk
31 of any of such courts.

32 Sec. 41. Section seven hundred sixty-three point eighteen
33 (763.18), subsection two (2), Code 1971, is amended to read
34 as follows:

35 2. In any case in which a court denied a motion under

1 subsection 1 to amend an order imposing conditions of re-
2 lease, or a defendant is detained after conditions of re-
3 lease have been imposed or amended upon such a motion, an
4 appeal may be taken to the ~~supreme-court~~ court of criminal
5 appeals. The appeal shall be determined summarily without
6 briefs on the record made in the district court. However,
7 the defendant may elect to file briefs and may be heard in
8 oral argument, in which case the prosecution shall have a
9 right to respond as in an ordinary appeal from a criminal
10 conviction. The ~~supreme-court~~ court of criminal appeals may,
11 on its own motion, order the parties to submit briefs and
12 set the time in which such briefs shall be filed. Any order
13 so appealed shall be affirmed if it is supported by the
14 proceedings in the district court. If the order is not so
15 supported the court may remand the case for a further hearing,
16 or may, with or without additional evidence, order the
17 defendant released pursuant to section 763.17, subsection
18 1.

19 Sec. 42. Section seven hundred ninety-three point two
20 (793.2), Code 1971, is amended to read as follows:

21 793.2 TIME OF TAKING--FROM FINAL JUDGMENT ONLY. An ap-
22 peal can only be taken from the final judgment, ~~and within~~
23 ~~sixty-days-thereafter~~ in the same manner as in civil actions.

24 Sec. 43. Section seven hundred ninety-three point thir-
25 teen (793.13), Code 1971, is amended to read as follows:

26 793.13 PERSONAL APPEARANCE OF DEFENDANT. The personal
27 appearance of the defendant in the supreme court or court
28 of criminal appeals on the trial of an appeal is in no case
29 necessary.

30 Sec. 44. Section seven hundred ninety-three point four-
31 teen (793.14), Code 1971, is amended to read as follows:

32 793.14 INFORMALITY OR DEFECT. An appeal shall not be
33 dismissed for any informality or defect in taking it, ~~if~~
34 ~~corrected-in-a-reasonable-time, and the supreme-court-must~~
35 ~~direct-how-it-shall-be-corrected.~~

1 Sec. 45. Section seven hundred ninety-three point eight-
2 teen (793.18), Code 1971, is amended to read as follows:

3 793.18 ~~DECISION OF SUPREME-COURT~~ COURT OF CRIMINAL APPEALS.

4 If the appeal is taken by the defendant, the ~~supreme-court~~
5 court of criminal appeals must examine the record, without
6 regard to technical errors or defects which do not affect
7 the substantial rights of the parties, and render such judg-
8 ment on the record as the law demands; it may affirm, re-
9 verse, or modify the judgment, or render such judgment as
10 the district court should have done, or order a new trial,
11 or reduce the punishment, but cannot increase it.

12 Sec. 46. Section seven hundred ninety-three point twenty
13 (793.20), Code 1971, is amended to read as follows:

14 793.20 DECISIONS IN APPEALS BY STATE. If the state ap-
15 peals, the ~~supreme court~~ of criminal appeals cannot reverse
16 or modify the judgment so as to increase the punishment, but
17 may affirm it, and shall point out any error in the proceedings
18 or in the measure of punishment, and its decision shall be
19 obligatory as law.

20 Sec. 47. Section seven hundred ninety-three point twenty-
21 one (793.21), Code 1971, is amended to read as follows:

22 793.21 REVERSAL--EFFECT. If a judgment against the de-
23 fendant is reversed, such reversal shall be deemed an order
24 for a new trial, unless the ~~supreme court~~ of criminal appeals
25 shall direct that the defendant be discharged and his bail
26 exonerated, or if money be deposited instead, that it be
27 refunded to him.

28 Sec. 48. Section seven hundred ninety-three point twenty-
29 two (793.22), Code 1971, is amended to read as follows:

30 793.22 AFFIRMANCE--EFFECT. On a judgment of affirmance
31 against the defendant, the original judgment shall be carried
32 into execution as the ~~supreme court~~ of criminal appeals shall
33 direct, except as otherwise provided.

34 Sec. 49. Section seven hundred ninety-three point twenty-
35 four (793.24), Code 1971, is amended to read as follows:

1 793.24 DECISION RECORDED AND TRANSMITTED. The decision
2 of the supreme court or court of criminal appeals, with any
3 opinion filed or judgment rendered, must be recorded by its
4 clerk, and, after the expiration of the period allowed for
5 a rehearing, or as ordered by the court or provided by its
6 rules, a certified copy of the decision and opinion shall
7 be transmitted to the clerk of the trial court, filed and
8 entered of record by him, and thereafter the jurisdiction
9 of the supreme court or court of criminal appeals shall cease,
10 and all proceedings necessary for executing the judgment shall
11 be had in the trial court, or by its clerk.

12 Sec. 50. Section seven hundred ninety-three point twenty-
13 six (793.26), Code 1971, is amended to read as follows:

14 793.26 TIME OF IMPRISONMENT DEDUCTED. If a defendant,
15 imprisoned during the pendency of an appeal, upon a new trial
16 ordered by the supreme court or court of criminal appeals
17 is again convicted, the period of his former imprisonment
18 shall be deducted from the period of imprisonment to be fixed
19 on the last verdict of conviction.

20 Sec. 51. Sections seven hundred ninety-three point four
21 (793.4), seven hundred ninety-three point five (793.5), seven
22 hundred ninety-three point six (793.6), seven hundred ninety-
23 three point seven (793.7), and seven hundred ninety-three
24 point seventeen (793.17), Code 1971, are repealed.

25 Sec. 52. The supreme court shall repeal, modify, and enact
26 new rules of procedure before such court to comply with this
27 Act. Initially, such repealed, modified or new rules shall
28 become effective when published as ordered by the supreme
29 court. Such repealed, modified or new rules shall be submitted
30 to the committees on judiciary of both houses of the general
31 assembly within twenty days of its convening at its next
32 regular session. Unless a majority of the members of each
33 such committee approve such repealed, modified or new rules
34 they shall become null and void upon adjournment. Each such
35 committee shall either approve or disapprove the repealed,

1 modified or new rules as submitted, after a public hearing,
2 and record the vote of each member in the journals of the
3 respective houses. The supreme court may, with a concurrence
4 of a majority of the members of each committee amend, modify
5 or withdraw any such rule or present a new rule prior to
6 concurrence. The general assembly may nullify, amend, or
7 modify any such rule or enact a new rule in the same manner
8 as any other bill becomes law. Thereafter, the supreme court
9 may alter, nullify, change, amend, or modify or enact new
10 rules in the manner prescribed for changes in the rules of
11 procedure pursuant to section six hundred eighty-four
12 joint nineteen (684.19) of the Code.

13 Sec. 53. This Act shall not become effective until acti-
14 vated by an executive order of the governor. The governor
15 shall first ascertain if there are any federal funds or grants
16 available to finance the court of criminal appeals. If such
17 funds are not available to defray at least seventy-five per-
18 cent of the cost thereof for the first two years, he shall
19 proceed no further. If such funds are available in at least
20 that amount he shall, prior to the issuance of any executive
21 order, convene the state judicial nominating commission for
22 the purpose of selecting and submitting their initial nominees.
23 The governor shall, also, after appointing the initial three
24 justices of the court of criminal appeals permit such justices
25 to take office for the purpose of organizing and adopting
26 the rules of procedure necessary for such court. After the
27 court has been organized and the rules adopted and published,
28 the governor shall issue the executive order placing this
29 Act into effect.

30 Sec. 54. All cases on appeal that would come within the
31 purview of this Act, that have not been submitted to the su-
32 preme court for decision upon the effective date of this Act,
33 shall be automatically transferred to the court of criminal
34 appeals for determination in accordance with the law and rules
35 in effect upon the date that such appeals was taken from the

1 district court.

2 Sec. 55. The governor is hereby authorized to accept any
3 federal funds or grants available for the purpose of financ-
4 ing the court of criminal appeals and to utilize such funds
5 for the operation of that court. The governor is also
6 authorized to accept any federal funds or grants available
7 to increase the annual salaries of any justices and judges
8 of the supreme court, court of criminal appeals, district
9 court, and municipal court. The annual salaries of all such
10 justices or judges may be increased by the governor, with
11 the concurrence of the executive council, in excess of that
12 annual salary set by law by the use of such funds.

13 Sec. 56. In the event the governor determines federal
14 funds or grants are not available to finance at least seventy-
15 five percent of the operation of the court of criminal appeals
16 for at least its first two years, this Act shall not become
17 effective. The governor shall report such fact to the next
18 general assembly within twenty days of its convening. This
19 Act shall not thereafter become effective unless it is
20 specifically authorized and funded by an appropriations act
21 duly enacted by the general assembly. This Act shall not
22 become a permanent part of the Code unless and until it becomes
23 effective as herein provided.

24

EXPLANATION

25 The case load of the supreme court has more than doubled
26 in the past 10 years. Much of this increase is additional
27 criminal appeals. It now takes a minimum time of nine months
28 to submit a criminal case to the supreme court. If extensions
29 are granted, the time can be much greater. If the defendant
30 is free on bond during this time, the public feels that the
31 laws are not being enforced and loses confidence in the courts.
32 Conversely a defendant who cannot post bail and who has a
33 meritorious appeal must remain imprisoned while his appeal
34 is delayed because of the backlog of cases before the supreme
35 court. This bill would expedite appeals in criminal matters

1 by creating an intermediate court of criminal appeals where
2 criminal appeals would be submitted in a minimum period of
3 three months. Public confidence in the system of criminal
4 justice and the courts should thus experience a measure of
5 restoration.

- 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
- 33
- 34
- 35

LSB 3213
dh/jw/3