

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 held to be
6 unconstitutional; providing legislative intent;
7 providing that a person authorized by state law
8 to prescribe medication, when designated by the
9 Department of Corrections, may prescribe the
10 drugs necessary to compound a lethal injection;
11 providing that a person authorized by state law
12 to prepare, compound, or dispense medication,
13 when designated by the Department of
14 Corrections, may prepare, compound, or dispense
15 the lethal injection; providing that the
16 prescription, preparation, compounding,
17 dispensing, or administration of a lethal
18 injection does not constitute practicing
19 medicine, nursing, or pharmacy; providing an
20 exemption from ch. 120, F.S., for the policies
21 and procedures of the Department of Corrections
22 for execution; prohibiting reduction of a
23 sentence of death as the result of a method of
24 execution being held to be unconstitutional;
25 prohibiting any physician, nurse, pharmacist,
26 employee of the Department of Corrections, or
27 other person from being required to assist in
28 an execution contrary to the person's moral or
29 ethical beliefs; amending s. 775.082, F.S.,
30 relating to penalties and mandatory minimum
31 sentences for certain reoffenders previously

1 released from prison; conforming provisions to
2 changes made by the act; prohibiting reduction
3 of a sentence of death as the result of a
4 method of execution being held
5 unconstitutional; amending s. 790.161, F.S.,
6 relating to the offense of making, possessing,
7 throwing, projecting, placing, or discharging a
8 destructive device, or attempt so to do, and
9 penalties; conforming provisions to changes
10 made by the act; prohibiting reduction of a
11 sentence of death as the result of a method of
12 execution being held unconstitutional;
13 providing an effective date.

14
15 WHEREAS, the Legislature finds that the existing method
16 of carrying out a sentence of death in Florida is by
17 electrocution, and

18 WHEREAS, the Legislature has previously determined that
19 death by electrocution is the preferred method of carrying out
20 the death penalty, and the death penalty should be carried out
21 in a swift and sure manner, and

22 WHEREAS, the existing method of carrying out a sentence
23 of death in this state is by 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 Florida Supreme Court, in Jones v. State,
29 701 So.2d 76 (1997), has held death by electrocution to be a
30 constitutional method of imposing the death penalty in this
31 state, and

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

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

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

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

26
27 Be It Enacted by the Legislature of the State of Florida:

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

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1 922.105 Execution of death sentence by lethal
2 injection if death by electrocution is declared
3 unconstitutional; prohibition against reduction of death
4 sentence as a result of determination that a method of
5 execution is unconstitutional.--

6 (1) A death sentence shall be executed by
7 electrocution pursuant to s. 922.10. If electrocution is held
8 to be unconstitutional by the Florida Supreme Court under the
9 State Constitution, or held to be unconstitutional by the
10 United States Supreme Court under the United States
11 Constitution, or if the United States Supreme Court declines
12 to review any judgment holding electrocution to be
13 unconstitutional under the United States Constitution made by
14 the Florida Supreme Court or the United States Court of
15 Appeals that has jurisdiction over Florida, all persons
16 sentenced to death for a capital crime shall be executed by
17 lethal injection.

18 (2) The provisions of the opinion and all points of
19 law decided by the United States Supreme Court in Malloy v.
20 South Carolina, 237 U.S. 180 (1915), finding that the Ex Post
21 Facto Clause of the United States Constitution is not violated
22 by a legislatively enacted change in the method of execution
23 for a sentence of death validly imposed for previously
24 committed capital murders, are adopted by the Legislature as
25 the law of this state.

26 (3) A change in the method of execution does not
27 increase the punishment or modify the penalty of death for
28 capital murder. Any legislative change to the method of
29 execution for the crime of capital murder does not violate s.
30 10, Art. I or s. 9, Art. X of the State Constitution.

31

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

5 Notwithstanding any law to the contrary, a person authorized
6 by state law to prepare, compound, or dispense medication and
7 designated by the Department of Corrections may prepare,
8 compound, or dispense a lethal injection. For purposes of
9 this section, prescription, preparation, compounding,
10 dispensing, and administration of a lethal injection does not
11 constitute the practice of medicine, nursing, or pharmacy.

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

15 (6) Notwithstanding s. 775.082(2), s. 790.161(4), or
16 s. 775.15(1)(a), or any other provision to the contrary, no
17 sentence of death shall be reduced as a result of a
18 determination that a method of execution is declared
19 unconstitutional under the State Constitution or the
20 Constitution of the United States. In any case in which an
21 execution method is declared unconstitutional, the death
22 sentence shall remain in force until the sentence can be
23 lawfully executed by any valid method of execution.

24 (7) Nothing contained in this chapter is intended to
25 require any physician, nurse, pharmacist, or employee of the
26 Department of Corrections or any other person to assist in any
27 aspect of an execution which is contrary to the person's moral
28 or ethical beliefs.

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

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1 775.082 Penalties; mandatory minimum sentences for
2 certain reoffenders previously released from prison.--

3 (1) A person who has been convicted of a capital
4 felony shall be punished by death if the proceeding held to
5 determine sentence according to the procedure set forth in s.
6 921.141 results in findings by the court that such person
7 shall be punished by death, otherwise such person shall be
8 punished by life imprisonment and shall be ineligible for
9 parole.

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

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

22 790.161 Making, possessing, throwing, projecting,
23 placing, or discharging any destructive device or attempt so
24 to do, felony; penalties.--A person who willfully and
25 unlawfully makes, possesses, throws, projects, places,
26 discharges, or attempts to make, possess, throw, project,
27 place, or discharge any destructive device:

28 (4) If the act results in the death of another person,
29 commits a capital felony, punishable as provided in s.
30 775.082. In the event the death penalty in a capital felony is
31 held to be unconstitutional by the Florida Supreme Court or

1 the United States Supreme Court, the court having jurisdiction
2 over a person previously sentenced to death for a capital
3 felony shall cause such person to be brought before the court,
4 and the court shall sentence such person to life imprisonment
5 if convicted of murder in the first degree or of a capital
6 felony under this subsection, and such person shall be
7 ineligible for parole. No sentence of death shall be reduced
8 as a result of a determination that a method of execution is
9 held to be unconstitutional under the State Constitution or
10 the Constitution of the United States.

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

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