

1                                   A bill to be entitled  
 2           An act relating to execution of death sentences;  
 3           amending s. 922.10, F.S.; providing that a death  
 4           sentence shall be executed by electrocution or firing  
 5           squad, rather than lethal injection; providing for  
 6           designation of the number and members of a firing  
 7           squad by the warden; providing that each firing squad  
 8           member shall be considered an executioner; amending s.  
 9           922.105, F.S.; conforming provisions to changes made  
 10          to the method of execution; providing for an election  
 11          of execution method for persons subject to a mandate  
 12          pursuant to a decision by the Florida Supreme Court  
 13          affirming the sentence of death on or within a  
 14          specified period after the effective date of the act;  
 15          amending s. 945.10, F.S.; conforming provisions to  
 16          changes made to the method of execution; providing  
 17          applicability; providing an effective date.

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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 amended to  
 22   read:

23           922.10   Execution of death sentence; executioner.—A death  
 24   sentence shall be executed by electrocution or firing squad  
 25   ~~lethal injection~~ in accordance with s. 922.105. The warden of  
 26   the state prison shall, in the case of electrocution, designate  
 27   the executioner or, in the case of a firing squad, shall  
 28   designate the number and members thereof, each of whom shall be

29 considered an executioner. The warrant authorizing the execution  
 30 shall be read to the convicted person immediately before  
 31 execution.

32 Section 2. Section 922.105, Florida Statutes, is amended  
 33 to read:

34 922.105 Execution of death sentence; prohibition against  
 35 reduction of death sentence as a result of determination that a  
 36 method of execution is unconstitutional.—

37 (1) A death sentence shall be executed by electrocution  
 38 ~~lethal injection~~, unless the person sentenced to death  
 39 affirmatively elects to be executed by firing squad  
 40 ~~electrocution~~. The sentence shall be executed under the  
 41 direction of the Secretary of Corrections or the secretary's  
 42 designee.

43 (2) A person convicted and sentenced to death for a  
 44 capital crime at any time shall have one opportunity to elect  
 45 that his or her death sentence be executed by firing squad  
 46 ~~electrocution~~. The election for death by firing squad  
 47 ~~electrocution~~ is waived unless it is personally made by the  
 48 person in writing and delivered to the warden of the  
 49 correctional facility within 30 days after the issuance of  
 50 mandate pursuant to a decision by the Florida Supreme Court  
 51 affirming the sentence of death ~~or, if mandate issued before the~~  
 52 ~~effective date of this act, the election must be made and~~  
 53 ~~delivered to the warden within 30 days after the effective date~~  
 54 ~~of this act. If a warrant of execution is pending on the~~  
 55 ~~effective date of this act, or if a warrant is issued within 30~~  
 56 ~~days after the effective date of this act, the person sentenced~~

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57 ~~to death who is the subject of the warrant shall have waived~~  
58 ~~election of electrocution as the method of execution unless a~~  
59 ~~written election signed by the person is submitted to the warden~~  
60 ~~of the correctional facility no later than 48 hours after a new~~  
61 ~~date for execution of the death sentence is set by the Governor~~  
62 ~~under s. 922.06.~~

63 (3) If electrocution or firing squad ~~lethal injection~~ is  
64 held to be unconstitutional by the Florida Supreme Court under  
65 the State Constitution, or held to be unconstitutional by the  
66 United States Supreme Court under the United States  
67 Constitution, or if the United States Supreme Court declines to  
68 review any judgment holding a method of execution to be  
69 unconstitutional under the United States Constitution made by  
70 the Florida Supreme Court or the United States Court of Appeals  
71 that has jurisdiction over Florida, all persons sentenced to  
72 death for a capital crime shall be executed by any  
73 constitutional method of execution.

74 (4) The provisions of the opinion and all points of law  
75 decided by the United States Supreme Court in *Malloy v. South*  
76 *Carolina*, 237 U.S. 180 (1915), finding that the Ex Post Facto  
77 Clause of the United States Constitution is not violated by a  
78 legislatively enacted change in the method of execution for a  
79 sentence of death validly imposed for previously committed  
80 capital murders, are adopted by the Legislature as the law of  
81 this state.

82 (5) A change in the method of execution does not increase  
83 the punishment or modify the penalty of death for capital  
84 murder. Any legislative change to the method of execution for

85 the crime of capital murder does not violate s. 10, Art. I or s.  
 86 9, Art. X of the State Constitution.

87 ~~(6) Notwithstanding any law to the contrary, a person~~  
 88 ~~authorized by state law to prescribe medication and designated~~  
 89 ~~by the Department of Corrections may prescribe the drug or drugs~~  
 90 ~~necessary to compound a lethal injection. Notwithstanding any~~  
 91 ~~law to the contrary, a person authorized by state law to~~  
 92 ~~prepare, compound, or dispense medication and designated by the~~  
 93 ~~Department of Corrections may prepare, compound, or dispense a~~  
 94 ~~lethal injection. Notwithstanding chapter 401, chapter 458,~~  
 95 ~~chapter 459, chapter 464, chapter 465, or any other law to the~~  
 96 ~~contrary, for purposes of this section, prescription,~~  
 97 ~~preparation, compounding, dispensing, and administration of a~~  
 98 ~~lethal injection does not constitute the practice of medicine,~~  
 99 ~~nursing, or pharmacy.~~

100 (6)~~(7)~~ The policies and procedures of the Department of  
 101 Corrections for execution of persons sentenced to death shall be  
 102 exempt from chapter 120.

103 (7)~~(8)~~ Notwithstanding s. 775.082(2), s. 775.15(1), or s.  
 104 790.161(4), or any other provision to the contrary, no sentence  
 105 of death shall be reduced as a result of a determination that a  
 106 method of execution is declared unconstitutional under the State  
 107 Constitution or the Constitution of the United States. In any  
 108 case in which an execution method is declared unconstitutional,  
 109 the death sentence shall remain in force until the sentence can  
 110 be lawfully executed by any valid method of execution.

111 (8)~~(9)~~ Nothing contained in this chapter is intended to  
 112 require any ~~physician, nurse, pharmacist, or~~ employee of the

113 Department of Corrections or any other person to assist in any  
 114 aspect of an execution which is contrary to the person's moral  
 115 or ethical beliefs.

116 Section 3. If a mandate was issued pursuant to a decision  
 117 by the Florida Supreme Court affirming a sentence of death  
 118 before the effective date of this act, an election for death by  
 119 firing squad must be made and delivered to the warden within 30  
 120 days after the effective date of this act. If a warrant of  
 121 execution is pending on the effective date of this act, or if a  
 122 warrant is issued within 30 days after the effective date of  
 123 this act, the person sentenced to death who is the subject of  
 124 the warrant shall have waived election of firing squad as the  
 125 method of execution unless a written election signed by the  
 126 person is submitted to the warden of the correctional facility  
 127 no later than 48 hours after a new date for execution of the  
 128 death sentence is set by the Governor under s. 922.06, Florida  
 129 Statutes.

130 Section 4. Paragraph (g) of subsection (1) of section  
 131 945.10, Florida Statutes, is amended to read:

132 945.10 Confidential information.—

133 (1) Except as otherwise provided by law or in this  
 134 section, the following records and information held by the  
 135 Department of Corrections are confidential and exempt from the  
 136 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 137 Constitution:

138 (g) Information which identifies an executioner, ~~or any~~  
 139 ~~person prescribing, preparing, compounding, dispensing, or~~  
 140 ~~administering a lethal injection.~~

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141           Section 5. The amendments to s. 945.10, Florida Statutes,  
142 by this act apply prospectively only and do not make any  
143 material that was confidential and exempt from the provisions of  
144 s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the  
145 State Constitution prior to the effective date of this act  
146 subject to those provisions.

147           Section 6. This act shall take effect July 1, 2012.