

289-204XA-38

Bill No. CS/HB 3033, 1st Eng.

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Stafford, Crist, and Ball offered the following:

Amendment to the Senate Amendment offered by Senator Burt (with title amendment)

On page 1, line 17, through page 2, line 17, remove from the amendment: all of said lines

and insert in lieu thereof:

Section 1. Section 922.105, Florida Statutes, is created to read:

922.105 Execution of death sentence by lethal injection if death by electrocution is declared unconstitutional; prohibition against reduction of death sentence as a result of determination that a method of execution is unconstitutional.--

(1) A death sentence shall be executed by electrocution pursuant to s. 922.10. If electrocution is held to be unconstitutional by the Florida Supreme Court under the State Constitution, or held to be unconstitutional by the United States Supreme Court under the United States

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1 Constitution, or if the United States Supreme Court declines
2 to review any judgment holding electrocution to be
3 unconstitutional under the United States Constitution made by
4 the Florida Supreme Court or the United States Court of
5 Appeals that has jurisdiction over Florida, all persons
6 sentenced to death for a capital crime shall be executed by
7 lethal injection.

8 (2) The provisions of the opinion and all points of
9 law decided by the United States Supreme Court in Malloy v.
10 South Carolina, 237 U.S. 180 (1915), finding that the Ex Post
11 Facto Clause of the United States Constitution is not violated
12 by a legislatively enacted change in the method of execution
13 for a sentence of death validly imposed for previously
14 committed capital murders, are adopted by the Legislature as
15 the law of this state.

16 (3) A change in the method of execution does not
17 increase the punishment or modify the penalty of death for
18 capital murder. Any legislative change to the method of
19 execution for the crime of capital murder does not violate s.
20 10, Art. I or s. 9, Art. X of the State Constitution.

21 (4) Notwithstanding any law to the contrary, a person
22 authorized by state law to prescribe medication and designated
23 by the Department of Corrections may prescribe the drug or
24 drugs necessary to compound a lethal injection.

25 Notwithstanding any law to the contrary, a person authorized
26 by state law to prepare, compound, or dispense medication and
27 designated by the Department of Corrections may prepare,
28 compound, or dispense a lethal injection. For purposes of
29 this section, prescription, preparation, compounding,
30 dispensing, and administration of a lethal injection does not
31 constitute the practice of medicine, nursing, or pharmacy.

1 (5) The policies and procedures of the Department of
2 Corrections for execution of persons sentenced to death shall
3 be exempt from chapter 120.

4 (6) Notwithstanding s. 775.082(2), s. 790.161(4), or
5 s. 775.15(1)(a), or any other provision to the contrary, no
6 sentence of death shall be reduced as a result of a
7 determination that a method of execution is declared
8 unconstitutional under the State Constitution or the
9 Constitution of the United States. In any case in which an
10 execution method is declared unconstitutional, the death
11 sentence shall remain in force until the sentence can be
12 lawfully executed by any valid method of execution.

13 (7) Nothing contained in this chapter is intended to
14 require any physician, nurse, pharmacist, or employee of the
15 Department of Corrections or any other person to assist in any
16 aspect of an execution which is contrary to the person's moral
17 or ethical beliefs.

18 Section 2. Subsection (2) of section 775.082, Florida
19 Statutes, is amended to read:

20 775.082 Penalties; mandatory minimum sentences for
21 certain reoffenders previously released from prison.--

22 (1) A person who has been convicted of a capital
23 felony shall be punished by death if the proceeding held to
24 determine sentence according to the procedure set forth in s.
25 921.141 results in findings by the court that such person
26 shall be punished by death, otherwise such person shall be
27 punished by life imprisonment and shall be ineligible for
28 parole.

29 (2) In the event the death penalty in a capital felony
30 is held to be unconstitutional by the Florida Supreme Court or
31 the United States Supreme Court, the court having jurisdiction

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1 over a person previously sentenced to death for a capital
2 felony shall cause such person to be brought before the court,
3 and the court shall sentence such person to life imprisonment
4 as provided in subsection (1). No sentence of death shall be
5 reduced as a result of a determination that a method of
6 execution is held to be unconstitutional under the State
7 Constitution or the Constitution of the United States.

8 Section 3. Subsection (4) of section 790.161, Florida
9 Statutes, is amended to read:

10 790.161 Making, possessing, throwing, projecting,
11 placing, or discharging any destructive device or attempt so
12 to do, felony; penalties.--A person who willfully and
13 unlawfully makes, possesses, throws, projects, places,
14 discharges, or attempts to make, possess, throw, project,
15 place, or discharge any destructive device:

16 (4) If the act results in the death of another person,
17 commits a capital felony, punishable as provided in s.
18 775.082. In the event the death penalty in a capital felony is
19 held to be unconstitutional by the Florida Supreme Court or
20 the United States Supreme Court, the court having jurisdiction
21 over a person previously sentenced to death for a capital
22 felony shall cause such person to be brought before the court,
23 and the court shall sentence such person to life imprisonment
24 if convicted of murder in the first degree or of a capital
25 felony under this subsection, and such person shall be
26 ineligible for parole. No sentence of death shall be reduced
27 as a result of a determination that a method of execution is
28 held to be unconstitutional under the State Constitution or
29 the Constitution of the United States.

30 Section 4. This act shall take effect upon becoming a
31 law.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 2, line 25, through page 4, line 10,
4 remove from the title of the amendment:

5
6 and insert in lieu thereof:

7 A bill to be entitled
8 An act relating to execution of the death
9 sentence; creating s. 922.105, F.S.; providing
10 for execution of the death sentence by means of
11 lethal injection if electrocution is held to be
12 unconstitutional; providing legislative intent;
13 providing that a person authorized by state law
14 to prescribe medication, when designated by the
15 Department of Corrections, may prescribe the
16 drugs necessary to compound a lethal injection;
17 providing that a person authorized by state law
18 to prepare, compound, or dispense medication,
19 when designated by the Department of
20 Corrections, may prepare, compound, or dispense
21 the lethal injection; providing that the
22 prescription, preparation, compounding,
23 dispensing, or administration of a lethal
24 injection does not constitute practicing
25 medicine, nursing, or pharmacy; providing an
26 exemption from ch. 120, F.S., for the policies
27 and procedures of the Department of Corrections
28 for execution; prohibiting reduction of a
29 sentence of death as the result of a method of
30 execution being held to be unconstitutional;
31 prohibiting any physician, nurse, pharmacist,

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1 employee of the Department of Corrections, or
2 other person from being required to assist in
3 an execution contrary to the person's moral or
4 ethical beliefs; amending s. 775.082, F.S.,
5 relating to penalties and mandatory minimum
6 sentences for certain reoffenders previously
7 released from prison; conforming provisions to
8 changes made by the act; prohibiting reduction
9 of a sentence of death as the result of a
10 method of execution being held
11 unconstitutional; amending s. 790.161, F.S.,
12 relating to the offense of making, possessing,
13 throwing, projecting, placing, or discharging a
14 destructive device, or attempt so to do, and
15 penalties; conforming provisions to changes
16 made by the act; prohibiting reduction of a
17 sentence of death as the result of a method of
18 execution being held unconstitutional;
19 providing an effective date.

20
21 WHEREAS, the Legislature finds that the existing method
22 of carrying out a sentence of death in Florida is by
23 electrocution, and

24 WHEREAS, the Legislature has previously determined that
25 death by electrocution is the preferred method of carrying out
26 the death penalty, and the death penalty should be carried out
27 in a swift and sure manner, and

28 WHEREAS, the existing method of carrying out a sentence
29 of death in this state is by electrocution, and

30 WHEREAS, the Legislature has previously determined that
31 death by electrocution is the preferred method of carrying out

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1 the death penalty, and the death penalty should be carried out
2 in a swift and sure manner, and

3 WHEREAS, the Florida Supreme Court, in Jones v. State,
4 701 So.2d 76 (1997), has held death by electrocution to be a
5 constitutional method of imposing the death penalty in this
6 state, and

7 WHEREAS, the Legislature intends to ensure that the
8 lawful punishment of death imposed on persons in this state is
9 carried out, and considers it to be appropriate to provide
10 alternative methods for imposing death only if legally
11 required to do so, and

12 WHEREAS, changing the method of carrying out the death
13 penalty both for those previously sentenced and for those who
14 will be sentenced in the future is merely procedural and does
15 not increase the quantum of punishment imposed upon a
16 defendant and therefore does not violate the prohibition
17 against ex post facto laws under the Constitution of the
18 United States, Malloy v. South Carolina, 237 U.S. 180 (1915),
19 and Ex Parte Kenneth Granviel, 561 S.W.2d 503 (Tex. App.
20 1978), and

21 WHEREAS, the United States Supreme Court has previously
22 declared, in the case of Dobbert v. Florida, 432 U.S. 282
23 (1977), that changing the practices and procedures of the
24 application of the death penalty statute does not violate the
25 ex post facto clauses of the State Constitution or the
26 Constitution of the United States, and

27 WHEREAS, the Florida Supreme Court has previously held
28 a claim under Article X, Section 9 of the State Constitution
29 against retroactive changes in death penalty procedures to be
30 without merit, in the case of Dobbert v. State, 375 So.2d 1069
31 (Fla. 1979), NOW, THEREFORE,