

Judiciary

FILED FEB 07 1991

SENATE FILE 137
BY NYSTROM and TAYLOR

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, by
2 establishing a capital offense, by providing for review of
3 death sentences, and procedures for the time, manner, and
4 delay of execution, by amending the rules of criminal
5 procedure and by providing for the Act's applicability.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 137

1 Section 1. Section 701.7, Code 1991, is amended to read as
2 follows:

3 701.7 FELONY DEFINED AND CLASSIFIED.

4 A public offense is a felony of a particular class when the
5 statute defining the crime declares it to be a felony.

6 Felonies are capital felonies, class "A" felonies, class "B"
7 felonies, class "C" felonies, and class "D" felonies. Where
8 If the statute defining the offense declares it to be a felony
9 but does not state what class of felony it is or provide for a
10 specific penalty, that felony ~~shall be~~ is a class "D" felony.

11 Sec. 2. Section 703.2, Code 1991, is amended by adding the
12 following new unnumbered paragraph:

13 NEW UNNUMBERED PARAGRAPH. Each person who is a party to an
14 agreement or to one of a series of interrelated agreements for
15 the commission of capital murder under the circumstances
16 specified in section 707.1A, subsection 1, paragraph "a",
17 commits capital murder.

18 Sec. 3. NEW SECTION. Sec. 707.1A CAPITAL MURDER.

19 1. A person commits capital murder if the person
20 willfully, deliberately, and with premeditation kills another
21 person in any of the following aggravating circumstances:

- 22 a. The killing was perpetrated for hire.
- 23 b. The killing was perpetrated by a person under sentence
24 of life imprisonment.
- 25 c. The killing was perpetrated for the purpose of escaping
26 detection, apprehension, trial, or punishment for another
27 offense committed by the offender.
- 28 d. The killing was perpetrated against another person for
29 the purpose of preventing the other person from testifying
30 against the offender in a criminal trial.
- 31 e. The killing was perpetrated as a part of a course of
32 conduct by the defendant involving the purposeful killing of,
33 or attempt to kill two or more persons.
- 34 f. The killing was perpetrated while the offender was
35 participating in a crime of first degree sexual abuse, first

1 degree kidnapping, first degree robbery, first degree
2 burglary, or first degree arson.

3 2. Capital murder is a felony punishable either by death
4 or by life imprisonment, as determined pursuant to sections 19
5 through 22 of this Act.

6 Sec. 4. Section 707.2, Code 1991, is amended to read as
7 follows:

8 707.2 MURDER IN THE FIRST DEGREE.

9 A person commits murder in the first degree when the person
10 commits murder which is not capital murder and which is
11 committed under any of the following circumstances:

12 1. The person willfully, deliberately, and with
13 premeditation kills another person.

14 2. The person kills another person while participating in
15 a forcible felony.

16 ~~3.--The-person-kills-another-person-while-escaping-or~~
17 ~~attempting-to-escape-from-lawful-custody-~~

18 4 3. The person intentionally kills a peace officer,
19 correctional officer, public employee, or hostage while the
20 person is imprisoned in a correctional institution under the
21 jurisdiction of the Iowa department of corrections, or in a
22 city or county jail.

23 Murder in the first degree is a class "A" felony.

24 Sec. 5. Section 707.3, unnumbered paragraph 1, Code 1991,
25 is amended to read as follows:

26 A person commits murder in the second degree when the
27 person commits murder which is not capital murder or murder in
28 the first degree.

29 Sec. 6. Section 707.4, unnumbered paragraph 2, Code 1991,
30 is amended to read as follows:

31 Voluntary manslaughter is an included offense under an
32 indictment for capital murder or murder in the first or second
33 degree.

34 Sec. 7. Section 707.5, unnumbered paragraph 1, Code 1991,
35 is amended to read as follows:

1 Involuntary manslaughter as defined in this section is an
2 included offense under an indictment for capital murder or
3 murder in the first or second degree or voluntary
4 manslaughter.

5 Sec. 8. Section 802.1, Code 1991, is amended to read as
6 follows:

7 802.1 MURDER.

8 A prosecution for capital murder or murder in the first or
9 second degree may be commenced at any time after the death of
10 the victim.

11 Sec. 9. Section 811.1, subsections 1 and 2, Code 1991, are
12 amended to read as follows:

13 1. A defendant awaiting judgment of conviction and
14 sentencing following either a plea or verdict of guilty of a
15 class "A" felony, capital murder, murder, felonious assault,
16 sexual abuse in the second degree, sexual abuse in the third
17 degree, kidnapping, robbery in the first degree, arson in the
18 first degree, or burglary in the first degree, or any felony
19 included in section 204.401, subsection 1, paragraph "a".

20 2. A defendant appealing a conviction of a class "A"
21 felony, capital murder, murder, felonious assault, sexual
22 abuse in the second degree, sexual abuse in the third degree,
23 kidnapping, robbery in the first degree, arson in the first
24 degree, or burglary in the first degree, or any felony
25 included in section 204.401, subsection 1, paragraph "a".

26 Sec. 10. Section 811.1, Code 1991, is amended by adding
27 the following new subsection:

28 NEW SUBSECTION. 4. A defendant charged with capital
29 murder, if upon hearing held under the conditions required by
30 section 812.2, the prosecuting attorney establishes by clear
31 and convincing evidence that the release of the defendant from
32 custody is likely to pose a danger of physical harm to another
33 person. The court shall consider all lawfully obtained
34 evidence relevant to the required determination, whether or
35 not the evidence would be admissible at trial, but testimony

1 of the person charged is not admissible at a subsequent trial
2 on the issue of guilt of the offense charged or of any other
3 offense.

4 Sec. 11. NEW SECTION. 814.28 REVIEW OF DEATH SENTENCE.

5 1. In a case in which a sentence of death is imposed, the
6 supreme court shall review the judgment and sentence. The
7 case shall not be transferred to the court of appeals.

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

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

19 a. Whether the trial court committed prejudicial error in
20 admitting or refusing to admit evidence relevant to the issue
21 of whether or not punishment of death should be imposed.

22 b. Whether the special findings returned under section 19,
23 subsection 2 of this Act are supported by the evidence.

24 c. Whether the sentence of death was imposed capriciously
25 or under the influence of prejudice or other arbitrary factor,
26 considering both the circumstances of the crime and the
27 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. 12. NEW SECTION. 902.12 CAPITAL MURDER.

2 If a person is to be sentenced to life imprisonment under
3 section 19, subsection 5 of this Act, nothing in chapters 901
4 through 909, pertaining to deferred judgment, deferred
5 sentence, suspended sentence, or reconsideration of sentence,
6 applies, and the person shall not be released on parole unless
7 the governor commutes the person's sentence to a term of years
8 and shall not otherwise be released from confinement unless
9 the governor pardons the person.

10 Sec. 13. Sections 14 through 17 of this Act are enacted as
11 a new chapter 902A of the Code entitled "Execution of Death
12 Sentence."

13 Sec. 14. NEW SECTION. 902A.1 TIME AND MANNER OF
14 EXECUTION.

15 1. A sentence of death shall be executed pursuant to
16 warrant at any time before the time of sunrise on the day set
17 for the execution by causing to pass through the body of the
18 person a current of electricity of sufficient intensity to
19 cause death, and by the application and continuance of the
20 current through the body of the person until the person is
21 dead.

22 2. The director of the department of corrections shall
23 cause the sentence of death to be executed. The executioner
24 shall be the person appointed by the department of corrections
25 for that purpose.

26 3. The execution shall take place within the confines of
27 the state penitentiary in a room arranged for that purpose.

28 4. The following persons may be present at the execution:
29 The director of the department of corrections or the
30 director's designee, the superintendent of the state
31 penitentiary or a deputy superintendent, the executioner and
32 persons necessary to assist the executioner in conducting the
33 execution, two physicians including the prison physician, the
34 spiritual advisor, if any, of the condemned, the chaplains of
35 the department of corrections, a district judge, the sheriff

1 or a deputy sheriff of the county in which the state
2 penitentiary is situated, and any of the relatives or friends
3 of the condemned person that the condemned person requests,
4 not exceeding five in number.

5 5. Persons other than those specifically designated in
6 subsection 4, or those specifically requested by the defendant
7 under the authority of subsection 4, shall not be present at
8 the execution. Notwithstanding subsection 4, a person shall
9 not be present at an execution if the person is less than
10 eighteen years of age, or if the person is in possession of a
11 device for receiving, transmitting, or recording sounds or
12 pictures.

13 Sec. 15. NEW SECTION. 902A.2 DELAY OF EXECUTION -- NEW
14 WARRANT.

15 1. If the condemned person escapes after sentence and
16 before delivery to the department of corrections and is not
17 rearrested until after the time fixed for execution, any
18 person may arrest and commit the condemned person to the jail
19 of the county in which the condemned person was sentenced.
20 The court by whom the condemned person was sentenced, on
21 receiving notice of the rearrest from the sheriff, shall again
22 appoint a time for the execution, not less than thirty days
23 after the notice of rearrest is received, and shall issue its
24 warrant, and the applicable procedures in section 902A.1 and
25 section 21 of this Act apply.

26 2. If the condemned person escapes after delivery to the
27 department of corrections, and is not rearrested until after
28 the time fixed for execution, any person may arrest and commit
29 the condemned person to the department. The director shall
30 certify the fact of escape and rearrest to the court in which
31 sentence was passed and the court shall appoint a time for the
32 execution which shall not be less than thirty days after the
33 certification of rearrest is received, and shall issue its
34 warrant, and the applicable procedures in section 902A.1 and
35 section 21 of this Act apply.

1 3. If for any other reason execution of the death sentence
2 is delayed beyond the date specified in the warrant of
3 execution, the court which originally sentenced the defendant
4 shall establish a later date for execution, and shall issue
5 its warrant. The date established shall not be more than
6 thirty days after issuance of the warrant.

7 Sec. 16. NEW SECTION. 902A.3 RETURN OF WARRANT.

8 On the arrival of the date set for execution the director
9 of the department of corrections shall cause the sentence of
10 death to be executed. If the person is pardoned or the
11 person's sentence is commuted by the governor before the time
12 for execution arrives, an execution shall not be held. In all
13 cases, the director of the department of corrections shall
14 return the warrant and certificate with a statement of the
15 circumstances and the proceedings endorsed on the statement.
16 In the event of execution the return shall be accompanied by a
17 statement showing what disposition was made of the body.
18 Return shall be made to the clerk of the trial court in which
19 the sentence was entered, who shall record the warrant and
20 return in the docket of the court.

21 Sec. 17. NEW SECTION. 902A.4 DISPOSITION OF BODY.

22 The department of corrections shall adopt rules specifying
23 procedures for the disposition of the body of a person who has
24 been executed.

25 Sec. 18. Rules of criminal procedure, Iowa court rules,
26 second edition, are amended by adding sections 19 through 22
27 of this Act.

28 Sec. 19. NEW RULE. CAPITAL MURDER -- PROCEDURE.

29 1. Upon a finding that a defendant is guilty of capital
30 murder, the court shall conduct a separate sentencing
31 proceeding to determine whether the defendant shall be
32 sentenced to death or to life imprisonment. The proceeding
33 shall be conducted in the trial court before the trial jury,
34 or the court if there is no jury, as soon as practicable. In
35 the proceeding, additional evidence may be presented as to any

1 matter which is relevant to the sentence. The court shall
2 receive when offered any evidence that is required by the
3 rules of criminal procedure. This subsection 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 argument for or against
9 a sentence of death.

10 2. On conclusion of the presentation of the evidence, the
11 court shall submit each of the following issues to the jury:

12 a. Whether the actual conduct of the defendant was
13 committed with the reasonable expectation that the defendant's
14 actions would result in capital murder.

15 b. Whether a probability exists that in the future the
16 defendant would commit criminal acts of violence that would
17 constitute a continuing threat to society.

18 If the case is not tried to a jury, the court shall deter-
19 mine the issues.

20 3. The state must prove each issue in subsection 2 beyond
21 a reasonable doubt, and the jury, or the court if there is no
22 jury, shall return a special verdict of "yes" or "no" on each
23 issue.

24 4. If the case is tried to a jury, the court shall charge
25 the jury that:

26 a. It shall answer any issue "yes" if it agrees
27 unanimously.

28 b. It shall answer any issue "no" if the jurors
29 unanimously agree that the answer is "no" or if the jurors do
30 not unanimously agree that the answer is "yes".

31 5. If the jury, or the court in an action not tried to a
32 jury, returns an affirmative finding on both issues, the court
33 shall sentence the defendant to death. If the jury or the
34 court returns a negative finding on any issue, the court shall
35 sentence the defendant to the custody of the director of the

1 department of corrections for confinement for the rest of the
2 defendant's life.

3 6. Iowa Code chapters 901 through 909 do not apply to a
4 conviction of capital murder if the defendant is sentenced to
5 death.

6 Sec. 20. NEW RULE. AUTOMATIC REVIEW -- STAY OF JUDGMENT.

7 1. A judgment of conviction and sentence of death shall be
8 reviewed automatically in the manner provided in Iowa Code
9 section 814.28, and the Iowa supreme court has exclusive
10 jurisdiction of the review.

11 2. Upon entry of judgment and sentence of death, the trial
12 court shall prepare a complete record and transcript of the
13 action in the manner provided in the rules of criminal
14 procedure and shall docket the record and transcript with the
15 clerk of the supreme court.

16 3. The judgment and sentence of the trial court is stayed
17 as a matter of law from the time of its entry until the
18 judgment of the supreme court is certified to and entered by
19 the trial court. Upon entry of a judgment of the supreme
20 court which affirms the conviction and sentence, the stay of
21 the judgment and sentence terminates as a matter of law.

22 Sec. 21. NEW RULE. ISSUANCE OF WARRANT.

23 1. Upon entry by the trial court of the judgment of the
24 supreme court affirming a judgment and sentence of death, a
25 district judge shall within five days of the entry issue a
26 warrant under the seal of the court for the execution of the
27 sentence of death. The warrant shall specifically set forth
28 the offense and the fact of conviction, shall state the
29 judgment and sentence of the court, shall state that the
30 judgment and sentence were affirmed by the supreme court and
31 the date of entry of judgment of the supreme court in the
32 trial court, and shall specify the date fixed for execution of
33 the defendant which shall be not less than fifty nor more than
34 sixty days after the date of entry in the trial court of the
35 judgment of the supreme court affirming the judgment and

1 sentence of death. The warrant shall be directed to the
2 director of the department of corrections commanding the
3 director to cause the warrant to be executed on the date
4 specified. The trial court shall deliver the warrant to the
5 sheriff of the county in which judgment of conviction was
6 entered and the sheriff shall deliver the warrant and the
7 defendant to the custody of the department of corrections for
8 confinement in the state penitentiary. The director of the
9 department of corrections shall acknowledge receipt of the
10 warrant and the defendant, and the sheriff shall return the
11 acknowledgment to the office of the clerk of the trial court
12 from which the warrant was issued.

13 2. Immediately after issuance of a warrant ordering a
14 sentence of death, the clerk of the trial court issuing the
15 warrant shall transmit by mail to the governor a copy of the
16 indictment, the plea, the verdict and special findings, the
17 affirmation of judgment and sentence by the supreme court, and
18 the complete transcript of the trial court.

19 Sec. 22. NEW RULE. EVIDENCE AT SENTENCING IN CAPITAL
20 MURDER CASES.

21 1. In a proceeding to determine whether the sentence shall
22 be death or life imprisonment, evidence may be presented as to
23 any matter which the trial court deems relevant to sentence,
24 including but not limited to the nature, circumstances, and
25 manner of completion of the murder, and the defendant's
26 character, background, history, and mental and physical
27 condition.

28 2. If offered by the defendant, the trial court shall
29 admit any relevant evidence respecting any of the following
30 mitigating circumstances:

31 a. The defendant has no significant history of prior
32 criminal activity.

33 b. The victim was a participant in the defendant's capital
34 conduct or consented to the capital act.

35 c. The capital act was committed under circumstances which

1 the defendant believed provided a moral justification or
2 extenuation for the defendant's conduct.

3 d. The defendant was an accomplice in a capital act
4 committed by another person and the defendant's participation
5 in the capital act was relatively minor.

6 e. The youth of the defendant at the time of the capital
7 act.

8 Sec. 23. APPLICABILITY. This Act applies to offenses
9 committed on or after the effective date of this Act.

10 EXPLANATION

11 This bill amends the Iowa criminal code to provide for
12 punishment by death for willful, deliberate, and premeditated
13 murder committed under specified circumstances if the trial
14 jury, or the judge if there is no jury, makes specific
15 affirmative findings respecting the nature of the act of
16 murder and the characteristics of the defendant in a separate
17 sentencing proceeding held at the close of the trial. The
18 death penalty sentence would be reviewed automatically by the
19 supreme court. If affirmed by the supreme court, the penalty
20 would be accomplished at the state penitentiary by
21 electrocution. If the jury fails to agree unanimously on the
22 required affirmative findings or if the supreme court
23 determines that error was committed in the sentencing
24 proceeding, the penalty would be life imprisonment. The bill
25 applies to offenses committed on or after its effective date.

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