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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.

18
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

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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

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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

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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. If a mandate was issued pursuant to a decision by the Florida Supreme Court affirming a sentence of death before the effective date of this act, an election for death by firing squad 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 firing squad 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, Florida Statutes.

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

945.10 Confidential information.—

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

(g) Information which identifies an executioner, ~~or any person prescribing, preparing, compounding, dispensing, or 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.