

Senate Bill No. 10-A

An act relating to the execution of the death sentence; amending ss. 922.10, 922.105, F.S.; providing for the death sentence to be executed by lethal injection; providing for a person who is sentenced to death to elect a death sentence executed by electrocution; providing a procedure for making such election; providing for a person whose warrant of execution is pending on a specified date to elect a sentence of death by electrocution; providing a procedure for making such election; providing an effective date.

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

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

922.10 Execution of death sentence; executioner.—A death sentence shall be executed by electrocution or lethal injection in accordance with s. 922.105. The warden of the state prison shall designate the executioner. Information which, if released, would identify the executioner is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The warrant authorizing the execution shall be read to the convicted person immediately before execution.

Section 2. Section 922.105, Florida Statutes, is amended 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 lethal injection, unless the person sentenced to death affirmatively elects to be executed by electrocution. The sentence shall be executed under the direction of the Secretary of Corrections or the secretary's designee pursuant to s. 922.10.

(2) A person convicted and sentenced to death for a capital crime at any time shall have one opportunity to elect that his or her death sentence be executed by electrocution. The election for death by electrocution is waived unless it is personally made by the person in writing and delivered to the warden of the correctional facility within 30 days after the issuance of mandate pursuant to a decision by the Florida Supreme Court affirming the sentence of death or, if mandate issued before the effective date of this act, the election must be made and delivered to the warden within 30 days after the effective date of this act. If a warrant of execution is pending on the effective date of this act, or if a warrant is issued within 30 days after the effective date of this act, the person sentenced to death who is the subject of the warrant shall have waived election of electrocution as the method of execution unless a written election signed by the person is submitted to the warden of the correctional facility no later than 48 hours after a new date for execution of the death sentence is set by the Governor under s. 922.06.

(3) If electrocution or lethal injection 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 a method of execution 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 any constitutional method of execution lethal injection.

(4)(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.

(5)(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.

(6)(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. Notwithstanding chapter 401, chapter 458, chapter 459, chapter 464, chapter 465, or any other law to the contrary, 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.

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

(8)(6) Notwithstanding s. 775.082(2), s. 775.15(1)(a), or s. 790.161(4), 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.

(9)(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 3. This act shall take effect upon becoming a law.

Approved by the Governor January 14, 2000.

Filed in Office Secretary of State January 14, 2000.