

CHAPTER 98-3

Committee Substitute for House Bill No. 3033

An act relating to execution of the death sentence; creating s. 922.105, F.S.; providing for execution of the death sentence by means of lethal injection if electrocution is held to be unconstitutional; providing legislative intent; providing that a person authorized by state law to prescribe medication, when designated by the Department of Corrections, may prescribe the drugs necessary to compound a lethal injection; providing that a person authorized by state law to prepare, compound, or dispense medication, when designated by the Department of Corrections, may prepare, compound, or dispense the lethal injection; providing that the prescription, preparation, compounding, dispensing, or administration of a lethal injection does not constitute practicing medicine, nursing, or pharmacy; providing an exemption from ch. 120, F.S., for the policies and procedures of the Department of Corrections for execution; prohibiting reduction of a sentence of death as the result of a method of execution being held to be unconstitutional; prohibiting any physician, nurse, pharmacist, employee of the Department of Corrections, or other person from being required to assist in an execution contrary to the person's moral or ethical beliefs; amending s. 775.082, F.S., relating to penalties and mandatory minimum sentences for certain reoffenders previously released from prison; conforming provisions to changes made by the act; prohibiting reduction of a sentence of death as the result of a method of execution being held unconstitutional; amending s. 790.161, F.S., relating to the offense of making, possessing, throwing, projecting, placing, or discharging a destructive device, or attempt so to do, and penalties; conforming provisions to changes made by the act; prohibiting reduction of a sentence of death as the result of a method of execution being held unconstitutional; 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 existing method of carrying out a sentence of death in this state 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. State*, 701 So.2d 76 (1997), has held death by electrocution to be a constitutional method of imposing the death penalty in this state, 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 alternative methods for imposing death only if legally required to do so, 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 United States, *Malloy v. South Carolina*, 237 U.S. 180 (1915), and *Ex Parte Kenneth Granviel*, 561 S.W.2d 503 (Tex. App. 1978), and

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

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

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

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

922.105 Execution of death sentence by lethal injection if death by electrocution is declared unconstitutional; prohibition against reduction of death sentence as a result of determination that a method of execution is unconstitutional.—

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

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

(3) A change in the method of execution does not increase the punishment or modify the penalty of death for capital murder. Any legislative

change to the method of execution for the crime of capital murder does not violate s. 10, Art. I or s. 9, Art. X of the State Constitution.

(4) Notwithstanding any law to the contrary, a person authorized by state law to prescribe medication and designated by the Department of Corrections may prescribe the drug or drugs necessary to compound a lethal injection. Notwithstanding any law to the contrary, a person authorized by state law to prepare, compound, or dispense medication and designated by the Department of Corrections may prepare, compound, or dispense a lethal injection. For purposes of this section, prescription, preparation, compounding, dispensing, and administration of a lethal injection does not constitute the practice of medicine, nursing, or pharmacy.

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

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

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

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

775.082 Penalties; mandatory minimum sentences for certain reoffenders previously released from prison.—

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

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

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

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

(4) If the act results in the death of another person, commits a capital felony, punishable as provided in s. 775.082. In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment if convicted of murder in the first degree or of a capital felony under this subsection, and such person shall be ineligible for parole. No sentence of death shall be reduced as a result of a determination that a method of execution is held to be unconstitutional under the State Constitution or the Constitution of the United States.

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

Approved by the Governor March 26, 1998.

Filed in Office Secretary of State March 26, 1998.