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SENATE FILE 2262

BY KING, BEHN, REHBERG,  
and SCHUERER

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act applying the death penalty or life imprisonment for the  
2 offense of first degree murder, by establishing circumstances  
3 under which the death penalty will be applied, by providing a  
4 minimum age for imposition of a death sentence, by providing  
5 for review of death sentences, by providing for execution by  
6 lethal injection, by amending the rules of criminal procedure,  
7 and by providing an effective date and for the Act's  
8 applicability.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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JUDICIARY

1 Section 1. Section 13B.4, Code 2001, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 6A. The state public defender shall  
4 perform all of the following duties with respect to the  
5 appointment of counsel for indigent persons in cases in which  
6 a sentence of death may be or is to be imposed:

7 a. Provide or contract with attorneys for appointment as  
8 lead counsel and cocounsel to provide legal services in cases  
9 where a person is charged with murder in the first degree and  
10 the state has given notice of intent to seek the death penalty  
11 or in cases in which a sentence of death is to be imposed.

12 b. Conduct or sponsor specialized training programs for  
13 attorneys representing persons who may be executed.

14 Sec. 2. NEW SECTION. 602.10111A QUALIFICATIONS OF  
15 COUNSEL IN DEATH PENALTY CASES.

16 The supreme court shall prescribe rules which establish  
17 minimum standards and procedures by which attorneys may become  
18 qualified to provide legal services as lead counsel in cases  
19 in which a sentence of death may be or is to be imposed.

20 Sec. 3. NEW SECTION. 702.19A TERRORISM.

21 "Terrorism" means the killing of another person to  
22 intimidate or coerce a civilian population, or to influence  
23 the policy of a unit of government by intimidation or  
24 coercion, or to affect the conduct of a unit of government.

25 Sec. 4. Section 707.2, Code 2001, is amended by adding the  
26 following new subsection:

27 NEW SUBSECTION. 6. The person commits terrorism as  
28 defined in section 702.19A.

29 Sec. 5. Section 708.6, Code 2001, is amended to read as  
30 follows:

31 708.6 TERRORISM INTIMIDATION WITH A DANGEROUS WEAPON.

32 A person commits a class "C" felony when the person, with  
33 the intent to injure or provoke fear or anger in another,  
34 shoots, throws, launches, or discharges a dangerous weapon at,  
35 into, or in a building, vehicle, airplane, railroad engine,

1 railroad car, or boat, occupied by another person, or within  
2 an assembly of people, and thereby places the occupants or  
3 people in reasonable apprehension of serious injury or  
4 threatens to commit such an act under circumstances raising a  
5 reasonable expectation that the threat will be carried out.

6 A person commits a class "D" felony when the person shoots,  
7 throws, launches, or discharges a dangerous weapon at, into,  
8 or in a building, vehicle, airplane, railroad engine, railroad  
9 car, or boat, occupied by another person, or within an  
10 assembly of people, and thereby places the occupants or people  
11 in reasonable apprehension of serious injury or threatens to  
12 commit such an act under circumstances raising a reasonable  
13 expectation that the threat will be carried out.

14 Sec. 6. Section 723A.1, subsection 1, paragraph c, Code  
15 2001, is amended to read as follows:

16 c. An offense constituting a violation of section 708.6  
17 involving an-act-of-terrorism intimidation with a dangerous  
18 weapon.

19 Sec. 7. NEW SECTION. 812A.1 PROCEDURE TO DETERMINE  
20 SANITY OF CONDEMNED INMATE.

21 1. At any time prior to execution of an inmate sentenced  
22 under section 902.1, if the director of the department of  
23 corrections or the counsel for the person who is under a  
24 sentence of execution has cause to believe that the inmate is  
25 suffering from such a diseased or deranged condition of the  
26 mind as to prevent the defendant from knowing the nature and  
27 quality of the act the defendant has been convicted of, or  
28 from understanding that trial on the offense has taken place  
29 and that execution proceedings are about to take place, or to  
30 otherwise cause the defendant to lack the capacity to  
31 understand the sentence that has been imposed and to  
32 participate in any legal proceedings relating to the sentence,  
33 the director or counsel may file a request with the court that  
34 issued the warrant for execution for a determination of the  
35 inmate's sanity. If the district court determines that there

1 is not sufficient reason to believe that the inmate is insane,  
2 the court shall enter an order denying the request and shall  
3 state the grounds for denying the request. If the court  
4 determines that there is sufficient reason to believe that the  
5 inmate is insane, the court shall suspend the execution and  
6 conduct a hearing to determine the sanity of the inmate.

7 2. At the hearing, the court shall determine the issue of  
8 the inmate's sanity. Prior to the hearing, the court shall  
9 appoint two licensed physicians or licensed psychologists, or  
10 one licensed physician and one licensed psychologist, who are  
11 qualified by training and practice, for purposes of conducting  
12 a psychiatric or psychological examination of the inmate. The  
13 physicians or psychologists shall examine the inmate and  
14 report any findings in writing to the court within ten days  
15 after the order of examination is issued. The inmate shall  
16 have the right to present evidence and cross-examine any  
17 witnesses at the hearing. Any statement made by the inmate  
18 during the course of any examination provided for in this  
19 section, whether or not the inmate consents to the  
20 examination, shall not be admitted into evidence against the  
21 inmate in any criminal proceeding for purposes other than a  
22 determination of the inmate's sanity.

23 3. If, at the conclusion of a hearing held pursuant to  
24 this section, the court determines that the inmate is sane,  
25 the court shall enter an order setting a date for the inmate's  
26 execution, which shall be carried into effect in the same  
27 manner as provided in the original sentence. A copy of the  
28 order shall be sent to the director of the department of  
29 corrections and the governor.

30 4. If, at the conclusion of a hearing held pursuant to  
31 this section, the court determines that the inmate is insane,  
32 the court shall suspend the execution until further order. At  
33 any time after issuance of the order, if the court has  
34 sufficient reason to believe that the inmate has become sane,  
35 the court shall again determine the sanity of the inmate as

1 provided by this section. Proceedings pursuant to this  
2 section may continue to be held at such times as the court  
3 orders until it is either determined that the inmate is sane  
4 or incurably insane.

5 Sec. 8. NEW SECTION. 814.28 REVIEW OF DEATH SENTENCE.

6 1. In a case in which a sentence of death is imposed, the  
7 supreme court shall automatically review the judgment and  
8 sentence. The court's review of the case shall be de novo.  
9 The case shall not be transferred to the court of appeals.

10 2. A review by the supreme court of a judgment and  
11 sentence imposing the punishment of death has priority over  
12 all other criminal and other actions pending before the  
13 supreme court.

14 3. The supreme court shall review the trial and judgment,  
15 and shall separately review the sentencing proceeding. Upon  
16 determining that errors did not occur at the trial requiring  
17 reversal or modification of the judgment, the supreme court  
18 shall proceed to determine if the sentence of death is  
19 lawfully imposed. In its review of the sentencing proceeding  
20 the supreme court shall determine all of the following:

21 a. Whether the sentence of death was imposed capriciously  
22 or under the influence of prejudice or other arbitrary factor.

23 b. Whether the special verdicts returned under section  
24 901.11 are supported by the evidence.

25 c. Whether the sentence of death is excessive or  
26 disproportionate to the penalty imposed in similar cases,  
27 considering both the crime and the defendant.

28 4. If the supreme court determines that the sentence of  
29 death was not lawfully imposed, the court shall set aside the  
30 sentence and shall remand the case to the trial court for  
31 imposition of a sentence of life imprisonment.

32 5. If the supreme court affirms the judgment and sentence  
33 of death, the clerk of the supreme court shall certify the  
34 judgment of the supreme court under the seal of the court to  
35 the clerk of the trial court.

1 Sec. 9. Section 815.10, Code 2001, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 1A. If two attorneys have not already  
4 been appointed pursuant to section 13B.4 or 13B.9, the court  
5 shall appoint, for each indigent person who is charged with  
6 murder in the first degree and in which a notice of intent to  
7 seek the death penalty has been filed, two attorneys who are  
8 qualified under section 602.10111A to represent the person in  
9 the murder proceedings and in all state legal proceedings  
10 which take place from the time the person is indicted or  
11 arraigned until the person is sentenced on the charge. In  
12 addition, if at any point in federal postconviction  
13 proceedings an indigent person is not afforded court-appointed  
14 counsel, the state shall provide counsel to the person to  
15 present any claims determined meritorious by the federal court  
16 if the person is not otherwise represented by legal counsel.  
17 Only private attorneys and public defenders who are qualified  
18 to provide representation in cases in which the death penalty  
19 may be imposed are eligible for appointment or assignment to a  
20 case in which the death penalty may be imposed.

21 Sec. 10. NEW SECTION. 901.11 MURDER PROCEEDINGS --  
22 REQUEST FOR DEATH PENALTY -- PENALTY PROCEEDINGS.

23 1. If a notice of intent to seek the death penalty has  
24 been filed, objections to the imposition of the death penalty  
25 based upon allegations that a defendant was mentally retarded  
26 or mentally ill at the time of the commission of the offense  
27 shall be raised within the time provided for the filing of  
28 pretrial motions under rule of criminal procedure 2.11, Iowa  
29 court rules, fourth edition. The court may, for good cause  
30 shown, allow late filing of the motion. Hearing on the motion  
31 shall be held prior to trial and the burden of proof shall be  
32 on the defendant to prove mental retardation or mental illness  
33 by a preponderance of the evidence. However, a rebuttable  
34 presumption of mental retardation arises if a defendant has an  
35 intelligence quotient of seventy or below. If the court finds

1 that the defendant is mentally retarded, the defendant, if  
2 convicted of murder in the first degree, shall not be  
3 sentenced to death but shall be sentenced to life imprisonment  
4 in the manner provided in section 902.1, subsection 1. A  
5 finding by the court that the evidence presented by the  
6 defendant at the hearing does not preclude the imposition of  
7 the death penalty under this section and section 902.13 shall  
8 not preclude the introduction of evidence of mental  
9 retardation or mental illness during the penalty proceeding.  
10 If the court finds that evidence of mental retardation or  
11 mental illness does not preclude imposition of the death  
12 penalty, evidence of mental retardation or mental illness may  
13 be reviewed by the jury in the penalty proceeding and the jury  
14 shall not be informed of the finding in the initial proceeding  
15 at any time during the penalty proceeding.

16 2. If, at the trial on a charge of murder in the first  
17 degree, the state intends to request that the death penalty be  
18 imposed under section 902.1, subsection 2, the prosecutor  
19 shall file a notice of intent to seek the death penalty, at  
20 the time of and as part of the information or indictment filed  
21 in the case.

22 3. If a notice of intent to seek the death penalty has  
23 been filed, the trial shall be conducted in bifurcated  
24 proceedings before the same trier of fact. During the initial  
25 proceeding, the jury, or the court, if the defendant waives  
26 the right to a jury trial, shall decide only whether the  
27 defendant is guilty or not guilty of murder in the first  
28 degree.

29 a. If, in the initial proceeding, the court or jury finds  
30 the defendant guilty of, or the defendant pleads guilty to, an  
31 offense other than murder in the first degree, the court shall  
32 sentence the defendant in accordance with the sentencing  
33 procedures set forth in rule of criminal procedure 2.23, Iowa  
34 court rules, fourth edition, and chapters 901 through 909,  
35 which are applicable to the offense.

1 b. If the court or jury finds the defendant guilty of, or  
2 the defendant pleads guilty to, murder in the first degree,  
3 but the prosecuting attorney waives the death penalty, the  
4 court shall sentence the defendant to life imprisonment in  
5 accordance with the sentencing procedures set forth in rule of  
6 criminal procedure 2.23, Iowa court rules, fourth edition, and  
7 chapters 901 through 909, which are applicable to convictions  
8 of murder in the first degree.

9 c. If the court or jury finds the defendant guilty of  
10 murder in the first degree, or a defendant enters a plea of  
11 guilty in the initial proceeding, and the prosecuting attorney  
12 does not waive imposition of the death penalty, a penalty  
13 proceeding shall be held in the manner provided in subsections  
14 4 through 12.

15 4. No sooner than twenty-four hours after a verdict of  
16 guilty or a plea of guilty to the charge of murder in the  
17 first degree is returned in the initial proceeding, a penalty  
18 proceeding shall be held to determine whether the defendant  
19 shall be sentenced to death or to life imprisonment. The  
20 proceeding shall be conducted in the trial court before the  
21 trial jury, or the court if the defendant has waived the right  
22 to a jury trial. Both the state and the defendant shall have  
23 the right to present opening statements at the commencement of  
24 the penalty proceedings. In the proceeding, evidence relevant  
25 to the existence of any aggravating or mitigating  
26 circumstances may be presented as follows:

27 a. The state shall or the defendant may present evidence  
28 relevant to the factor in section 902.13. The state or the  
29 defendant may present evidence relevant to any aggravating  
30 circumstances. Evidence presented shall be other than  
31 juvenile delinquency adjudications for offenses which carry  
32 penalties equivalent to the penalties imposed for simple or  
33 serious misdemeanors. The state may introduce evidence of the  
34 actual harm caused by the commission of the murder including,  
35 but not limited to, evidence relating to the life of the

1 victim and the impact of the loss of the victim on the  
2 victim's family and society. The state shall be required to  
3 prove the existence of the factor in section 902.13 beyond a  
4 reasonable doubt.

5 b. The defendant may present evidence that the defendant  
6 was mentally retarded at the time of the commission of the  
7 offense. The burden of proof shall be on the defendant to  
8 prove mental retardation by a preponderance of the evidence.  
9 However, a rebuttable presumption of mental retardation arises  
10 if a defendant has an intelligence quotient of seventy or  
11 below.

12 c. The state or the defendant may present evidence  
13 relevant to any mitigating circumstances which may exist.  
14 Mitigating circumstances may include the following  
15 circumstances:

16 (1) The defendant was under the influence of an extreme  
17 mental or emotional disturbance insufficient to constitute a  
18 defense.

19 (2) The victim solicited, participated in, or consented to  
20 the conduct which resulted in the victim's death.

21 (3) The age of the defendant at the time of the murder.

22 (4) The defendant's capacity to appreciate the  
23 wrongfulness of the defendant's conduct and to conform that  
24 conduct to the requirements of law was significantly impaired  
25 as a result of a mental disease or defect or mental  
26 retardation, but not to a degree sufficient to constitute a  
27 defense.

28 (5) The defendant has no significant history of prior  
29 adult criminal activity.

30 (6) The defendant acted under extreme duress or under the  
31 substantial domination of another person.

32 (7) The defendant did not directly commit the murder and  
33 the defendant did not intend to kill or anticipate that lethal  
34 force would be used.

35 (8) Any other factor which is relevant to the defendant's

1 character or record or to the circumstances of the offense.

2 (9) The defendant rendered substantial assistance to the  
3 state in the prosecution of another person for the crime of  
4 murder.

5 (10) The evidence which establishes that the defendant  
6 committed murder in the first degree does not include direct  
7 evidence from at least two different sources.

8 d. The state and the defendant or the defendant's counsel  
9 shall be permitted to present and cross-examine witnesses and  
10 present arguments for or against a sentence of death. The  
11 admission of evidence in support of the existence of the  
12 aggravating factor in section 902.13 shall be governed by the  
13 rules governing admissibility of evidence at a criminal trial.  
14 Evidence regarding aggravating and mitigating circumstances  
15 shall not be governed by the rules governing admissibility of  
16 evidence, except that introduction of evidence secured in  
17 violation of the Constitution of the United States or of the  
18 Constitution of the State of Iowa shall not be permitted.

19 5. At the conclusion of presentation of evidence in the  
20 penalty proceeding, the state and the defendant or the  
21 defendant's counsel shall be permitted to make closing  
22 arguments, including any rebuttal arguments, in the same  
23 manner as in the initial proceeding and the following issues  
24 shall be determined by the jury or the court, if there is no  
25 jury:

26 a. Whether the factor in section 902.13 has been  
27 established beyond a reasonable doubt.

28 b. If one or more aggravating circumstances are  
29 established, whether the aggravating circumstance or  
30 circumstances outweigh any one or more mitigating  
31 circumstances.

32 c. Whether the defendant shall be sentenced to death.

33 6. A recommendation for a sentence of death shall not be  
34 permitted if the recommendation is based on the race, color,  
35 religious beliefs, national origin, or sex of the defendant or

1 any victim. After submission of the issues, but prior to the  
2 return of a finding in the penalty proceeding, if the matter  
3 is tried before a jury, the court shall instruct the jury that  
4 in considering whether a sentence of death is justified, it  
5 shall not consider race, color, religious beliefs, national  
6 origin, or sex of the defendant or of any victim. The court  
7 shall further instruct the jury that it shall not return a  
8 sentence of death unless it concludes that such a sentence  
9 would be recommended no matter what the race, color, religious  
10 beliefs, national origin, or sex of the defendant or any  
11 victim may be.

12 7. After submission of the issues, but prior to the  
13 commencement of the jury deliberations in the penalty  
14 proceeding, the court shall instruct the jury that if the  
15 defendant is not sentenced to death, the court is required by  
16 law to impose a sentence of life imprisonment without parole.  
17 The court shall further instruct the jury that the sentence of  
18 life imprisonment without parole is required by law if the  
19 jury fails to reach a unanimous verdict recommending a  
20 sentence of death.

21 8. Concurrently with the return of the findings on the  
22 issues submitted under subsection 5, the jury, or the court if  
23 there is no jury, shall return special verdicts as follows:

24 a. If the factor enumerated in section 902.13 has been  
25 unanimously found to have been established beyond a reasonable  
26 doubt.

27 b. Which aggravating circumstances were established and  
28 were considered in reaching the verdict returned on the issue  
29 specified in subsection 5, paragraph "b".

30 c. Which mitigating circumstances were established and  
31 were considered in reaching the verdict returned on the issue  
32 specified in subsection 5, paragraph "b".

33 9. If the jury, or the court if there is no jury, returns  
34 a unanimous affirmative finding on each of the issues  
35 submitted under subsection 5, paragraphs "a", "b", and "c",

1 the court shall enter a judgment of conviction and shall  
2 sentence the defendant to death as provided in section 902.1,  
3 subsection 2.

4 10. However, if evidence that the defendant was not a  
5 major participant in the commission of the murder and that the  
6 defendant's conduct did not manifest a reckless indifference  
7 to human life is presented to the jury, or the court, if there  
8 is no jury, the jury or the court shall also return a special  
9 verdict on the issue. If the jury unanimously determines, or  
10 the court, if there is no jury, finds that a preponderance of  
11 evidence exists that shows that the defendant was not a major  
12 participant in the commission of the murder and that the  
13 defendant's conduct did not manifest a reckless indifference  
14 to human life, the court shall enter a judgment of conviction  
15 and shall sentence the defendant to life imprisonment as  
16 provided in section 902.1, subsection 1, even if the jury or  
17 the court returns unanimous affirmative findings on each of  
18 the issues submitted under subsection 5.

19 11. If the jury, or the court, if there is no jury,  
20 returns a negative finding on any of the issues submitted  
21 under subsection 5, paragraphs "a", "b", and "c", the court  
22 shall enter a judgment of conviction and shall sentence the  
23 defendant to life imprisonment as provided in section 902.1,  
24 subsection 1.

25 12. After a verdict has been rendered it shall be recorded  
26 on the jury verdict form and shall be read and recorded in  
27 open court. The jurors shall be collectively asked by the  
28 court whether the verdict returned is their true and correct  
29 verdict. Even though no juror makes any declaration to the  
30 contrary, the jury shall, if either party so requests, be  
31 polled and each juror shall be separately asked whether the  
32 verdict rendered by the jury foreperson is the juror's true  
33 and correct verdict. If, upon either the collective or the  
34 separate inquiry, any juror denies that the verdict is the  
35 juror's verdict, the court shall refuse to accept the verdict.

1 The court may direct inquiry or permit inquiry by counsel to  
2 ascertain whether any juror has been subjected to coercion or  
3 has become confused during the jury deliberation process. The  
4 court may, as appropriate, direct the jury to resume  
5 deliberation in the case. If no disagreement on the verdict  
6 is expressed by any of the jurors, the court shall discharge  
7 the jury.

8 13. This section shall not apply to a defendant who was  
9 under the age of eighteen at the time the offense was  
10 committed.

11 Sec. 11. Section 902.1, Code 2001, is amended to read as  
12 follows:

13 902.1 CLASS "A" FELONY.

14 1. Upon Except as otherwise provided in subsection 2, upon  
15 a plea of guilty, a verdict of guilty, or a special verdict  
16 upon which a judgment of conviction of a class "A" felony may  
17 be rendered, the court shall enter a judgment of conviction  
18 and shall commit the defendant into the custody of the  
19 director of the Iowa department of corrections for the rest of  
20 the defendant's life. Nothing in the Iowa corrections code  
21 pertaining to deferred judgment, deferred sentence, suspended  
22 sentence, or reconsideration of sentence applies to a sentence  
23 of life imprisonment for a class "A" felony, and a person  
24 convicted of a class "A" felony and sentenced to life  
25 imprisonment shall not be released on parole unless the  
26 governor commutes the sentence to a term of years.

27 2. Upon return of a plea or verdict of guilty to the  
28 offense of murder in the first degree under section 707.2,  
29 subsection 6, and a return of a verdict in favor of a sentence  
30 of death in a penalty proceeding conducted as provided in  
31 section 901.11, the court shall enter a judgment of conviction  
32 and shall commit the defendant into the custody of the  
33 director of the Iowa department of corrections. The sentence  
34 shall be carried out by the administration of a lethal  
35 injection pursuant to rules adopted by the board of

1 corrections. If a defendant, for whom a warrant of execution  
2 is issued, is pregnant, the execution shall not take place  
3 until after the defendant is no longer pregnant. If a  
4 defendant, for whom a warrant of execution is issued, is  
5 suffering from such a diseased or deranged condition of the  
6 mind as to prevent the defendant from knowing the nature and  
7 quality of the act the defendant has been convicted of, or  
8 from understanding that trial on the offense has taken place  
9 and that execution proceedings are about to take place, or  
10 otherwise causes the defendant to lack the capacity to  
11 understand the sentence which has been imposed and to  
12 participate in any legal proceedings relating to the sentence,  
13 the execution shall not take place until after the defendant's  
14 capacity is restored. If the director of the department of  
15 corrections or the defendant's counsel files a request with  
16 the court which issued the warrant of execution, alleging that  
17 the defendant suffers from such a diseased or deranged  
18 condition, a hearing on the matter shall be held in the manner  
19 provided in section 812A.1. If a defendant was under the age  
20 of eighteen at the time the offense was committed, the  
21 defendant shall be sentenced as provided in subsection 1. For  
22 the purposes of this section, "lethal injection" means a  
23 continuous intravenous injection of a lethal substance  
24 sufficient to cause death.

25 Sec. 12. NEW SECTION. 902.13 FIRST DEGREE MURDER --  
26 ADDITIONAL FACTOR.

27 A person who commits murder in the first degree, who is not  
28 mentally retarded or mentally ill, and who is age eighteen or  
29 older at the time the offense is committed, shall be eligible  
30 for a sentence of death under section 902.1, subsection 2, if  
31 the following factor is established: The person has been  
32 convicted of a class "A" felony criminal offense in this state  
33 or a criminal offense in any other state which would  
34 constitute a class "A" felony under section 124.401D, 707.2,  
35 709.2, or 710.2 if committed in this state.

1 For purposes of this section, "mentally retarded" means  
2 significant subaverage general intellectual functioning  
3 accompanied by significant deficits or impairments in adaptive  
4 functioning manifested in the developmental period, but no  
5 later than the age of eighteen years, and accompanied by  
6 deficits in adaptive behavior.

7 For purposes of this section, "mentally ill" means the  
8 condition of a person who is suffering from a chronic and  
9 persistent serious mental disease or disorder and who, by  
10 reason of that condition, lacks sufficient judgment to make  
11 responsible decisions regarding treatment and is reasonably  
12 likely to injure the person's self or others who may come into  
13 contact with the person if the person is allowed to remain at  
14 liberty without treatment.

15 Sec. 13. NEW SECTION. 902.14 DATA COLLECTION FOR DEATH  
16 PENALTY.

17 1. The supreme court shall collect data on all murder  
18 charges in which the death penalty is or was not waived, which  
19 are filed and processed in the courts in this state. This  
20 data may be used by the supreme court to determine whether  
21 death sentences imposed are excessive or disproportionate, or  
22 under the influence of prejudice as a result of racial  
23 discrimination under section 814.28. The court shall make  
24 this data available to litigants in death penalty cases.

25 2. Data collected by public officials concerning factors  
26 relevant to the imposition of the death sentence shall be made  
27 publicly available.

28 Sec. 14. NEW SECTION. 903C.1 EXECUTIONS -- REFUSAL TO  
29 PERFORM.

30 An employee of the state who may lawfully perform, assist,  
31 or participate in the execution of a person pursuant to  
32 section 902.1, and rules adopted by the department of  
33 corrections, shall not be required to perform, assist, or  
34 participate in the execution. State employees who refuse to  
35 perform, assist, or participate in the execution of a person

1 shall not be discriminated against in any way, including, but  
2 not limited to, employment, promotion, advancement, transfer,  
3 licensing, education, training, or the granting of any  
4 privileges or appointments because of the refusal to perform,  
5 assist, or participate in the execution.

6 Sec. 15. Section 904.105, Code 2001, is amended by adding  
7 the following new subsection:

8 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A  
9 pertaining to executions of persons convicted of murder in the  
10 first degree. Rules adopted shall include, but are not  
11 limited to, rules permitting the witnessing of executions by  
12 members of the public. Invitations to witness an execution  
13 shall at least be extended to the following representatives of  
14 the news media:

- 15 a. A representative from a wire service serving Iowa.
- 16 b. A representative from a broadcasting network serving  
17 Iowa.
- 18 c. A representative from a television station located in  
19 Iowa.
- 20 d. A representative from a radio station located in Iowa.
- 21 e. A representative from a daily newspaper published in  
22 Iowa.
- 23 f. A representative from a weekly newspaper published in  
24 Iowa.
- 25 g. A representative from the news media from the community  
26 in which the condemned person resided, if that community is  
27 located in Iowa.

28 Sec. 16. Rules of criminal procedure, Iowa court rules,  
29 fourth edition, are amended by adding sections 17 through 20  
30 of this Act.

31 Sec. 17. NEW RULE. 2. \_\_\_ MURDER IN THE FIRST DEGREE --  
32 PROCEDURE.

33 2.\_\_(1) If a notice of intent to seek the death penalty  
34 has been filed, objections to the imposition of the death  
35 penalty based upon allegations that a defendant was mentally

1 retarded at the time of the commission of the offense shall be  
2 raised within the time provided for the filing of pretrial  
3 motions under rule 2.11. The court may, for good cause shown,  
4 allow late filing of the motion. Hearing on the motion shall  
5 be held prior to trial and the burden of proof shall be on the  
6 defendant to prove mental retardation by a preponderance of  
7 the evidence. However, a rebuttable presumption of mental  
8 retardation arises if a defendant has an intelligence quotient  
9 of seventy or below. A finding of the court that the evidence  
10 presented by the defendant at the hearing does not preclude  
11 the imposition of the death penalty under this section and  
12 Code section 902.13 shall not preclude the introduction of  
13 evidence of mental retardation during the penalty proceeding.  
14 If the court finds that the evidence presented by the  
15 defendant does not preclude the imposition of the death  
16 penalty, evidence of mental retardation may be reviewed by the  
17 jury during the penalty proceeding and the jury shall not be  
18 informed of the finding in the initial proceeding at any time  
19 during the penalty proceeding.

20 2.\_\_(2) Upon a finding or plea that a defendant is guilty  
21 of murder in the first degree in an initial proceeding, if a  
22 notice of intent to seek the death penalty has been filed and  
23 has not been waived, the court shall conduct a separate  
24 penalty proceeding to determine whether the defendant shall be  
25 sentenced to death or to life imprisonment. The penalty  
26 proceeding shall be conducted in the trial court before the  
27 trial jury, or the court, if there is no jury, no sooner than  
28 twenty-four hours after the return of the verdict or plea in  
29 the initial proceeding. In the penalty proceeding, additional  
30 evidence shall be presented by the state and may be presented  
31 by the defendant as to the factor in Code section 902.13. The  
32 state and the defendant may present evidence relevant to any  
33 aggravating or mitigating circumstance which may exist.  
34 Evidence presented which is relevant to the existence of the  
35 factor in Code section 902.13 shall be subject to the rules of

1 evidence. Presentation of evidence which is relevant to the  
2 existence of an aggravating or mitigating circumstance shall  
3 not be bound by the rules of evidence. This rule does not  
4 authorize the introduction of any evidence secured in  
5 violation of the Constitution of the United States or of the  
6 Constitution of the State of Iowa. The state and the  
7 defendant or the defendant's counsel shall be permitted to  
8 cross-examine witnesses and to present arguments for or  
9 against a sentence of death.

10 2.\_\_(3) On conclusion of the presentation of the evidence  
11 in the penalty proceeding, the state and the defendant or the  
12 defendant's counsel shall be permitted to make closing  
13 arguments, including any rebuttal arguments, in the same  
14 manner as in the initial proceeding and the court shall submit  
15 each of the following issues to the jury:

16 a. Whether the factor in Code section 902.13 has been  
17 established beyond a reasonable doubt.

18 b. If one or more aggravating circumstances have been  
19 established, whether one or more of those circumstances  
20 outweigh any one or more mitigating circumstances.

21 c. Whether the defendant shall be sentenced to death.

22 If the case is not tried to a jury, the court shall  
23 determine the issues.

24 2.\_\_(4) The state must prove the issue in rule  
25 2.\_\_(3)(a) beyond a reasonable doubt, and the jury, or the  
26 court if there is no jury, shall return a special verdict of  
27 "yes" or "no" on each issue.

28 2.\_\_(5) If the case is tried to a jury, the court shall  
29 charge the jury that:

30 a. It shall answer any issue "yes" if it agrees  
31 unanimously.

32 b. It shall answer any issue "no" if the jurors  
33 unanimously agree that the answer is "no" or if the jurors do  
34 not unanimously agree that the answer is "yes".

35 2.\_\_(6) Concurrently with the return of the special

1 verdicts under rule 2.\_\_(4), the jury, or the court if there  
2 is no jury, shall also return special verdicts as follows:

3 a. The factor in Code section 902.13 has been unanimously  
4 found to have been established beyond a reasonable doubt.

5 b. Which aggravating circumstances were established and  
6 were considered in reaching the verdict returned on the issue  
7 specified in rule 2.\_\_(3)(b).

8 c. Which mitigating circumstances were established and  
9 were considered in reaching the verdict returned on the issue  
10 specified in rule 2.\_\_(3)(b).

11 2.\_\_(7) If the jury, or the court, if there is no jury,  
12 returns an affirmative finding on all applicable issues, the  
13 court shall sentence the defendant to death. If the jury or  
14 the court returns a negative finding on any applicable issue,  
15 the court shall sentence the defendant to the custody of the  
16 director of the department of corrections for confinement for  
17 the rest of the defendant's life.

18 2.\_\_(8) However, if evidence that the defendant was not a  
19 major participant in the commission of the murder and that the  
20 defendant's conduct did not manifest a reckless indifference  
21 to human life is presented to the jury, or the court, if there  
22 is no jury, the jury or the court shall also return a special  
23 verdict on the issue. If the jury unanimously determines, or  
24 the court, if there is no jury, finds that a preponderance of  
25 evidence exists that shows that the defendant was not a major  
26 participant in the commission of the murder and that the  
27 defendant's conduct did not manifest a reckless indifference  
28 to human life, the court shall enter a judgment of conviction  
29 and shall sentence the defendant to life imprisonment as  
30 provided in Code section 902.1, subsection 1, even if the jury  
31 or the court returns unanimous affirmative findings on each of  
32 the issues submitted under rule 2.\_\_(3).

33 2.\_\_(9) After a verdict has been rendered it shall be  
34 recorded on the jury verdict form and shall be read and  
35 recorded in open court. The jurors shall be collectively

1 asked by the court whether the verdict returned is their true  
2 and correct verdict. Even though no juror makes any  
3 declaration to the contrary, the jury shall, if either party  
4 so requests, be polled and each juror shall be separately  
5 asked whether the verdict rendered by the jury foreperson is  
6 the juror's true and correct verdict. If, upon either the  
7 collective or the separate inquiry, any juror denies that the  
8 verdict is the juror's verdict, the court shall refuse to  
9 accept the verdict. The court may direct inquiry or permit  
10 inquiry by counsel to ascertain whether any juror has been  
11 subjected to coercion or has become confused during the jury  
12 deliberation process. The court may, as appropriate, direct  
13 the jury to resume deliberation in the case. If no  
14 disagreement on the verdict is expressed by any of the jurors,  
15 the court shall discharge the jury.

16 2.\_\_(10) Provisions relating to deferred judgment,  
17 deferred sentence, suspended sentence, reconsideration of  
18 sentence, reopening of a sentence, probation, parole, or work  
19 release contained in Code chapters 901 through 909 do not  
20 apply to a conviction of murder in the first degree if the  
21 defendant is sentenced to death.

22 Sec. 18. NEW RULE. 2.\_\_\_\_ AUTOMATIC REVIEW -- STAY OF  
23 EXECUTION OF JUDGMENT.

24 2.\_\_(1) A judgment of conviction and sentence of death  
25 shall be reviewed automatically in the manner provided in Code  
26 section 814.28, and the Iowa supreme court has exclusive  
27 jurisdiction of the review.

28 2.\_\_(2) Upon entry of judgment and sentence of death, the  
29 trial court shall prepare a complete record and transcript of  
30 the action in the manner provided in the rules of criminal  
31 procedure and shall docket the record and transcript with the  
32 clerk of the supreme court.

33 2.\_\_(3) The execution of judgment of the trial court is  
34 stayed as a matter of law from the time of its entry until the  
35 judgment of the supreme court is certified to and entered by

1 the trial court. Upon entry of a judgment of the supreme  
2 court which affirms the conviction and sentence, the stay of  
3 execution of judgment terminates as a matter of law.

4 2.\_\_(4) All court costs required due to the automatic  
5 preparation of the record and transcript, docketing with the  
6 supreme court, and stay of execution of judgment shall be  
7 assessed to the state.

8 Sec. 19. NEW RULE. 2.\_\_\_\_ ISSUANCE OF WARRANT.

9 2.\_\_(1) Upon entry by the trial court of the judgment of  
10 the supreme court affirming a judgment and sentence of death,  
11 a district judge shall within five days of the entry issue a  
12 warrant under the seal of the court for the execution of the  
13 sentence of death. The warrant shall specifically set forth  
14 the offense and the fact of conviction, shall state the  
15 judgment and sentence of the court, shall state that the  
16 judgment and sentence were affirmed by the supreme court and  
17 the date of entry of judgment of the supreme court in the  
18 trial court, and shall, subject to the requirements of Code  
19 section 902.1, subsection 2, specify the date fixed for  
20 execution of the defendant which shall be not less than fifty  
21 nor more than sixty days after the date of entry in the trial  
22 court of the judgment of the supreme court affirming the  
23 judgment and sentence of death. The warrant shall be directed  
24 to the director of the department of corrections commanding  
25 the director to cause the warrant to be executed on the date  
26 specified. The trial court shall deliver the warrant to the  
27 sheriff of the county in which judgment of conviction was  
28 entered and the sheriff shall deliver the warrant to the  
29 director of the department of corrections. The director of  
30 the department of corrections shall acknowledge receipt of the  
31 warrant and the defendant, and the sheriff shall return the  
32 acknowledgment to the office of the clerk of the trial court  
33 from which the warrant was issued.

34 2.\_\_(2) Immediately after issuance of a warrant ordering  
35 a sentence of death, the clerk of the trial court issuing the

1 warrant shall transmit by certified mail to the governor a  
2 copy of the indictment, the plea, the verdict and special  
3 findings, the affirmation of judgment and sentence by the  
4 supreme court, and the complete transcript of the trial court.

5 3. Notwithstanding rule 2.\_\_(1), if a defendant, for whom  
6 a warrant of execution is issued, is pregnant, the execution  
7 shall not take place until after the defendant is no longer  
8 pregnant. Notwithstanding rule 2.\_\_(1), if a defendant, for  
9 whom a warrant of execution is issued, is suffering from such  
10 a diseased or deranged condition of the mind as to prevent the  
11 defendant from knowing the nature and quality of the act the  
12 defendant has been convicted of, or from understanding that  
13 trial on the offense has taken place and that execution  
14 proceedings are about to take place, or to otherwise cause the  
15 defendant to lack the capacity to understand the sentence  
16 which has been imposed and to participate in any legal  
17 proceedings relating to the sentence, the execution shall not  
18 take place until after the defendant is no longer suffering  
19 from the condition.

20 Sec. 20. NEW RULE. 2.\_\_\_\_ EVIDENCE AT PENALTY PROCEEDING  
21 WHERE DEATH SENTENCE REQUESTED.

22 2.\_\_(1) At a reasonable time before the commencement of  
23 initial proceedings in a first degree murder trial in which a  
24 sentence of death has been requested, each party shall file  
25 and serve upon the other party the following:

26 a. A list of all aggravating or mitigating circumstances  
27 which the party intends to prove during the sentencing  
28 proceedings.

29 b. The names of all persons whom the party intends to call  
30 as witnesses during the sentencing proceedings.

31 c. Notwithstanding rule 2.14, copies, or for inspection  
32 purposes, the location, of all documents, including books,  
33 papers, writings, drawings, graphs, charts, photographs,  
34 telephone records, and other data compilations from which  
35 information can be obtained, or other objects which the party

1 intends to offer into evidence during the sentencing  
2 proceedings. If copies are not supplied to opposing counsel,  
3 the party shall make the items available for inspection and  
4 copying without order of the court.

5 2.\_\_(2) In proceedings to determine whether the sentence  
6 shall be death or life imprisonment, evidence may be presented  
7 as to any matter which the trial court deems relevant to the  
8 sentence, including but not limited to the nature,  
9 circumstances, and manner of completion of the murder, and the  
10 defendant's character, background, history, and mental and  
11 physical condition. The trial court shall admit any relevant  
12 admissible evidence respecting any aggravating or mitigating  
13 circumstances, if the party has included the circumstance on a  
14 list provided pursuant to this rule, or good cause is shown  
15 for the failure to do so.

16 Sec. 21. EFFECTIVE DATE -- SEVERABILITY -- SENTENCES  
17 COMMUTED TO LIFE IMPRISONMENT IF ACT UNCONSTITUTIONAL.

18 1. This Act takes effect October 1, 2002, and applies to  
19 offenses committed on or after that date.

20 2. If any provision of this Act or the application thereof  
21 to any person is invalid, the invalidity shall not affect the  
22 provisions or application of this Act which can be given  
23 effect without the invalid provisions or application and to  
24 this end, the provisions of this Act are severable.

25 3. If the imposition of a sentence of death under this Act  
26 is found to be unconstitutional, the sentence of any person  
27 who has been sentenced to death under this Act shall  
28 automatically be commuted to a term of life imprisonment.

29 EXPLANATION

30 This bill amends the Iowa criminal code to provide for  
31 punishment by death for murder committed under specified  
32 circumstances if the trial jury, or the judge if there is no  
33 jury, makes specific affirmative findings respecting the act  
34 of murder and whether the jury believes the defendant should  
35 be put to death in a separate penalty proceeding held after

1 the close of the initial trial proceeding. Under the bill, a  
2 death sentence could be imposed if the murder would constitute  
3 murder in the first degree and the state pleads and proves the  
4 murder was committed by a person who has previously been  
5 convicted of a class "A" felony.

6 If a person is indigent and is charged with capital murder,  
7 payment of costs for two attorneys is authorized. The supreme  
8 court is required to establish standards for the competency of  
9 counsel in death penalty cases. The state public defender is  
10 charged with establishing teams of qualified lead and co-  
11 counsel for death penalty cases, as well as conducting or  
12 sponsoring specialized training programs for attorneys  
13 representing persons who may be executed.

14 If a murder case proceeds to trial and a notice of intent  
15 to seek the death penalty has been filed, in addition to any  
16 other defenses which may be presented to the charge, the  
17 defendant may raise the issue of mental retardation during the  
18 time of filing pretrial motions, and the defendant is entitled  
19 to a rebuttable presumption of mental retardation if the  
20 defendant establishes that the defendant has an intelligence  
21 quotient of 70 or below.

22 Once the evidence is submitted to the jury, the court shall  
23 instruct the jury that in considering whether a sentence of  
24 death is justified, the race, color, religious beliefs,  
25 national origin, or sex of the defendant or of any victim is  
26 not to be considered. The supreme court shall collect  
27 evidence relating to whether the death sentences imposed are  
28 excessive, disproportionate, or imposed under the influence of  
29 prejudice at trial which will be available to litigants.

30 The sentence of death is imposed only if the death penalty  
31 has not been previously waived and the trier of fact  
32 unanimously answers three questions affirmatively: (1)  
33 whether the person committed terrorism; (2) whether other  
34 aggravating circumstances outweigh any mitigating  
35 circumstances that may exist; and (3) whether the defendant

1 should be sentenced to death. Mitigating factors the trier of  
2 fact may consider include the following: the defendant was  
3 under the influence of an extreme mental or emotional  
4 disturbance; the victim solicited or participated in the  
5 conduct; the age of the defendant; the defendant's ability to  
6 appreciate the wrongfulness of the conduct due to mental  
7 disease but not to a degree to constitute a defense; the  
8 defendant has no significant prior criminal history; the  
9 defendant was under extreme duress; the defendant did not  
10 directly commit the murder; the defendant's character; the  
11 defendant gave substantial assistance to the prosecution in  
12 the prosecution of another person for the crime of murder; and  
13 the evidence which convicted the defendant does not include  
14 direct evidence from two sources. The sentencing penalty  
15 proceeding is conducted separately from the finding of guilt  
16 or innocence by the same trier of fact.

17 For the sentencing penalty proceeding, the trier of fact is  
18 to weigh any aggravating circumstances established beyond a  
19 reasonable doubt by the state against any of the enumerated  
20 mitigating circumstances which may be presented by the  
21 defendant. Evidence of juvenile delinquency adjudications is  
22 not admissible in any proceeding to determine the sentence  
23 penalty. If the jury fails to agree unanimously on the  
24 required affirmative findings or if the supreme court  
25 determines that error was committed in the sentencing  
26 proceeding, the penalty would be life imprisonment.

27 The death penalty sentence would be reviewed automatically  
28 by the supreme court. The bill requires the supreme court to  
29 examine whether the sentence penalty is excessive or  
30 disproportionate to penalties in similar cases. If affirmed  
31 by the supreme court, the penalty would be accomplished by  
32 lethal injection. The bill requires the board of corrections  
33 to adopt rules pertaining to executions, including rules  
34 pertaining to the witnessing of executions.

35 The bill further provides that in order to receive a

1 sentence of death, the defendant must be at least 18 years of  
2 age at the time the offense is committed, must not be mentally  
3 ill or mentally retarded, and must have been a major  
4 participant in the commission of the murder or must have shown  
5 a manifest indifference to human life.

6 A person who is sentenced to death, but who is pregnant  
7 when the warrant of execution is issued, is not to be executed  
8 until the person is no longer pregnant. A procedure is also  
9 provided to stay execution of a condemned inmate who becomes  
10 insane after conviction but before execution.

11 An employee of the state shall not be required to perform  
12 or assist in any execution and shall not be discriminated  
13 against for refusing to participate.

14 The bill contains severability provisions and takes effect  
15 October 1, 2002, and applies only to offenses committed on or  
16 after that date.

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