

By the Committee on Criminal Justice and Senators Burt, Klein, Bronson, Campbell, Crist, Gutman, Horne, Turner and Silver

307-1626-98

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A bill to be entitled  
An act relating to execution; amending s.  
922.10, F.S.; providing for execution by means  
of lethal injection if electrocution is held to  
be unconstitutional; providing legislative  
intent; providing an effective date.

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

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

WHEREAS, the Florida Supreme Court, in Jones v.  
Butterworth, Case No. 90,231 (October 20, 1997), has held  
death by electrocution to be a constitutional method of  
imposing the death penalty in Florida, and

WHEREAS, the Legislature intends to ensure that the  
lawful punishment of death imposed on persons in this state is  
carried out, and considers it to be appropriate to provide an  
alternative method for imposing death only in the event that  
the United States Supreme Court, the United States Court of  
Appeals for the Eleventh Circuit, or the Florida Supreme Court  
declares death by electrocution to be unconstitutional, and

WHEREAS, changing the method of carrying out the death  
penalty both for those previously sentenced and for those who  
will be sentenced in the future is merely procedural and does  
not increase the quantum of punishment imposed upon a  
defendant and therefore does not violate the prohibition  
against ex post facto laws under the Constitution of the

1 United States, Malloy v. South Carolina, 237 U.S. 180 (1915),  
2 and Ex Parte Kenneth Granviel, 561 S.W.2d 503 (Tex. App.  
3 1978), and

4 WHEREAS, in the case of Malloy v. South Carolina, 237  
5 U.S. 180 (1915), the United States Supreme Court held that a  
6 change in the method of execution does not change the penalty  
7 for the crime of murder, but only the method of inducing  
8 death, when under such a change some of the odious features  
9 incident to the old method are abated by the new method, and

10 WHEREAS, the Florida Supreme Court has previously  
11 declared, in the case of Dobbert v. State, 375 So.2d 1069  
12 (Fla. 1979), affirmed in Dobbert v. Florida, 432 U.S. 282,  
13 that changing the practices and procedures of the application  
14 of the death penalty statute does not violate the provisions  
15 of Article X, Section 9 of the Florida Constitution or the "ex  
16 post facto" clauses of the Florida and United States  
17 Constitutions, NOW, THEREFORE,

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

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21 Section 1. Section 922.10, Florida Statutes, is  
22 amended to read:

23 922.10 Execution of death sentence; executioner.--

24 (1) A death sentence shall be executed by  
25 electrocution. If electrocution is held to be unconstitutional  
26 by the Florida Supreme Court, the United States Court of  
27 Appeals for the Eleventh Circuit, or the United States Supreme  
28 Court, all persons sentenced to death for a capital crime  
29 shall be executed by lethal injection.The superintendent  
30 ~~warden~~ of the state prison shall designate the executioner.  
31 Information which, if released, would identify the executioner

1 is confidential and exempt from the provisions of s. 119.07(1)  
2 and s. 24(a), Art. I of the State Constitution. The warrant  
3 authorizing the execution shall be read to the convicted  
4 person immediately before execution.

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

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

18 Section 2. This act shall take effect upon becoming a  
19 law.

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21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
22 COMMITTEE SUBSTITUTE FOR  
23 Senate Bill's 360 and 350

24 . References the United States Court of Appeals for the  
25 Eleventh Circuit for the purpose of providing that if  
26 that court declares electrocution to be unconstitutional,  
lethal injection shall be the method of execution.

27 . Adopts the opinion and points of law in Malloy v. South  
28 Carolina, 237 U.S. 180 (1915), in which the United States  
29 Supreme Court held that a legislative change in the  
30 method of execution does not violate federal ex post  
31 facto law.

30 . Provides that a change in the method of execution does  
31 not increase the punishment or modify the death penalty,  
nor does it violate Article I, Section 10, or Article X,  
Section 9, Florida Constitution.