

IN THE
Supreme Court of Florida

TIMOTHY LEE HURST,
Appellant,

v.

Case No. SC12-1947

STATE OF FLORIDA,
Appellee.

THOMAS BEVEL,
Appellant,

v.

Case No. SC14-770

STATE OF FLORIDA,
Appellee.

TERENCE OLIVER,
Appellant,

v.

Case No. SC12-1350

STATE OF FLORIDA,
Appellee.

**APPENDIX TO AMENDED BRIEF OF AMICI CURIAE JUSTICE HARRY LEE
ANSTEAD, JUDGE ROSEMARY BARKETT, MARTHA BARNETT, TALBOT
D'ALEMBERTE, HANK COXE, JUSTICE GERALD KOGAN, FLORIDA
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, FLORIDA CAPITAL
RESOURCE CENTER, AND FLORIDA CENTER FOR CAPITAL REPRESENTATION,
ON BEHALF OF APPELLANTS**

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By Senator McClain
 Prefiled August, 1971

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1
 2
 3 A bill to be entitled
 4 AN ACT relating to criminal penalties;
 5 amending section 775.082, Florida Statutes,
 6 creating new subsections (2) and (3) of
 7 section 775.082, Florida Statutes, pro-
 8 viding that if the courts declare the
 9 death penalty unconstitutional, then
 10 those persons to be sentenced or those
 11 previously sentenced to death shall be
 12 sentenced to life imprisonment; renum-
 13 bering subsections (2), (3), and (4) of
 14 section 775.082, Florida Statutes;
 15 providing an effective date.

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

18 Section 1. Section 775.082, Florida Statutes,
 19 is amended by creating two new subsections (2) and
 20 (3) to read:

21 775.082 Penalties for felonies and misdemean-
 22 ors.—

23 (2) *In the event the death penalty in a*
 24 *capital felony is held to be unconstitutional by the*
 25 *Florida Supreme Court or the United States Supreme*
 26 *Court, a person who has been convicted of a capital*
 27 *felony shall be punished by life imprisonment.*

28 (3) *In the event the death penalty in a cap-*
 29 *ital felony is held to be unconstitutional by the*

30
 31

1 *Florida Supreme Court or the United States Supreme*
2 *Court, the court having jurisdiction over a person*
3 *previously sentenced to death for a capital felony*
4 *shall cause such person to be brought before the*
5 *court, and the court shall sentence such person to*
6 *life imprisonment.*

7 Section 2. Subsections (2), (3), and (4) of
8 section 775.082, Florida Statutes, are renumbered
9 accordingly.

10 Section 3. This act shall take effect
11 October 1, 1972.

LEGISLATIVE SERVICE BUREAU SUMMARY

Amends Section 775.082, F. S., by adding two subsections to provide that if the death penalty is held unconstitutional by the Florida or U. S. Supreme Court, persons previously sentenced to death shall be brought before the appropriate court and resented to life imprisonment. Effective October 1, 1972.

JERRY THOMAS
PRESIDENT

WILSON H. BOYD
PRESIDENT PRO TEMPORE



THE FLORIDA SENATE
TALLAHASSEE

JERRY THOMAS
PRESIDENT

ELMER O. FRIDAY, JR.
SECRETARY

LEROY ADKISON
SERGEANT AT ARMS

November 10, 1971

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MEMORANDUM

TO: Senator William D. Barrow, Chairman,
Committee on Judiciary-Criminal

FROM: Martha A. Bass, Attorney

QUESTION: What would happen to persons previously sentenced to death should the death penalty be held unconstitutional by the Florida or U. S. Supreme Court?

ANSWER: Since Chapter 71-136, effective January 1, 1972, will separate the penalty provisions from the substantive portion of the statutes prescribing capital crimes, any decision of unconstitutionality will probably apply to the death penalty only. The conviction, therefore, will not be invalid, and the prisoner could proceed under Criminal Procedure Rule 1.850 for post conviction relief to correct the sentence.

Note that the Florida law is dissimilar to those statutes heretofore declared unconstitutional. In those cases the statutes authorized the death penalty only if the jury so recommends, and the court, upon a plea of guilty, could not impose a greater sentence than a term for life. Thus, the accused was needlessly encouraged to enter a plea of guilty.

In United States v. Jackson, 390 U. S. 570, 88 S. Ct. 1209, 20 L. Ed. 2d 138 (1968), the Supreme Court held that the death penalty provision of the Federal Kidnaping Act unconstitutionally burdened the right to defend before a jury and was severable from the remainder of the statute. Under this statute, capital punishment could be imposed only on the jury's recommendation, which was binding on the trial court, while life imprisonment

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was the maximum penalty after either a plea of not guilty with a waiver of a jury trial or a plea of guilty. In that case no question was raised about the death penalty itself. The holding centered on the fact that under the federal law the death penalty could be imposed only on persons who asserted their constitutional right to a jury trial.

The applicable Florida Statute, effective January 1, 1972, reads:

775.082(1) A person who has been convicted of a capital felony shall be punished by death, unless the verdict includes a recommendation to mercy by a majority of the jury, in which case the punishment shall be life imprisonment. A defendant found guilty by the court of a capital felony on a plea of guilty or when a jury is waived shall be sentenced to death or life imprisonment, in the discretion of the court.

In discussing corrective legislation to comply with the Jackson case, Cornell Law Review, Vol. 54, No. 3, February, 1969, suggests as one alternative the method used in Florida. Another alternative suggested is a jury trial on sentencing only after the court accepts a plea of guilty. There is some precedence for this type procedure in Florida. It was first used in 1963 in the Pitts and Lea case, and I believe it has been used at least once since then although there is no statutory authorization.

MAB/lbl



FLORIDA HOUSE OF REPRESENTATIVES
TALLAHASSEE

COMMITTEE ON CRIMINAL JUSTICE

JACK SHREVE, CHAIRMAN
R. ED BLACKBURN, JR., VICE CHAIRMAN
KARL R. ADAMS, STAFF DIRECTOR

ROOM 328, HOUSE OFFICE BUILDING
TALLAHASSEE, FLORIDA 32304
TELEPHONE (904) 488-5362

MEMORANDUM

December 12, 1974

TO: Karl R. Adams, Staff Director

FROM: Mark Herron

SUBJECT: Section 64 Criminal Code and Related Matters

Chapter 71-136, Laws of Florida, mandated the establishment of uniform penalty provisions to be applied for violation of the criminal provisions of the Florida Statutes. These uniform provisions are found in Chapter 775. Section 775.082, Florida Statutes, 1973, establishes the penalties to be applied for felonies and misdemeanors. Section 775.083, Florida Statutes, 1973, provides for a fine in lieu of, or in addition to, the criminal penalty provided. Section 775.084, Florida Statutes, 1973, provides for extended terms for subsequent felony offenders.

Under the present scheme felonies are "punishable as provided in section 775.082, section 775.083, or section 775.084." Misdemeanors are punishable as provided in section 775.082 or section 775.083."

Chapter 74-383, Laws of Florida, substantially amended the provisions of Chapter 775. Sections 775.082 and 775.083 were not substantially changed by the Criminal Code Revision. However, section 775.084 as it relates to subsequent felony offenders and extended terms was substantially amended. In addition a new provision, section 775.086, was created to provide for extended terms of subsequent misdemeanor offenders. Section 775.087 provides for the reclassification of offenses for the possession or use of a weapon and for certain minimum sentences. The Joint Code Revision Committee in an effort to maintain the uniformity in the penalty provisions

included section 64 in Chapter 74-383, Laws of Florida. Section 64 directs that references in Florida Statutes to an offense being punishable as provided by a specific section or specific sections of Chapter 775 should be changed to read "punishable as provided in Chapter 775." The substantive provisions in the code contain such a reference to Chapter 775. The statutory revisor has noted that section 64 may violate the " republication rule" of Article III, Section 6, Florida Constitution, which provides that "[l]aws to revise or amend shall set out in full the revised or amended act, section, subsection, or paragraph of a subsection."

Although the provisions of the criminal code do not become effective until July 1, 1975, the penalty provisions should be made uniform during this session of the Legislature. There are a number of options available in order to solve this problem and thereby assure uniform penalty provisions:

- (1) The most extensive and complete method would involve a compilation of all the criminal provisions in the Florida Statutes and change the penalty provisions to read "punishable as provided in chapter 775." This method would be consistent with the intent of the Joint Criminal Code Revision Committee. It should be noted, however, that those misdemeanors and felonies punishable by a fine only should be designated as being so punishable.
- (2) Chapter 74-383, Laws of Florida, could be amended to include the provisions relating to extended terms for subsequent misdemeanor offenders in the provisions of section 775.084. However, this method would require further amendment of the various misdemeanor provisions to include punishment for subsequent offenses as specified in section 775.084. This method would require that the substantive provisions of Chapter 74-383, Laws of Florida, be considered by the Legislature in order to change the particular references to Chapter 775.
- (3) The penalty provisions of Chapter 775 could be re-drafted in their entirety so as to include the appropriate penalty provisions in a manner consistent with the existing scheme. This method would require that the code provisions be considered by the Legislature in order to change the Chapter 775 references.

- (4) Another option available would be to take no action at all. The Code provisions are complete within themselves as to crimes and punishments contained therein. As to other criminal provisions and their penalty references to "section 775.082, section 775.083, or section 775.084" and to "section 775.082 or 775.083," those references are complete and applicable under the code provision. The subsequent misdemeanor provision of section 775.086 is lost by taking no action, and the reclassification and minimum sentence provisions of section 775.087 may be lost by such action.

By taking no action the statutory revisor may be forced to carry out the directive of section 64 of Chapter 74-383, Laws of Florida. By such action, however, the Legislature runs the risk of having the act declared invalid. See 30 Fla. Jur., Statutes, §73-74 and 9 Fla. Jur., Criminal Law, §25.

MH:nd

Section 35. If any part or parts of this act are adjudged invalid, the remaining part shall not be affected thereby.

Section 36. This act shall become effective on January 1, 1976, and if it is not commenced by that date, the act shall be barred.

Approved by the Governor July 3, 1974.

Filed in Office Secretary of State July 3, 1974.

FLORIDA STATE ARCHIVE
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, Florida 32304

CHAPTER 74-383

Committee Substitute for House Bill No. 2179

AN ACT relating to criminal law; creating section 775.011, Florida Statutes, providing for title and applicability; creating section 775.012, Florida Statutes, providing for general purposes; creating section 775.021, Florida Statutes, providing for rules of construction; amending section 775.08, Florida Statutes, providing for classes and definitions of offenses; amending section 775.083, Florida Statutes, providing for penalties; amending section 775.084, Florida Statutes, relating to fines; amending section 775.084, Florida Statutes, relating to subsequent felony offenses; creating section 775.086, Florida Statutes, relating to extended terms for subsequent misdemeanors; creating section 775.087, Florida Statutes, relating to felony reclassification for possession of weapons or for battery, and minimum sentence; renumbering and amending section 832.466, Florida Statutes, relating to time limitations; renumbering and amending section 776.011, Florida Statutes, relating to principal in first degree; renumbering and amending section 776.04, Florida Statutes, relating to attempt, solicitation and conspiracy; creating sections 776.012, 776.021, 776.031, 776.041, 776.05, 775.051, 776.06, 776.07, and 776.08, Florida Statutes, relating to justifiable use of force; amending section 782.04, Florida Statutes, defining the crimes of and providing the penalties for murder; amending section 782.07, Florida Statutes, defining the crime of and providing the penalty for manslaughter; creating section 782.071, Florida Statutes, defining the crime of and penalty for vehicular homicide; renumbering and amending section 784.02, Florida Statutes, defining the crime of and providing the penalty for assault; renumbering and amending section 784.04, Florida Statutes, defining the crime of and providing the penalty for aggravated assault; amending section 784.03, Florida Statutes, defining the crime of and providing the penalty for battery; amending section 784.041, Florida Statutes, defining the crime of and providing the penalty for aggravated battery; amending section 784.05, Florida Statutes, defining the crime of and providing the penalty for culpable negligence; renumbering and amending section 806.02, Florida Statutes, defining the crime of and providing the penalty for kidnapping; renumbering and amending section 806.01, Florida Statutes, defining the crime of and providing the penalty for false imprisonment; creating section 787.03, Florida

Statutes, defining the crime of and providing the penalty for interference with custody; renumbering and amending section 805.03, Florida Statutes, defining the crime of and providing the penalty for removing children from state; amending section 806.01, Florida Statutes, defining the crimes of and providing the penalties for arson; amending section 806.02, Florida Statutes, defining the crime of and providing the penalties for criminal mischief; amending section 806.10, Florida Statutes, defining the crime of and providing the penalty for obstructing extinguishment of fire; amending subsection (1) of section 806.11, Florida Statutes, defining the crime of and providing the penalty for possession of fire bombs; creating section 810.011, Florida Statutes, providing for definitions; amending section 810.02, Florida Statutes, defining the crime of and providing the penalties for burglary; amending section 810.06, Florida Statutes, defining the crime of and providing the penalty for possession of burglary tools; amending section 810.07, Florida Statutes, relating to evidence of intent; creating section 810.08, Florida Statutes, defining the crime of and providing the penalty for trespass in structure or conveyance; creating section 810.09, Florida Statutes, defining the crime of and providing the penalty for trespass on property other than structure or conveyance; renumbering and amending section 821.071, Florida Statutes, defining the crime of and providing the penalty for unlawfully removing notices; renumbering and amending section 821.02, Florida Statutes, defining the crime of and providing the penalty for placing signs adjacent to highway; renumbering and amending section 813.011, Florida Statutes, defining the crimes of and providing the penalties for robbery; creating section 812.011, Florida Statutes, providing for definitions; renumbering and amending section 811.021, Florida Statutes, defining the crime of and providing the penalty for larceny; renumbering and amending section 811.16, Florida Statutes, defining the crime of and providing the penalty for receiving stolen property; renumbering and amending section 814.04, Florida Statutes, defining the crime of and providing the penalty for unauthorized use of motor vehicle, etc.; renumbering and amending subsection (2) of section 811.166, Florida Statutes, relating to records of purchases and sales; renumbering and amending section 799.01 and 799.02, Florida Statutes, defining the crime of and providing the penalty for highway; renumbering and amending section 799.03, Florida Statutes, defining the crime of and providing the penalty for knowingly marrying the spouse of another; creating section 826.04, Florida Statutes, defining the crime of and providing the penalty for incest; creating section 827.01, Florida Statutes, providing for definitions; renumbering and amending section 828.04, Florida Statutes, defining the crime of and providing the penalty for aggravated child abuse; creating section 827.04, Florida Statutes, defining the crime of and providing the penalty for negligent treatment of children; creating section 827.06, Florida Statutes, defining the crime of and providing the penalty for negligent treatment of children; renumbering and amending section 828.042, Florida Statutes, defining the crime of and providing the penalty for negligent treatment of children; creating section 827.06, Florida Statutes, defining the crime of and providing the penalty for parent's non-support; creating section 837.011, Florida Statutes, providing for definitions; renumbering and amending section 837.01, Florida Statutes, defining the crime of and providing the penalty for perjury not in an official proceeding; amending section 837.02, Florida Statutes, defining the

crime of and providing the penalty for perjury in official proceedings; amending subsection (1) of section 837.021, Florida Statutes, defining the crime of and providing the penalty for perjury by contradictory statements; creating section 837.05, Florida Statutes, defining the crime of and providing the penalty for making false reports to law enforcement authorities; creating section 837.06, Florida Statutes, defining the crime of and providing the penalty for false official statements; creating section 838.014, Florida Statutes, providing for definitions; creating section 838.015, Florida Statutes, defining the crime of and providing the penalty for bribery; creating section 838.016, Florida Statutes, making unlawful certain compensation or rewards for past official behavior and providing penalty; creating section 838.021, Florida Statutes, defining the crime of and providing the penalty for corruption by threat against public servant; creating section 838.031, Florida Statutes, defining the crime of and providing the penalty for official misconduct; creating section 838.041, Florida Statutes, defining the crime of and providing the penalty for misuse of confidential information; providing that reference to punishable as provided in specific section of chapter 775 shall be changed to punishable as provided in chapter 775; renumbering section 776.08, Florida Statutes, as section 777.03, Florida Statutes; renumbering sections 779.01, 779.02, 779.03, 779.04, 779.05, 779.06, 779.07, 779.08, 779.09, 779.10, 779.11, 779.12, 779.13, 779.14, 779.15, 779.16, 779.17, 779.18, 779.19, 779.20 and 779.21, Florida Statutes, as sections 876.32, 876.33, 876.34, 876.35, 876.36, 876.37, 876.38, 876.39, 876.40, 876.41, 876.42, 876.43, 876.44, 876.45, 876.46, 876.47, 876.48, 876.49, 876.50, 876.51 and 876.52, Florida Statutes, respectively; renumbering section 806.06, Florida Statutes, as section 817.60, Florida Statutes; renumbering section 811.022, Florida Statutes, as section 901.27, Florida Statutes; renumbering sections 911.165 and 911.201, Florida Statutes, as sections 812.051 and 812.201, Florida Statutes, respectively; renumbering section 814.05, Florida Statutes, as section 322.274, Florida Statutes; renumbering section 814.07, Florida Statutes, as section 319.36, Florida Statutes; renumbering section 823.09, Florida Statutes, as section 806.101, Florida Statutes; renumbering section 828.041, Florida Statutes, as section 827.07, Florida Statutes; and renumbering section 828.301, Florida Statutes, as section 827.08, Florida Statutes; repealing section 741.22, Florida Statutes, relating to incest; repealing section 776.11, Florida Statutes, relating to prosecution for second offenses; repealing section 776.12, Florida Statutes, relating to limitation of repeal; repealing sections 782.01, 782.02, and 782.05, Florida Statutes, relating to homicide; repealing section 784.05, Florida Statutes, relating to assault; repealing section 800.04, Florida Statutes, relating to crimes against nature; repealing sections 806.03, 806.04, 806.05, 806.06, 806.07, 806.08, 806.09, 806.11, and 806.12, Florida Statutes, relating to arson; repealing sections 810.01, 810.03, 810.04, 810.05, and 810.051, Florida Statutes, relating to burglary; repealing sections 811.03, 811.04, 811.05, 811.17, 811.28, 811.29, and 811.30, Florida Statutes, relating to larceny; repealing sections 812.10 and 812.12, Florida Statutes, relating to embezzlement; repealing sections 814.01, 814.02, 814.03, and 814.06, Florida Statutes, relating to auto theft; repealing sections 821.01, 821.011, 821.08, 821.04, 821.05, 821.07, 821.08, 821.09, 821.10, 821.11, 821.12, 821.13, 821.14, 821.15,

821.16, 821.17, 821.18, 821.19, 821.20, 821.21, 821.22, 821.23, 821.24, 821.25, 821.26, 821.27, 821.28, 821.29, 821.30, 821.31, 821.32, 821.33, 821.34, 821.35, 821.37, and 821.38, Florida Statutes, relating to trespass and injury to real property; repealing sections 822.01, 822.02, 822.03, 822.04, 822.05, 822.06, 822.07, 822.08, 822.09, 822.10, 822.11, 822.12, 822.13, 822.14, 822.15, 822.16, 822.17, 822.18, 822.19, 822.20, 822.21, 822.22, and 822.23, Florida Statutes, relating to malicious injury to buildings; repealing sections 823.01, 823.02, 823.03, 823.04, 823.05, 823.06, 823.07, 823.08, 823.09, and 823.10, Florida Statutes, relating to nuisances and doors of certain buildings; repealing sections 838.01, 838.05, 838.07, 838.09, 838.11, 838.12, 838.13, 838.14, 838.15, 838.16, 838.17, 838.18, 838.19, 838.20, and 838.21, Florida Statutes, relating to cruelty to animals and children; repealing sections 833.03, and 833.04, Florida Statutes, and section 833.05, Florida Statutes, relating to conspiracy; repealing sections 837.01, 837.03, and 837.04, Florida Statutes, relating to perjury; repealing sections 838.01, 838.02, 838.03, 838.04, 838.05, 838.06, 838.07, 838.08, 838.09, and 838.10, Florida Statutes, relating to bribery; repealing sections 851.01, 851.02, 851.03, and 851.04, Florida Statutes, relating to bucket shops; providing an effective date.

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

Section 1. Section 775.011, Florida Statutes, is created to read:

775.011 Short title; applicability to antecedent offenses.—

(1) This act shall be known and may be cited as the "Florida Criminal Code."

(2) Except as provided in subsection (3) of this section, the code does not apply to offenses committed prior to its effective date and prosecutions for such offenses shall be governed by the prior law. For the purposes of this section, an offense was committed prior to the effective date of the code if any of the material elements of the offense occurred prior thereto.

(3) In any case pending on or after the effective date of the code, involving an offense committed prior to such date, the provisions of the code involving any quasi-procedural matter shall govern, insofar as they are justly applicable. The provisions of the code according a defense or mitigation or establishing a penalty shall apply only with the consent of the defendant.

Section 2. Section 775.012, Florida Statutes, is created to read:

775.012 General purposes.—The general purposes of the provisions of the code are:

(1) To proscribe conduct that improperly causes or threatens substantial harm to individual or public interests.

(2) To give fair warning to the people of the State of Florida in understandable language of the nature of the conduct proscribed and of the sentences authorized upon conviction.

(3) To define clearly the material elements constituting an offense, and the accompanying state of mind or criminal intent required of that offense.

(4) To differentiate on reasonable grounds between serious and minor offenses and to establish appropriate disposition for each.

(5) To safeguard conduct that is without fault or legitimate state interest from being condemned as criminal.

(6) To insure the public safety by deterring the commission of offenses, providing for the opportunity for rehabilitation of those convicted, and for their confinement when required in the interests of public protection.

Section 3. Section 775.021, Florida Statutes, is created to read:

775.021 Rules of construction.—

(1) The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

(2) The provisions of this chapter are applicable to offenses defined by other statutes, unless the code otherwise provides.

(3) This section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

Section 4. Section 775.08, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 775.08, F.S., for present text.)

775.08 Classes and definitions of offenses.—When used as the laws of this state:

(1) The term "felony" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. "State penitentiary" wherever used in the Laws of Florida shall include state correctional facilities. A person shall be imprisoned in the state penitentiary for each sentence which, except an extended term exceeds one (1) year.

(2) The term "misdemeanor" shall mean any criminal offense that is punishable under the laws of this state or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility, except an extended term, not in excess of one year. The term "misdemeanor" as used in the laws of this state shall not mean any conviction for any violation of any provision of chapter 316, Florida Statutes, or of any municipal or county ordinance.

(3) The term "violation" shall mean any offense that is punishable under the laws of this state or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture or other civil penalty. A violation does not constitute a crime, and conviction for a violation

shall not give rise to any legal disability based on a criminal offense. The term "violation" as used in the laws of this state shall not mean any conviction for any violation of any provision of chapter 316, Florida Statutes, or of any municipal or county ordinance. Nothing contained in this code shall repeal or change the penalty for a violation of any provision of chapter 316, Florida Statutes, or of any municipal or county ordinance.

(4) The term "crime" shall mean a felony or misdemeanor.

Section 5. Section 775.082, Florida Statutes, is amended to read:

775.082 Penalties.—

(1) A person who has been convicted of a capital felony shall be punished by life imprisonment and shall be required to serve no less than twenty-five (25) calendar years before becoming eligible for parole unless the proceeding held to determine sentence according to the procedure set forth in section 921.141 results in findings by the court that such person shall be punished by death, and in the latter event such person shall be punished by death.

(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, a person convicted of a capital felony shall be punished by life imprisonment as provided in subsection (1).

(3) 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).

(4) A person who has been convicted of any other designated felony may be punished as follows:

(a) For a life felony, by a term of imprisonment in the state prison for life, or for a term of years not less than thirty;

(b) For a felony of the first degree, by a term of imprisonment in the state prison not exceeding thirty (30) years or, when specifically provided by statute, by imprisonment in the state prison for a term of years not exceeding life imprisonment;

(c) For a felony of the second degree, by a term of imprisonment in the state prison not exceeding fifteen (15) years;

(d) For a felony of the third degree, by a term of imprisonment in the state prison not exceeding five (5) years.

(5) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment in the county jail not exceeding one (1) year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment in the county jail not exceeding sixty (60) days.

(5) Any person who has been convicted of a violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 16, Florida Statutes, or by ordinance of any city or county.

(6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1).

(7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

Section 6. Section 775.083, Florida Statutes, is amended to read:

775.083 Fines in lieu of or in addition to other criminal penalty.—A person who has been convicted of a crime an offense, other than a capital felony, may be sentenced, when specifically designated by statute, to pay a fine in lieu of or in addition to any punishment described in section 775.082, or when specifically authorized by statute, he may be sentenced to pay a fine in lieu of any punishment described in section 775.082. A person who has been convicted of a violation may be sentenced to pay a fine. Fines for designated crimes and for violations shall not exceed:

(1) \$15,000, when conviction is of a life felony;

++ (2) \$10,000 when the conviction is of a felony of the first or second degree;

++ (3) \$5,000, when the conviction is of a felony of the third degree;

++ (4) \$1,000, when the conviction is of a misdemeanor of the first degree;

++ (5) \$500, when the conviction is of a misdemeanor of the second degree or a violation;

++ (6) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.

++ (7) Any higher amount specifically authorized by statute.

(8) If a defendant is unable to pay a fine, the court shall permit him to pay the fine in installments.

Section 7. Section 775.084, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 775.054, F.S., for present text.)

775.084 Subsequent felony offenders: extended terms.—

(1) Unless otherwise specifically provided by statute, the court, after reasonable notice to the parties and opportunity to be heard, may sentence a person who has been convicted of a felony within this state to punishments provided in this section if it finds all the following:

(a) The imposition of sentence under this section is necessary for the protection of the public from further criminal activity by the defendant.

(b) The defendant has previously committed a felony, or the defendant has previously twice been convicted of a misdemeanor of the first degree, in this state or another qualified offense which was committed after the defendant's eighteenth birthday. For the purpose of this subsection, the term "qualified offense" includes any offense in violation of a law of another state or of the United States that was punishable under the laws of such state or of the United States at the time of its commission by the defendant by death or imprisonment exceeding one year, or that was equivalent in penalty to a misdemeanor of the first degree.

(c) The felony for which the defendant is to be sentenced was committed within five years of the date of the commission of the last prior felony, or misdemeanor, or other qualified offense of which he was convicted, or within five years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.

(d) The defendant has not received a pardon on the ground of innocence for any felony or other qualified offense that is necessary for the operation of this section.

(e) A conviction of a felony, a misdemeanor or other qualified offense necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(2) For the purposes of this section, the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction if the felony for which he is to be sentenced was committed during the probationary period.

(3) The court, in conformity with the criteria specified in subsection (1), may sentence the convicted felon to the state penitentiary as follows:

(a) In the case of a felony of the first degree, for life;

(b) In the case of a felony of the second degree, for a term of years not exceeding 30;

(c) In the case of a felony of the third degree, for a term of years not exceeding 10.

(4) If the court decides that imposition of sentence under this section is not necessary for the protection of the public, sentence shall be imposed without regard to this section.

(5) A sentence imposed under this section shall not be increased after such imposition.

Section 8. Section 775.086, Florida Statutes, is created to read:

775.086 Subsequent misdemeanor offenders; extended terms.—

(1) The court, after reasonable notice to the parties and opportunity to be heard, may sentence a person who has been convicted of a misdemeanor to an extended term of imprisonment as provided in this section if it finds all the following:

- (a) The imposition of sentence under this section is necessary for the protection of the public from further criminal activity by the defendant;
- (b) The defendant has at least twice previously been convicted of the same crime committed at different times after the defendant's eighteenth birthday;
- (c) The misdemeanor for which the defendant is to be sentenced was committed within two years of the date of the commission of the last prior crime, or within two years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a crime, whichever is later;
- (d) The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this section;
- (e) A conviction of a crime necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(2) For the purposes of this section, the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction if the subsequent misdemeanor for which he is to be sentenced was committed during such probationary period.

(3) The court, in conformity with the criteria specified in subsection (1), may sentence the convicted misdemeanor as follows:

- (a) In the case of a misdemeanor of the first degree, for a term of imprisonment not in excess of three years;
- (b) In the case of a misdemeanor of the second degree, for a term not in excess of one year.
- (4) A sentence imposed under this section shall not be increased after such imposition.

Section 9. Section 775.087, Florida Statutes, is created to read:

775.087 Possession or use of weapon or aggravated battery; felony reclassification; minimum sentence.—

(1) Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant displayed, used, threatened or attempted to use any weapon or firearm, or during the commission of such felony the defendant committed an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

- (a) In the case of a felony of the first degree, to a life felony;
- (b) In the case of a felony of the second degree, to a felony of the first degree;

(c) In the case of a felony of the third degree, to a felony of the second degree.

(2) Any person who has been convicted of a felony involving a firearm or destructive device as defined in section 790.001(4) and (5), Florida Statutes, in the courts of this state or the United States, or in any other state, territory, or country if punishable by imprisonment for a term exceeding one year shall, upon subsequent conviction of a felony involving the display, use or attempt to use a firearm or destructive device as defined in section 790.001(4) and (6), serve a minimum term of three years.

Section 10. Section 932.465, Florida Statutes, is renumbered and amended to read:

(Substantial rewording of section. See section 932.465, F.S., for present text.)

932.465 775.15 Time limitations.—

(1) A prosecution for a capital felony may be commenced at any time.

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

- (a) A prosecution for a life felony or a felony of the first degree must be commenced within four years after it is committed;
- (b) A prosecution for any other felony must be commenced within three years after it is committed;
- (c) A prosecution for a misdemeanor of the first degree must be commenced within two years after it is committed;
- (d) A prosecution for a misdemeanor of the second degree or a violation must be commenced within one year after it is committed.

(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:

(a) Any offense, a material element of which is either fraud or a breach of fiduciary obligation, within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; and

(b) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years from the time he leaves public office or employment or during any time permitted by any other part of this section, whichever time is greater.

(4) An offense is committed either when every element occurs or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's com-

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ply thereon is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment or information is filed, provided that the capias, summons or other process issued on such indictment or information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant after diligent search or the defendant's absence from the state shall be considered. If, however, an indictment or information has been filed within the time period prescribed in this section and the indictment or information is dismissed or set aside because of a defect in its content or form after the time period has elapsed, the period for commencing prosecution shall be extended three months from the time the indictment or information is dismissed or set aside.

(6) The period of limitation does not run during any time when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

Section 11. Section 776.011, Florida Statutes, is renumbered and amended to read:

776.011 Principal in first degree.—Whoever commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed and such offense is committed or is attempted to be committed, is a principal in the first degree and may be charged, convicted and punished as such, whether he is or is not actually or constructively present at the commission of such offense.

Section 12. Section 776.04, Florida Statutes, is renumbered and amended to read:

776.04 Attempt, solicitation, conspiracy, generally.

(1) Whoever attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such an offense, but fails in the perpetration, or is intercepted or prevented in the execution of the same, commits the offense of criminal attempt and shall, when no express provision is made by law for the punishment of such attempt, be punished as follows provided in subsection (4).

(2) Whoever solicits another to commit an offense prohibited by law and in the course of such solicitation commands, encourages, hires, or requests another person to engage in specific conduct which would constitute such offense or an attempt to commit such offense, commits the offense of criminal solicitation, and shall, when no express provision is made by law for the punishment of such solicitation, be punished as provided in subsection (4).

(3) Whoever shall agree, conspire, combine or confederate with another person or persons to commit any offense, commits the offense of criminal conspiracy, and shall, when no express provision is made by law for

the punishment of such conspiracy, be punished as provided in subsection (4).

(4) Whoever commits the offense of criminal attempt, solicitation, or conspiracy as defined by this section shall be punished as follows:

(a) If the offense attempted, solicited, or conspired to is a capital felony or a life felony, the person convicted shall be guilty of a felony of the second first degree, punishable as provided in sections 776.062, sections 776.063 or section 776.084 chapter 775.

(b) If the offense attempted, solicited, or conspired to is a life felony or a felony of the first degree or second degree, the person convicted shall be guilty of a felony of the third second degree, punishable as provided in sections 776.062, sections 776.063, or section 776.084 chapter 775.

(c) If the offense attempted, solicited or conspired to is a felony of the second degree or any burglary, the person convicted shall be guilty of a felony of the third degree, punishable as provided in chapter 775.

(d) If the offense attempted, solicited or conspired to is a felony of the third degree, the person convicted shall be guilty of a misdemeanor of the first degree, punishable as provided in sections 776.062 and 776.063 chapter 775.

(e) If the offense attempted, solicited or conspired to is a misdemeanor of the first or second degree, the person convicted shall be guilty of a misdemeanor of the second degree, punishable as provided in sections 776.062 and 776.063 chapter 775.

(5) It is a defense under this section that, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose, the defendant:

(a) abandoned his attempt to commit the offense or otherwise prevented its commission; or

(b) after soliciting another person to commit an offense, he persuaded such other person not to do so or otherwise prevented commission of the offense; or

(c) after conspiring with one or more persons to commit an offense, he persuaded such persons not to do so or otherwise prevented commission of the offense.

Section 13. Sections 776.012, 776.021, 776.031, 776.041, 776.05, 776.06, 776.07, and 776.08, Florida Statutes, are created to read:

CHAPTER 776

JUSTIFIABLE USE OF FORCE

776.012 Use of force in defense of person.—A person is justified in the use of force, except deadly force, against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of deadly force only if he reasonably

believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or to prevent the imminent commission of a forcible felony.

776.021 Use of force in defense of dwelling.—A person is justified in the use of force, except deadly force, against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon a dwelling. However, he is justified in the use of deadly force only if:

(1) The entry is made or attempted without permission, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to, him or another then in the dwelling; or

(2) He reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling.

776.031 Use of force in defense of other.—A person is justified in the use of force, except deadly force, against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than a dwelling) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of deadly force only if he reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony.

776.041 Use of force by aggressor.—The justification described in the preceding sections of this chapter is not available to a person who:

(1) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or

(2) Initially provokes the use of force against himself, unless:

(a) Such force is so great that he reasonably believes that he is in imminent danger of death or great bodily harm, and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

776.05 Law enforcement officers; use of force in making an arrest.—A law enforcement officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force, except deadly force, which he reasonably believes to be necessary to effect the arrest and of any force, except deadly force, which he reasonably believes to be necessary to defend

himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he reasonably believes both that:

(1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(2) The person to be arrested has committed or attempted a felony, or is attempting to escape by use of a weapon, or otherwise indicates that he will endanger human life, or inflict great bodily harm unless arrested without delay.

776.051 Use of force in resisting or making an arrest; prohibition.—

(1) A person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears to be a law enforcement officer.

(2) A law enforcement officer, or any person whom he has summoned or directed to assist him, is not justified in the use of force if the arrest is unlawful and known by him to be unlawful.

776.06 Deadly force.—Deadly force means force which is likely to cause death or great bodily harm and includes, but is not limited to:

(1) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

(2) The firing of a firearm at a vehicle in which the person to be arrested is riding.

776.07 Use of force to prevent escape.—

(1) A law enforcement officer or other person who has an arrested person in his custody is justified in the use of any force which he reasonably believes to be necessary to prevent the escape of the arrested person from custody.

(2) A guard or other law enforcement officer is justified in the use of force, including deadly force, which he reasonably believes to be necessary, to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or waiting trial or commitment for an offense.

776.08 Forcible felony.—Forcible felony means treason, murder, manslaughter, forcible rape, forcible sodomy, robbery, burglary, arson, kidnapping, aggravated assault, aggravated battery, aircraft piracy, unlawful throwing, placing or discharging of a destructive device or bomb and other felony which involves the use or threat of physical force or violence against any individual.

Section 14, Section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being, when perpetrated from a premeditated design to effect the death of the person killed or any

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human being, or when committed by a person engaged in the perpetration of or in the attempt to perpetrate any arson, rape, sodomy, robbery, burglary, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb, or which resulted from the unlawful distribution of heroin by a person ~~sixteen~~ (19) eighteen years or older when such drug is proven to be the proximate cause of the death of the user shall be murder in the first degree and shall constitute a capital felony, punishable as provided in ~~section 775.052~~ chapter 775.

(b) In all cases under this section the procedure set forth in section 921.141 shall be followed in order to determine sentence of death or life imprisonment.

(2) The unlawful killing of a human being when perpetrated by any act imminently dangerous to another, and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual or when committed in the perpetration of or in the attempt to perpetrate any arson, rape, robbery, burglary, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb, except as provided in subsection (1), it shall be murder in the second degree and shall constitute a felony of the first degree, punishable by imprisonment in the state prison for life or for such term of years as may be determined by the court for a term of years not exceeding life or as provided in chapter 775.

(3) When a person is killed in the perpetration of or in the attempt to perpetrate any arson, rape, sodomy, robbery, burglary, kidnapping, aircraft piracy or unlawful throwing, placing, or discharging of a destructive device or bomb by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony shall be guilty of murder in the second degree which constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in chapter 775.

(4) The unlawful killing of a human being when perpetrated without any design to effect death, by a person engaged in the perpetration of or in the attempt to perpetrate any felony, other than any arson, rape, sodomy, robbery, burglary, kidnapping, aircraft piracy or unlawful throwing, placing or discharging of a destructive device or bomb, it shall be murder in the third degree and shall constitute a felony of the second degree, punishable as provided in ~~section 775.052~~, ~~section 775.052~~, or ~~section 775.051~~ chapter 775.

Section 15. Section 782.07, Florida Statutes, is amended to read:

782.07 Manslaughter.—The killing of a human being by the act, procurement or culpable negligence of another, without lawful justification according to the provisions of chapter 776 and in cases where such killing shall not be justifiable or excusable homicide nor murder, according to the provisions of this chapter, shall be deemed manslaughter and shall constitute a felony of the second degree, punishable as provided in ~~section 775.052~~, ~~section 775.052~~, or ~~section 775.054~~ chapter 775.

Section 16. Section 782.071, Florida Statutes, is created to read:

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782.071 Vehicular homicide.—"Vehicular homicide" is the killing of a human being by the operation of a motor vehicle by another in a reckless manner likely to cause the death or great bodily harm to another. "Vehicular homicide" is a felony of the third degree punishable as provided in chapter 775.

Section 17. Section 784.02, Florida Statutes, is renumbered and amended to read:

(Substantial rewording of section. See section 784.08, F.S., for present text.)

784.09 784.011 Assault.—

(1) "Assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

(2) Whoever commits an assault shall be guilty of a misdemeanor or the second degree, punishable as provided in chapter 776.

Section 18. Section 784.04, Florida Statutes, is renumbered and amended to read:

(Substantial rewording section. See section 784.04, F.S., for present text.)

784.04 784.021 Aggravated assault.—

(1) "Aggravated assault" is an assault:

(a) With a deadly weapon without intent to kill; or

(b) With an intent to commit a felony.

(2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree punishable as provided in chapter 776.

Section 19. Section 784.03, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 784.03, F.S., for present text.)

784.03 Battery.—

(1) A person commits battery if he:

(a) Actually and intentionally touches or strikes another person against the will of the other; or

(b) Intentionally causes bodily harm to an individual.

(2) Whoever commits battery shall be guilty of a misdemeanor or the first degree, punishable as provided in chapter 776.

Section 20. Section 784.045, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 784.045, F.S., for present text.)

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784.045 Aggravated battery.—

- (1) A person who in committing battery:
- (a) Intentionally or knowingly causes great bodily harm, permanent disability or permanent disfigurement; or
 - (b) Uses a deadly weapon;
- commits aggravated battery.

(2) Whoever commits aggravated battery shall be guilty of a felony of the second degree, punishable as provided in chapter 775.

Section 21. Section 784.05, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 784.05, F.S., for present text.)

784.05 Culpable negligence.—

(1) Whoever through culpable negligence, exposes another person to personal injury shall be guilty of a misdemeanor of the second degree, punishable as provided in chapter 775.

(2) Whoever through culpable negligence inflicts actual personal injury on another shall be guilty of a misdemeanor of the first degree, punishable as provided in chapter 775.

Section 22. Section 805.02, Florida Statutes, is renumbered and amended to read:

(Substantial rewording of section. See section 805.02, F.S., for present text.)

805.02 787.01 Kidnapping.—

(1) "Kidnapping" means forcibly, secretly, or by threat confining, abducting or imprisoning another person against his will and without lawful authority with intent to:

- (a) Hold for ransom or reward, or as a shield or hostage; or
- (b) Commit or facilitate commission of any felony; or
- (c) Inflict bodily harm upon or to terrorize the victim or other person; or
- (d) Interfere with the performance of any governmental or political function.

(2) Confinement of a child under the age of thirteen (13) is against his will within the meaning of subsection (1) if such confinement is without the consent of his parent or legal guardian.

(3) Whoever kidnaps a person is guilty of a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in chapter 775.

Section 33. Section 805.01, Florida Statutes, is renumbered and amended to read:

(Substantial rewording of section. See section 805.01, F.S., for present text.)

805.01 787.02 False imprisonment.—

(1) "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning or restraining another person without lawful authority and against his will with any purpose other than those referred to in section 787.01.

(2) Confinement of a child under the age of thirteen (13) is against his will within the meaning of this section if such confinement is without the consent of his parent or legal guardian.

(3) Whoever commits the offense of false imprisonment shall be guilty of a felony of the third degree, punishable as provided in chapter 775.

Section 34. Section 787.03, Florida Statutes, is created to read:

787.03 Interference with custody.—

(1) Whoever without lawful authority knowingly or recklessly takes or entices any child seventeen (17) years or under or any incompetent person from the custody of his parent, guardian or other lawful custodian, commits the offense of interference with custody and shall be guilty of a misdemeanor of the first degree, punishable as provided in chapter 775.

(2) It is a defense that:

(a) The defendant reasonably believes that his action was necessary to preserve the child or the incompetent person from danger to his welfare; or

(b) The child or incompetent person was taken away at his own instigation without enticement and without purpose to commit a criminal offense with or against the child.

(3) Proof that a child was seventeen (17) years or under creates the presumption that the defendant knew the child's age or acted in reckless disregard thereof.

Section 25. Section 805.03, Florida Statutes, is renumbered and amended to read:

805.03 787.04 Felony to remove children from state contrary to court order.—

(1) It is unlawful for any person, in violation of a court order, to lead, take, entice or remove a child beyond the limits of this state without personal knowledge of the order.

(2) It is unlawful for any person, with criminal intent, to lead, take, entice or remove a child beyond the limits of this state during the pendency of any action or proceedings affecting custody of a child after having received notice as required by law of the pendency of the action or proceedings, without the permission of the court in which the action or proceeding is pending.

(3) It is unlawful for any person, who has carried beyond the limits of this state any child whose custody is involved in any action or proceeding pending in this state, pursuant to the order of the court in which the action or proceeding is pending, or pursuant to the permission of the court, thereafter, to fail to produce the child in the court or deliver the child to the person designated by the court.

(4) Any person convicted of a violation of this law shall be guilty of a felony of the third degree, punishable as provided in section 775.082, sections 775.083 or section 775.084 chapter 775.

Section 26. Section 806.01, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 806.01, F.S., for present text.)

806.01 Arson.—

(1) Any person who willfully and maliciously by fire or explosive damages any structure whether the property of himself or another knowing or having reason to know that a human being is in the structure shall be guilty of arson in the first degree which constitutes a felony of the first degree, punishable as provided in chapter 775.

(2) Any person who willfully and maliciously by fire or explosive damages any structure, whether the property of himself or another under any circumstances not referred to in subsection (1) shall be guilty of arson in the second degree which constitutes a felony of the second degree, punishable as provided in chapter 775.

(3) "Structure" means any building of any kind and any enclosed area with a roof over it, vehicle, vessel or aircraft.

Section 27. Section 806.02, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 806.02, F.S., for present text.)

806.02 Criminal mischief.—

(1) A person commits the offense of criminal mischief if he willfully and maliciously injures or damages by any means any real or personal property belonging to another.

(2) (a) If the damage to such property is two hundred dollars (\$200) or less, it is a misdemeanor of the second degree, punishable as provided in chapter 775.

(b) If the damage to such property is greater than two hundred dollars (\$200) but less than \$1,000, it is a misdemeanor of the first degree, punishable as provided in chapter 775.

(c) If the damage is \$1,000 or greater or if there is interruption or impairment of a business operation, public communication, transportation, supply of water, gas or power or other public service which costs \$1,000 or more in labor and supplies to restore, it is a felony of the third degree, punishable as provided in chapter 775.

Section 28. Section 806.10, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 806.10, F.S., for present text.)

806.10 Preventing or obstructing extinguishment of fire.—

(1) Any person who willfully and maliciously injures, destroys, removes, or in any manner interferes with the use of any vehicles, tools, equipment, water supplies, hydrants, towers, buildings, communication facilities, or any other instruments or facilities used in the detection, reporting, suppression, or extinguishment of fire shall be guilty of a felony of the third degree, punishable as provided in chapter 775.

(2) Any person who willfully or unreasonably interferes with, hinders, or assaults or attempts to interfere with or hinder any fire fighter in the performance of his duty shall be guilty of a felony of the third degree, punishable as provided in chapter 775.

Section 29. Subsection (1) of section 806.111, Florida Statutes, is amended to read:

806.111 Fire bombs.—

(1) Every person who possesses, manufactures or disposes of a fire bomb with intent that such fire bomb be willfully and maliciously used to set fire to or burn any building or property is guilty of a felony of the third degree, punishable as provided in section 775.082, sections 775.083, or section 775.084 chapter 775.

Section 30. Section 810.011, Florida Statutes, is created to read:

810.011 Definitions.—As used in this chapter:

(1) "Structure" means any building of any kind either temporary or permanent which has a roof over it together with the curtilage thereof.

(2) "Conveyance" means any motor vehicle, ship, vessel, railroad car, trailer, aircraft or sleeping car and to enter a conveyance includes taking apart any portion of the conveyance.

(3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(4) "Posted land" is that land upon which signs are placed not more than five hundred feet apart along, and at each corner of, the boundaries of the land, upon which signs there shall appear prominently, in letters of not less than two inches in height, the words "no trespassing" and in addition thereto shall appear the name of the owner, lessee, or occupant of said land. Said signs shall be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by poster on any land or place not exceeding five acres on which there is a dwelling house in order to obtain the benefits of the statutes of this state prohibiting trespass.

(5) "Cultivated land" is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or in fallow land as part of a crop rotation.

(6) "Fenced land" is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, or other wire, or other material, which stands at least three (3) feet in height. For the purpose of this chapter it shall not be necessary to fence any boundary or part of a boundary of any land which shall be formed by water.

(7) Where lands are posted, cultivated or fenced as described herein then said lands for the purpose of this chapter shall be considered as enclosed and posted.

Section 31. Section 810.02, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 810.02, F.S., for present text.)

810.02 Burglary.—

(1) Burglary means entering or remaining in a structure or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.

(2) Burglary is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in chapter 775, if in the course of committing the offense, the offender:

(a) Makes an assault upon any person; or

(b) Is armed or arms himself within such structure with explosives or a dangerous weapon.

(3) If the offender does not make an assault or is not armed or does not arm himself with a dangerous weapon or explosive as aforesaid during the course of committing the offense and the structure entered is a dwelling or there is a human being in the structure or conveyance at the time the offender entered or remained in the structure or conveyance, the burglary is a felony of the second degree, punishable as provided in chapter 775. Otherwise, burglary is a felony of the third degree, punishable as provided in chapter 775.

Section 32. Section 810.06, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 810.06, F.S., for present text.)

810.06 Possession of burglary tools.—Whoever has in his possession any tool, machine, or implement with intent to use the same or allow the same to be used to commit any burglary or trespass shall be guilty of a felony of the third degree, punishable as provided in chapter 775.

Section 33. Section 810.07, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 810.07, F.S., for present text.)

810.07 Prima facie evidence of intent.—In a trial on the charge of burglary, proof of the entering of such structure or conveyance at any time stealthily and without consent of the owner or occupant thereof, shall be prima facie evidence of entering with intent to commit an offense.

Section 34. Section 810.08, Florida Statutes, is created to read:

810.08 Trespass in structure or conveyance.—A person trespasses if he willfully enters any structure or conveyance of another without being authorized, licensed or invited. An offense under this section is a misdemeanor of the first degree, punishable as provided in chapter 775, if:

(1) The offender is armed or arms himself while in the structure or conveyance; or

(2) There is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass or was in the structure or conveyance. Otherwise, it is a misdemeanor of the second degree, punishable as provided in chapter 775.

Section 35. Section 810.09, Florida Statutes, is created to read:

810.09 Trespass on property other than structure or conveyance.—

(1) A person commits an offense if without being authorized, licensed or invited, he willfully enters upon or remains in any property other than a structure or conveyance as to which notice against entering or remaining is given by:

(a) Actual communication to the defendant; or

(b) Posting, fencing or cultivation as prescribed in section 810.011.

(2) An offense under this subsection is a misdemeanor of the first degree, punishable as provided in chapter 775, if:

(a) The offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person; or

(b) The offender willfully opens any door, fence or gate or does any other act which exposes animals, crops or other property to waste, destruction or freedom.

Otherwise, it is a misdemeanor of the second degree, punishable as provided in chapter 775.

Section 36. Section 821.071, Florida Statutes, is renumbered and amended to read:

821.071 810.10 Posted land; removing notices unlawful; penalty.—

(1) It is unlawful for any person to willfully remove, destroy, mutilate or commit any act designed to remove, mutilate or reduce the legibility or effectiveness of any posted notice placed by the owner, tenant, lessee, or occupant of legally enclosed or legally posted land pursuant to any law of this state for the purpose of legally enclosing the same.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in section 775.082 or section 775.082 chapter 775.

Section 37. Section 821.02, Florida Statutes, is renumbered and amended to read:

821.02 810.11 Placing signs adjacent to highways; penalty.—

(1) All persons are prohibited from placing, posting or erecting signs upon land or upon trees upon land adjacent to or adjoining all public highways of the state, without the written consent of the owner of such land, or the written consent of the attorney or agent of such owner.

(2) Every person convicted of a violation of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in section 775.082 or section 775.082 chapter 775.

Section 38. Section 813.011, Florida Statutes, is renumbered and amended to read:

(Substantial rewording of section. See section 812.011, F.S., for present text)

811.011 812.011 Robbery.—

(1) "Robbery" means the taking of money or other property which may be the subject of larceny from the person or custody of another by force, violence or assault or putting in fear.

(2) (a) If in the course of committing the robbery the offender carried a firearm or other deadly weapon, then the robbery is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in chapter 775.

(b) If in the course of committing the robbery the offender carried a weapon, then the robbery is a felony of the first degree, punishable as provided in chapter 775.

(c) If in the course of committing the robbery the offender carried no firearm, deadly weapon, or other weapon, then the robbery is a felony of the second degree.

(3) An act shall be deemed "in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

Section 39. Section 812.011, Florida Statutes, is created to read:

812.011 Definitions.—

(1) "Property" means anything of value, including but not limited to real estate, tangible and intangible personal property, contract rights, evidence of debt, choses-in action and other interest in or claims to wealth, admission or transportation tickets, animals, food and drink, gas, water, electric and other power and telephone service, or transportation

tickets, animals, food and drink, transient accommodations at any public lodging establishment, gas, water, electric and other power and telephone service.

(2) "Value" equals fair market value of property;

(3) "Motor vehicle" means automobiles, motorcycles, motor trucks, mobile homes, trailer coaches, house trailers, camper type mobile homes mounted and transported wholly upon the body of a self-propelled vehicle, any type of trailer or vehicle body without independent motive power drawn by or carried upon a self-propelled vehicle, designed for and used either as a means of transporting persons or property over the public streets and highways or for furnishing housing accommodations, or both, and all other vehicles operated over the public highways and streets of this state and propelled by power other than muscular power, but does not include traction engines, road rollers, or vehicles that run on a track.

(4) "Aircraft" means aircraft as defined in section 380.01.

(5) "Boat" means vessel as defined in section 371.021.

(6) "Boat motor" means any motor-driven device used for propelling a boat.

(7) "Public servant" means any public officer, agent, or employee of government, whether elected or appointed, including any executive, legislative or judicial officer, and any person participating as a special master, receiver, auditor, juror, arbitrator, umpire, referee, consultant, hearing examiner, or otherwise, in performing a governmental function; but the term does not include witnesses. Such term shall include a candidate for election to any such office including the time prior to the election, the time after he is elected and the time after he has qualified. It shall include any person appointed to any of the foregoing offices or employments before and after he qualifies.

(8) "Steal or Stolen" means to commit or have committed larceny.

Section 40. Section 811.021, Florida Statutes, is renumbered and amended to read:

811.021 812.031 Larceny defined; penalties; sufficiency of indictment, information or warrant.—

(1) A person who with intent to unlawfully deprive or defraud the true owner of his real or personal property or of the use and benefit thereof, or to appropriate the same to the use of the taker or of any other person:

(a) Takes from the possession of the true owner, or of any other person; or obtains from such person possession by color or aid of fraudulent or false representations or pretense, or of any false token or writing; or obtains the signature of any person to a written instrument, the false or making whereof would be punishable as forgery; or secretes, withholds, or appropriates to his own use, or that of any other than the true owner, any money, personal property, goods and chattels, thing in action, evidence of debt, contract, or property, or article of value of any kind; or

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(b) Having in his possession, custody or control, as a broker, baliee, public servant, attorney, agent, employee, clerk, trustee, or officer of any person, association, or corporation, member of co-partnership, pool or joint adventure or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody, or control, any money, personal thing or action, goods and chattels, evidence of debt, moneys, property, or article of value of any kind appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof; or

(c) While acting as executor, administrator, committee, guardian, receiver, collector or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, secretar, withholds or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any moneys, personal property, goods and chattels, thing in action, evidence of debt, security, property or article of value of any kind, in his possession or custody by virtue of his office, employment or appointment; or

(d) Takes unpurchased merchandise of any mercantile establishment on the premises of such establishment with the intent to convert the same to personal use without paying the purchase price therefor; or

(e) Obtains property of another by threatening to:

1. accuse anyone of a criminal offense; or
 2. expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
 3. take or withhold action as a public servant; or
 4. bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the defendant purports to act; or
 5. testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (1) Fails to take reasonable measures to restore property which he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient after he comes into control of such property; shall, upon conviction, be guilty of larceny.

(2) If the property stolen is:

- (a) of the value of one hundred dollars or more; or if,
- (b) no part of a common scheme or design to defraud property of the aggregate value of two hundred dollars or more is taken in any twelve consecutive month period by an agent, servant or employee from his principal or employer by a series or combination of any of the acts denounced in this section, as part of a common scheme or design to defraud; or
- (c) a will, codicil or other testamentary instrument; or

(d) a firearm; or

(e) a motor vehicle; or

(1) any member of the genera bos (cattle) or equus (horses); or any hybrid of the specified genus.

The offender shall be deemed guilty of grand larceny which constitutes a felony of the third degree, punishable as provided in section 775.082, section 775.083, or section 775.084 chapter 775, unless the offender is a public servant who used his official position to commit the offense or in the course of committing the offense stole public property or property which the duty of his office required him to receive and hold, in which case the offender shall be guilty of a felony of the second degree, punishable as provided in chapter 775.

(3) If the value of the property stolen is less than one hundred dollars, the offender shall be guilty of larceny of property not described within subsection (2) is petit larceny, which constitutes a misdemeanor of the second degree, punishable as provided in section 775.082 or 775.083 chapter 775. Upon a second conviction of petit larceny, the offender shall be guilty of a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083 chapter 775. Upon a third or subsequent conviction of the offense of petit larceny, the offender shall be guilty of a felony of the third degree, punishable as provided in section 775.082, section 775.083, or section 775.084, chapter 775.

(4) Hereafter it shall not be a defense to a prosecution for larceny, or for an attempt, solicitation or for conspiracy to commit the same, or for being accessory thereto, that the purpose for which the owner was induced by color of or aid of fraudulent or false representation or pretense, or of any false token or writing, to part with his property or the possession thereof, was illegal, immoral or unworthy.

(5) It shall be sufficient for any indictment, information, or warrant returned, filed or issued under this section to charge generally that the defendant at the time and in the county specified, did steal the personal or real property, thing in action, evidence of debt or contract or article of value out of which the prosecution arose, describing the same in general terms and alleging generally the ownership and value thereof. It shall not be necessary when alleging the larceny of property over a period of time that the exact date or dates the property was taken be alleged but instead the total period of time may be alleged generally. This section shall not be construed as intending to interfere with the power of the court to require the state to furnish the defendant with a bill of particulars in proper cases and on sufficient showing that cause exists for the same.

(6) Nothing in this section shall be construed as in any way affecting, modifying or repealing the following statutes or any part thereof: section 306.10, 311.02, 311.04, 312.10, 312.12, 312.13, 312.14, 312.15, 312.16, 312.17, 312.18, 312.19, 312.20, 312.21, 312.22 and 312.23.

(7) The failure, neglect, omission or refusal of any public servant to pay over or deliver any money, property, or effects to any official or person authorized or having the right by law to receive the same, for more than thirty days after the same has been collected or received by him, shall be prima facie evidence of the conversion to one's own use,

or the receiving with intent to convert to one's own use, or the withholding with the intent to convert to one's own use the said money, property or effects.

Section 41. Section 811.16, Florida Statutes, is renumbered and amended to read:

(Substantiated rewording of section. See section 811.16, Florida Statutes, for present text.)

811.16 812.031 Receiving stolen property.—

(1) Whoever intentionally receives, retains, disposes or aids in concealment of any stolen property of another without consent of the owner or person entitled to possession, knowing that it has been stolen, or under such circumstances as would induce a reasonable man to believe that the property was stolen, commits an offense.

(2) If the property received is:

- (a) property of the value of one hundred dollars or more; or
- (b) a will, codicil or other testamentary instrument; or
- (c) a firearm; or
- (d) a motor vehicle; or
- (e) any member of the genera bova (cattle) or equus (horse); or any hybrid of the specified genera.

the offender shall be deemed guilty of a felony of the third degree, punishable as provided in chapter 775.

(3) If the property received is not described in subsection (2) above, the offender shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in chapter 775.

(4) It shall not be necessary on the trial of the crime of receiving stolen property to prove that the person who stole the property has been convicted.

(5) In determining the value of the property received the aggregate value of all stolen property found in possession of the offender shall be used for the purposes of this section.

Section 42. Section 814.04, Florida Statutes, is renumbered and amended to read:

814.04 812.041 Unauthorized temporary use of motor vehicle, aircraft, boat or boat motor.—

(1) Any person who temporarily uses any motor vehicle, aircraft, boat, or boat motor without the authority of the owner or his representative, or who shall knowingly be a party to such unauthorized use, shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083 chapter 775.

(2) Nothing in this section shall be construed to apply to any case in which the taking of the property of another is with intent to steal the same or in which the taking is under a claim of right or with the

presumed consent of the owner or other person having the legal control, care, or custody of the same.

Section 43. Subsection (2) of section 811.165, Florida Statutes, is renumbered and amended to read:

811.165 812.051 Record of purchases and sales required of junk dealers and persons dealing in secondhand goods.—

(2) A failure to keep the records required under this section and for the period of time required shall be a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083 chapter 775.

Section 44. Section 799.01, Florida Statutes, is renumbered and amended to read:

799.01 826.01 Bigamy: punishment.—Whoever, having a husband or wife living, marries another person, or continues to cohabit with such second husband or wife in this state, shall (except in the cases mentioned in section 799.02 section 826.02) be guilty of a felony of the third degree, punishable as provided in section 775.082, section 775.083 or section 775.084 chapter 775.

Section 45. Section 799.02, Florida Statutes, is renumbered and amended to read:

799.02 826.02 Exceptions.—The provisions of section 799.01 section 826.01 shall not extend to any person who reasonably believes that the prior spouse is dead; whose husband or wife has been continually remaining beyond sea; or to a person whose prior spouse has voluntarily deserted the other him and remained absent for the space of three years continuously; the party marrying again not knowing the other to be living within that time; nor to any person whose bonds of matrimony have been dissolved; or to a person who violates its provisions because a domestic or foreign court has entered an invalid judgment purporting to terminate or annul the prior marriage and the defendant does not know that judgment to be invalid; or to any person who reasonably believes that he is legally eligible to marry.

Section 46. Section 799.03, Florida Statutes, is renumbered and amended to read:

799.03 826.03 Knowingly marrying husband or wife of another.—Whoever knowingly marries the husband or wife of another person knowing him or her to be the spouse of another person shall be guilty of a felony of the third degree, punishable as provided in section 775.082, section 775.083 or section 775.084 chapter 775.

Section 47. Section 826.04, Florida Statutes, is created to read:

826.04 Incest.—Whoever knowingly marries or has sexual intercourse with a person to whom he is related by blood consanguinity, or a brother, sister, uncle, aunt, nephew, or niece commits incest which constitutes a felony of the third degree, punishable as provided in chapter 775. "Sexual intercourse" is the penetration of the female sex organ by the male sex organ, however slight; emission of semen is not required.

Section 48. Section 827.01, Florida Statutes, is created to read:

827.01 Definitions.—As used in this section:

- (1) "Child" means any person under the age of eighteen (18) years.
 - (2) "Placement" means the giving or transferring of possession or custody of a child, by any person to another person, for adoption or with intent or purpose of surrendering the control of the child.
 - (3) "Torture" means every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused.
- Section 49. Section 828.04, Florida Statutes, is renumbered and amended to read:

(Substantial rewording of section. See section 827.04, F.S., for present text.)

827.03 Aggravated child abuse.—Whoever:

- (1) Commits aggravated battery on a child; or
- (2) Willfully tortures a child; or
- (3) Maliciously punishes a child; or
- (4) Willfully and unlawfully cages a child;

shall be guilty of a felony of the second degree, punishable as provided in chapter 775.

Section 50. Section 827.04, Florida Statutes, is created to read:

827.04 Child abuse.—

(1) Whoever willfully or by culpable negligence deprives a child of or allows a child to be deprived of necessary food, clothing, shelter and medical treatment or who knowingly or by culpable negligence or permits the physical or mental health of the child to be materially endangered and in so doing causes great bodily harm, permanent disability or permanent disfigurement to such child shall be guilty of a felony of the third degree, punishable as provided in chapter 775.

(2) Whoever willfully or by culpable negligence deprives a child of or allows a child to be deprived of necessary food, clothing, shelter and medical treatment or who knowingly or by culpable negligence or permits the physical or mental health of the child to be materially endangered shall be guilty of a misdemeanor of the first degree, punishable as provided in chapter 775.

Section 51. Section 828.042, Florida Statutes, is renumbered and amended to read:

828.042 277.05 Negligent treatment of children.—Whoever negligently deprives a child of or allows a child to be deprived of necessary food, clothing, or shelter, or medical treatment any person under the age of sixteen years, and whoever negligently and without malice deprives of necessary maintenance or sustenance, or negligently and without malice deprives of necessary

nary treatment and attention his child or ward is guilty of a misdemeanor of the second degree, punishable as provided in section 775.082 or section 775.083 chapter 775.

Section 52. Section 827.06, Florida Statutes, is created to read:

827.06 Persistent nonpayment.—

(1) Any person who, after notice, fails to provide support which he is able to provide to children or spouse which he knows he is legally obligated to support and over which no court has jurisdiction in any proceedings for child support or dissolution of marriage, shall be guilty of a misdemeanor of the first degree, punishable as provided in chapter 775.

(2) Prior to commencing prosecution under this section, the state attorney must advise the person responsible for support by certified mail, return receipt requested that a prosecution under this section will be commenced against him unless he makes such delinquent support payments or provides a satisfactory explanation as to why he has not made such payments.

Section 53. Section 837.011, Florida Statutes, is created to read:

837.011 Definitions.—In this chapter, unless a different meaning plainly is required:

(1) "Official proceeding" means a proceeding heard or which may be required to be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, master in chancery, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

(2) "Oath" includes affirmation or any other form of attestation required or authorized by law by which a person acknowledges that he is bound in conscience or law to testify truthfully in an official proceeding or other official matter.

(3) "Material matter" means any subject, regardless of its admissibility under the rules of evidence which could affect the course or outcome of the proceeding. Whether a matter is material in a given factual situation is a question of law.

Section 54. Section 837.01, Florida Statutes, is renumbered and amended to read:

(Substantial rewording of section. See section 837.01, F.S., for present text.)

837.01 277.012 Perjury not in an official proceeding.—

(1) Whoever makes a false statement, which the maker does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree, punishable as provided in chapter 775.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his statement was not material is not a defense.

Section 55. Section 837.02, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 837.02, F.S., for present text.)

837.02 Perjury in official proceedings.—

(1) Whoever makes a false statement, which the maker does not believe to be true, under oath in an official proceeding in regard to any material matter shall be guilty of a felony of the third degree, punishable as provided in chapter 775.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his statement was not material is not a defense.

Section 56. Subsection (1) of section 837.021, Florida Statutes, is amended to read:

837.021 Perjury by contradictory statements.—

(1) Whoever, in one or more trials, hearings, investigations, depositions, or affidavits, official proceedings in which the making of statements under oath or affirmation is required or authorized by law, willfully makes two or more material statements under oath or affirmation, when in fact two or more of the statements contradict each other, is guilty of a felony of the third degree, punishable as provided in section 775.082, section 775.083, or section 775.084 chapter 775. The prosecution may proceed in a single count by setting forth the willful making of inconsistent statements under oath or affirmation pursuant to requirement or authorization of law and alleging in the alternative that one or more of them are false.

Section 57. Section 837.05, Florida Statutes, is created to read:

837.05 False reports to law enforcement authorities.—Whoever knowingly gives false information to any law enforcement officer concerning the alleged commission of any crime is guilty of a misdemeanor of the first degree, punishable as provided in chapter 775.

Section 58. Section 837.06, Florida Statutes, is created to read:

837.06 False official statements.—Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in chapter 775.

Section 59. Section 838.014, Florida Statutes, is created to read:

838.014 Definitions.—For the purposes of this chapter, unless a different meaning plainly is required:

(1) "Benefit" means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he is interested;

(2) "Pecuniary benefit" is benefit in the form of any commission, gift, gratuity, property, commercial interests or any other thing of economic value;

(3) "Harm" means loss, disadvantage or injury to the person affected, including loss, disadvantage or injury to any other person with whose welfare he is interested.

(4) "Public servant" means any public officer, agent, or employee of government, whether elected or appointed, including but not limited to any executive, legislative or judicial officer; any person who holds an office or position in a political party or political party committee, whether elected or appointed; and any person participating as a special master, receiver, auditor, juror, arbitrator, umpire, referee, consultant, hearing examiner, or person acting on behalf of any of these in performing a governmental function; but the term does not include witnesses. Such term shall include a candidate for election or appointment to any such office including any individual who seeks or intends to occupy any such office. It shall include any person appointed to any of the foregoing offices or employments before and after he qualifies.

(5) "Government" includes the state government and any city or county government or any branch, political subdivision or agency of the state, county or city government;

(6) "Corruptly" means done with a wrongful intent and for the purpose of obtaining or compensating or receiving compensation for any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

Section 60. Sections 838.015 and 838.016, Florida Statutes, are created to read:

838.015 Bribery.—

(1) "Bribery" means corruptly to give, offer or promise to any public servant, or if a public servant, corruptly to request, solicit, accept or agree to accept for himself or another, any pecuniary or other benefit with an intent or purpose to influence the performance of any act or omission which the person believes to be or the public servant represents as being within the official discretion of a public servant or in violation of a public duty or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, or that he had assumed office, or that the matter was properly pending before him or might by law properly be brought before him or that he possessed jurisdiction over the matter, or that his official action was necessary to achieve the person's purpose.

(3) Any person who commits bribery is guilty of a felony in the third degree, punishable as provided in chapter 775.

838.016 Unlawful compensation or reward for past official behavior.—

(1) It is unlawful for any person corruptly to give, offer, or promise to any public servant, or if a public servant, corruptly to request, solicit, accept or agree to accept any pecuniary or other benefit not authorized by law for the past performance of any act or omission which the person

believes to have been or the public servant represents as having been either within the official discretion of the public servant or in violation of a public duty, or in performance of a public duty. Provided that nothing herein shall be construed so as to preclude a public servant from accepting rewards for services performed in apprehending any criminal.

(2) It is unlawful for any person corruptly to give, offer, or promise to any public servant, or if a public servant, corruptly to request, solicit, accept or agree to accept any pecuniary or other benefit not authorized by law for the past exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been or which is represented to him as having been either within the official discretion of the other public servant or in violation of a public duty or in performance of a public duty.

(3) Prosecution under this section shall not require that the exercise of influence or official discretion, or violation of a public duty or performance of a public duty for which a pecuniary or other benefit was given, offered, promised, requested, or solicited, was accomplished or was within the influence, official discretion, or public duty of the public servant whose action or omission was sought to be rewarded or compensated.

(4) Whoever violates the provisions of this section shall be guilty of a felony of the third degree, punishable as provided in chapter 775.

Section 61. Section 838.021, Florida Statutes, is created to read:

838.021 Corruption by threat against public servant.—

(1) Whoever unlawfully harms or threatens unlawful harm to any public servant, to his immediate family, or to any other person with whose welfare he is interested with the intent or purpose:

(a) To influence the performance of any act or omission which the person believes to be or the public servant represents as being within the official discretion of the public servant or in violation of a public duty or in performance of a public duty.

(b) To cause or induce him to use or exert or procure the use or exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to be or the public servant represents as being within the official discretion of the public servant or in violation of a public duty or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, or that he had assumed office, or that the matter was properly pending before him or might by law properly be brought before him or that he possessed jurisdiction over the matter, or that his official action was necessary to achieve the person's purpose.

(3) (a) Whoever unlawfully harms any public servant or any other person with whose welfare he is interested shall be guilty of a felony of the second degree, punishable as provided in chapter 775.

(b) Whoever threatens unlawful harm to any public servant or to any other person with whose welfare he is interested shall be guilty of a felony of the third degree, punishable as provided in chapter 775.

Section 62. Section 838.031, Florida Statutes, is created to read:

838.031 Official misconduct.—

(1) "Official misconduct" means the commission of one of the following acts by a public servant, with corrupt intent to obtain a benefit for himself or another or to cause unlawful harm to another:

(a) Knowingly refraining or causing another to refrain from performing a duty imposed upon him by law; or

(b) Knowingly falsifying or causing another to falsify any official record or official document; or

(c) Knowingly violating or causing another to violate any statute or lawfully adopted regulation or rule relating to his office.

(2) Official misconduct under this section is a felony of the third degree, punishable as provided in chapter 775.

(3) "Corrupt" means done with knowledge that act is wrongful and with improper motives.

Section 63. Section 838.041, Florida Statutes, is created to read:

838.041 Misuse of confidential information.—Any public servant, who in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, commits any of the following acts:

(a) The acquisition of a pecuniary interest in any property, transaction, or enterprise or gaining of any pecuniary or other benefit which may be affected by such information or official action; or

(b) Speculation or wagering on the basis of such information or action; or

(c) Aiding another to do any of the foregoing; shall be guilty of a misdemeanor of the first degree, punishable as provided in chapter 775.

Section 64. Whenever any reference is made in the Florida Statutes to an offense being punishable as provided by a specific section or sections of chapter 775, it shall be changed to read "punishable as provided in chapter 775."

Section 65. Section 776.03, Florida Statutes, is renumbered as section 777.04, Florida Statutes; sections 779.01, 779.02, 779.03, 779.04, 779.05, 779.06, 779.07, 779.08, 779.09, 779.10, 779.11, 779.12, 779.13, 779.14, 779.15, 779.16, 779.17, 779.18, 779.19, 779.20, and 779.21, Florida Statutes, are renumbered respectively as sections 876.32, 876.33, 876.34, 876.35, 876.36, 876.37, 876.38, 876.39, 876.40, 876.41, 876.42, 876.43, 876.44, 876.45, 876.46, 876.47, 876.48, 876.49, 876.50, 876.51, and 876.52, Florida Statutes; section 806.06, Florida Statutes, is renumbered as section 817.60, Florida Statutes; section 811.022, Florida Statutes, is renumbered as section 931.27, Florida

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Statutes; sections 811.65 and 811.201, Florida Statutes, are renumbered respectively as sections 812.051 and 812.051, Florida Statutes; section 814.05, Florida Statutes, is renumbered as section 822.274, Florida Statutes; section 814.07, Florida Statutes, is renumbered as section 819.36, Florida Statutes; section 823.03, Florida Statutes, is renumbered as section 806.101, Florida Statutes; section 828.041, Florida Statutes, is renumbered as section 827.07, Florida Statutes; and section 828.301, Florida Statutes, is renumbered as section 827.08, Florida Statutes.

Section 66. Sections 741.22, 775.11, 775.12, 782.01, 782.02, 782.05, 784.06, 800.04, 806.03, 806.04, 806.05, 806.06, 806.07, 806.08, 806.09, 806.11, 806.12, 810.01, 810.03, 810.04, 810.05, 810.06, 810.07, 810.08, 810.09, 810.11, 811.17, 811.28, 811.29, 811.30, 812.10, 812.12, 814.01, 814.02, 814.03, 814.06, 821.01, 821.011, 821.03, 821.04, 821.041, 821.05, 821.04, 821.08, 821.09, 821.10, 821.11, 821.12, 821.121, 821.13, 821.14, 821.15, 821.17, 821.18, 821.19, 821.20, 821.21, 821.22, 821.23, 821.24, 821.25, 821.26, 821.27, 821.28, 821.29, 821.30, 821.31, 821.32, 821.33, 821.34, 821.35, 821.37, 821.38, 822.01, 822.02, 822.03, 822.04, 822.05, 822.06, 822.07, 822.08, 822.09, 822.10, 822.12, 822.13, 822.14, 822.15, 822.16, 822.17, 822.18, 822.19, 822.20, 822.21, 822.22, 822.23, 823.01, 823.02, 823.04, 823.05, 823.06, 823.07, 823.08, 823.09, 823.10, 823.01, 828.05, 828.07, 828.08, 828.10, 828.11, 828.18, 828.19, 828.20, 828.21, 833.03, 833.04, Florida Statutes, 833.05, Florida Statutes, 837.01, 837.03, 837.04, 838.01, 838.011, 838.012, 838.013, 838.02, 838.03, 838.04, 838.05, 838.06, 838.07, 838.071, 838.08, 838.09, 838.10, 851.01, 851.02, 851.03, and 851.04, Florida Statutes, are repealed.

Section 67. This act shall take effect July 1, 1974.

Approved by the Governor July 3, 1974.

Filed in Office Secretary of State July 3, 1974.

CHAPTER 74-384

House Bill No. 2922

AN ACT relating to driving while under the influence; amending §316.028, Florida Statutes, 1973, to provide penalties for driving with an unlawful blood alcohol level and providing for discretionary driver improvement course; adding a new paragraph (b) to §322.261(1), Florida Statutes, 1973, and redesignating subsequent paragraphs accordingly, to provide for prearrest breath test; amending §322.262(2), Florida Statutes, 1973, to provide for unlawful driving with certain blood alcohol percentages, prohibiting trial judge accepting lesser plea if blood alcohol level exceeds certain level; to correct the reference to the measure of weight of alcohol in the blood; amending §322.264(1)(b), Florida Statutes, 1973, to include unlawful blood alcohol level in the definition of habitual traffic offender; amending subsection (5) of §322.27 and §322.271, Florida Statutes, to provide for the issuance of a driving privilege on a restricted basis solely for business or employment purposes after a period of twelve months to those whose privilege has been revoked as habitual offenders; amending §322.28(2), Florida Statutes, 1973, to include un-

lawful blood alcohol level, to change time period for computing subsequent conviction penalties, to change the period within which a bail bond may be vacated; creating §322.281 and §322.282, Florida Statutes, to provide for a mandatory adjudication and the procedures when a license is reinstated and restricted; providing for severability; providing an effective date.

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

Section 1. Section 316.028, Florida Statutes, 1973, is amended to read: 316.028 Driving while under the influence of alcoholic beverages, model glue, or controlled substances.—

(1) It is unlawful and punishable as provided in subsection (2) for any person who is under the influence of alcoholic beverages, model glue, or any substance controlled under chapter 893, when affected to the extent that his normal faculties are impaired, to drive or be in the actual physical control of any vehicle within this state.

(2) Any person who is convicted of a violation of subsection (1) whose license shall be punished:

(a) For first conviction thereof, by imprisonment for not more than 6 months or by a fine of not less than \$25 or more than \$500, or by both such fine and imprisonment.

(b) For a second conviction within a period of three years from the date of a prior conviction for violation of this section, by imprisonment for not less than 10 days nor more than 6 months and, in the discretion of the court, a fine of not more than \$500.

(c) For a third or subsequent conviction within a period of five years from the date of conviction of the first of three or more convictions for violations of this section, by imprisonment for not less than 30 days nor more than 12 months and, in the discretion of the court, a fine of not more than one thousand dollars (\$1000) \$500.

(3) It is unlawful and punishable as provided in subsection (4) for any person with a blood alcohol level of 0.10 percent or above to drive or be in actual physical control of any vehicle within this state.

(4) Any person who is convicted of a violation of subsection (3) of this section shall be punished:

(a) For first conviction thereof, by imprisonment for not more than ninety (90) days or by a fine of not more than two hundred fifty dollars (\$250), or by both such fine and imprisonment.

(b) For a second conviction within a period of three (3) years from the date of a prior conviction for violation of this section, by imprisonment for not less than ten (10) days nor more than six (6) months and, in the discretion of the court, a fine of not more than five hundred dollars (\$500).

(c) For a third or subsequent conviction within a period of five (5) years from the date of conviction of the first of three (3) or more con-

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5 0904 GENERAL BILL, BY CRIMINAL JUSTICE (SIMILAR H 2179)
 CRIMINAL LAW; CREATES P.A. CRIMINAL CODE; PROVIDES FOR GENERAL PURPOSES
 AND RULES OF CONSTRUCTION OF SUCH CODE; PROVIDES FOR CLASSES AND
 DEFINITIONS OF OFFENSES, PENALTIES, ETC. AMENDS SECS. IN CHS. 775,
 776, 782, 784, ETC.
 04/24/74 SENATE INTRODUCED, REFERRED TO CRIMINAL JUSTICE -SJ 00234
 05/02/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE CRIMINAL JUSTICE -SJ
 00304
 05/07/74 SENATE COMM. REPORT: COMM. SUB. PLACED ON CALENDAR BY CRIMINAL
 JUSTICE -SJ 00348
 05/24/74 SENATE COMP./SIM. HOUSE BILL SUBSTITUTED -SJ 00518
 SENATE LAID ON TABLE UNDER RULE, COMP./SIM. BILL PASSED, REFER
 TO H 2179 -SJ 00532

5 0905 GENERAL BILL, BY GRAHAM (COMPANION H 3757)
 COMMUNITY COLLEGES; PROVIDES PROCEDURES FOR DETERMINING STATE FINANCIAL
 SUPPORT & ANNUAL APPORTIONMENT TO EACH COMMUNITY COLLEGE DIST. AMENDS
 230.767,
 04/24/74 SENATE INTRODUCED, REFERRED TO EDUCATION, WAYS & MEANS -SJ
 00234
 05/06/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION -SJ 00321
 05/13/74 SENATE COMM. REPORT: FAVORABLE WITH AMEND. BY EDUCATION
 05/22/74 SENATE NOW IN WAYS & MEANS -SJ 00388
 EXTENSION OF TIME GRANTED COMMITTEE WAYS & MEANS -SJ
 00468
 05/23/74 SENATE COMM. REPORT: COMM. SUB. PLACED ON CALENDAR BY WAYS &
 MEANS -SJ 00519
 05/31/74 SENATE LAID ON TABLE UNDER RULE E, COMP./SIM. BILL PASSED, REFER
 TO H 3757

5 0906 GENERAL BILL, BY LANE, D. C. (COMPANION H 3706)
 DIST. MENTAL HEALTH BDS.1 PROVIDES FOR PHYSICIAN MEMBERSHIP, ETC. AMENDS
 394.10.
 04/24/74 SENATE INTRODUCED, REFERRED TO HEALTH & REHABILITATIVE SERVICES
 -SJ 00234
 05/03/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE HEALTH &
 REHABILITATIVE SERVICES -SJ 00311
 05/16/74 SENATE COMM. REPORT: FAVORABLE WITH AMEND. PLACED ON CALENDAR
 BY HEALTH & REHABILITATIVE SERVICES -SJ 00438
 05/27/74 SENATE COMP./SIM. HOUSE BILL SUBSTITUTED
 SENATE LAID ON TABLE UNDER RULE, COMP./SIM. BILL PASSED, REFER
 TO H 3706 -SJ 00572

5 0907 GENERAL BILL, BY GRAHAM (COMPANION H 39651)
 SCHOOLS; AUTHORIZES VACATION LEAVE FOR 12-MONTH INSTRUCTIONAL &
 NONINSTRUCTIONAL PERSONNEL. CREATES 231.431.
 04/24/74 SENATE INTRODUCED, REFERRED TO EDUCATION -SJ 00234
 05/06/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION -SJ 00321
 05/31/74 SENATE DIED IN COMMITTEE CN EDUCATION

5 0908 CONCURRENT RESOLUTION, BY GRAHAM (COMPANION H 39491)
 INSTITUTIONS OF HIGHER LEARNING; APPROVES TYPES, AMOUNTS & USE OF
 REGISTRATION FEES, TUITION FEES & COURSE FEES TO BE CHARGED & COLLECTED
 FROM STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER LEARNING UNDER BD. OF
 CONTINUED ON NEXT PAGE

REGENTS, ETC.
 04/24/74 SENATE INTRODUCED, REFERRED TO EDUCATION, WAYS & MEANS -SJ
 00234
 05/06/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION -SJ 00321
 05/13/74 SENATE COMM. REPORT: FAVORABLE WITH AMEND. BY EDUCATION
 05/22/74 SENATE NOW IN WAYS & MEANS -SJ 00388
 EXTENSION OF TIME GRANTED COMMITTEE WAYS & MEANS -SJ
 00468
 05/23/74 SENATE COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY WAYS &
 MEANS -SJ 00519
 05/31/74 SENATE DIED ON CALENDAR

5 0909 GENERAL BILL, BY WINN (COMPANION H 39421)
 HANDGUNST; REQUIRES 72-HR. DELAY BEFORE DELIVERY OF SAME; PROVIDES
 PENALTIES FOR VIOLATION OF ACT. CREATES 790.13
 04/24/74 SENATE INTRODUCED, REFERRED TO COMMERCE -SJ 00234
 05/06/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE COMMERCE -SJ 00321
 05/20/74 SENATE COMM. REPORT: UNFAVORABLE, LAID ON TABLE UNDER RULE BY
 COMMERCE -SJ 00460

5 0910 GENERAL BILL, BY JOHNSON (COMPANION H 36731)
 CORPORATIONS; PROVIDES NEW GENERAL CORPORATION LAW IN ENTIRETY, ETC.
 REPEALS CH. 608.
 04/24/74 SENATE INTRODUCED, REFERRED TO JUDICIARY -SJ 00234
 05/06/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY -SJ 00321
 05/31/74 SENATE DIED IN COMMITTEE CN JUDICIARY

5 0911 GENERAL BILL, BY BRANTLEY
 MOTOR CARRIERS; PROVIDES FOR EXEMPTION OF MOTOR CARRIER ENGAGED IN
 BACKHAULING OF PROPERTY. AMENDS 321.01 & 323.24.
 04/24/74 SENATE INTRODUCED, REFERRED TO COMMERCE -SJ 00234
 05/06/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE COMMERCE -SJ 00321
 05/31/74 SENATE DIED IN COMMITTEE CN COMMERCE

5 0912 GENERAL BILL, BY PETERSON (COMPANION H 3563)
 CAREER SERVICE SYSTEMS; PROVIDES FOR RECOGNITION OF PRIOR SERVICE WITH
 POLITICAL SUBDIVISIONS. AMENDS 110.022.
 04/24/74 SENATE INTRODUCED, REFERRED TO WAYS & MEANS -SJ 00234
 05/07/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE WAYS & MEANS -SJ
 00340
 05/31/74 SENATE DIED IN COMMITTEE CN WAYS & MEANS

5 0913 GENERAL BILL, BY PETERSON (SIMILAR H 2923, S 0792)
 MOTOR VEHICLE LICENSES; PRESCRIBES LICENSE TAXES FOR TRUCKS HAULING
 AGRICULTURAL, HORTICULTURAL & LIVESTOCK PRODUCTS; PROVIDES FOR OPERATION
 WITHIN 250-MILE RADIUS. AMENDS 320.08.
 04/24/74 SENATE INTRODUCED, REFERRED TO COMMERCE, WAYS & MEANS -SJ 00234
 05/06/74 SENATE EXTENSION OF TIME GRANTED COMMITTEE COMMERCE -SJ 00321
 05/31/74 SENATE DIED IN COMMITTEE CN COMMERCE

5 0914 GENERAL BILL, BY PETERSON (SIMILAR H 3702)
 EDUCATION; PROVIDES FOR DISTRIBUTION OF ANNUAL REPORT OF SCHOOL
 PROGRESS, ETC. AMENDS 220.165.
 04/24/74 SENATE INTRODUCED, REFERRED TO EDUCATION -SJ 00234
 CONTINUED ON NEXT PAGE

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 FLORIDA STATE ARCHIVES
 DEPARTMENT OF STATE
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1 A bill to be entitled
2 An act relating to execution of the death
3 sentence; creating s. 922.105, F.S.; providing
4 for execution of the death sentence by means of
5 lethal injection if electrocution is declared
6 invalid by any one of specified courts, unless
7 overruled; providing that a person authorized
8 by state law to prescribe medication, when
9 designated by the Department of Corrections,
10 may prescribe the drugs necessary to compound a
11 lethal injection; providing that a person
12 authorized by state law to prepare, compound,
13 or dispense medication, when designated by the
14 Department of Corrections, may prepare,
15 compound, or dispense the lethal injection;
16 providing that the prescription, preparation,
17 compounding, dispensing, or administration of a
18 lethal injection does not constitute practicing
19 medicine, nursing, or pharmacy; providing for
20 execution of the death sentence by other means
21 not declared unconstitutional by the United
22 States Supreme Court, if lethal injection is
23 declared invalid; providing for determination
24 and supervision of execution procedure by the
25 Secretary of Corrections or the secretary's
26 designee, under specified circumstances when
27 execution by means of electrocution or lethal
28 injection has been declared invalid; providing
29 an exemption from ch. 120, F.S., for the
30 policies and procedures of the Department of
31 Corrections for execution; prohibiting

1 reduction of a sentence of death as the result
2 of a method of execution being declared
3 invalid; prohibiting health care provider or
4 employee of the Department of Corrections from
5 being required to assist in an execution
6 contrary to the person's moral or ethical
7 beliefs; amending s. 775.082, F.S., relating to
8 penalties and mandatory minimum sentences for
9 certain reoffenders previously released from
10 prison; conforming provisions to changes made
11 by the act; prohibiting reduction of a sentence
12 of death as the result of a method of execution
13 being declared invalid; amending s. 790.161,
14 F.S., relating to the offense of making,
15 possessing, throwing, projecting, placing, or
16 discharging a destructive device, or attempt so
17 to do, and penalties; conforming provisions to
18 changes made by the act; prohibiting reduction
19 of a sentence of death as the result of a
20 method of execution being declared invalid;
21 providing an effective date.

22
23 WHEREAS, the existing method of carrying out a sentence
24 of death in this state is by electrocution, and

25 WHEREAS, the Legislature has previously determined that
26 death by electrocution is the preferred method of carrying out
27 the death penalty, and the death penalty should be carried out
28 in a swift and sure manner, and

29 WHEREAS, the Florida Supreme Court, in Jones v. State,
30 701 So.2d 76, has held death by electrocution to be a
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1 constitutional method of imposing the death penalty in this
2 state, and

3 WHEREAS, the Legislature intends to ensure that the
4 lawful punishment of death imposed on persons in this state is
5 carried out, and considers it to be appropriate to provide
6 alternative methods for imposing death only if legally
7 required to do so, and

8 WHEREAS, changing the method of carrying out the death
9 penalty both for those previously sentenced and for those who
10 will be sentenced in the future is merely procedural and does
11 not increase the quantum of punishment imposed upon a
12 defendant and therefore does not violate the prohibition
13 against ex post facto laws under the Constitution of the
14 United States, *Malloy v. South Carolina*, 237 U.S. 180 (1915),
15 and *Ex Parte Kenneth Granviel*, 561 S.W.2d 503 (Tex. App.
16 1978), and

17 WHEREAS, the United States Supreme Court has previously
18 declared, in the case of *Dobbert v. Florida*, 432 U.S. 282
19 (1977), that changing the practices and procedures of the
20 application of the death penalty statute does not violate the
21 ex post facto clauses of the State Constitution or the
22 Constitution of the United States, and

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

28

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

30

31

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

3 922.105 Execution of death sentence by lethal
4 injection or other method of execution if death by
5 electrocution is declared invalid; prohibition against
6 reduction of death sentence as a result of determination that
7 a method of execution is invalid.--

8 (1) If death by electrocution pursuant to s. 922.10 is
9 declared invalid by the Florida Supreme Court, the United
10 States Supreme Court, or a final decision of the United States
11 Court of Appeal, Eleventh Circuit, unless overruled in any
12 manner, then the method of execution shall be by lethal
13 injection of a substance or substances in lethal quantity
14 sufficient to cause death. The execution procedure is to be
15 determined and supervised by the Secretary of Corrections or
16 the secretary's designee.

17 (2) Notwithstanding any law to the contrary, a
18 person authorized by state law to prescribe medication and
19 designated by the Department of Corrections may prescribe the
20 drug or drugs necessary to compound a lethal injection.
21 Notwithstanding any law to the contrary, a person authorized
22 by state law to prepare, compound, or dispense medication and
23 designated by the Department of Corrections may prepare,
24 compound, or dispense a lethal injection. For purposes of
25 this section, prescription, preparation, compounding,
26 dispensing, and administration of a lethal injection does not
27 constitute the practice of medicine, nursing, or pharmacy.

28 (3) If the imposition of death by lethal injection is
29 declared invalid by the Florida Supreme Court, the United
30 States Supreme Court, or a final decision of the United States
31 Court of Appeal, Eleventh Circuit, unless overruled in any

1 manner, then the method of execution in that case shall be
2 carried out by any other method of execution not declared
3 unconstitutional by the United States Supreme Court. The
4 execution procedure for imposing a death sentence pursuant to
5 this subsection is to be determined and supervised by the
6 Secretary of Corrections or the secretary's designee.

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

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

18 (6) Nothing contained in this chapter is intended to
19 require any physician, nurse, health care provider or employee
20 of the Department of Corrections to assist in any aspect of an
21 execution which is contrary to the person's moral or ethical
22 beliefs.

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

25 775.082 Penalties; mandatory minimum sentences for
26 certain reoffenders previously released from prison.--

27 (1) A person who has been convicted of a capital
28 felony shall be punished by death if the proceeding held to
29 determine sentence according to the procedure set forth in s.
30 921.141 results in findings by the court that such person
31 shall be punished by death, otherwise such person shall be

1 punished by life imprisonment and shall be ineligible for
2 parole.

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

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

15 790.161 Making, possessing, throwing, projecting,
16 placing, or discharging any destructive device or attempt so
17 to do, felony; penalties.--A person who willfully and
18 unlawfully makes, possesses, throws, projects, places,
19 discharges, or attempts to make, possess, throw, project,
20 place, or discharge any destructive device:

21 (4) If the act results in the death of another person,
22 commits a capital felony, punishable as provided in s.
23 775.082. In the event the death penalty in a capital felony is
24 held to be unconstitutional by the Florida Supreme Court or
25 the United States Supreme Court, the court having jurisdiction
26 over a person previously sentenced to death for a capital
27 felony shall cause such person to be brought before the court,
28 and the court shall sentence such person to life imprisonment
29 if convicted of murder in the first degree or of a capital
30 felony under this subsection, and such person shall be
31 ineligible for parole. No sentence of death shall be reduced

1 as a result of a determination that a method of execution is
2 invalid under the State Constitution or the Constitution of
3 the United States.

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

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STORAGE NAME: h3033b.cp
DATE: February 4, 1998

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 3033

RELATING TO: Execution by Lethal Injection

SPONSOR(S): Rep.'s Stafford & Heyman

COMPANION BILL(S): SB 3034

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 2
- (2) GOVERNMENTAL OPERATIONS
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill does not change the current method of execution.

The bill creates section 922.105, Florida Statutes, providing that if electrocution is declared to be an invalid method of execution then the method of execution is to be by lethal injection. If electrocution is not declared invalid then electrocution will remain the method of execution in Florida.

The bill permits anyone qualified to administer intravenous drugs to perform as the executioner and exempts this conduct from the definition of "practicing medicine."

The bill provides that if lethal injection is declared invalid then the Department of Corrections is to determine the method of execution which will be any method not declared unconstitutional by the United States Supreme Court.

The bill provides that inmates sentenced to death may not have their sentences reduced in the event that a method of execution is declared invalid, and that the sentences are to be carried out by any lawful method.

The bill is effective upon becoming law.

35

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

- Florida's **death-penalty** statute s. 775.082(1), states:
 - (1) A person who has been convicted of a capital felony shall be punished by death...
- Florida's **method-of-execution** statute, s. 922.10, states:
 - A death sentence shall be executed by electrocution. ...
- Article I, section 17 of the **Florida Constitution** provides that "cruel **or** unusual" punishment is forbidden.
- The Eighth Amendment to the **United States Constitution** provides that "cruel **and** unusual" punishments may not be inflicted.

Currently, the only method of execution available in Florida is the electric chair. Florida began using the electric chair in 1924 when it was thought to be a more humane method than execution by hanging which occasionally resulted in slow suffocation when improperly performed. The electric chair has recently come under attack as being inhumane when two executions resulted in unnecessary burns to the body of the condemned. Nonetheless, the Florida Supreme Court recently held that the electric chair does not violate constitutional protections against cruel or unusual punishment in Jones v. Butterworth, 22 Fla. L. Weekly S659a (Fla. October 20, 1997).

In Jones, the majority did not distinguish the clause in the Florida Constitution prohibiting cruel **or** unusual punishment as requiring a different analysis than the cruel **and** unusual clause in the federal constitution. The majority emphatically held that the electric chair in its present condition is not cruel **or** unusual:

There was substantial evidence presented in this case that executions in Florida are conducted without any pain whatsoever, and this record is entirely devoid of evidence suggesting deliberate indifference to a prisoner's well-being on the part of state officials.

The Florida Supreme Court's four to three decision in Jones implied that their decision to uphold the constitutionality of the electric chair is subject to change in the future. One of the votes for the majority, Justice Grimes, is leaving the bench this year. Another justice in the majority, Justice Harding, strongly encouraged the legislature to give inmates an option of lethal injection or electrocution. Justice Harding mentioned the possibility of a "constitutional train wreck" with all the people on Death Row having their sentences commuted to life unless an alternative to electrocution is passed by the legislature. Anderson v. State, 267 So. 2d 8 (Fla. 1972); Furman v. Georgia, 408 U.S.

238 (1972). Justice Overton, who was also with the majority, concurred with Justice Harding's concerns. Five of the seven Justices encouraged the legislature to adopt legislation which would give an inmate the option to choose lethal injection.

Authority for "constitutional train wreck"

Justice Harding in his concurring opinion in the recent Jones case wrote that a new statute providing for a death sentence to be executed either by electrocution or by lethal injection "would avert a possible 'constitutional train wreck.'" Justice Harding attempted to demonstrate the real possibility of death sentences being commuted to life by referring to the United States Supreme Court's decision in Furman v. Georgia, 408 U.S. 238 (1972) which held that the manner in which the death penalty was being imposed constituted cruel and unusual punishment. Justice Harding noted that before 1972 the United States Supreme Court had consistently held that the death penalty was not cruel and unusual, thus implying that like the federal court, the Florida Supreme Court could suddenly change its position.

The Florida Supreme Court was forced to commute death sentences to life after Furman, because the United States Supreme Court had held that the manner in which judges and juries decided whether to impose the death penalty was without standards and the arbitrary manner in which the death penalty was decided upon violated the Cruel and Unusual Clause in the federal constitution. After the Furman decision, the states rectified their death-penalty statutes to ensure that certain standards or guidelines were met. The United States Supreme Court subsequently upheld the new death penalty statutes. Gregg v. Georgia, 428 U.S. 153 (1976).

If the Florida Supreme Court decides to strike down the use of the electric chair, that decision would only invalidate the method of execution, not the imposition of the death penalty itself. However, Justice Harding in the Jones case has pointed out that Florida statutes only provide for one method of execution and that if that method is removed, then the Court's only alternative may be to impose life sentences on all the inmates currently on Death Row. The Court would not necessarily have to come to the conclusion that sentences would have to be commuted. It is not settled that the method of execution must be specified by statute in order for the Governor to execute a lawfully imposed death sentence. Alternatively, the court could acknowledge that the penalty of death remains intact, and stay the execution until the Legislature passed a new law regulating the method of execution.

Governor's Response

In response to the opinion in Jones the Governor has delayed two executions and reset them for the week of May 23, 1998, to "allow the Legislature an opportunity to consider the Court's recommendation." In a letter to the Speaker of the House, the Governor urged the legislature "to act swiftly in adopting an alternative method of execution."

B. EFFECT OF PROPOSED CHANGES:

The bill does not change the current method of execution. The statute providing that a death sentence shall be executed by electrocution was not changed.

The bill creates section 922.105, Florida Statutes, providing that if electrocution is declared to be an invalid method of execution, then the method of execution is to be by lethal injection. If electrocution is not declared invalid, then it will remain the method of execution in Florida.

The bill permits anyone qualified to administer intravenous drugs to perform as the executioner and exempts this conduct from the definition of "practicing medicine."

The bill provides that if lethal injection is declared invalid then the Department of Corrections is to determine the method of execution which will be any method not declared unconstitutional by the United States Supreme Court.

The bill exempts the procedure from the administrative rule-making and hearing requirements of Chapter 120.

The bill provides that inmates sentenced to death may not have their sentences reduced in the event that a method of execution is declared invalid, and that the sentences are to be carried out by any lawful method.

The bill is effective upon becoming law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

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b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

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- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill phases out the electric chair as a lawful means of execution.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

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- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

C. STATUTE(S) AFFECTED:

775.082; 922.10

D. SECTION-BY-SECTION RESEARCH:

SECTION 1: See, EFFECT OF PROPOSED CHANGES

SECTION 2: Provides an effective date of "July 1 of the year in which enacted."

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

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4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has determined that the fiscal impact on the prison population would be insignificant, or none. According to the Department of Corrections analysis, the fiscal impact is "insignificant."

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because this is a criminal bill, this provision does not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

No.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

No.

V. COMMENTS:

Ex Post Facto Analysis

Both state and federal constitutions contain prohibitions against ex post facto laws (i.e., laws which criminalize, or punish more severely, conduct which occurred before the existence of the law). See, Article I, Section 9 of the Florida Constitution; and Article I, Section 10 of the United States Constitution. The Florida Supreme Court has not delineated a difference between the ex post facto provisions of the Florida and United States Constitutions. The Florida Supreme Court and the United States both use the following test to determine if there is an ex post facto violation:

In evaluating whether a law violates the ex post facto clause, a two-prong test must be applied: (1) whether the law is retrospective in its effect; and (2) whether the law alters the definition of criminal conduct or increases the penalty by which a crime is punishable.

Gwong v. Singletary, 683 So. 2d 112 (Fla. 1996), citing, California Dep't of Corrections v. Morales, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995).

If electrocution is held to be unconstitutional, then a change in the method of execution would not be an Ex Post Facto violation because changing the method of execution does not, and can not, increase a penalty of death. Both the United States Supreme Court and the Texas Supreme Court have held that a retrospective change in the method of execution does not violate the Ex Post Facto Clause:

We conclude in light of these holdings that execution by lethal injection may be imposed upon a defendant even though death by electrocution was the mode of execution authorized by law at the time of the commission of capital murder, at the time of his trial, and even if he had been previously sentenced to die by electrocution. The statute under consideration did not change the penalty of death for capital murder, but only the mode of imposing such penalty. The punishment was not increased, only some of the odious features incident to the former method of electrocution were abated. ...

Ex parte Kenneth Granviel, 561 S.W. 2d 503 (Tex. App. 1978), citing Malloy v. South Carolina, 237 U.S. 180 (1915) (footnoted omitted). There is no reason to believe the Florida Supreme Court's ex post facto analysis would be different, if confronted with the same issue.

Saving Clause Analysis

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The chief obstacle to any retroactive change to methods of execution is Article X, Section 9 of the Florida Constitution which provides as follows:

Repeal of criminal statutes.-- Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.

The purpose of this provision, which is commonly referenced as a "saving clause," is to save pending criminal prosecutions and the sentences imposed from the repeal of the underlying statute. Hayward v. State, 467 So.2d 462 (Fla. 2d DCA 1985). The Florida Supreme Court has held that "the effect of this constitutional provision is to give to all criminal legislation a prospective effectiveness." Washington v. Dowling, 109 So. 588 (Fla. 1926).

Florida's saving clause was originally passed in 1885 in response to criminals escaping prosecution because the underlying statute was repealed or amended. In 1923 the Florida legislature abolished death by hanging as the method of execution and enacted a statute that required the death penalty be carried out by electrocution. An inmate who was sentenced to death by hanging before the method of execution was changed argued that he could not be hung because the statute specifically stated that "hanging ...is hereby abolished." The courts had previously held that the inmate could not be electrocuted because the sentence pronounced by the trial court was death by hanging. The Florida Supreme Court in Washington v. Dowling, 109 So. 2d 588 (Fla. 1926), held that the savings clause prevented the retrospective change in the method of execution from hanging to electrocution.

Under the Washington rationale, inmates had to be hung if they were sentenced to death for crimes committed before the effective date of the statute calling for death by electrocution. In Ex parte Browne 111 So. 518 (Fla. 1927) the Florida Supreme Court again held that the statute requiring execution by electrocution could not be applied to crimes committed before the effective date of the statute because the Saving Clause prohibits retroactive changes in punishment. The defendant's case in Browne was remanded to the trial court for resentencing.

Applying the Saving Clause to Future Legislation

The only case law in the country that address whether the method of execution is affected by a saving clause in a state constitution are the 70-year-old cases mentioned above. All the states, except New Mexico and Florida, and the federal government have statutes that save pending criminal prosecutions from a change in the underlying statute. New Mexico has a constitutional provision similar to Florida's, in its state constitution; but there is no case law discussing that provision's effect on changes in the method of execution. If the Legislature changes the current method of execution from electrocution to lethal injection, the Florida Supreme Court could apply the saving clause, and Washington and Browne, to hold that the change in method only applies prospectively.

The saving clause and the reasoning of Washington and Browne could also be used to strike down the retroactive application of a statute that gives an inmate the option to choose how to be executed. The portion of a statute that allows the choosing of lethal injection could be stricken to the extent that it abrogates the people's right to a specified punishment for crimes already committed pursuant to the saving clause. In a worst case scenario, the Court could strike down the option of lethal injection and then, at a later date, rule that electrocution is cruel or unusual. With no remaining methods of execution, the court could

commute sentences to life for first degree murders committed before the effective date of the option statute.

Although there is a legal basis for the Court to strike down that portion of a statute which allows an inmate to choose lethal injection, it is more likely that the Court would uphold a statute that gives an inmate an option to choose the method of execution given the recent positions of the Justices in the Jones v. Butterworth opinion which upholds the use of the electric chair. Presumably, Justice Harding who recommended the option approach to the legislature would vote to uphold the option, and the three justices who dissented would either have to uphold the option or see electrocution again become the only method of execution. In all, five of the seven justices in Jones recommended or concurred in opinions that recommended the option approach. As the Governor's counsel, Tom Crapps, has publicly stated, it is hard to imagine that the Supreme Court would "turn around and bite us..." for doing what the court urged to be done. Furthermore, it would not be difficult for the Court to reverse its decision in Washington and hold that the term "punishment" in the Saving Clause refers only to the **death-penalty** statute, and not to the **method-of-execution** statute. See, Mallory v. South Carolina, 237 U.S. 180, 35 S.Ct. 507 (1915)(change of manner of execution from hanging to electrocution did not change the penalty of death nor increase the punishment).

The saving clause may prohibit a retroactive repeal of execution by electrocution, however, it could not prohibit an alternative method of execution if electrocution is found unconstitutional. The saving clause does not refer to punishments found unconstitutional, it only prohibits a retroactive amendment or repeal of a criminal statute. It would be irrational for a court to hold that this clause, which was adopted to ensure the People's right to punishment, prohibits lethal injection from replacing the electric chair if execution by electrocution is found unconstitutional. A statute authorizing the option approach could include an additional safeguard which makes lethal injection the method of execution if the option is struck down and electrocution is found unconstitutional.

California

California has recently litigated issues relating to their methods of execution in both state and federal courts. A review of this litigation could give Florida guidance on constitutional limits to legislation regulating methods of execution.

Last year the United States Court of Appeals for the Ninth Circuit in the case of Fierro v. Gomez, 77 F.3d 301 (9th Cir. 1996) held that the gas chamber used by California violated the Cruel and Unusual clause of the United States Constitution. At the time of the sentencing of David Fierro the sole method for execution was lethal gas. However, before the Fierro case was decided California amended state law to allow all inmates sentenced prior to or after the effective date of the law to choose between lethal injection and lethal gas. Lethal gas was the default method if a person did not make a choice within ten days of being served with an execution warrant. The option method that California passed also provided that if either manner of execution is held invalid, the punishment shall be imposed by the alternative means remaining. The Ninth Circuit acknowledged that regardless of their holding, that lethal gas is unconstitutional, the inmate's sentence of death remained unaffected.

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During the same year that the Ninth Circuit held lethal gas to be cruel and unusual, California passed a third change to their law which made lethal injection the default method of execution. The United States Supreme Court vacated the Ninth Circuit's decision in Fierro "in light of" the new change to the California law without further explanation. Justice Harding in a concurring opinion in Jones v. Butterworth (Florida Supreme Court upheld use of electric chair as not being cruel or unusual), wrote that "the United States Supreme Court [in Fierro] impliedly approved the course of action taken by the California Legislature" and the Justice urged the Florida Legislature to adopt the California approach.

The litigation in California demonstrates a slight benefit to the option as opposed to having a primary method of execution, supplemented by an alternate method which takes effect if the primary method is ruled unconstitutional. The California Supreme Court and the United States Ninth Circuit Court of Appeals have both held that only the primary method of execution may be challenged as being cruel and unusual. An affirmative choice of an alternate method waives any challenge that the alternate method is cruel and unusual. See, People v. Bradford, 929 P.2d 544 (Ca. 1997); and Poland v. Stewart, 92 F.3d 881 (9th Cir. 1996). The court in Poland further held that "the mere existence of the option is not a violation of Poland's constitutional rights."

Under the rationale of Bradford and Poland, HB 3033 by Rep. Stafford will prohibit inmates currently on Death Row from challenging the constitutionality of lethal injection, but the default method, electrocution, would continue to be challenged regardless of which method the inmate chooses. Lethal injection will be challenged by defendants who commit crimes punishable by death in the future, since the bill requires lethal injection for crimes that occur on or after the effective date of the bill. The California experience also suggests that even if the Court finds a method of execution unconstitutional the penalty would still be death. People v. Holt, 937 P.2d 213 (Cal. 1997)(invalidation of the means by which a sentence is carried out does not affect the validity of the sentence).

Senate Deliberations

The Senate initially took up a bill similar to HB 3033 and various amendments were debated and adopted. The Senate then adopted a strike-everything amendment which discarded the option approach and was passed out of the Senate during the special session. The bill that passed the Senate states the following:

If electrocution is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, all persons sentenced to death for a capital crime shall be executed by lethal injection.

Other Issues Relating to Implementation of HB 3033

1. The bill requires that particular lethal drugs be injected, namely, an ultrashort-acting barbiturate and a chemical paralytic agent. Such specification could prevent the use of new and better drugs. The highest criminal court in Texas rejected vagueness arguments raised against its lethal injection statute which reads, in part:

...the sentence shall be executed ... by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death.

Ex parte Granviel, 561 S.W.2d 503 (Tx. 1978).

2. The bill requires that the lethal injection be administered by any person qualified to administer the injections. The "term" qualified means licensed or certified medical person. It may be difficult to find a medical doctor willing to participate in the execution which could violate the Hippocratic oath. Furthermore, the American Medical Association has taken a position against medical doctors performing executions. The Senate considered an amendment which called for the injection to be performed by "any person who is competent to prepare and administer intravenous injections." However, this language was not adopted in the Senate's final bill.
3. The bill makes an election of lethal injection apply to all successive dates of execution, but it is not clear if the election may be revoked or changed before each execution date.
4. The bill allows an inmate to choose execution by lethal injection "within 24 hours of the scheduled execution when the time period is less than 7 days." The time period that the bill refers to is not defined. Furthermore, the Department of Correction's position is that more than 24 hours are needed to prepare for an execution. Other states simply require the election be made 7 to 15 days before the scheduled date of execution. Or within 7 to 15 days of the service of the warrant.
5. Florida Corrections Commission has gathered information that indicates that 5.28% of executions in the United States by lethal injection have been problematic or "botched" compared to 5.97% of executions by electrocution. Problems encountered with lethal injection are:
 - ◆ Difficulty of locating and inserting intravenous connection into a viable vein
 - ◆ Violent reaction to lethal drugs
 - ◆ Tightness of leather straps which prevented the flow of chemicals
 - ◆ Lethal drugs clogged the tube and stopped the process, which required that the clogged tube be replaced

Does a Change In the Method Of Execution Cause Delays?

Of the 32 states which currently use lethal injection, 16 states provide it as an option. Committee staff contacted the attorney general's office in 10 states using lethal injection as an **option**, or as their **only** method of execution, and asked whether they experienced any delays in the rate of execution as a result of passing their lethal injection legislation. Every office claimed to have experienced **no delays**.

The following table contains a list of those authorities.

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STATE	YEAR PASSED	TYPE OF STATUTE	AUTHORITY FOR OPINION THAT PASSAGE OF LETHAL INJECTION LAW DID NOT DELAY RATE OF EXECUTION IN THEIR STATE
CALIFORNIA	1996	option	Dane Gillette A.A.G., Chief of Capital Appeals
MISSOURI	1988	option	Jack Morris A.A.G., Chief of Capital Appeals
OHIO	1994	option	S. McClellan A.A.G., Chief of Capital Appeals
OKLAHOMA	1976	option	Sandy Howard A.A.G., Chief of Capital Appeals
S. CAROLINA	1995	option	Don Zelinka A.A.G., Chief of Capital Appeals
VIRGINIA	1995	option	K. Baldwin A.A.G., Chief of Capital Appeals
WASHINGTON	1981	option	Paul Weisser A.A.G., Chief of Capital Appeals
LOUISIANA	1991	injection only	Fred Dewy A.A.G., Chief of Capital Appeals
NEVADA	1981	injection only	D. Surnowski A.A.G., Chief of Capital Appeals
TEXAS	1977	injection only	Gina Blunt A.A.G., Assistant Chief of C.A.'s

Finally, it is also the opinion of the Attorney General of the State of Florida that giving an inmate the option to choose a method of execution will not result in a delay of the process. However, it is possible that if the method of execution is changed or inmates are given the option, then the trial court may have to resentence the inmates on death row.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Crime and Punishment Committee adopted a strike-everything amendment that was offered by Representative Crist. The original bill allowed inmates on death row to choose either lethal injection or the electric chair. Inmates sentenced to death for capital crimes committed after the effective date of the original bill would be executed by lethal injection and would not have an option. The bill was made a committee substitute.

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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:
Prepared by:

Legislative Research Director:

Jamie Spivey

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certify that a true and correct copy of the foregoing has been furnished via email service, this the 3rd day of May, 2016, to:

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