

1                   A bill to be entitled  
2           An act relating to execution of the death  
3           sentence; creating s. 922.105, F.S.; providing  
4           for execution of the death sentence by means of  
5           lethal injection if electrocution is declared  
6           invalid by any one of specified courts, unless  
7           overruled; providing that a person authorized  
8           by state law to prescribe medication, when  
9           designated by the Department of Corrections,  
10          may prescribe the drugs necessary to compound a  
11          lethal injection; providing that a person  
12          authorized by state law to prepare, compound,  
13          or dispense medication, when designated by the  
14          Department of Corrections, may prepare,  
15          compound, or dispense the lethal injection;  
16          providing that the prescription, preparation,  
17          compounding, dispensing, or administration of a  
18          lethal injection does not constitute practicing  
19          medicine, nursing, or pharmacy; providing for  
20          execution of the death sentence by other means  
21          not declared unconstitutional by the United  
22          States Supreme Court, if lethal injection is  
23          declared invalid; providing for determination  
24          and supervision of execution procedure by the  
25          Secretary of Corrections or the secretary's  
26          designee, under specified circumstances when  
27          execution by means of electrocution or lethal  
28          injection has been declared invalid; providing  
29          an exemption from ch. 120, F.S., for the  
30          policies and procedures of the Department of  
31          Corrections for execution; prohibiting

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

22  
23 WHEREAS, the existing method of carrying out a sentence  
24 of death in this state is by electrocution, and

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

29 WHEREAS, the Florida Supreme Court, in Jones v. State,  
30 701 So.2d 76, has held death by electrocution to be a  
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1 constitutional method of imposing the death penalty in this  
2 state, and

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

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

17 WHEREAS, the United States Supreme Court has previously  
18 declared, in the case of *Dobbert v. Florida*, 432 U.S. 282  
19 (1977), that changing the practices and procedures of the  
20 application of the death penalty statute does not violate the  
21 ex post facto clauses of the State Constitution or the  
22 Constitution of the United States, and

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

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29 Be It Enacted by the Legislature of the State of Florida:

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

3           922.105 Execution of death sentence by lethal  
4 injection or other method of execution if death by  
5 electrocution is declared invalid; prohibition against  
6 reduction of death sentence as a result of determination that  
7 a method of execution is invalid.--

8           (1) If death by electrocution pursuant to s. 922.10 is  
9 declared invalid by the Florida Supreme Court, the United  
10 States Supreme Court, or a final decision of the United States  
11 Court of Appeal, Eleventh Circuit, unless overruled in any  
12 manner, then the method of execution shall be by lethal  
13 injection of a substance or substances in lethal quantity  
14 sufficient to cause death. The execution procedure is to be  
15 determined and supervised by the Secretary of Corrections or  
16 the secretary's designee.

17           (2) Notwithstanding any law to the contrary, a  
18 person authorized by state law to prescribe medication and  
19 designated by the Department of Corrections may prescribe the  
20 drug or drugs necessary to compound a lethal injection.  
21 Notwithstanding any law to the contrary, a person authorized  
22 by state law to prepare, compound, or dispense medication and  
23 designated by the Department of Corrections may prepare,  
24 compound, or dispense a lethal injection. For purposes of  
25 this section, prescription, preparation, compounding,  
26 dispensing, and administration of a lethal injection does not  
27 constitute the practice of medicine, nursing, or pharmacy.

28           (3) If the imposition of death by lethal injection is  
29 declared invalid by the Florida Supreme Court, the United  
30 States Supreme Court, or a final decision of the United States  
31 Court of Appeal, Eleventh Circuit, unless overruled in any

1 manner, then the method of execution in that case shall be  
2 carried out by any other method of execution not declared  
3 unconstitutional by the United States Supreme Court. The  
4 execution procedure for imposing a death sentence pursuant to  
5 this subsection is to be determined and supervised by the  
6 Secretary of Corrections or the secretary's designee.

7 (4) The policies and procedures of the Department of  
8 Corrections for execution of persons sentenced to death shall  
9 be exempt from chapter 120.

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

18 (6) Nothing contained in this chapter is intended to  
19 require any physician, nurse, health care provider or employee  
20 of the Department of Corrections to assist in any aspect of an  
21 execution which is contrary to the person's moral or ethical  
22 beliefs.

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

25 775.082 Penalties; mandatory minimum sentences for  
26 certain reoffenders previously released from prison.--

27 (1) A person who has been convicted of a capital  
28 felony shall be punished by death if the proceeding held to  
29 determine sentence according to the procedure set forth in s.  
30 921.141 results in findings by the court that such person  
31 shall be punished by death, otherwise such person shall be

1 punished by life imprisonment and shall be ineligible for  
2 parole.

3 (2) In the event the death penalty in a capital felony  
4 is held to be unconstitutional by the Florida Supreme Court or  
5 the United States Supreme Court, the court having jurisdiction  
6 over a person previously sentenced to death for a capital  
7 felony shall cause such person to be brought before the court,  
8 and the court shall sentence such person to life imprisonment  
9 as provided in subsection (1). No sentence of death shall be  
10 reduced as a result of a determination that a method of  
11 execution is invalid under the State Constitution or the  
12 Constitution of the United States.

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

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

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

1 as a result of a determination that a method of execution is  
2 invalid under the State Constitution or the Constitution of  
3 the United States.

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

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