

HB 4189

2011

1 A bill to be entitled
2 An act relating to the death penalty; amending s. 775.082,
3 F.S.; deleting provisions providing for the death penalty
4 for capital felonies; deleting provisions relating to the
5 effect of a declaration by a court of last resort that the
6 death penalty in a capital felony is unconstitutional;
7 amending ss. 27.51 and 27.511, F.S.; deleting provisions
8 relating to representation in death penalty cases;
9 repealing ss. 27.7001, 27.7002, 27.701, 27.702, 27.703,
10 27.704, 27.705, 27.706, 27.707, 27.708, 27.7081, 27.709,
11 27.7091, 27.710, 27.711, and 27.715, F.S., relating to
12 capital collateral representation; amending s. 119.071,
13 F.S.; deleting a public records exemption relating to
14 capital collateral proceedings; amending ss. 775.15 and
15 790.161, F.S.; deleting provisions relating to the effect
16 of a declaration by a court of last resort declaring that
17 the death penalty in a capital felony is unconstitutional;
18 repealing s. 913.13, F.S., relating to jurors in capital
19 cases; repealing s. 921.137, F.S., relating to prohibiting
20 the imposition of the death sentence upon a defendant with
21 mental retardation; repealing s. 921.141, F.S., relating
22 to determination of whether to impose a sentence of death
23 or life imprisonment for a capital felony; repealing s.
24 921.142, F.S., relating determination of whether to impose
25 a sentence of death or life imprisonment for a capital
26 drug trafficking felony; amending ss. 782.04, 794.011, and
27 893.135, F.S.; conforming provisions to changes made by
28 the act; repealing ss. 922.052, 922.06, 922.07, 922.08,

HB 4189

2011

29 | 922.095, 922.10, 922.105, 922.108, 922.11, 922.111,
30 | 922.12, 922.14, and 922.15, F.S., relating to issuance of
31 | warrant of execution, stay of execution of death sentence,
32 | proceedings when person under sentence of death appears to
33 | be insane, proceedings when person under sentence of death
34 | appears to be pregnant, grounds for death warrant,
35 | execution of death sentence, prohibition against reduction
36 | of death sentence as a result of determination that a
37 | method of execution is unconstitutional, sentencing orders
38 | in capital cases, regulation of execution, transfer to
39 | state prison for safekeeping before death warrant issued,
40 | return of warrant of execution issued by Governor,
41 | sentence of death unexecuted for unjustifiable reasons,
42 | and return of warrant of execution issued by Supreme
43 | Court, respectively; amending s. 924.055, F.S.; deleting
44 | provisions relating to legislative intent concerning
45 | appeals and postconviction proceedings in death penalty
46 | cases; repealing ss. 924.056 and 924.057, F.S., relating
47 | to commencement of capital postconviction actions for
48 | which sentence of death is imposed; limitations on
49 | actions; amending ss. 924.058 and 924.059, F.S.;
50 | conforming provisions to changes made by the act; amending
51 | s. 925.11, F.S.; deleting provisions relating to
52 | preservation of DNA evidence in death penalty cases;
53 | amending s. 945.10, F.S.; deleting a public records
54 | exemption for the identity of executioners; providing an
55 | effective date.

56

HB 4189

2011

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

58

59 Section 1. Subsections (1) and (2) of section 775.082,
60 Florida Statutes, are amended to read:

61 775.082 Penalties; applicability of sentencing structures;
62 mandatory minimum sentences for certain reoffenders previously
63 released from prison.—

64 (1) A person who has been convicted of a capital felony
65 shall be ~~punished by death if the proceeding held to determine~~
66 ~~sentence according to the procedure set forth in s. 921.141~~
67 ~~results in findings by the court that such person shall be~~
68 ~~punished by death, otherwise such person shall be punished by~~
69 ~~life imprisonment and shall be ineligible for parole.~~

70 ~~(2) In the event the death penalty in a capital felony is~~
71 ~~held to be unconstitutional by the Florida Supreme Court or the~~
72 ~~United States Supreme Court, the court having jurisdiction over~~
73 ~~a person previously sentenced to death for a capital felony~~
74 ~~shall cause such person to be brought before the court, and the~~
75 ~~court shall sentence such person to life imprisonment as~~
76 ~~provided in subsection (1). No sentence of death shall be~~
77 ~~reduced as a result of a determination that a method of~~
78 ~~execution is held to be unconstitutional under the State~~
79 ~~Constitution or the Constitution of the United States.~~

80 Section 2. Paragraphs (d), (e), and (f) of subsection (1)
81 of section 27.51, Florida Statutes, are amended to read:

82 27.51 Duties of public defender.—

83 (1) The public defender shall represent, without
84 additional compensation, any person determined to be indigent

HB 4189

2011

85 under s. 27.52 and:

86 (d) Sought by petition filed in such court to be
 87 involuntarily placed as a mentally ill person under part I of
 88 chapter 394, involuntarily committed as a sexually violent
 89 predator under part V of chapter 394, or involuntarily admitted
 90 to residential services as a person with developmental
 91 disabilities under chapter 393. A public defender shall not
 92 represent any plaintiff in a civil action brought under the
 93 Florida Rules of Civil Procedure, the Federal Rules of Civil
 94 Procedure, or the federal statutes, or represent a petitioner in
 95 a rule challenge under chapter 120, unless specifically
 96 authorized by statute; or

97 ~~(e) Convicted and sentenced to death, for purposes of~~
 98 ~~handling an appeal to the Supreme Court; or~~

99 (e) ~~(f)~~ Is appealing a matter in a case arising under
 100 paragraphs (a)-(d).

101 Section 3. Paragraphs (e), (f), and (g) of subsection (5)
 102 of section 27.511, Florida Statutes, are amended to read:

103 27.511 Offices of criminal conflict and civil regional
 104 counsel; legislative intent; qualifications; appointment;
 105 duties.—

106 (5) When the Office of the Public Defender, at any time
 107 during the representation of two or more defendants, determines
 108 that the interests of those accused are so adverse or hostile
 109 that they cannot all be counseled by the public defender or his
 110 or her staff without a conflict of interest, or that none can be
 111 counseled by the public defender or his or her staff because of
 112 a conflict of interest, and the court grants the public

HB 4189

2011

113 defender's motion to withdraw, the office of criminal conflict
 114 and civil regional counsel shall be appointed and shall provide
 115 legal services, without additional compensation, to any person
 116 determined to be indigent under s. 27.52, who is:

117 ~~(e) Convicted and sentenced to death, for purposes of~~
 118 ~~handling an appeal to the Supreme Court;~~

119 (e) ~~(f)~~ Appealing a matter in a case arising under
 120 paragraphs (a)-(d); or

121 (f) ~~(g)~~ Seeking correction, reduction, or modification of a
 122 sentence under Rule 3.800, Florida Rules of Criminal Procedure,
 123 or seeking postconviction relief under Rule 3.850, Florida Rules
 124 of Criminal Procedure, if, in either case, the court determines
 125 that appointment of counsel is necessary to protect a person's
 126 due process rights.

127 Section 4. Sections 27.7001, 27.7002, 27.701, 27.702,
 128 27.703, 27.704, 27.705, 27.706, 27.707, 27.708, 27.7081, 27.709,
 129 27.7091, 27.710, 27.711, and 27.715 Florida Statutes, are
 130 repealed.

131 Section 5. Paragraph (d) of subsection (1) of section
 132 119.071, Florida Statutes, is amended to read:

133 119.071 General exemptions from inspection or copying of
 134 public records.—

135 (1) AGENCY ADMINISTRATION.—

136 (d)1. A public record that was prepared by an agency
 137 attorney (including an attorney employed or retained by the
 138 agency or employed or retained by another public officer or
 139 agency to protect or represent the interests of the agency
 140 having custody of the record) or prepared at the attorney's

HB 4189

2011

141 | express direction, that reflects a mental impression,
142 | conclusion, litigation strategy, or legal theory of the attorney
143 | or the agency, and that was prepared exclusively for civil or
144 | criminal litigation or for adversarial administrative
145 | proceedings, or that was prepared in anticipation of imminent
146 | civil or criminal litigation or imminent adversarial
147 | administrative proceedings, is exempt from s. 119.07(1) and s.
148 | 24(a), Art. I of the State Constitution until the conclusion of
149 | the litigation or adversarial administrative proceedings. ~~For~~
150 | ~~purposes of capital collateral litigation as set forth in s.~~
151 | ~~27.7001, the Attorney General's office is entitled to claim this~~
152 | ~~exemption for those public records prepared for direct appeal as~~
153 | ~~well as for all capital collateral litigation after direct~~
154 | ~~appeal until execution of sentence or imposition of a life~~
155 | ~~sentence.~~

156 | 2. This exemption is not waived by the release of such
157 | public record to another public employee or officer of the same
158 | agency or any person consulted by the agency attorney. When
159 | asserting the right to withhold a public record pursuant to this
160 | paragraph, the agency shall identify the potential parties to
161 | any such criminal or civil litigation or adversarial
162 | administrative proceedings. If a court finds that the document
163 | or other record has been improperly withheld under this
164 | paragraph, the party seeking access to such document or record
165 | shall be awarded reasonable attorney's fees and costs in
166 | addition to any other remedy ordered by the court.

167 | Section 6. Subsection (1) of section 775.15, Florida
168 | Statutes, is amended to read:

HB 4189

2011

169 775.15 Time limitations; general time limitations;
 170 exceptions.—

171 (1) A prosecution for a capital felony, a life felony, or
 172 a felony that resulted in a death may be commenced at any time.
 173 ~~If the death penalty is held to be unconstitutional by the~~
 174 ~~Florida Supreme Court or the United States Supreme Court, all~~
 175 ~~crimes designated as capital felonies shall be considered life~~
 176 ~~felonies for the purposes of this section, and prosecution for~~
 177 ~~such crimes may be commenced at any time.~~

178 Section 7. Subsection (4) of section 790.161, Florida
 179 Statutes, is amended to read:

180 790.161 Making, possessing, throwing, projecting, placing,
 181 or discharging any destructive device or attempt so to do,
 182 felony; penalties.—A person who willfully and unlawfully makes,
 183 possesses, throws, projects, places, discharges, or attempts to
 184 make, possess, throw, project, place, or discharge any
 185 destructive device:

186 (4) If the act results in the death of another person,
 187 commits a capital felony, punishable as provided in s. 775.082.
 188 ~~In the event the death penalty in a capital felony is held to be~~
 189 ~~unconstitutional by the Florida Supreme Court or the United~~
 190 ~~States Supreme Court, the court having jurisdiction over a~~
 191 ~~person previously sentenced to death for a capital felony shall~~
 192 ~~cause such person to be brought before the court, and the court~~
 193 ~~shall sentence such person to life imprisonment if convicted of~~
 194 ~~murder in the first degree or of a capital felony under this~~
 195 ~~subsection, and such person shall be ineligible for parole. No~~
 196 ~~sentence of death shall be reduced as a result of a~~

HB 4189

2011

197 ~~determination that a method of execution is held to be~~
 198 ~~unconstitutional under the State Constitution or the~~
 199 ~~Constitution of the United States.~~

200 Section 8. Section 913.13, Florida Statutes, is repealed.

201 Section 9. Section 921.137, Florida Statutes, is repealed.

202 Section 10. Sections 921.141 and 921.142, Florida
 203 Statutes, are repealed.

204 Section 11. Subsection (1) of section 782.04, Florida
 205 Statutes, is amended to read:

206 782.04 Murder.—

207 (1) ~~(a)~~ The unlawful killing of a human being:

208 1. When perpetrated from a premeditated design to effect
 209 the death of the person killed or any human being;

210 2. When committed by a person engaged in the perpetration
 211 of, or in the attempt to perpetrate, any:

212 a. Trafficking offense prohibited by s. 893.135(1),

213 b. Arson,

214 c. Sexual battery,

215 d. Robbery,

216 e. Burglary,

217 f. Kidnapping,

218 g. Escape,

219 h. Aggravated child abuse,

220 i. Aggravated abuse of an elderly person or disabled
 221 adult,

222 j. Aircraft piracy,

223 k. Unlawful throwing, placing, or discharging of a
 224 destructive device or bomb,

HB 4189

2011

225 | 1. Carjacking,
 226 | m. Home-invasion robbery,
 227 | n. Aggravated stalking,
 228 | o. Murder of another human being,
 229 | p. Resisting an officer with violence to his or her
 230 | person,
 231 | q. Felony that is an act of terrorism or is in furtherance
 232 | of an act of terrorism; or
 233 | 3. Which resulted from the unlawful distribution of any
 234 | substance controlled under s. 893.03(1), cocaine as described in
 235 | s. 893.03(2)(a)4., opium or any synthetic or natural salt,
 236 | compound, derivative, or preparation of opium, or methadone by a
 237 | person 18 years of age or older, when such drug is proven to be
 238 | the proximate cause of the death of the user,
 239 |
 240 | is murder in the first degree and constitutes a capital felony,
 241 | punishable as provided in s. 775.082.
 242 | ~~(b) In all cases under this section, the procedure set~~
 243 | ~~forth in s. 921.141 shall be followed in order to determine~~
 244 | ~~sentence of death or life imprisonment.~~
 245 | Section 12. Paragraph (a) of subsection (2) of section
 246 | 794.011, Florida Statutes, is amended to read:
 247 | 794.011 Sexual battery.—
 248 | (2)(a) A person 18 years of age or older who commits
 249 | sexual battery upon, or in an attempt to commit sexual battery
 250 | injures the sexual organs of, a person less than 12 years of age
 251 | commits a capital felony, punishable as provided in s. 775.082
 252 | ~~and 921.141.~~

HB 4189

2011

253 Section 13. Paragraphs (b), (c), (d), (e), (f), (g), (h),
 254 (i), (j), (k), and (l) of subsection (1) of section 893.135,
 255 Florida Statutes, are amended to read:

256 893.135 Trafficking; mandatory sentences; suspension or
 257 reduction of sentences; conspiracy to engage in trafficking.—

258 (1) Except as authorized in this chapter or in chapter 499
 259 and notwithstanding the provisions of s. 893.13:

260 (b)1. Any person who knowingly sells, purchases,
 261 manufactures, delivers, or brings into this state, or who is
 262 knowingly in actual or constructive possession of, 28 grams or
 263 more of cocaine, as described in s. 893.03(2)(a)4., or of any
 264 mixture containing cocaine, but less than 150 kilograms of
 265 cocaine or any such mixture, commits a felony of the first
 266 degree, which felony shall be known as "trafficking in cocaine,"
 267 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 268 If the quantity involved:

269 a. Is 28 grams or more, but less than 200 grams, such
 270 person shall be sentenced to a mandatory minimum term of
 271 imprisonment of 3 years, and the defendant shall be ordered to
 272 pay a fine of \$50,000.

273 b. Is 200 grams or more, but less than 400 grams, such
 274 person shall be sentenced to a mandatory minimum term of
 275 imprisonment of 7 years, and the defendant shall be ordered to
 276 pay a fine of \$100,000.

277 c. Is 400 grams or more, but less than 150 kilograms, such
 278 person shall be sentenced to a mandatory minimum term of
 279 imprisonment of 15 calendar years and pay a fine of \$250,000.

280 2. Any person who knowingly sells, purchases,

HB 4189

2011

281 manufactures, delivers, or brings into this state, or who is
282 knowingly in actual or constructive possession of, 150 kilograms
283 or more of cocaine, as described in s. 893.03(2)(a)4., commits
284 the first degree felony of trafficking in cocaine. A person who
285 has been convicted of the first degree felony of trafficking in
286 cocaine under this subparagraph shall be punished by life
287 imprisonment and is ineligible for any form of discretionary
288 early release except pardon or executive clemency or conditional
289 medical release under s. 947.149. However, if the court
290 determines that, in addition to committing any act specified in
291 this paragraph:

292 a. The person intentionally killed an individual or
293 counseled, commanded, induced, procured, or caused the
294 intentional killing of an individual and such killing was the
295 result; or

296 b. The person's conduct in committing that act led to a
297 natural, though not inevitable, lethal result,

298
299 such person commits the capital felony of trafficking in
300 cocaine, punishable as provided in s. ss. 775.082 and 921.142.
301 Any person sentenced for a capital felony under this paragraph
302 shall also be sentenced to pay the maximum fine provided under
303 subparagraph 1.

304 3. Any person who knowingly brings into this state 300
305 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
306 and who knows that the probable result of such importation would
307 be the death of any person, commits capital importation of
308 cocaine, a capital felony punishable as provided in s. ss.

HB 4189

2011

309 775.082 ~~and 921.142~~. Any person sentenced for a capital felony
 310 under this paragraph shall also be sentenced to pay the maximum
 311 fine provided under subparagraph 1.

312 (c)1. Any person who knowingly sells, purchases,
 313 manufactures, delivers, or brings into this state, or who is
 314 knowingly in actual or constructive possession of, 4 grams or
 315 more of any morphine, opium, oxycodone, hydrocodone,
 316 hydromorphone, or any salt, derivative, isomer, or salt of an
 317 isomer thereof, including heroin, as described in s.
 318 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more
 319 of any mixture containing any such substance, but less than 30
 320 kilograms of such substance or mixture, commits a felony of the
 321 first degree, which felony shall be known as "trafficking in
 322 illegal drugs," punishable as provided in s. 775.082, s.
 323 775.083, or s. 775.084. If the quantity involved:

324 a. Is 4 grams or more, but less than 14 grams, such person
 325 shall be sentenced to a mandatory minimum term of imprisonment
 326 of 3 years, and the defendant shall be ordered to pay a fine of
 327 \$50,000.

328 b. Is 14 grams or more, but less than 28 grams, such
 329 person shall be sentenced to a mandatory minimum term of
 330 imprisonment of 15 years, and the defendant shall be ordered to
 331 pay a fine of \$100,000.

332 c. Is 28 grams or more, but less than 30 kilograms, such
 333 person shall be sentenced to a mandatory minimum term of
 334 imprisonment of 25 calendar years and pay a fine of \$500,000.

335 2. Any person who knowingly sells, purchases,
 336 manufactures, delivers, or brings into this state, or who is

HB 4189

2011

337 knowingly in actual or constructive possession of, 30 kilograms
 338 or more of any morphine, opium, oxycodone, hydrocodone,
 339 hydromorphone, or any salt, derivative, isomer, or salt of an
 340 isomer thereof, including heroin, as described in s.
 341 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
 342 more of any mixture containing any such substance, commits the
 343 first degree felony of trafficking in illegal drugs. A person
 344 who has been convicted of the first degree felony of trafficking
 345 in illegal drugs under this subparagraph shall be punished by
 346 life imprisonment and is ineligible for any form of
 347 discretionary early release except pardon or executive clemency
 348 or conditional medical release under s. 947.149. However, if the
 349 court determines that, in addition to committing any act
 350 specified in this paragraph:

351 a. The person intentionally killed an individual or
 352 counseled, commanded, induced, procured, or caused the
 353 intentional killing of an individual and such killing was the
 354 result; or

355 b. The person's conduct in committing that act led to a
 356 natural, though not inevitable, lethal result,
 357
 358 such person commits the capital felony of trafficking in illegal
 359 drugs, punishable as provided in s. ss. 775.082 and ~~921.142~~. Any
 360 person sentenced for a capital felony under this paragraph shall
 361 also be sentenced to pay the maximum fine provided under
 362 subparagraph 1.

363 3. Any person who knowingly brings into this state 60
 364 kilograms or more of any morphine, opium, oxycodone,

HB 4189

2011

365 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
 366 salt of an isomer thereof, including heroin, as described in s.
 367 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or
 368 more of any mixture containing any such substance, and who knows
 369 that the probable result of such importation would be the death
 370 of any person, commits capital importation of illegal drugs, a
 371 capital felony punishable as provided in s. ss. 775.082 ~~and~~
 372 ~~921.142~~. Any person sentenced for a capital felony under this
 373 paragraph shall also be sentenced to pay the maximum fine
 374 provided under subparagraph 1.

375 (d)1. Any person who knowingly sells, purchases,
 376 manufactures, delivers, or brings into this state, or who is
 377 knowingly in actual or constructive possession of, 28 grams or
 378 more of phencyclidine or of any mixture containing
 379 phencyclidine, as described in s. 893.03(2)(b), commits a felony
 380 of the first degree, which felony shall be known as "trafficking
 381 in phencyclidine," punishable as provided in s. 775.082, s.
 382 775.083, or s. 775.084. If the quantity involved:

383 a. Is 28 grams or more, but less than 200 grams, such
 384 person shall be sentenced to a mandatory minimum term of
 385 imprisonment of 3 years, and the defendant shall be ordered to
 386 pay a fine of \$50,000.

387 b. Is 200 grams or more, but less than 400 grams, such
 388 person shall be sentenced to a mandatory minimum term of
 389 imprisonment of 7 years, and the defendant shall be ordered to
 390 pay a fine of \$100,000.

391 c. Is 400 grams or more, such person shall be sentenced to
 392 a mandatory minimum term of imprisonment of 15 calendar years

HB 4189

2011

393 and pay a fine of \$250,000.

394 2. Any person who knowingly brings into this state 800
 395 grams or more of phencyclidine or of any mixture containing
 396 phencyclidine, as described in s. 893.03(2)(b), and who knows
 397 that the probable result of such importation would be the death
 398 of any person commits capital importation of phencyclidine, a
 399 capital felony punishable as provided in s. ss. 775.082 ~~and~~
 400 ~~921.142~~. Any person sentenced for a capital felony under this
 401 paragraph shall also be sentenced to pay the maximum fine
 402 provided under subparagraph 1.

403 (e)1. Any person who knowingly sells, purchases,
 404 manufactures, delivers, or brings into this state, or who is
 405 knowingly in actual or constructive possession of, 200 grams or
 406 more of methaqualone or of any mixture containing methaqualone,
 407 as described in s. 893.03(1)(d), commits a felony of the first
 408 degree, which felony shall be known as "trafficking in
 409 methaqualone," punishable as provided in s. 775.082, s. 775.083,
 410 or s. 775.084. If the quantity involved:

411 a. Is 200 grams or more, but less than 5 kilograms, such
 412 person shall be sentenced to a mandatory minimum term of
 413 imprisonment of 3 years, and the defendant shall be ordered to
 414 pay a fine of \$50,000.

415 b. Is 5 kilograms or more, but less than 25 kilograms,
 416 such person shall be sentenced to a mandatory minimum term of
 417 imprisonment of 7 years, and the defendant shall be ordered to
 418 pay a fine of \$100,000.

419 c. Is 25 kilograms or more, such person shall be sentenced
 420 to a mandatory minimum term of imprisonment of 15 calendar years

HB 4189

2011

421 and pay a fine of \$250,000.

422 2. Any person who knowingly brings into this state 50
 423 kilograms or more of methaqualone or of any mixture containing
 424 methaqualone, as described in s. 893.03(1)(d), and who knows
 425 that the probable result of such importation would be the death
 426 of any person commits capital importation of methaqualone, a
 427 capital felony punishable as provided in s. ss. 775.082 ~~and~~
 428 ~~921.142~~. Any person sentenced for a capital felony under this
 429 paragraph shall also be sentenced to pay the maximum fine
 430 provided under subparagraph 1.

431 (f)1. Any person who knowingly sells, purchases,
 432 manufactures, delivers, or brings into this state, or who is
 433 knowingly in actual or constructive possession of, 14 grams or
 434 more of amphetamine, as described in s. 893.03(2)(c)2., or
 435 methamphetamine, as described in s. 893.03(2)(c)4., or of any
 436 mixture containing amphetamine or methamphetamine, or
 437 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine
 438 in conjunction with other chemicals and equipment utilized in
 439 the manufacture of amphetamine or methamphetamine, commits a
 440 felony of the first degree, which felony shall be known as
 441 "trafficking in amphetamine," punishable as provided in s.
 442 775.082, s. 775.083, or s. 775.084. If the quantity involved:

443 a. Is 14 grams or more, but less than 28 grams, such
 444 person shall be sentenced to a mandatory minimum term of
 445 imprisonment of 3 years, and the defendant shall be ordered to
 446 pay a fine of \$50,000.

447 b. Is 28 grams or more, but less than 200 grams, such
 448 person shall be sentenced to a mandatory minimum term of

HB 4189

2011

449 imprisonment of 7 years, and the defendant shall be ordered to
 450 pay a fine of \$100,000.

451 c. Is 200 grams or more, such person shall be sentenced to
 452 a mandatory minimum term of imprisonment of 15 calendar years
 453 and pay a fine of \$250,000.

454 2. Any person who knowingly manufactures or brings into
 455 this state 400 grams or more of amphetamine, as described in s.
 456 893.03(2)(c)2., or methamphetamine, as described in s.
 457 893.03(2)(c)4., or of any mixture containing amphetamine or
 458 methamphetamine, or phenylacetone, phenylacetic acid,
 459 pseudoephedrine, or ephedrine in conjunction with other
 460 chemicals and equipment used in the manufacture of amphetamine
 461 or methamphetamine, and who knows that the probable result of
 462 such manufacture or importation would be the death of any person
 463 commits capital manufacture or importation of amphetamine, a
 464 capital felony punishable as provided in s. ss. 775.082 and
 465 921.142. Any person sentenced for a capital felony under this
 466 paragraph shall also be sentenced to pay the maximum fine
 467 provided under subparagraph 1.

468 (g)1. Any person who knowingly sells, purchases,
 469 manufactures, delivers, or brings into this state, or who is
 470 knowingly in actual or constructive possession of, 4 grams or
 471 more of flunitrazepam or any mixture containing flunitrazepam as
 472 described in s. 893.03(1)(a) commits a felony of the first
 473 degree, which felony shall be known as "trafficking in
 474 flunitrazepam," punishable as provided in s. 775.082, s.
 475 775.083, or s. 775.084. If the quantity involved:

476 a. Is 4 grams or more but less than 14 grams, such person

HB 4189

2011

477 shall be sentenced to a mandatory minimum term of imprisonment
478 of 3 years, and the defendant shall be ordered to pay a fine of
479 \$50,000.

480 b. Is 14 grams or more but less than 28 grams, such person
481 shall be sentenced to a mandatory minimum term of imprisonment
482 of 7 years, and the defendant shall be ordered to pay a fine of
483 \$100,000.

484 c. Is 28 grams or more but less than 30 kilograms, such
485 person shall be sentenced to a mandatory minimum term of
486 imprisonment of 25 calendar years and pay a fine of \$500,000.

487 2. Any person who knowingly sells, purchases,
488 manufactures, delivers, or brings into this state or who is
489 knowingly in actual or constructive possession of 30 kilograms
490 or more of flunitrazepam or any mixture containing flunitrazepam
491 as described in s. 893.03(1)(a) commits the first degree felony
492 of trafficking in flunitrazepam. A person who has been convicted
493 of the first degree felony of trafficking in flunitrazepam under
494 this subparagraph shall be punished by life imprisonment and is
495 ineligible for any form of discretionary early release except
496 pardon or executive clemency or conditional medical release
497 under s. 947.149. However, if the court determines that, in
498 addition to committing any act specified in this paragraph:

499 a. The person intentionally killed an individual or
500 counseled, commanded, induced, procured, or caused the
501 intentional killing of an individual and such killing was the
502 result; or

503 b. The person's conduct in committing that act led to a
504 natural, though not inevitable, lethal result,

HB 4189

2011

505
506 such person commits the capital felony of trafficking in
507 flunitrazepam, punishable as provided in s. ss. 775.082 ~~and~~
508 ~~921.142~~. Any person sentenced for a capital felony under this
509 paragraph shall also be sentenced to pay the maximum fine
510 provided under subparagraph 1.

511 (h)1. Any person who knowingly sells, purchases,
512 manufactures, delivers, or brings into this state, or who is
513 knowingly in actual or constructive possession of, 1 kilogram or
514 more of gamma-hydroxybutyric acid (GHB), as described in s.
515 893.03(1)(d), or any mixture containing gamma-hydroxybutyric
516 acid (GHB), commits a felony of the first degree, which felony
517 shall be known as "trafficking in gamma-hydroxybutyric acid
518 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.
519 775.084. If the quantity involved:

520 a. Is 1 kilogram or more but less than 5 kilograms, such
521 person shall be sentenced to a mandatory minimum term of
522 imprisonment of 3 years, and the defendant shall be ordered to
523 pay a fine of \$50,000.

524 b. Is 5 kilograms or more but less than 10 kilograms, such
525 person shall be sentenced to a mandatory minimum term of
526 imprisonment of 7 years, and the defendant shall be ordered to
527 pay a fine of \$100,000.

528 c. Is 10 kilograms or more, such person shall be sentenced
529 to a mandatory minimum term of imprisonment of 15 calendar years
530 and pay a fine of \$250,000.

531 2. Any person who knowingly manufactures or brings into
532 this state 150 kilograms or more of gamma-hydroxybutyric acid

HB 4189

2011

533 (GHB), as described in s. 893.03(1)(d), or any mixture
534 containing gamma-hydroxybutyric acid (GHB), and who knows that
535 the probable result of such manufacture or importation would be
536 the death of any person commits capital manufacture or
537 importation of gamma-hydroxybutyric acid (GHB), a capital felony
538 punishable as provided in s. 775.082 and ~~921.142~~. Any person
539 sentenced for a capital felony under this paragraph shall also
540 be sentenced to pay the maximum fine provided under subparagraph
541 1.

542 (i)1. Any person who knowingly sells, purchases,
543 manufactures, delivers, or brings into this state, or who is
544 knowingly in actual or constructive possession of, 1 kilogram or
545 more of gamma-butyrolactone (GBL), as described in s.
546 893.03(1)(d), or any mixture containing gamma-butyrolactone
547 (GBL), commits a felony of the first degree, which felony shall
548 be known as "trafficking in gamma-butyrolactone (GBL),"
549 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
550 If the quantity involved:

551 a. Is 1 kilogram or more but less than 5 kilograms, such
552 person shall be sentenced to a mandatory minimum term of
553 imprisonment of 3 years, and the defendant shall be ordered to
554 pay a fine of \$50,000.

555 b. Is 5 kilograms or more but less than 10 kilograms, such
556 person shall be sentenced to a mandatory minimum term of
557 imprisonment of 7 years, and the defendant shall be ordered to
558 pay a fine of \$100,000.

559 c. Is 10 kilograms or more, such person shall be sentenced
560 to a mandatory minimum term of imprisonment of 15 calendar years

HB 4189

2011

561 and pay a fine of \$250,000.

562 2. Any person who knowingly manufactures or brings into
563 the state 150 kilograms or more of gamma-butyrolactone (GBL), as
564 described in s. 893.03(1)(d), or any mixture containing gamma-
565 butyrolactone (GBL), and who knows that the probable result of
566 such manufacture or importation would be the death of any person
567 commits capital manufacture or importation of gamma-
568 butyrolactone (GBL), a capital felony punishable as provided in
569 s. ss. 775.082 and 921.142. Any person sentenced for a capital
570 felony under this paragraph shall also be sentenced to pay the
571 maximum fine provided under subparagraph 1.

572 (j)1. Any person who knowingly sells, purchases,
573 manufactures, delivers, or brings into this state, or who is
574 knowingly in actual or constructive possession of, 1 kilogram or
575 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of
576 any mixture containing 1,4-Butanediol, commits a felony of the
577 first degree, which felony shall be known as "trafficking in
578 1,4-Butanediol," punishable as provided in s. 775.082, s.
579 775.083, or s. 775.084. If the quantity involved:

580 a. Is 1 kilogram or more, but less than 5 kilograms, such
581 person shall be sentenced to a mandatory minimum term of
582 imprisonment of 3 years, and the defendant shall be ordered to
583 pay a fine of \$50,000.

584 b. Is 5 kilograms or more, but less than 10 kilograms,
585 such person shall be sentenced to a mandatory minimum term of
586 imprisonment of 7 years, and the defendant shall be ordered to
587 pay a fine of \$100,000.

588 c. Is 10 kilograms or more, such person shall be sentenced

589 to a mandatory minimum term of imprisonment of 15 calendar years
 590 and pay a fine of \$500,000.

591 2. Any person who knowingly manufactures or brings into
 592 this state 150 kilograms or more of 1,4-Butanediol as described
 593 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,
 594 and who knows that the probable result of such manufacture or
 595 importation would be the death of any person commits capital
 596 manufacture or importation of 1,4-Butanediol, a capital felony
 597 punishable as provided in s. ss. 775.082 ~~and 921.142~~. Any person
 598 sentenced for a capital felony under this paragraph shall also
 599 be sentenced to pay the maximum fine provided under subparagraph
 600 1.

601 (k)1. Any person who knowingly sells, purchases,
 602 manufactures, delivers, or brings into this state, or who is
 603 knowingly in actual or constructive possession of, 10 grams or
 604 more of any of the following substances described in s.
 605 893.03(1)(a) or (c):

- 606 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 607 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 608 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 609 d. 2,5-Dimethoxyamphetamine;
- 610 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 611 f. N-ethylamphetamine;
- 612 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 613 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 614 i. 4-methoxyamphetamine;
- 615 j. 4-methoxymethamphetamine;
- 616 k. 4-Methyl-2,5-dimethoxyamphetamine;

HB 4189

2011

- 617 | 1. 3,4-Methylenedioxy-N-ethylamphetamine;
- 618 | m. 3,4-Methylenedioxyamphetamine;
- 619 | n. N,N-dimethylamphetamine; or
- 620 | o. 3,4,5-Trimethoxyamphetamine,
- 621 |
- 622 | individually or in any combination of or any mixture containing
- 623 | any substance listed in sub-subparagraphs a.-o., commits a
- 624 | felony of the first degree, which felony shall be known as
- 625 | "trafficking in Phenethylamines," punishable as provided in s.
- 626 | 775.082, s. 775.083, or s. 775.084.
- 627 | 2. If the quantity involved:
- 628 | a. Is 10 grams or more but less than 200 grams, such
- 629 | person shall be sentenced to a mandatory minimum term of
- 630 | imprisonment of 3 years, and the defendant shall be ordered to
- 631 | pay a fine of \$50,000.
- 632 | b. Is 200 grams or more, but less than 400 grams, such
- 633 | person shall be sentenced to a mandatory minimum term of
- 634 | imprisonment of 7 years, and the defendant shall be ordered to
- 635 | pay a fine of \$100,000.
- 636 | c. Is 400 grams or more, such person shall be sentenced to
- 637 | a mandatory minimum term of imprisonment of 15 calendar years
- 638 | and pay a fine of \$250,000.
- 639 | 3. Any person who knowingly manufactures or brings into
- 640 | this state 30 kilograms or more of any of the following
- 641 | substances described in s. 893.03(1)(a) or (c):
- 642 | a. 3,4-Methylenedioxymethamphetamine (MDMA);
- 643 | b. 4-Bromo-2,5-dimethoxyamphetamine;
- 644 | c. 4-Bromo-2,5-dimethoxyphenethylamine;

- 645 d. 2,5-Dimethoxyamphetamine;
- 646 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 647 f. N-ethylamphetamine;
- 648 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 649 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 650 i. 4-methoxyamphetamine;
- 651 j. 4-methoxymethamphetamine;
- 652 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 653 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 654 m. 3,4-Methylenedioxyamphetamine;
- 655 n. N,N-dimethylamphetamine; or
- 656 o. 3,4,5-Trimethoxyamphetamine,

657
 658 individually or in any combination of or any mixture containing
 659 any substance listed in sub-subparagraphs a.-o., and who knows
 660 that the probable result of such manufacture or importation
 661 would be the death of any person commits capital manufacture or
 662 importation of Phenethylamines, a capital felony punishable as
 663 provided in s. ss. 775.082 and 921.142. Any person sentenced for
 664 a capital felony under this paragraph shall also be sentenced to
 665 pay the maximum fine provided under subparagraph 1.

666 (l)1. Any person who knowingly sells, purchases,
 667 manufactures, delivers, or brings into this state, or who is
 668 knowingly in actual or constructive possession of, 1 gram or
 669 more of lysergic acid diethylamide (LSD) as described in s.
 670 893.03(1)(c), or of any mixture containing lysergic acid
 671 diethylamide (LSD), commits a felony of the first degree, which
 672 felony shall be known as "trafficking in lysergic acid

HB 4189

2011

673 diethylamide (LSD)," punishable as provided in s. 775.082, s.
674 775.083, or s. 775.084. If the quantity involved:

675 a. Is 1 gram or more, but less than 5 grams, such person
676 shall be sentenced to a mandatory minimum term of imprisonment
677 of 3 years, and the defendant shall be ordered to pay a fine of
678 \$50,000.

679 b. Is 5 grams or more, but less than 7 grams, such person
680 shall be sentenced to a mandatory minimum term of imprisonment
681 of 7 years, and the defendant shall be ordered to pay a fine of
682 \$100,000.

683 c. Is 7 grams or more, such person shall be sentenced to a
684 mandatory minimum term of imprisonment of 15 calendar years and
685 pay a fine of \$500,000.

686 2. Any person who knowingly manufactures or brings into
687 this state 7 grams or more of lysergic acid diethylamide (LSD)
688 as described in s. 893.03(1)(c), or any mixture containing
689 lysergic acid diethylamide (LSD), and who knows that the
690 probable result of such manufacture or importation would be the
691 death of any person commits capital manufacture or importation
692 of lysergic acid diethylamide (LSD), a capital felony punishable
693 as provided in s. ss. 775.082 and 921.142. Any person sentenced
694 for a capital felony under this paragraph shall also be
695 sentenced to pay the maximum fine provided under subparagraph 1.

696 Section 14. Sections 922.052, 922.06, 922.07, 922.08,
697 922.095, 922.10, 922.105, 922.108, 922.11, 922.111, 922.12,
698 922.14, and 922.15, Florida Statutes, are repealed.

699 Section 15. Section 924.055, Florida Statutes, is amended
700 to read:

HB 4189

2011

701 924.055 Postconviction review in capital cases;
702 legislative findings and intent.—

703 ~~(1) It is the intent of the Legislature to reduce delays~~
704 ~~in capital cases and to ensure that all appeals and~~
705 ~~postconviction actions in capital cases are resolved within 5~~
706 ~~years after the date a sentence of death is imposed in the~~
707 ~~circuit court. All capital postconviction actions must be filed~~
708 ~~as early as possible after the imposition of a sentence of death~~
709 ~~which may be during a direct appeal of the conviction and~~
710 ~~sentence. A person sentenced to death or that person's capital~~
711 ~~postconviction counsel must file any postconviction legal action~~
712 ~~in compliance with the statutes of limitation established in s.~~
713 ~~924.056 and elsewhere in this chapter. Except as expressly~~
714 ~~allowed by s. 924.056(5), a person sentenced to death or that~~
715 ~~person's capital postconviction counsel may not file more than~~
716 ~~one postconviction action in a sentencing court and one appeal~~
717 ~~therefrom to the Florida Supreme Court, unless authorized by~~
718 ~~law.~~

719 ~~(2) It is the further intent of the Legislature that no~~
720 ~~state resources be expended in violation of this act. In the~~
721 ~~event that any state employee or party contracting with the~~
722 ~~state violates the provisions of this act, the Attorney General~~
723 ~~shall deliver to the Speaker of the House of Representatives and~~
724 ~~the President of the Senate a copy of any court pleading or~~
725 ~~order that describes or adjudicates a violation.~~

726 Section 16. Sections 924.056 and 924.057, Florida
727 Statutes, are repealed.

HB 4189

2011

728 Section 17. Subsection (1) of section 924.058, Florida
 729 Statutes, is amended to read:

730 924.058 Capital postconviction claims.—This section shall
 731 regulate the procedures in actions for capital postconviction
 732 relief commencing after the effective date of this act unless
 733 and until such procedures are revised by rule or rules adopted
 734 by the Florida Supreme Court which specifically reference this
 735 section.

736 (1) The defendant or the defendant's capital
 737 postconviction counsel shall not file more than one capital
 738 postconviction action in the sentencing court, one appeal
 739 therefrom in the Florida Supreme Court, and one original capital
 740 postconviction action alleging the ineffectiveness of direct
 741 appeal counsel in the Florida Supreme Court, ~~except as expressly~~
 742 ~~allowed by s. 924.056(5).~~

743 Section 18. Subsection (8) of section 924.059, Florida
 744 Statutes, is amended to read:

745 924.059 Time limitations and judicial review in capital
 746 postconviction actions.—This section shall regulate the
 747 procedures in actions for capital postconviction relief
 748 commencing after the effective date of this act unless and until
 749 such procedures are revised by rule or rules adopted by the
 750 Florida Supreme Court which specifically reference this section.

751 (8) A capital postconviction action filed in violation of
 752 the time limitations provided by statute is barred, and all
 753 claims raised therein are waived. ~~A state court shall not~~
 754 ~~consider any capital postconviction action filed in violation of~~
 755 ~~s. 924.056 or s. 924.057.~~ The Attorney General shall deliver to

HB 4189

2011

756 the Governor, the President of the Senate, and the Speaker of
757 the House of Representatives a copy of any pleading or order
758 that alleges or adjudicates any violation of this provision.

759 Section 19. Subsection (4) of section 925.11, Florida
760 Statutes, is amended to read:

761 925.11 Postsentencing DNA testing.—

762 (4) PRESERVATION OF EVIDENCE.—

763 ~~(a)~~ Governmental entities that may be in possession of any
764 physical evidence in the case, including, but not limited to,
765 any investigating law enforcement agency, the clerk of the
766 court, the prosecuting authority, or the Department of Law
767 Enforcement shall maintain any physical evidence collected at
768 the time of the crime for which a postsentencing testing of DNA
769 may be requested.

770 ~~(b) In a case in which the death penalty is imposed, the~~
771 ~~evidence shall be maintained for 60 days after execution of the~~
772 ~~sentence. In all other cases, a governmental entity may dispose~~
773 ~~of the physical evidence if the term of the sentence imposed in~~
774 ~~the case has expired and no other provision of law or rule~~
775 ~~requires that the physical evidence be preserved or retained.~~

776 Section 20. Paragraphs (g) and (h) of subsection (1) and
777 subsection (2) of section 945.10, Florida Statutes, are amended
778 to read:

779 945.10 Confidential information.—

780 (1) Except as otherwise provided by law or in this
781 section, the following records and information held by the
782 Department of Corrections are confidential and exempt from the
783 provisions of s. 119.07(1) and s. 24(a), Art. I of the State

HB 4189

2011

784 Constitution:

785 ~~(g) Information which identifies an executioner, or any~~
786 ~~person prescribing, preparing, compounding, dispensing, or~~
787 ~~administering a lethal injection.~~

788 (g)~~(h)~~ Records that are otherwise confidential or exempt
789 from public disclosure by law.

790 (2) The records and information specified in subsection
791 ~~paragraphs~~ (1)~~(a)~~~~(h)~~ may be released as follows unless
792 expressly prohibited by federal law:

793 (a) Information specified in paragraphs (1)(b), (d), and
794 (f) to the Office of the Governor, the Legislature, the Parole
795 Commission, the Department of Children and Family Services, a
796 private correctional facility or program that operates under a
797 contract, the Department of Legal Affairs, a state attorney, the
798 court, or a law enforcement agency. A request for records or
799 information pursuant to this paragraph need not be in writing.

800 (b) Information specified in paragraphs (1)(c), (e), and
801 (g)~~(h)~~ to the Office of the Governor, the Legislature, the
802 Parole Commission, the Department of Children and Family
803 Services, a private correctional facility or program that
804 operates under contract, the Department of Legal Affairs, a
805 state attorney, the court, or a law enforcement agency. A
806 request for records or information pursuant to this paragraph
807 must be in writing and a statement provided demonstrating a need
808 for the records or information.

809 (c) Information specified in paragraph (1)(b) to an
810 attorney representing an inmate under sentence of death, except
811 those portions of the records containing a victim's statement or

HB 4189

2011

812 address, or the statement or address of a relative of the
813 victim. A request for records of information pursuant to this
814 paragraph must be in writing and a statement provided
815 demonstrating a need for the records or information.

816 (d) Information specified in paragraph (1)(b) to a public
817 defender representing a defendant, except those portions of the
818 records containing a victim's statement or address, or the
819 statement or address of a relative of the victim. A request for
820 records or information pursuant to this paragraph need not be in
821 writing.

822 (e) Information specified in paragraph (1)(b) to state or
823 local governmental agencies. A request for records or
824 information pursuant to this paragraph must be in writing and a
825 statement provided demonstrating a need for the records or
826 information.

827 (f) Information specified in paragraph (1)(b) to a person
828 conducting legitimate research. A request for records and
829 information pursuant to this paragraph must be in writing, the
830 person requesting the records or information must sign a
831 confidentiality agreement, and the department must approve the
832 request in writing.

833 (g) Information specified in paragraph (1)(a) to the
834 Department of Health and the county health department where an
835 inmate plans to reside if he or she has tested positive for the
836 presence of the antibody or antigen to human immunodeficiency
837 virus infection.

838

839 Records and information released under this subsection remain

HB 4189

2011

840 | confidential and exempt from the provisions of s. 119.07(1) and
841 | s. 24(a), Art. I of the State Constitution when held by the
842 | receiving person or entity.

843 | Section 21. This act shall take effect July 1, 2011.