

By Senator Klein

28-739A-00

1 A bill to be entitled
2 An act relating to the death penalty; creating
3 the "Death Penalty Reform Act of 2000";
4 amending s. 922.10, F.S., relating to the
5 execution of the death sentence; creating s.
6 922.101, F.S.; providing for execution of death
7 sentence by lethal injection if electrocution
8 is not selected; prohibiting a reduction of the
9 death sentence as a result of a determination
10 that a method of execution is unconstitutional;
11 creating s. 922.103, F.S.; providing
12 legislative intent with respect to the
13 interpretation of laws altering a method of
14 execution of the death penalty; creating s.
15 922.104, F.S.; providing a procedure for
16 execution of the death sentence by lethal
17 injection; amending s. 922.105, F.S., relating
18 to execution of the death sentence by lethal
19 injection; urging the Supreme Court to adopt
20 procedural rules that will streamline the
21 filing and handling of postconviction and
22 collateral actions of persons under sentence of
23 death and to submit certain recommendations to
24 the Legislature; providing an effective date.

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

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28 Section 1. This act may be cited as the "Death Penalty
29 Reform Act of 2000."

30 Section 2. Section 922.10, Florida Statutes, is
31 amended to read:

1 922.10 Execution of death sentence;
2 executioner.--Unless otherwise provided by law, a death
3 sentence shall be executed by electrocution. The warden of the
4 state prison shall designate the executioner. Information
5 which, if released, would identify the executioner is
6 confidential and exempt from the provisions of s. 119.07(1)
7 and s. 24(a), Art. I of the State Constitution. The warrant
8 authorizing the execution shall be read to the convicted
9 person immediately before execution.

10 Section 3. Section 922.101, Florida Statutes, is
11 created to read:

12 922.101 Execution of death sentence by lethal
13 injection if death by electrocution is not elected;
14 prohibition against reduction of death sentence as a result of
15 determination that a method of execution is
16 unconstitutional.--

17 (1) With respect to all sentences executed after
18 January 10, 2000, a death sentence shall be executed by
19 electrocution pursuant to s. 922.10 at the election, pursuant
20 to this section, of the person sentenced to death. The
21 election for death by electrocution is waived unless it is
22 made in writing and delivered to the warden of the
23 correctional facility within 30 days after the issuance of
24 mandate pursuant to a decision by the Supreme Court of Florida
25 affirming the sentence of death. If the person waives the
26 election of death by electrocution, then the sentence shall be
27 executed by lethal injection pursuant to s. 922.104.

28 (2) If an execution by lethal injection pursuant to
29 this section is barred by any court as a violation of any
30 provision of either the State Constitution or Federal
31 Constitution, then the death sentence shall be carried out

1 pursuant to s. 922.10, s. 922.105 (if applicable), or any
2 other provision of law which may be applicable at the time of
3 the execution.

4 (3) In any case in which the time provided for making
5 an election under subsection (1) shall have expired prior to
6 30 days after the effective date of this act, the person
7 sentenced to death shall make an election within 30 days after
8 the effective date of this act and if not so made such
9 election is waived.

10 (4) If a death warrant is issued before the expiration
11 of the time provided for making the election under subsection
12 (3), the election must be made within 48 hours after a date
13 for execution of the death sentence has been set by the
14 Governor; and, if not so made, the election is waived.

15 Section 4. Section 922.103, Florida Statutes, is
16 created to read:

17 922.103 Legislative intent regarding interpretation of
18 laws altering a method of execution of the death penalty.--

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

27 (2) A change in the method of execution does not
28 increase the punishment or modify the penalty of death for a
29 capital crime. Any legislative change to the method of
30 execution for a capital crime does not violate s. 10, Art. I,
31 nor s. 9, Art. X of the State Constitution.

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

10 Section 5. Section 922.104, Florida Statutes, is
11 created to read:

12 922.104 Execution of death sentence by lethal
13 injection.--

14 (1) This section shall govern all cases where a
15 sentence of death is to be executed by lethal injection.

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

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

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

1 Section 6. Section 922.105, Florida Statutes, is
2 amended to read:

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

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

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

28 (3) ~~A change in the method of execution does not~~
29 ~~increase the punishment or modify the penalty of death for~~
30 ~~capital murder. Any legislative change to the method of~~
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1 ~~execution for the crime of capital murder does not violate s.~~
2 ~~10, Art. I or s. 9, Art. X of the State Constitution.~~

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

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

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

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

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

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1 Section 7. The Legislature declares its intent to
2 revise, in a separate bill to be considered during the 2000
3 Regular Session of the Legislature, the laws governing
4 postconviction and collateral actions brought for reviewing
5 either the judgment or the sentence of death in capital cases.
6 To this end, the Legislature urges the Florida Supreme Court
7 to expeditiously adopt procedural rules that will streamline
8 the process for filing and handling such actions and to submit
9 to the presiding officer of each house of the Legislature by
10 March 2, 2000, any recommendations that the Court has for the
11 substantive revision of the laws governing such actions.

12 Section 8. This act shall take effect upon becoming a
13 law.

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16 SENATE SUMMARY

17 Creates the "Death Penalty Reform Act of 2000." Provides
18 for a death sentence to be executed by lethal injection
19 unless the person sentenced to death elects death by
20 electrocution. Requires that such election be made in
21 writing to the warden within 30 days after the sentence
22 of death is affirmed by the Florida Supreme Court. If the
23 death warrant is issued before expiration of the 30-day
24 period, requires that such election be made within 48
25 hours after the date for execution is set. Provides
26 procedures for execution by lethal injection. Urges the
27 Supreme Court to adopt procedural rules that will
28 streamline the filing and handling of postconviction and
29 collateral actions of persons under sentence of death and
30 to submit certain recommendations to the Legislature.
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