

# House Amendment 3109

## Amendment Text

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1 1 Amend [House File 2](#) as follows:  
1 2 #1. By striking everything after the enacting  
1 3 clause and inserting the following:  
1 4 "Section 1. Section [13B.4](#), Code 1995, is amended  
1 5 by adding the following new subsection:  
1 6 NEW SUBSECTION. 6A. The state public defender  
1 7 shall perform all of the following duties with respect  
1 8 to the appointment of counsel for indigent persons in  
1 9 cases in which a sentence of death may be or is to be  
1 10 imposed:  
1 11 a. Provide or contract with attorneys for  
1 12 appointment as lead counsel and co-counsel to provide  
1 13 legal services in cases where a person is charged with  
1 14 murder in the first degree and the state has given  
1 15 notice of intent to seek the death penalty or in cases  
1 16 in which a sentence of death is to be imposed.  
1 17 b. Conduct or sponsor specialized training  
1 18 programs for attorneys representing persons who may be  
1 19 executed.  
1 20 Sec. 2. NEW SECTION. 13D.1 QUALIFICATIONS OF  
1 21 COUNSEL IN DEATH PENALTY CASES.  
1 22 The supreme court shall prescribe rules which  
1 23 establish minimum standards and procedures by which  
1 24 attorneys may become qualified to provide legal  
1 25 services as lead counsel in cases in which a sentence  
1 26 of death may be or is to be imposed.  
1 27 Sec. 3. NEW SECTION. 812A.1 PROCEDURE TO  
1 28 DETERMINE SANITY OF CONDEMNED INMATE.  
1 29 1. At any time prior to execution of an inmate  
1 30 under section 902.1, if the director of the department  
1 31 of corrections or the counsel for a person who is  
1 32 under a sentence of execution has cause to believe  
1 33 that the inmate is suffering from such a diseased or  
1 34 deranged condition of the mind as to prevent the  
1 35 defendant from knowing the nature and quality of the  
1 36 act the defendant has been convicted of, or from  
1 37 understanding that trial on the offense has taken  
1 38 place and that execution proceedings are about to take  
1 39 place, or otherwise causes the defendant to lack the  
1 40 capacity to understand the sentence which has been  
1 41 imposed and to participate in any legal proceedings  
1 42 relating to the sentence, the director or counsel may  
1 43 file a request with the court that issued the warrant  
1 44 for execution for a determination of the inmate's  
1 45 sanity. If the district court determines that there  
1 46 is not sufficient reason to believe that the inmate is  
1 47 insane, the court shall enter an order denying the  
1 48 request and shall state the grounds for denying the  
1 49 request. If the court believes that there is  
1 50 sufficient reason to believe that the inmate is  
2 1 insane, the court shall suspend the execution and  
2 2 conduct a hearing to determine the sanity of the  
2 3 inmate.  
2 4 2. At the hearing, the court shall determine the  
2 5 issue of the inmate's sanity. The court shall order a  
2 6 psychiatric or psychological examination of the  
2 7 inmate. For that purpose, the court shall appoint two

2 8 licensed physicians or licensed psychologists, or one  
2 9 licensed physician and one licensed psychologist, who  
2 10 are qualified by training and practice to make such an  
2 11 examination and to examine the inmate and report any  
2 12 findings in writing to the court within ten days after  
2 13 the order of examination is issued. The inmate shall  
2 14 have the right to present evidence and cross-examine  
2 15 any witnesses at the hearing. Any statement made by  
2 16 the inmate during the course of any examination  
2 17 provided for in this section, whether or not the  
2 18 inmate consents to the examination, shall not be  
2 19 admitted into evidence against the convict in any  
2 20 criminal proceeding.

2 21 3. If, at the conclusion of a hearing held  
2 22 pursuant to this section, the court determines that  
2 23 the inmate is sane, the court shall enter an order  
2 24 setting a date for the convict's execution, which  
2 25 shall be carried into effect in the same manner as  
2 26 provided in the original sentence. A copy of the  
2 27 order shall be sent to the director of the department  
2 28 of corrections and the governor.

2 29 4. If, at the conclusion of a hearing held  
2 30 pursuant to this section, the court determines that  
2 31 the convict is insane, the court shall suspend the  
2 32 execution until further order. At any time after  
2 33 issuance of the order, if the court has sufficient  
2 34 reason to believe that the inmate has become sane, the  
2 35 court shall again determine the sanity of the inmate  
2 36 as provided by this section. Proceedings pursuant to  
2 37 this section may continue to be held at such times as  
2 38 the court orders until it is either determined that  
2 39 the inmate is sane or incurably insane.

2 40 Sec. 4. NEW SECTION. 814.28 REVIEW OF DEATH  
2 41 SENTENCE.

2 42 1. In a case in which a sentence of death is  
2 43 imposed, the supreme court shall automatically review  
2 44 the judgment and sentence. The court's review of the  
2 45 case shall be de novo. The case shall not be  
2 46 transferred to the court of appeals.

2 47 2. A review by the supreme court of a judgment and  
2 48 sentence imposing the punishment of death has priority  
2 49 over all other criminal and other actions pending  
2 50 before the supreme court.

3 1 3. The supreme court shall review the trial and  
3 2 judgment, and separately shall review the sentencing  
3 3 proceeding. Upon determining that errors did not  
3 4 occur at the trial requiring reversal or modification  
3 5 of the judgment, the supreme court shall proceed to  
3 6 determine if the sentence of death is lawfully  
3 7 imposed. In its review of the sentencing proceeding  
3 8 the supreme court shall determine all of the  
3 9 following:

3 10 a. Whether the sentence of death was imposed  
3 11 capriciously or under the influence of prejudice or  
3 12 other arbitrary factor.

3 13 b. Whether the special verdicts returned under  
3 14 section 901.11 are supported by the evidence.

3 15 c. Whether the sentence of death is excessive or  
3 16 disproportionate to the penalty imposed in similar  
3 17 cases, considering both the crime and the defendant.

3 18 4. If the supreme court determines that the  
3 19 sentence of death was not lawfully imposed, the court  
3 20 shall set aside the sentence and shall remand the case  
3 21 to the trial court for imposition of a sentence of  
3 22 life imprisonment.

3 23 5. If the supreme court affirms the judgment and  
3 24 sentence of death, the clerk of the supreme court

3 25 shall certify the judgment of the supreme court under  
3 26 the seal of the court to the clerk of the trial court.

3 27 Sec. 5. Section [815.10](#), Code 1995, is amended by  
3 28 adding the following new subsection:

3 29 NEW SUBSECTION. 1A. The court shall appoint for  
3 30 each indigent person who is charged with murder in the  
3 31 first degree and in which a notice of intent to seek  
3 32 the death penalty has been filed two attorneys to  
3 33 represent the person in the murder proceedings and in  
3 34 all state legal proceedings which take place from the  
3 35 time the person is arraigned until the time of  
3 36 sentencing on the charge. Only private attorneys and  
3 37 public defenders who are qualified for representation  
3 38 in cases in which the death penalty may be imposed are  
3 39 eligible for appointment or assignment to a case in  
3 40 which the death penalty may be imposed.

3 41 Sec. 6. NEW SECTION. 901.11 MURDER PROCEEDINGS  
3 42 &ndash; REQUEST FOR DEATH PENALTY &ndash; PENALTY PROCEEDINGS.

3 43 1. If a notice of intent to seek the death penalty  
3 44 has been filed, objections to the imposition of the  
3 45 death penalty based upon allegations that a defendant  
3 46 was mentally retarded at the time of the commission of  
3 47 the offense shall be raised within the time provided  
3 48 for the filing of pretrial motions under rule of  
3 49 criminal procedure 10, Iowa court rules, third  
3 50 edition. The court may, for good cause shown, allow  
4 1 late filing of the motion. Hearing on the motion  
4 2 shall be held prior to trial and the burden of proof  
4 3 shall be on the defendant to prove mental retardation  
4 4 by a preponderance of the evidence. However, a  
4 5 rebuttable presumption of mental retardation arises if  
4 6 a defendant has an intelligence quotient of seventy or  
4 7 below. A finding of the court that the evidence  
4 8 presented by the defendant at the hearing does not  
4 9 preclude the imposition of the death penalty under  
4 10 this section and section 902.12 shall not preclude the  
4 11 introduction of evidence of mental retardation during  
4 12 the penalty proceeding. If the court finds that  
4 13 evidence of mental retardation does not preclude  
4 14 imposition of the death penalty, evidence of mental  
4 15 retardation may be reviewed by the jury in the penalty  
4 16 proceeding and the jury shall not be informed of the  
4 17 finding in the initial proceeding at any time during  
4 18 the penalty proceeding.

4 19 2. If at the trial of a charge of murder in the  
4 20 first degree, the state intends to request that the  
4 21 death penalty be imposed under section 902.1,  
4 22 subsection 2, the prosecutor shall file a notice of  
4 23 intent to seek the death penalty, listing the factors  
4 24 enumerated under section 902.12 that the state intends  
4 25 to establish in support of imposition of the death  
4 26 penalty, at the time of and as part of the information  
4 27 or indictment filed in the case.

4 28 3. If a notice of intent to seek the death penalty  
4 29 has been filed, the trial shall be conducted in  
4 30 bifurcated proceedings before the same trier of fact.  
4 31 During the initial proceeding, the jury, or the court,  
4 32 if the defendant waives the right to a jury trial,  
4 33 shall decide only whether the defendant is guilty or  
4 34 not guilty of murder in the first degree.

4 35 a. If, in the initial proceeding, the court or  
4 36 jury finds the defendant guilty of, or the defendant  
4 37 pleads guilty to, an offense other than murder in the  
4 38 first degree, the court shall sentence the defendant  
4 39 in accordance with the sentencing procedures set forth  
4 40 in rule of criminal procedure 22, Iowa court rules,  
4 41 third edition, and chapters 901 through 909, which are

4 42 applicable to the offense.

4 43 b. If the court or jury finds the defendant guilty  
4 44 of, or the defendant pleads guilty to, murder in the  
4 45 first degree, but the prosecuting attorney waives the  
4 46 death penalty, the court shall sentence the defendant  
4 47 to life imprisonment in accordance with the sentencing  
4 48 procedures set forth in rule of criminal procedure 22,  
4 49 Iowa court rules, third edition, and chapters 901  
4 50 through 909, which are applicable to convictions of  
5 1 murder in the first degree.

5 2 c. If the court or jury finds the defendant guilty  
5 3 of murder in the first degree, or a defendant enters a  
5 4 plea of guilty in the initial proceeding, and the  
5 5 prosecuting attorney does not waive imposition of the  
5 6 death penalty, a penalty proceeding shall be held in  
5 7 the manner provided in subsections 4 through 9.

5 8 4. No sooner than twenty-four hours after a  
5 9 verdict of guilty or a plea of guilty to the charge of  
5 10 murder in the first degree is returned in the initial  
5 11 proceeding, a penalty proceeding shall be held to  
5 12 determine whether the defendant shall be sentenced to  
5 13 death or to life imprisonment. The proceeding shall  
5 14 be conducted in the trial court before the trial jury,  
5 15 or the court if the defendant has waived the right to  
5 16 a jury trial. In the proceeding, evidence relevant to  
5 17 the existence of any aggravating or mitigating  
5 18 circumstances may be presented as follows:

5 19 a. The state or the defendant may present evidence  
5 20 relevant to any of the factors enumerated in section  
5 21 902.12 and any aggravating circumstances other than  
5 22 juvenile delinquency adjudications for offenses which  
5 23 carry penalties equivalent to the penalties imposed  
5 24 for simple or serious misdemeanors. The state shall  
5 25 be required to prove the existence of any of the  
5 26 factors enumerated in section 902.12 beyond a  
5 27 reasonable doubt.

5 28 b. The defendant may present evidence that the  
5 29 defendant was mentally retarded at the time of the  
5 30 commission of the offense. The burden of proof shall  
5 31 be on the defendant to prove mental retardation by a  
5 32 preponderance of the evidence. However, a rebuttable  
5 33 presumption of mental retardation arises if a  
5 34 defendant has an intelligence quotient of seventy or  
5 35 below.

5 36 c. The state or the defendant may present evidence  
5 37 relevant to any mitigating circumstances which may  
5 38 exist. Mitigating circumstances may include the  
5 39 following circumstances:

5 40 (1) The defendant was under the influence of an  
5 41 extreme mental or emotional disturbance insufficient  
5 42 to constitute a defense.

5 43 (2) The victim solicited, participated in, or  
5 44 consented to the conduct which resulted in the  
5 45 victim's death.

5 46 (3) The age of the defendant at the time of the  
5 47 murder.

5 48 (4) The defendant's capacity to appreciate the  
5 49 wrongfulness of the defendant's conduct and to conform  
5 50 that conduct to the requirements of law was  
6 1 significantly impaired as a result of a mental disease  
6 2 or defect or mental retardation, but not to a degree  
6 3 sufficient to constitute a defense.

6 4 (5) The defendant has no significant history of  
6 5 prior adult criminal activity or prior juvenile  
6 6 criminal activity involving offenses which carry  
6 7 penalties equivalent to the penalties imposed for  
6 8 aggravated misdemeanors or felonies.

6 9 (6) The defendant acted under extreme duress or  
6 10 under the substantial domination of another person.

6 11 (7) The defendant did not directly commit the  
6 12 murder and the defendant did not intend to kill or  
6 13 anticipate that lethal force would be used.

6 14 (8) Any other factor which is relevant to the  
6 15 defendant's character or record or to the  
6 16 circumstances of the offense.

6 17 (9) The defendant rendered substantial assistance  
6 18 to the state in the prosecution of another person for  
6 19 the crime of murder.

6 20 d. The state and the defendant or the defendant's  
6 21 counsel shall be permitted to present and cross-  
6 22 examine witnesses and present arguments for or against  
6 23 a sentence of death. The court shall receive any  
6 24 evidence offered that is required to be presented  
6 25 under the rules of criminal procedure. The admission  
6 26 of evidence in support of the existence of a factor  
6 27 enumerated in section 902.12 shall be governed by the  
6 28 rules governing admissibility of evidence at a  
6 29 criminal trial. Evidence regarding aggravating and  
6 30 mitigating circumstances shall not be governed by the  
6 31 rules governing admissibility of evidence, except that  
6 32 introduction of evidence secured in violation of the  
6 33 Constitution of the United States or of the  
6 34 Constitution of the State of Iowa shall not be  
6 35 permitted.

6 36 5. At the conclusion of presentation of evidence  
6 37 in the penalty proceeding, the following issues shall  
6 38 be determined by the jury or the court, if there is no  
6 39 jury:

6 40 a. Whether one or more of the factors enumerated  
6 41 in section 902.12 have been established beyond a  
6 42 reasonable doubt.

6 43 b. If one or more aggravating circumstances are  
6 44 established, whether the aggravating circumstance or  
6 45 circumstances outweigh any one or more mitigating  
6 46 circumstances.

6 47 c. Whether the defendant shall be sentenced to  
6 48 death.

6 49 6. A recommendation for a sentence of death shall  
6 50 not be permitted if the recommendation is based on the  
7 1 race, color, religious beliefs, national origin, or  
7 2 sex of the defendant or the victim. After submission  
7 3 of the issues, but prior to the return of a finding in  
7 4 the penalty proceeding, if the matter is tried before  
7 5 a jury, the court shall instruct the jury that in  
7 6 considering whether a sentence of death is justified,  
7 7 it shall not consider race, color, religious beliefs,  
7 8 national origin, or sex of the defendant or of any  
7 9 victim. The court shall further instruct the jury  
7 10 that it shall not return a sentence of death unless it  
7 11 concludes that such a sentence would be recommended no  
7 12 matter what the race, color, religious beliefs,  
7 13 national origin, or sex of the defendant or victim may  
7 14 be.

7 15 7. If the jury, or the court if there is no jury,  
7 16 returns a unanimous affirmative finding on each of the  
7 17 issues submitted under subsection 5, paragraphs "a",  
7 18 "b", and "c", the court shall enter a judgment of  
7 19 conviction and shall sentence the defendant to death  
7 20 as provided in section 902.1, subsection 2.

7 21 8. However, if evidence that the defendant did not  
7 22 directly commit the murder and the defendant did not  
7 23 intend to kill or anticipate that lethal force would  
7 24 be used is presented to the jury, or the court, if  
7 25 there is no jury, the jury or the court shall return a

7 26 special verdict on the issue. If the jury unanimously  
7 27 determines, or the court, if there is no jury, finds  
7 28 that a preponderance of evidence exists that shows  
7 29 that the defendant did not directly commit the murder  
7 30 and the defendant did not intend to kill or anticipate  
7 31 that lethal force would be used, the court shall enter  
7 32 a judgment of conviction and shall sentence the  
7 33 defendant to life imprisonment as provided in section  
7 34 902.1, subsection 1, even if the jury or the court  
7 35 returns unanimous affirmative findings on each of the  
7 36 issues submitted under subsection 5.

7 37 9. If the jury, or the court, if there is no jury,  
7 38 returns a negative finding on any of the issues  
7 39 submitted under subsection 5, paragraphs "a", "b", and  
7 40 "c", the court shall enter a judgment of conviction  
7 41 and shall sentence the defendant to life imprisonment  
7 42 as provided in section 902.1, subsection 1.

7 43 10. This section shall not apply to a defendant  
7 44 who was under the age of eighteen at the time the  
7 45 offense was committed.

7 46 Sec. 7. Section [902.1](#), Code 1995, is amended to  
7 47 read as follows:

7 48 902.1 CLASS "A" FELONY.

7 49 1.

~~Upon~~

~~Except as otherwise provided in subsection~~

7 50 2. upon a plea of guilty, a verdict of guilty, or a  
8 1 special verdict upon which a judgment of conviction of  
8 2 a class "A" felony may be rendered, the court shall  
8 3 enter a judgment of conviction and shall commit the  
8 4 defendant into the custody of the director of the Iowa  
8 5 department of corrections for the rest of the  
8 6 defendant's life. Nothing in the Iowa corrections  
8 7 code pertaining to deferred judgment, deferred  
8 8 sentence, suspended sentence, or reconsideration of  
8 9 sentence applies to a sentence of life imprisonment  
8 10 for a class "A" felony, and a person convicted of a  
8 11 class "A" felony and sentenced to life imprisonment  
8 12 shall not be released on parole unless the governor  
8 13 commutes the sentence to a term of years.

8 14 2. Upon return of a plea or verdict of guilty to  
8 15 the offense of murder in the first degree under  
8 16 section 707.2 and a return of a verdict in favor of a  
8 17 sentence of death in a penalty proceeding conducted as  
8 18 provided in section 901.11, the court shall enter a  
8 19 judgment of conviction and shall commit the defendant  
8 20 into the custody of the director of the Iowa  
8 21 department of corrections. The sentence shall be  
8 22 carried out by the administration of a lethal  
8 23 injection pursuant to rules adopted by the board of  
8 24 corrections. If a defendant, for whom a warrant of  
8 25 execution is issued, is pregnant, the execution shall  
8 26 not take place until after the defendant is no longer  
8 27 pregnant. If a defendant, for whom a warrant of  
8 28 execution is issued, is suffering from such a diseased  
8 29 or deranged condition of the mind as to prevent the  
8 30 defendant from knowing the nature and quality of the  
8 31 act the defendant has been convicted of, or from  
8 32 understanding that trial on the offense has taken  
8 33 place and that execution proceedings are about to take  
8 34 place, or otherwise causes the defendant to lack the  
8 35 capacity, to understand the sentence which has been  
8 36 imposed and to participate in any legal proceedings  
8 37 relating to the sentence the execution shall not take  
8 38 place until after the defendant's capacity is  
8 39 restored. If the director of the department of

8 40 corrections or the defendant's counsel files a request  
8 41 with the court which issued the warrant of execution,  
8 42 alleging that the defendant suffers from such a  
8 43 diseased or deranged condition, a hearing on the  
8 44 matter shall be held in the manner provided in section  
8 45 812A.1. If a defendant was under the age of eighteen  
8 46 at the time the offense was committed, the defendant  
8 47 shall be sentenced as provided in subsection 1. For  
8 48 the purposes of this section, "lethal injection" means  
8 49 a continuous intravenous injection of a lethal  
8 50 quantity of sodium thiopental or other equally or more  
9 1 effective substance sufficient to cause death.

9 2 Sec. 8. Section [902.2](#), Code 1995, is amended to  
9 3 read as follows:

9 4 902.2 RECORD OF CLASS "A" FELON REVIEWED.

9 5 The board shall interview a class "A" felon who has  
9 6 been sentenced to life imprisonment within five years  
9 7 of the felon's confinement and regularly thereafter.  
9 8 If, in the opinion of the board, the person should be  
9 9 considered for release on parole, the board shall  
9 10 recommend to the governor that the person's sentence  
9 11 be commuted to a term of years. If the person's  
9 12 sentence is so commuted, the person shall be eligible  
9 13 for parole as provided in chapter 906.

9 14 Sec. 9. NEW SECTION. 902.12 FIRST DEGREE MURDER  
9 15 &dash; ADDITIONAL FACTORS.

9 16 A person who commits murder in the first degree,  
9 17 who is not mentally retarded, and who is age eighteen  
9 18 or older at the time the offense is committed, shall  
9 19 be eligible for a sentence of death under section  
9 20 902.1, subsection 2, if one or more of the following  
9 21 factors have been established:

9 22 1. The person has been previously convicted of a  
9 23 class "A" felony in this state or a criminal offense  
9 24 in any other state which would constitute a class "A"  
9 25 felony under section 707.2, 709.2, or 710.2 if  
9 26 committed in this state. For purposes of this  
9 27 section, a conviction which occurs prior to the filing  
9 28 of an indictment or information for murder in the  
9 29 first degree shall be considered to be a previous  
9 30 conviction. An adjudication of delinquency does not  
9 31 constitute a conviction for purposes of this  
9 32 subsection.

9 33 2. The person is convicted, during the course of  
9 34 the same trial in which the defendant is convicted of  
9 35 murder in the first degree, of committing another  
9 36 class "A" felony under section 707.2, 709.2, or 710.2.

9 37 3. The victim was a witness to a crime and the  
9 38 murder is for the purpose of preventing the victim  
9 39 from testifying in any criminal proceeding and the  
9 40 murder was not committed during the commission of the  
9 41 crime that the victim witnessed, or the victim was a  
9 42 witness to a crime and the murder is in retaliation  
9 43 for the victim's testimony in any criminal proceeding.

9 44 4. The victim was a prosecutor or former  
9 45 prosecutor, as defined in section 801.4, subsection  
9 46 12, or was a prosecutor or former prosecutor for any  
9 47 federal prosecutor's office, and the murder is in  
9 48 retaliation for or to prevent the victim from carrying  
9 49 out the victim's official duties.

9 50 5. The victim was a judicial officer as defined  
10 1 under section 602.1101, subsection 8, or a former  
10 2 judicial officer of any court of record in this state  
10 3 or any other state and the murder is in retaliation  
10 4 for or to prevent the victim from carrying out the  
10 5 victim's official duties.

10 6 6. The victim was an employee of an institution or

10 7 facility under the control of the department of  
10 8 corrections or a judicial district department of  
10 9 correctional services or of a city or county jail who  
10 10 was performing the victim's official duties.

10 11 7. The victim was under the age of twelve years  
10 12 and the death results from exceptionally brutal or  
10 13 heinous behavior indicative of wanton cruelty.

10 14 For purposes of this section, "mentally retarded"  
10 15 means significant subaverage general intellectual  
10 16 functioning accompanied by significant deficits or  
10 17 impairments in adaptive functioning manifested in the  
10 18 developmental period, but no later than the age of  
10 19 eighteen years, and accompanied by deficits in  
10 20 adaptive behavior.

10 21 Sec. 10. NEW SECTION. 902.13 DATA COLLECTION FOR  
10 22 DEATH PENALTY.

10 23 1. The supreme court shall collect data on all  
10 24 murder charges in which the death penalty is or was  
10 25 not waived, which are filed and processed in the  
10 26 courts in this state. This data may be used by the  
10 27 supreme court to determine whether death sentences  
10 28 imposed are excessive or disproportionate, or under  
10 29 the influence of prejudice as a result of racial  
10 30 discrimination under section 814.28. The court shall  
10 31 make this data available to litigants in death penalty  
10 32 cases.

10 33 2. Data collected by public officials concerning  
10 34 factors relevant to the imposition of the death  
10 35 sentence shall be made publicly available.

10 36 Sec. 11. NEW SECTION. 903B.1 EXECUTIONS &ndash;  
10 37 REFUSAL TO PERFORM.

10 38 An employee of the state who may lawfully perform,  
10 39 assist, or participate in the execution of a person  
10 40 pursuant to section 902.1, and rules adopted by the  
10 41 department of corrections, shall not be required to  
10 42 perform, assist, or participate in the execution.  
10 43 State employees who refuse to perform, assist, or  
10 44 participate in the execution of a person shall not be  
10 45 discriminated against in any way, including, but not  
10 46 limited to, employment, promotion, advancement,  
10 47 transfer, licensing, education, training, or the  
10 48 granting of any privileges or appointments because of  
10 49 the refusal to perform, assist, or participate in the  
10 50 execution.

11 1 Sec. 12. Section [904.105](#), Code 1995, is amended by  
11 2 adding the following new subsection:

11 3 NEW SUBSECTION. 9A. Adopt rules pursuant to  
11 4 chapter 17A pertaining to executions of persons  
11 5 convicted of murder in the first degree. Rules  
11 6 adopted shall include, but are not limited to, rules  
11 7 permitting the witnessing of executions by members of  
11 8 the public. Invitations to witness an execution shall  
11 9 at least be extended to the following representatives  
11 10 of the news media:

11 11 a. A representative from a wire service serving  
11 12 Iowa.

11 13 b. A representative from a broadcasting network  
11 14 serving Iowa.

11 15 c. A representative from a television station  
11 16 located in Iowa.

11 17 d. A representative from a radio station located  
11 18 in Iowa.

11 19 e. A representative from a daily newspaper  
11 20 published in Iowa.

11 21 f. A representative from a weekly newspaper  
11 22 published in Iowa.

11 23 g. A representative from the news media from the



11 24 community in which the condemned person resided, if  
11 25 that community is located in Iowa.

11 26 Sec. 13. Rules of criminal procedure, Iowa court  
11 27 rules, third edition, are amended by adding sections  
11 28 14 through 17 of this Act.

11 29 Sec. 14. NEW RULE. MURDER IN THE FIRST DEGREE &ndash;  
11 30 PROCEDURE.

11 31 1. If a notice of intent to seek the death penalty  
11 32 has been filed, objections to the imposition of the  
11 33 death penalty based upon allegations that a defendant  
11 34 was mentally retarded at the time of the commission of  
11 35 the offense shall be raised within the time provided  
11 36 for the filing of pretrial motions under R.Cr.P. 10,  
11 37 Iowa court rules, third edition. The court may, for  
11 38 good cause shown, allow late filing of the motion.  
11 39 Hearing on the motion shall be held prior to trial and  
11 40 the burden of proof shall be on the defendant to prove  
11 41 mental retardation by a preponderance of the evidence.  
11 42 However, a rebuttable presumption of mental  
11 43 retardation arises if a defendant has an intelligence  
11 44 quotient of seventy or below. A finding of the court  
11 45 that the evidence presented by the defendant at the  
11 46 hearing does not preclude the imposition of the death  
11 47 penalty under this section and section 902.12 shall  
11 48 not preclude the introduction of evidence of mental  
11 49 retardation during the penalty proceeding. If the  
11 50 court finds that the evidence presented by the  
12 1 defendant does not preclude the imposition of the  
12 2 death penalty, evidence of mental retardation may be  
12 3 reviewed by the jury during the penalty proceeding and  
12 4 the jury shall not be informed of the finding in the  
12 5 initial proceeding at any time during the penalty  
12 6 proceeding.

12 7 2. Upon a finding or plea that a defendant is  
12 8 guilty of murder in the first degree in an initial  
12 9 proceeding, if a notice of intent to seek the death  
12 10 penalty has been filed and has not been waived, the  
12 11 court shall conduct a separate penalty proceeding to  
12 12 determine whether the defendant shall be sentenced to  
12 13 death or to life imprisonment. The proceeding shall  
12 14 be conducted in the trial court before the trial jury,  
12 15 or the court, if there is no jury, no sooner than  
12 16 twenty-four hours after the return of the verdict or  
12 17 plea in the initial proceeding. In the proceeding,  
12 18 additional evidence may be presented as to any factor  
12 19 enumerated in Iowa Code section 902.12 or any  
12 20 aggravating or mitigating circumstance which may  
12 21 exist. Evidence presented which is relevant to the  
12 22 existence of a factor enumerated in Iowa Code section  
12 23 902.12 shall be subject to the rules of evidence.  
12 24 Presentation of evidence which is relevant to the  
12 25 existence of an aggravating or mitigating circumstance  
12 26 shall not be bound by the rules of evidence. This  
12 27 subsection does not authorize the introduction of any  
12 28 evidence secured in violation of the Constitution of  
12 29 the United States or of the Constitution of the State  
12 30 of Iowa. The state and the defendant or the  
12 31 defendant's counsel shall be permitted to cross-  
12 32 examine witnesses and to present argument for or  
12 33 against a sentence of death.

12 34 3. On conclusion of the presentation of the  
12 35 evidence, the court shall submit each of the following  
12 36 issues to the jury:

12 37 a. Whether one or more of the factors enumerated  
12 38 in Iowa Code section 902.12 have been proven.

12 39 b. If one or more aggravating circumstances have  
12 40 been established, whether one or more of those

12 41 circumstances outweigh any one or more mitigating  
12 42 circumstances.

12 43 c. Whether the defendant shall be sentenced to  
12 44 death.

12 45 If the case is not tried to a jury, the court shall  
12 46 determine the issues.

12 47 4. The state must prove the issue in subsection 3,  
12 48 paragraph "a" beyond a reasonable doubt, and the jury,  
12 49 or the court if there is no jury, shall return a  
12 50 special verdict of "yes" or "no" on each issue.

13 1 5. If the case is tried to a jury, the court shall  
13 2 charge the jury that:

13 3 a. It shall answer any issue "yes" if it agrees  
13 4 unanimously.

13 5 b. It shall answer any issue "no" if the jurors  
13 6 unanimously agree that the answer is "no" or if the  
13 7 jurors do not unanimously agree that the answer is  
13 8 "yes".

13 9 6. If the jury, or the court, if there is no jury,  
13 10 returns an affirmative finding on all applicable  
13 11 issues, the court shall sentence the defendant to  
13 12 death. If the jury or the court returns a negative  
13 13 finding on any applicable issue, the court shall  
13 14 sentence the defendant to the custody of the director  
13 15 of the department of corrections for confinement for  
13 16 the rest of the defendant's life.

13 17 7. However, if evidence that the defendant did not  
13 18 directly commit the murder and the defendant did not  
13 19 intend to kill or anticipate that lethal force would  
13 20 be used is presented to the jury, or the court if  
13 21 there is no jury, the jury or the court shall return a  
13 22 special verdict on the issue. If the jury unanimously  
13 23 determines, or the court, if there is no jury, finds  
13 24 that a preponderance of evidence exists that shows  
13 25 that the defendant did not directly commit the murder  
13 26 and the defendant did not intend to kill or anticipate  
13 27 that lethal force would be used, the court shall enter  
13 28 a judgment of conviction and shall sentence the  
13 29 defendant to life imprisonment as provided in section  
13 30 902.1, subsection 1, even if the jury or the court  
13 31 returns unanimous affirmative findings on each of the  
13 32 issues submitted under subsection 3.

13 33 8. Provisions relating to deferred judgment,  
13 34 deferred sentence, suspended sentence, reconsideration  
13 35 of sentence, probation, parole, or work release  
13 36 contained in Iowa Code chapters 901 through 909 do not  
13 37 apply to a conviction of murder in the first degree if  
13 38 the defendant is sentenced to death.

13 39 Sec. 15. NEW RULE. AUTOMATIC REVIEW &ndash; STAY OF  
13 40 EXECUTION OF JUDGMENT.

13 41 1. A judgment of conviction and sentence of death  
13 42 shall be reviewed automatically in the manner provided  
13 43 in Iowa Code section 814.28, and the Iowa supreme  
13 44 court has exclusive jurisdiction of the review.

13 45 2. Upon entry of judgment and sentence of death,  
13 46 the trial court shall prepare a complete record and  
13 47 transcript of the action in the manner provided in the  
13 48 rules of criminal procedure and shall docket the  
13 49 record and transcript with the clerk of the supreme  
13 50 court.

14 1 3. The execution of judgment of the trial court is  
14 2 stayed as a matter of law from the time of its entry  
14 3 until the judgment of the supreme court is certified  
14 4 to and entered by the trial court. Upon entry of a  
14 5 judgment of the supreme court which affirms the  
14 6 conviction and sentence, the stay of execution of  
14 7 judgment terminates as a matter of law.

14 8 4. All court costs required due to the automatic  
14 9 preparation of the record and transcript, docketing  
14 10 with the supreme court, and stay of execution of  
14 11 judgment shall be assessed to the state.

14 12 Sec. 16. NEW RULE. ISSUANCE OF WARRANT.

14 13 1. Upon entry by the trial court of the judgment  
14 14 of the supreme court affirming a judgment and sentence  
14 15 of death, a district judge shall within five days of  
14 16 the entry issue a warrant under the seal of the court  
14 17 for the execution of the sentence of death. The  
14 18 warrant shall specifically set forth the offense and  
14 19 the fact of conviction, shall state the judgment and  
14 20 sentence of the court, shall state that the judgment  
14 21 and sentence were affirmed by the supreme court and  
14 22 the date of entry of judgment of the supreme court in  
14 23 the trial court, and shall, subject to the  
14 24 requirements of Iowa Code section 902.1, subsection 2,  
14 25 specify the date fixed for execution of the defendant  
14 26 which shall be not less than fifty nor more than sixty  
14 27 days after the date of entry in the trial court of the  
14 28 judgment of the supreme court affirming the judgment  
14 29 and sentence of death. The warrant shall be directed  
14 30 to the director of the department of corrections  
14 31 commanding the director to cause the warrant to be  
14 32 executed on the date specified. The trial court shall  
14 33 deliver the warrant to the sheriff of the county in  
14 34 which judgment of conviction was entered and the  
14 35 sheriff shall deliver the warrant to the director of  
14 36 the department of corrections. The director of the  
14 37 department of corrections shall acknowledge receipt of  
14 38 the warrant and the defendant, and the sheriff shall  
14 39 return the acknowledgment to the office of the clerk  
14 40 of the trial court from which the warrant was issued.

14 41 2. Immediately after issuance of a warrant  
14 42 ordering a sentence of death, the clerk of the trial  
14 43 court issuing the warrant shall transmit by certified  
14 44 mail to the governor a copy of the indictment, the  
14 45 plea, the verdict and special findings, the  
14 46 affirmation of judgment and sentence by the supreme  
14 47 court, and the complete transcript of the trial court.

14 48 3. Notwithstanding subsection 1, if a defendant,  
14 49 for whom a warrant of execution is issued, is  
14 50 pregnant, the execution shall not take place until  
15 1 after the defendant is no longer pregnant.  
15 2 Notwithstanding subsection 1, if a defendant, for whom  
15 3 a warrant of execution is issued, is suffering from  
15 4 such a diseased or deranged condition of the mind as  
15 5 to prevent the defendant from knowing the nature and  
15 6 quality of the act the defendant has been convicted  
15 7 of, or from understanding that trial on the offense  
15 8 has taken place and that execution proceedings are  
15 9 about to take place, or otherwise causes the defendant  
15 10 to lack the capacity to understand the sentence which  
15 11 has been imposed and to participate in any legal  
15 12 proceedings relating to the sentence, the execution  
15 13 shall not take place until after the defendant is no  
15 14 longer suffering from the condition.

15 15 Sec. 17. NEW RULE. EVIDENCE AT PENALTY PROCEEDING  
15 16 WHERE DEATH SENTENCE REQUESTED.

15 17 1. At a reasonable time before the commencement of  
15 18 initial proceedings in a first degree murder trial in  
15 19 which a sentence of death has been requested, each  
15 20 party shall file and serve upon the other party the  
15 21 following:

15 22 a. A list of all aggravating or mitigating  
15 23 circumstances which the party intends to prove during  
15 24 the sentencing proceedings.

15 25 b. The names of all persons whom the party intends  
15 26 to call as witnesses during the sentencing  
15 27 proceedings.

15 28 c. Notwithstanding R.Cr.P. 13, copies, or for  
15 29 inspection purposes, the location, of all documents,  
15 30 including books, papers, writings, drawings, graphs,  
15 31 charts, photographs, phone records, and other data  
15 32 compilations from which information can be obtained,  
15 33 or other objects which the party intends to offer into  
15 34 evidence during the sentencing proceedings. If copies  
15 35 are not supplied to opposing counsel, the party shall  
15 36 make the items available for inspection and copying  
15 37 without order of the court.

15 38 2. In proceedings to determine whether the  
15 39 sentence shall be death or life imprisonment, evidence  
15 40 may be presented as to any matter which the trial  
15 41 court deems relevant to the sentence, including but  
15 42 not limited to the nature, circumstances, and manner  
15 43 of completion of the murder, and the defendant's  
15 44 character, background, history, and mental and  
15 45 physical condition. The trial court shall admit any  
15 46 relevant admissible evidence respecting any  
15 47 aggravating or mitigating circumstances, if the party  
15 48 has included the circumstance on a list provided  
15 49 pursuant to this rule, or good cause is shown for the  
15 50 failure to do so.

16 1 Sec. 18. APPLICABILITY. This Act applies to  
16 2 offenses committed on or after the effective date of  
16 3 this Act."

16 4 #2. Title page, line 1, by inserting after the  
16 5 word "imprisonment" the following: "for the offense  
16 6 of first degree murder".

16 7 #3. Title page, by striking line 2 and inserting  
16 8 the following: "establishing circumstances under  
16 9 which the death penalty will be applied, by providing  
16 10 a".

16 11  
16 12

16 13 \_\_\_\_\_  
16 14 COMMITTEE ON [JUDICIARY](#)  
16 15 HURLEY of Fayette, Chairperson  
16 16 [HF 2.315](#) 76  
16 17 lh/cf