

**Constitution Revision Commission  
Declaration Of Rights Committee  
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 36

Relating to: DECLARATION OF RIGHTS, Excessive punishments

Introducer(s): Commissioner Martinez

Article/Section affected: Article I, Section 17

Date: January 22, 2018

	REFERENCE	ACTION
1.	<u>DR</u>	<u><b>Pre-meeting</b></u>
2.	<u>JU</u>	<u></u>

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**I. SUMMARY:**

Article I, Section 17 of the Florida Constitution provides that the death penalty is an authorized punishment for capital crimes designated by the Florida Legislature. The provision also empowers the Florida Legislature to select methods of execution in Florida. Currently, a death sentence in Florida may be carried out by lethal injection or electrocution.

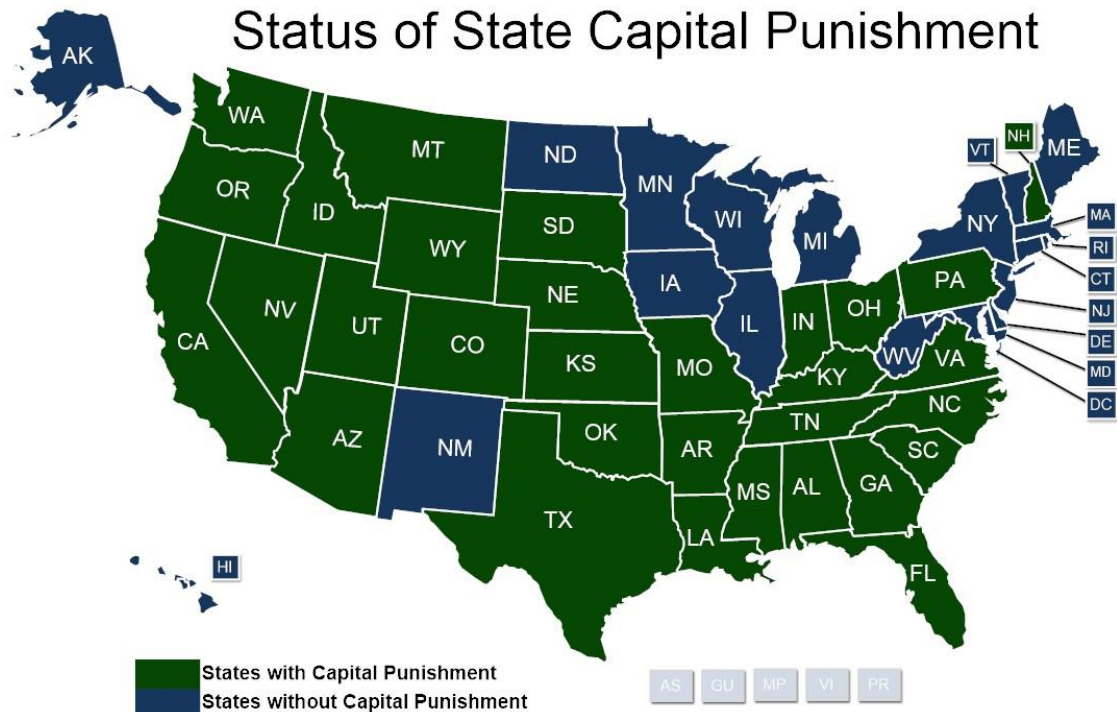
This proposal repeals the death penalty as an authorized punishment for capital crimes and provides that the death penalty, while not in violation of the Eighth Amendment's prohibition on cruel and unusual punishment, is prohibited under the Florida Constitution. The proposal establishes life imprisonment without the possibility for release as the maximum penalty for capital crimes.

If approved by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019. The proposal does not appear to apply retroactively.

**II. SUBSTANTIVE ANALYSIS:**

**A. PRESENT SITUATION:**

Congress or any state legislature may prescribe the death penalty, also known as capital punishment, for murder and other capital crimes. Capital punishment is currently authorized in 31 states, by the federal government, and the U.S. Military.<sup>1</sup>



Source: National Conference of State Legislatures<sup>2</sup>

The Supreme Court has ruled that the death penalty is not a per se violation of the Eighth Amendment’s ban on cruel and unusual punishment, but the Eighth Amendment does shape certain procedural aspects regarding when a death sentence may be imposed and how it must be carried out.<sup>3</sup>

The Eighth Amendment requires that punishment be proportional to the crime. In performing its proportionality analysis, the Supreme Court looks to the following three factors: a consideration of the offense’s gravity and the stringency of the penalty; a consideration of how the jurisdiction punishes its other criminals; and a consideration of how other jurisdictions punish the same crime.<sup>4</sup> This requirement has effectively limited the application of the death penalty to only capital

<sup>1</sup> NATIONAL CONFERENCE OF STATE LEGISLATURES, *States and Capital Punishment*, Feb. 2, 2017, available at <http://www.ncsl.org/research/civil-and-criminal-justice/death-penalty.aspx> (last visited Jan. 21, 2018). However, a governor-imposed moratorium is in effect in Colorado, Oregon, Pennsylvania and Washington. See DEATH PENALTY INFORMATION CENTER, *States With and Without the Death Penalty*, Nov. 9, 2016, available at <https://deathpenaltyinfo.org/states-and-without-death-penalty> (last visited Jan. 21, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> See *Gregg v. Georgia*, 428 U.S. 153 (1976).

<sup>4</sup> See *Solem v. Helm*, 463 U.S. 277 (1983).

offenses.<sup>5</sup> Additionally, when imposing a sentence of death, juries must be guided by the particular circumstances of the criminal, and the court must have conducted an individualized sentencing process.

Although a legislature may prescribe the manner of execution, the Eighth Amendment requires that it not inflict unnecessary or wanton pain upon the criminal.<sup>6</sup> Courts apply an "objectively intolerable" test when determining if the method of execution violates the Eighth Amendment's ban on cruel and unusual punishments.<sup>7</sup> The Supreme Court has never invalidated a state's chosen procedure for carrying out the death penalty as a violation of the Eighth Amendment.<sup>8</sup>

Additionally, the Eighth Amendment prohibits the execution of certain persons. A sentence of death may not be carried out against an offender, in any state, if:

- The offender was a juvenile when he or she committed the capital offense;<sup>9</sup>
- The offender is intellectually disabled;<sup>10</sup> or
- The offender is insane.<sup>11</sup>

### **Legal History of Capital Punishment in Florida**

Prior to 1923, Florida executions were carried out by the counties rather than the state, with the first known execution taking place in 1827.<sup>12</sup> The most common method of execution at the time was hanging. In 1923, the Florida Legislature placed all executions in Florida under state (rather than local) jurisdiction and substituted electrocution for hanging as an execution method.<sup>13</sup>

In 1972, in *Furman v. Georgia*, the United States Supreme Court struck down all then-existing death penalty statutes in the U.S. on grounds that the imposition and carrying out of the death penalty constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments due to the arbitrary and racially biased way in which death sentences were imposed.<sup>14</sup>

Florida was the first state to statutorily reenact the death penalty after the then existing capital statutes were invalidated by the *Furman v. Georgia* decision and its related cases. In late November 1972, a special session of the Florida Legislature was convened, the primary purpose of which was to consider a new death penalty law. New capital punishment procedures were passed on December 1, and signed into law by Governor Askew on December 8.<sup>15</sup> Florida resumed

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<sup>5</sup> See *Coker v. Georgia*, 433 U.S. 584 (1977) (prohibiting the imposition of the death penalty for the crime of raping an adult woman because it violates the proportionality requirement).

<sup>6</sup> See *Ingraham v. Wright*, 430 U.S. 651 (1977).

<sup>7</sup> See *Baze v. Rees*, 553 U.S. 35 (2008).

<sup>8</sup> See *Baze v. Rees*, 553 U.S. 35 (2008).

<sup>9</sup> See *Roper v. Simmons*, 543 U.S. 551, (2005).

<sup>10</sup> See *Atkins v. Virginia*, 536 U.S. 304, (2002); s. 921.137, F.S.

<sup>11</sup> See *Ford v. Wainwright*, 477 U.S. 399 (1986); *Panetti v. Quarterman*, 551 U.S. 930 (2007).

<sup>12</sup> DEATH PENALTY INFORMATION CENTER, *Florida*, available at <https://deathpenaltyinfo.org/florida-1> (last visited Jan. 21, 2018).

<sup>13</sup> FLORIDA DEPARTMENT OF CORRECTIONS, *Annual Report: Fiscal Year 2015-2016*, pg. 36..

<sup>14</sup> See *Furman v. Georgia*, 408 U.S. 238 (1972)

<sup>15</sup> Michael L. Radelet, *Rejecting the Jury: The Imposition of the Death Penalty in Florida*, 18 U.C. Davis L. Rev 1410 (1984-1985), available at [https://lawreview.law.ucdavis.edu/issues/18/4/iii-empirical-studies/DavisVol18No4\\_Radelet.pdf](https://lawreview.law.ucdavis.edu/issues/18/4/iii-empirical-studies/DavisVol18No4_Radelet.pdf) (last visited Jan. 22, 2018).

executions in 1979, after the U.S. Supreme Court ended the de facto moratorium on the death penalty in *Gregg v. Georgia*, 428 U.S. 153 (1976).

Prior to 2002, specific authority to impose the death penalty existed only by general law and did not emanate from a specific constitutional source other than the general police power of the state. In 2001, in response to a number of cases challenging the death penalty and electrocution as prohibited by the Florida Constitution as “cruel or unusual” punishment, the Legislature by joint resolution proposed the following amendment to Section 17 of the Florida Constitution:

SECTION 17. Excessive punishments.--Excessive fines, cruel and ~~or~~ unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. The death penalty is an authorized punishment for capital crimes designated by the legislature. The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution. Any method of execution shall be allowed, unless prohibited by the United States Constitution. Methods of execution may be designated by the legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid. In any case in which an execution method is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.

The proposed amendment was adopted by the electors in 2002, garnering 69.7% of votes for approval.

### **Capital Sentencing Proceedings**

Capital Felonies that have been designated by the Florida Legislature as eligible for imposition of the death penalty consist of the following specified offenses:

- First-degree murder;<sup>16</sup>
- The killing of an unborn child by injury to the mother if it resulted in the death of the mother (allows for distinct charges for the death of the child and the mother);<sup>17</sup>
- Willfully and unlawfully making, possessing, throwing, projecting, placing, discharging any destructive device if the act results in the death of another person (including attempts);<sup>18</sup>

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<sup>16</sup> The unlawful killing of a human being when perpetrated from a premeditated design to effect the death of the person killed or any human being; when committed by a person engaged in the perpetration of, or in the attempt to perpetrate another felony (i.e. arson, sexual battery, robbery, burglary, kidnapping, aggravated abuse of a child or vulnerable adult, carjacking, etc.); or which resulted from the unlawful distribution by a person 18 years of age or older of certain illegal substances. s. 782.04, F.S.

<sup>17</sup> s. 782.09(1)(a), F.S.

<sup>18</sup> s. 790.161(4), F.S.

- Unlawfully manufacturing, possessing, selling, delivering, sending, mailing, displaying, using, or making readily accessible to others a weapon of mass destruction if death results (including threats, attempts, and conspiracies);<sup>19</sup>
- Certain drug trafficking, importation, and manufacturing crimes that result in death or where the probable result of such act would be the death of a person;<sup>20</sup>
- Sexual battery upon, or in the attempt to commit sexual battery the injury of the sexual organs of, a person less than 12 years of age, if committed by a person 18 years of age or older.<sup>21</sup>

#### Trial Phase

In Florida, an offense that may be punished by death, must be prosecuted by indictment.<sup>22</sup> The Florida Rules of Criminal Procedure require the state to give notice to a defendant of its intent to seek the death penalty within 45 days from the date of arraignment on any of the aforementioned capital felonies.<sup>23</sup> The notice must be filed with the court within 45 days of arraignment and contain a list of the aggravating factors the state intends to prove, and has reason to believe it can prove, beyond a reasonable doubt.<sup>24</sup> The court may allow the state to amend the notice upon a showing of good cause.<sup>25</sup>

Section 775.082(1)(a), F.S., provides that if the offender is convicted of a capital felony at trial, he or she must be punished by death if the death penalty sentencing proceeding subsequent to the conviction results in a determination that such person be punished by death. Otherwise, such person is sentenced to life imprisonment without the possibility for parole.

#### Sentencing Phase

If a defendant is convicted of a capital felony, a separate sentencing proceeding is conducted to determine whether the defendant should be sentenced to death or life imprisonment.<sup>26</sup> The proceeding is conducted by the trial judge before the trial jury, or, if the trial jury is unable to be reconvened, was waived, or the defendant pled guilty, is conducted by the trial judge before a jury impaneled for the purpose.<sup>27</sup> A defendant may waive his or her right to a sentencing proceeding by a jury.<sup>28</sup>

In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant, including statutorily specified aggravating factors and mitigating circumstances.

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<sup>19</sup> s. 790.166, F.S.

<sup>20</sup> s. 893.135(1), F.S.

<sup>21</sup> s. 794.011(2)(a), F.S.; But see *Kennedy v. Louisiana*, 554 U.S. 407 (2008) holding that the Eighth Amendment to U.S. Constitution prohibits imposition of the death penalty for the rape of a child in cases where the crime did not result, and was not intended to result, in the death of the victim.

<sup>22</sup> Fla. R. Crim. P. 3.140.

<sup>23</sup> Fla. R. Crim. P. 3.181.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> s. 921.141(1), F.S.

<sup>27</sup> s. 921.141(1), F.S.

<sup>28</sup> *Id.*

*Aggravating Factors for Capitol Felonies (except capital drug trafficking offenses)*

The aggravating factors that may be considered are limited to the following for all capital felonies except capitol drug trafficking offenses:<sup>29</sup>

- The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The defendant knowingly created a great risk of death to many persons.
- The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.
- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.
- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- The victim of the capital felony was a person less than 12 years of age.

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<sup>29</sup> s. 921.141(6), F.S.

- The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a criminal gang member, as defined in s. 874.03.
- The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.
- The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

*Aggravating Factors in Capital Drug Trafficking Offenses*

The aggravating factors that may be considered in capital drug trafficking felonies are limited to the following:<sup>30</sup>

- The capital felony was committed by a person under a sentence of imprisonment.
- The defendant was previously convicted of another capital felony or of a state or federal offense involving the distribution of a controlled substance which is punishable by a sentence of at least 1 year of imprisonment.
- The defendant knowingly created grave risk of death to one or more persons such that participation in the offense constituted reckless indifference or disregard for human life.
- The defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person in committing the offense or in furtherance of the offense.
- The offense involved the distribution of controlled substances to persons under the age of 18 years, the distribution of controlled substances within school zones, or the use or employment of persons under the age of 18 years in aid of distribution of controlled substances.
- The offense involved distribution of controlled substances known to contain a potentially lethal adulterant.
- The defendant intentionally killed the victim; intentionally inflicted serious bodily injury that resulted in the death of the victim; or intentionally engaged in conduct

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<sup>30</sup> s. 921.142(7), F.S.

intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

- The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.
- The defendant committed the offense after planning and premeditation.
- The defendant committed the offense in a heinous, cruel, or depraved manner in that the offense involved torture or serious physical abuse to the victim.

#### *Mitigating Circumstances*

Unlike aggravating factors, mitigating circumstances are not limited by statute, but include the consideration of the following:<sup>31</sup>

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The defendant was an accomplice in the capital felony committed by another person, and the defendant's participation was relatively minor.
- The victim was a participant in the defendant's conduct or consented to the act.
- The defendant was under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of her or his conduct or to conform her or his conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the offense.
- The defendant could not have reasonably foreseen that her or his conduct in the course of the commission of the offense would cause or would create a grave risk of death to one or more persons.
- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

After hearing all of the evidence presented regarding aggravating and mitigating circumstances, the jury must determine, unanimously, whether any aggravating factors exists.<sup>32</sup> If the jury does not unanimously find that one aggravating factor exists, the defendant is ineligible for a sentence of death.<sup>33</sup> If the jury unanimously find at least one aggravating factor, the defendant is eligible for

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<sup>31</sup> ss. 921.141(7) and 921.142(8), F.S.

<sup>32</sup> s. 921.141(2), F.S.

<sup>33</sup> s. 921.141(2), F.S.



a sentence of death and the jury must make a recommendation to the court as to whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.<sup>34</sup>

If the jury recommends a sentence of life imprisonment without the possibility of parole, the court must impose the recommended sentence.<sup>35</sup> If the jury recommends a sentence of death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of death or life imprisonment without the possibility of parole.<sup>36</sup>

If the defendant waived his or her right to a sentencing proceeding by a jury, the trial judge, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without parole or a sentence of death (only if the court finds the existence of one aggravating factor beyond a reasonable doubt).<sup>37</sup>

In each case in which the court imposes a sentence of death, the court must enter a written order addressing the aggravating factors which were found to exist, the mitigating circumstances reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence.<sup>38</sup> If the court does not issue its order requiring the death sentence within 30 days after of the rendition of the judgment and sentence, the court must instead impose a sentence of life imprisonment without the possibility of parole.<sup>39</sup>

### Appeals

Death sentences are automatically appealed to the Florida Supreme Court.<sup>40</sup> The Florida Supreme Court reviews the enumerations of error, if raised, the sufficiency of the evidence used to convict the defendant, and the proportionality of the appellant's death sentence.<sup>41</sup> The Court is required to review the sufficiency of the evidence and the proportionality of the appellant's death sentence even if such issues are not raised on appeal.<sup>42</sup> The Florida Supreme Court must render a judgment within two years of the filing of the notice of appeal.<sup>43</sup>

The Court's judgment may affirm the trial court's decision or remand the case to the trial court for a new guilt/innocence and/or penalty phase, or remand the case to the trial court with directions for a judgment of acquittal or to reduce the sentence to life. The defendant may further appeal the decision of the Florida Supreme Court to the U.S. Supreme Court, the "direct appeal," or pursue a number of collateral remedies.

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<sup>34</sup> s. 921.141(2), F.S.

<sup>35</sup> s. 921.141(3), F.S.

<sup>36</sup> s. 921.141(3), F.S.

<sup>37</sup> s. 921.141(3), F.S.

<sup>38</sup> s. 921.141(4), F.S.

<sup>39</sup> s. 921.141(4), F.S.

<sup>40</sup> s. 921.141(5), F.S.; Art. 5, Sec. 3, Fla. Const.; Fla. R. App. Proc. 9.030(a)(1)(A)(i).

<sup>41</sup> ss. 924.051(3) and 921.141(4), F.S.; Fla. R. App. Proc. 9.142(a)(5).

<sup>42</sup> Fla. R. App. P. 9.142(a)(5).

<sup>43</sup> s. 921.141(5), F.S.

### Methods of Execution

A sentence of death imposed in Florida may not specify any particular method of execution,<sup>44</sup> as execution methods may change over time. A change in execution methods is not considered as an increase in punishment or modification of the penalty of death.<sup>45</sup>

Current law provides that a death sentence may be executed by one of two methods: lethal injection or electrocution.<sup>46</sup> A death sentence will be carried out by lethal injection unless the person sentenced to death affirmatively elects to be executed by electrocution.<sup>47</sup> Florida administers executions by lethal injection or electric chair at the execution chamber located at Florida State Prison in Raiford, FL.<sup>48</sup>

#### Lethal Injection Protocol

Florida uses the following drugs in its lethal injection protocol: etomidate, rocuronium bromide, and potassium acetate.<sup>49</sup> The Florida Department of Corrections establishes detailed procedures for execution by lethal injection.<sup>50</sup>

#### Electrocution

A person convicted and sentenced to death for a capital crime has one opportunity to elect that his or her death sentence be carried out by electrocution.<sup>51</sup> The inmate must personally make the election in writing and deliver it to the warden of the correctional facility within 30 days after the issuance of the mandate from the Florida Supreme Court affirming the sentence of death.<sup>52</sup> If the inmate fails to make the election within the specified time period, the election is deemed waived and he or she will be executed by lethal injection.<sup>53</sup> A sentence of death by electrocution is performed through use of an electric chair.<sup>54</sup> The Florida Department of Corrections establishes detailed procedures for execution by electrocution.<sup>55</sup>

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<sup>44</sup> s. 922.108, F.S.

<sup>45</sup> s. 922.105(5), F.S.

<sup>46</sup> s. 922.10, F.S.

<sup>47</sup> s. 922.105(1), F.S.

<sup>48</sup> Florida Department of Corrections, *Death Row*, available at <http://www.dc.state.fl.us/oth/deathrow/> (last visited Jan. 21, 2018).

<sup>49</sup> See Florida Department of Corrections, *Execution by Lethal Injection Procedures*, Jan. 24, 2017, available at [http://www.dc.state.fl.us/oth/deathrow/lethal-injection-procedures-as-of\\_01-04-17.pdf](http://www.dc.state.fl.us/oth/deathrow/lethal-injection-procedures-as-of_01-04-17.pdf) (last visited Jan. 21, 2018).

<sup>50</sup> *Id.*

<sup>51</sup> s. 922.105(2), F.S.

<sup>52</sup> s. 922.105(2), F.S. If the mandate issued prior to the effective date of the Act, the election must be made and delivered to the warden within thirty days after the effective date of the Act. If a warrant of execution was pending on the effective date of the Act, or if a warrant is issued within 30 days after the effective date of the Act, the person sentenced to death who is the subject of the warrant must submit a written election within 48 hours after a new date for execution of the death sentence is set by the Governor.

<sup>53</sup> s. 922.105(2), F.S.

<sup>54</sup> The three-legged electric chair was constructed from oak by Department of Corrections personnel in 1998 and installed at Florida State Prison in Raiford, FL, in 1999. The previous chair was made by inmates from oak in 1923 after the Florida legislature designated electrocution as the official mode of execution.

<sup>55</sup> See FLORIDA DEPARTMENT OF CORRECTIONS, *Execution by Electrocution Procedures*, Jan. 24, 2017, available at [http://www.dc.state.fl.us/oth/deathrow/electrocution-procedures-as-of\\_01-04-17.pdf](http://www.dc.state.fl.us/oth/deathrow/electrocution-procedures-as-of_01-04-17.pdf) (last visited Jan. 21, 2018).

If lethal injection or electrocution is held 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 of a lower court holding a method of execution unconstitutional under the United States Constitution; all persons sentenced to death in Florida for a capital crime must be executed by any other constitutional method of execution.<sup>56</sup> Under such circumstances, the death sentence remains in force until the sentence can be lawfully executed by any valid method of execution.<sup>57</sup>

### **Execution**

An inmate's death sentence may not be carried out until the Governor issues a death warrant.<sup>58</sup> A death warrant may be issued after the inmate has pursued all possible collateral remedies in a timely manner or after the inmate has failed to pursue said remedies within specified time limits.<sup>59</sup> Upon issuance of a death warrant, the Governor must transmit the warrant and the record to the warden and direct the warden to execute the sentence at a time designated in the warrant.<sup>60</sup>

The warden of the state prison designates the executioner.<sup>61</sup> The warden (or a deputy) must be present at the execution and must select twelve individuals to witness the execution.<sup>62</sup> A qualified physician must be present, and the inmate's counsel, ministers of religion, representatives of the media, and prison and correctional officers may be present.<sup>63</sup> Immediately before the inmate's execution, the death warrant must be read to the inmate.<sup>64</sup> The physician must announce when death has been inflicted.<sup>65</sup>

After the death sentence has been executed, the warden must send the warrant and a signed statement of the execution to the Secretary of State and file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence.<sup>66</sup>

### **Florida Capital Punishment Statistics**

Since the reinstatement of capital punishment by the United States Supreme Court in 1976, Florida has executed 95 inmates.<sup>67</sup> During the same period, several other states have carried out a greater number of executions, including Texas, Oklahoma, and Virginia.<sup>68</sup> Florida inmates spend an average of 15.6 years on death row before execution of the death sentence.<sup>69</sup> The average age at

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<sup>56</sup> s. 922.105(3), F.S.

<sup>57</sup> s. 922.105(9), F.S.

<sup>58</sup> s. 922.052(1), F.S.

<sup>59</sup> s. 922.095, F.S.

<sup>60</sup> s. 922.052(1), F.S.

<sup>61</sup> s. 922.10, F.S. 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. Section 922.105(6), F.S.

<sup>62</sup> s. 922.11, F.S.

<sup>63</sup> *Id.*

<sup>64</sup> s. 922.10, F.S.

<sup>65</sup> s. 922.11(2), F.S.

<sup>66</sup> s. 922.12, F.S.

<sup>67</sup> *Supra* note 48.

<sup>68</sup> By early 2016, Texas, Oklahoma, and Virginia had carried out 531, 112, and 111 executions, respectively. See Tonya Alanez, *Death penalty in Florida: By the numbers*, SUN SENTINEL, Jan. 15, 2016, available at <http://www.sun-sentinel.com/news/florida/fl-death-penalty-roundup-20160115-story.html> (last visited Jan. 21, 2018).

<sup>69</sup> *Supra* note 13.

offense for executed inmates is 27.4 years old and the average age at the time of execution is 44.9 years old.<sup>70</sup>

<b>Florida Executions Since 1976 <sup>71</sup></b>					
<b>Year</b>	<b># of Executions</b>	<b>Year</b>	<b># of Executions</b>	<b>Year</b>	<b># of Executions</b>
1979	1	1992	2	2005	1
1980	0	1993	3	2006	4
1981	0	1994	1	2007	0
1982	0	1995	3	2008	2
1983	1	1996	2	2009	2
1984	8	1997	1	2010	1
1985	3	1998	4	2011	2
1986	3	1999	1	2012	3
1987	1	2000	6	2013	7
1988	2	2001	1	2014	8
1989	2	2002	3	2015	2
1990	4	2003	3	2016	1
1991	2	2004	2	2017	3
<b>TOTAL: 95</b>					

Current Death Row Statistics

As of January 21, 2018, there were a total of 349 people awaiting execution in Florida<sup>72</sup> – more than any other state except California.<sup>73</sup> Men on death row are housed at Florida State Prison in Raiford, FL, and Union Correctional Institution in Raiford, FL. The women on death row are housed at Lowell Annex in Lowell, FL.<sup>74</sup>

There is currently one active death warrant which was issued on January 19, 2018, and is scheduled to be carried out on February 22, 2018.<sup>75</sup>

<b>Florida Death Row Population as of 1/21/18</b>			
<b>Race</b>	<b>Female</b>	<b>Male</b>	<b>Total</b>
White	1	207	208
Black	2	131	133
Other	0	8	8
<b>TOTAL</b>	<b>3</b>	<b>346</b>	<b>349</b>

<sup>70</sup> *Supra* note 13.

<sup>71</sup> *Supra* note 48.

<sup>72</sup> Florida Department of Corrections, *Death Row Roster*, available at <http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx> (last visited Jan. 21, 2018).

<sup>73</sup> California has 747 inmates under a sentence of death. See Paige St. John and Maloy Moore, *These are the 747 inmates awaiting execution of California’s death row*, Los Angeles Times, Aug. 24, 2017, available at <http://www.latimes.com/projects/la-me-death-row/> (last visited Jan. 21, 2018).

<sup>74</sup> *Supra* note 48.

<sup>75</sup> Florida Supreme Court, *Pending Death Warrant Filings*, available at [http://www.floridasupremecourt.org/pub\\_info/deathwarrants.shtml](http://www.floridasupremecourt.org/pub_info/deathwarrants.shtml) (last visited Jan. 21, 2018).

Pending Cases

As of January 15, 2017, state attorneys reported a total of 313 pending death penalty cases of which 66 were ready for trial in the twenty judicial circuits.<sup>76</sup>

Exonerations

According to the Death Penalty Information Center, a non-profit organization based out of Washington, D.C., 27 people have been “exonerated”<sup>77</sup> from Florida’s death row since 1973, more than any other state.<sup>78</sup>

**B. EFFECT OF PROPOSED CHANGES:**

This proposal repeals the death penalty as an authorized punishment for capital crimes and provides that the death penalty, while not in violation of the Eight Amendment’s prohibition on cruel and unusual punishment, is prohibited under the Florida Constitution. The proposal establishes life imprisonment without the possibility for release as the maximum penalty for capital crimes.

If approved by the voters, the proposal will take effect on January 8, 2019.<sup>79</sup> The proposal does not appear to apply retroactively.

**C. FISCAL IMPACT:**

The fiscal impact on state and local government is indeterminate.

**III. Additional Information:****A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

**B. Amendments:**

None.

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<sup>76</sup> House of Representatives Judiciary Committee Staff Analysis, HB 527 (2017 Session), Feb. 21, 2017, available at <http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0527c.JDC.DOCX&DocumentType=Analysis&BillNumber=0527&Session=2017> (last visited Jan. 21, 2018).

<sup>77</sup>Defendants must have been convicted, sentenced to death and subsequently either acquitted of all charges related to the crime that placed them on death row; had all charges related to the crime that placed them on death row dismissed by the prosecution or the courts; or been granted a complete pardon based on evidence of innocence. See Death Penalty Information Center, *The Innocence List*, available at <https://deathpenaltyinfo.org/innocence-list-those-freed-death-row> (last visited Jan. 21, 2018)

<sup>78</sup> *Supra* note 12.

<sup>79</sup> See Article XI, Sec. 5(e) of the Florida Constitution (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

**C.** Technical Deficiencies:

None.

**D.** Related Issues:

None.