

Senate Amendment 3182

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1 1 Amend House File 619, as amended, passed, and
1 2 reprinted by the House, as follows:
1 3 #1. By striking everything after the enacting
1 4 clause and inserting the following:
1 5 <DIVISION I
1 6 DNA PROFILING
1 7 Section 1. NEW SECTION. 81.1 DEFINITIONS.
1 8 As used in this chapter, unless the context
1 9 otherwise requires:
1 10 1. "DNA" means deoxyribonucleic acid.
1 11 2. "DNA databank" means the repository for DNA
1 12 samples obtained pursuant to section 81.4.
1 13 3. "DNA database" means the collection of DNA
1 14 profiles and DNA records.
1 15 4. "DNA profile" means the objective form of the
1 16 results of DNA analysis performed on a DNA sample.
1 17 The results of all DNA identification analysis on an
1 18 individual's DNA sample are also collectively referred
1 19 to as the DNA profile of an individual.
1 20 5. "DNA profiling" means the procedure established
1 21 by the division of criminal investigation, department
1 22 of public safety, for determining a person's genetic
1 23 identity.
1 24 6. "DNA record" means the DNA sample and DNA
1 25 profile, and other records in the DNA database and DNA
1 26 data bank used to identify a person.
1 27 7. "DNA sample" means a biological sample provided
1 28 by any person required to submit a DNA sample or a DNA
1 29 sample submitted for any other purpose under section
1 30 81.4.
1 31 8. "Person required to submit a DNA sample" means
1 32 a person convicted, adjudicated delinquent, receiving
1 33 a deferred judgment, or found not guilty by reason of
1 34 insanity of an offense requiring DNA profiling
1 35 pursuant to section 81.2. "Person required to submit
1 36 a DNA sample" also means a person determined to be a
1 37 sexually violent predator pursuant to section 229A.7.
1 38 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
1 39 SUBMIT A DNA SAMPLE.
1 40 1. A person who receives a deferred judgment for a
1 41 felony or against whom a judgment or conviction for a
1 42 felony has been entered shall be required to submit a
1 43 DNA sample for DNA profiling pursuant to section 81.4.
1 44 2. A person determined to be a sexually violent
1 45 predator pursuant to chapter 229A shall be required to
1 46 submit a DNA sample for DNA profiling pursuant to
1 47 section 81.4 prior to discharge or placement in a
1 48 transitional release program.
1 49 3. A person found not guilty by reason of insanity
1 50 of an offense that requires DNA profiling shall be
2 1 required to submit a DNA sample for DNA profiling
2 2 pursuant to section 81.4 as part of the person's
2 3 treatment management program.
2 4 4. A juvenile adjudicated delinquent of an offense
2 5 that requires DNA profiling of an adult offender shall
2 6 be required to submit a DNA sample for DNA profiling
2 7 pursuant to section 81.4 as part of the disposition of
2 8 the juvenile's case.
2 9 5. An offender placed on probation shall
2 10 immediately report to the judicial district department
2 11 of correctional services after sentencing so it can be
2 12 determined if the offender has been convicted of an
2 13 offense requiring DNA profiling. If it is determined
2 14 by the judicial district that DNA profiling is
2 15 required, the offender shall immediately submit a DNA
2 16 sample.
2 17 6. A person required to register as a sex
2 18 offender.
2 19 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA
2 20 DATABASE AND DNA DATABANK.
2 21 1. A state DNA database and a state DNA databank
2 22 are established under the control of the division of
2 23 criminal investigation, department of public safety.
2 24 The division of criminal investigation shall conduct

2 25 DNA profiling of a DNA sample submitted in accordance
2 26 with this section.

2 27 2. A DNA sample shall be submitted, and the
2 28 division of criminal investigation shall store and
2 29 maintain DNA records in the DNA database and DNA
2 30 databank for persons required to submit a DNA sample.

2 31 3. A DNA sample may be submitted, and the division
2 32 of criminal investigation shall store and maintain DNA
2 33 records in the DNA database and DNA databank for any
2 34 of the following:

2 35 a. Crime scene evidence and forensic casework.

2 36 b. A relative of a missing person.

2 37 c. An anonymous DNA profile used for forensic
2 38 validation, forensic protocol development, or quality
2 39 control purposes, or for the establishment of a
2 40 population statistics database.

2 41 4. A fingerprint record of a person required to
2 42 submit a DNA sample shall also be submitted to the
2 43 division of criminal investigation with the DNA sample
2 44 to verify the identity of the person required to
2 45 submit a DNA sample.

2 46 Sec. 4. NEW SECTION. 81.4 COLLECTING,
2 47 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
2 48 SAMPLES AND DNA RECORDS.

2 49 1. The division of criminal investigation shall
2 50 adopt rules for the collection, submission, analysis,
3 1 identification, storage, and disposition of DNA
3 2 records.

3 3 2. A supervising agency having control, custody,
3 4 or jurisdiction over a person shall collect a DNA
3 5 sample from a person required to submit a DNA sample.
3 6 The supervising agency shall collect a DNA sample,
3 7 upon admittance to the pertinent institution or
3 8 facility, of the person required to submit a DNA
3 9 sample or at a determined date and time set by the
3 10 supervising agency. If a person required to submit a
3 11 DNA sample is confined at the time a DNA sample is
3 12 required, the person shall submit a DNA sample as soon
3 13 as practicable. If a person required to submit a DNA
3 14 sample is not confined after the person is required to
3 15 submit a DNA sample, the supervising agency shall
3 16 determine the date and time to collect the DNA sample.

3 17 3. A person required to submit a DNA sample who
3 18 refuses to submit a DNA sample may be subject to
3 19 contempt proceedings pursuant to chapter 665 until the
3 20 DNA sample is submitted.

3 21 4. The division of criminal investigation shall
3 22 conduct DNA profiling on a DNA sample or may contract
3 23 with a private entity to conduct the DNA profiling.

3 24 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
3 25 LIABILITY == LIMITATION.

3 26 A person who collects a DNA sample shall not be
3 27 civilly or criminally liable for the collection of the
3 28 DNA sample if the person performs the person's duties
3 29 in good faith and in a reasonable manner according to
3 30 generally accepted medical practices or in accordance
3 31 with the procedures set out in the administrative
3 32 rules of the department of public safety adopted
3 33 pursuant to section 81.4.

3 34 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

3 35 1. A person who knowingly or intentionally does
3 36 any of the following commits an aggravated
3 37 misdemeanor:

3 38 a. Discloses any part of a DNA record to a person
3 39 or agency that is not authorized by the division of
3 40 criminal investigation to have access to the DNA
3 41 record.

3 42 b. Uses or obtains a DNA record for a purpose
3 43 other than what is authorized under this chapter.

3 44 2. A person who knowingly or intentionally alters
3 45 or attempts to alter a DNA sample, falsifies the
3 46 source of a DNA sample, or materially alters a
3 47 collection container used to collect the DNA sample,
3 48 commits a class "D" felony.

3 49 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
3 50 NOT INVALIDATED.

4 1 The detention, arrest, or conviction of a person
4 2 based upon a DNA database match is not invalidated if
4 3 it is determined that the DNA sample or DNA profile
4 4 was obtained or placed into the DNA database by
4 5 mistake or error.

4 6 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

4 7 1. A DNA record shall be considered a confidential
4 8 record and disclosure of a DNA record is only
4 9 authorized pursuant to this section.

4 10 2. Confidential DNA records under this section may
4 11 be released to the following agencies for law
4 12 enforcement identification purposes:

4 13 a. Any criminal or juvenile justice agency as
4 14 defined in section 692.1.

4 15 b. Any criminal or juvenile justice agency in
4 16 another jurisdiction that meets the definition of a
4 17 criminal or juvenile justice agency as defined in
4 18 section 692.1.

4 19 3. The division of criminal investigation shall
4 20 share the DNA record information with the appropriate
4 21 federal agencies for use in a national DNA database.

4 22 4. A DNA record or other forensic information
4 23 developed pursuant to this chapter may be released for
4 24 use in a criminal or juvenile delinquency proceeding
4 25 in which the state is a party and where the DNA record
4 26 or forensic information is relevant and material to
4 27 the subject of the proceeding. Such a record or
4 28 information may become part of a public transcript or
4 29 other public recording of such a proceeding.

4 30 5. A DNA record or other forensic information may
4 31 be released pursuant to a court order for criminal
4 32 defense purposes to a defendant, who shall have access
4 33 to DNA samples and DNA profiles related to the case in
4 34 which the defendant is charged.

4 35 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
4 36 RECORDS.

4 37 1. A person whose DNA record has been included in
4 38 the DNA database or DNA databank established pursuant
4 39 to section 81.3 may request, in writing to the
4 40 division of criminal investigation, expungement of the
4 41 DNA record from the DNA database and DNA databank
4 42 based upon the person's conviction, adjudication, or
4 43 civil commitment which caused the submission of the
4 44 DNA sample being reversed on appeal and the case
4 45 dismissed. The written request shall contain a
4 46 certified copy of the final court order reversing the
4 47 conviction, adjudication, or civil commitment, and a
4 48 certified copy of the dismissal, and any other
4 49 information necessary to ascertain the validity of the
4 50 request.

5 1 2. The division of criminal investigation, upon
5 2 receipt of a written request that validates reversal
5 3 on appeal of a person's conviction, adjudication, or
5 4 commitment, and subsequent dismissal of the case, or
5 5 upon receipt of a written request by a person who
5 6 voluntarily submitted a DNA sample under section 81.3,
5 7 subsection 3, paragraph "b", or upon receipt of a
5 8 written request by a person who voluntarily submitted
5 9 a DNA sample pursuant to section 81.3, subsection 3,
5 10 paragraph "b", shall expunge all of the DNA records
5 11 and identifiable information of the person in the DNA
5 12 database and DNA databank. However, if the division
5 13 of criminal investigation determines that the person
5 14 is otherwise obligated to submit a DNA sample, the DNA
5 15 records shall not be expunged. If the division of
5 16 criminal investigation denies an expungement request,
5 17 the division shall notify the person requesting the
5 18 expungement of the decision not to expunge the DNA
5 19 record and the reason supporting its decision. The
5 20 division of criminal investigation decision is subject
5 21 to judicial review pursuant to chapter 17A. The
5 22 department of public safety shall adopt rules
5 23 governing the expungement procedure and a review
5 24 process.

5 25 3. The division of criminal investigation is not
5 26 required to expunge or destroy a DNA record pursuant
5 27 to this section, if expungement or destruction of the
5 28 DNA record would destroy evidence related to another
5 29 person.

5 30 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
5 31 CONVICTION.

5 32 1. A defendant who has been convicted of a felony
5 33 and who has not been required to submit a DNA sample
5 34 for DNA profiling may make a motion to the court for
5 35 an order to require that DNA analysis be performed on
5 36 evidence collected in the case for which the person

5 37 stands convicted.

5 38 2. The motion shall state the following:

5 39 a. The specific crimes for which the defendant

5 40 stands convicted in this case.

5 41 b. The facts of the underlying case, as proven at

5 42 trial or admitted to during a guilty plea proceeding.

5 43 c. Whether any of the charges include sexual abuse

5 44 or involve sexual assault, and if so, whether a sexual

5 45 assault examination was conducted and evidence

5 46 preserved, if known.

5 47 d. Whether identity was at issue or contested by

5 48 the defendant.

5 49 e. Whether the defendant offered an alibi, and if

5 50 so, testimony corroborating the alibi and, from whom.

6 1 f. Whether eyewitness testimony was offered, and

6 2 if so from whom.

6 3 g. Whether any issues of police or prosecutor

6 4 misconduct have been raised in the past or are being

6 5 raised by the motion.

6 6 h. The type of inculpatory evidence admitted into

6 7 evidence at trial or admitted to during a guilty plea

6 8 proceeding.

6 9 i. Whether blood testing or other biological

6 10 evidence testing was conducted previously in

6 11 connection with the case and, if so, by whom and to

6 12 the result, if known.

6 13 j. What biological evidence exists and, if known,

6 14 the agency or laboratory storing the evidence that the

6 15 defendant seeks to have tested.

6 16 k. Why the requested analysis of DNA evidence is

6 17 material to the issue in the case and not merely

6 18 cumulative or impeaching.

6 19 l. Why the DNA evidence would have changed the

6 20 outcome of the trial or invalidated a guilty plea if

6 21 DNA profiling had been conducted prior to the

6 22 conviction.

6 23 3. A motion filed under this section shall be

6 24 filed in the county where the defendant was convicted,

6 25 and notice of the motion shall be served by certified

6 26 mail upon the county attorney and, if known, upon the

6 27 state, local agency, or laboratory holding evidence

6 28 described in subsection 2, paragraph "k". The county

6 29 attorney shall have sixty days to file an answer to

6 30 the motion.

6 31 4. Any DNA profiling of the defendant or other

6 32 biological evidence testing conducted by the state or

6 33 by the defendant shall be disclosed and the results of

6 34 such profiling or testing described in the motion or

6 35 answer.

6 36 5. If the evidence requested to be tested was

6 37 previously subjected to DNA or other biological

6 38 analysis by either party, the court may order the

6 39 disclosure of the results of such testing, including

6 40 laboratory reports, notes, and underlying data, to the

6 41 court and the parties.

6 42 6. The court may order a hearing on the motion to

6 43 determine if evidence should be subjected to DNA

6 44 analysis.

6 45 7. The court shall grant the motion if all of the

6 46 following apply:

6 47 a. The evidence subject to DNA testing is

6 48 available and in a condition that will permit

6 49 analysis.

6 50 b. A sufficient chain of custody has been

7 1 established for the evidence.

7 2 c. The identity of the person who committed the

7 3 crime for which the defendant was convicted was a

7 4 significant issue in the crime for which the defendant

7 5 was convicted.

7 6 d. The evidence subject to DNA analysis is

7 7 material to, and not merely cumulative or impeaching

7 8 of, evidence included in the trial record or admitted

7 9 to at a guilty plea proceeding.

7 10 e. DNA analysis of the evidence would raise a

7 11 reasonable probability that the defendant would not

7 12 have been convicted if DNA profiling had been

7 13 available at the time of the conviction and had been

7 14 conducted prior to the conviction.

7 15 8. Upon the court granting a motion filed pursuant

7 16 to this section, DNA analysis of evidence shall be

7 17 conducted within the guidelines generally accepted by

7 18 the scientific community. The defendant shall provide
7 19 DNA samples for testing if requested by the state.

7 20 9. Results of DNA analysis conducted pursuant to
7 21 this section shall be reported to the parties and to
7 22 the court and may be provided to the board of parole,
7 23 department of corrections, and criminal and juvenile
7 24 justice agencies, as defined in section 692.1, for use
7 25 in the course of investigations and prosecutions, and
7 26 for consideration in connection with requests for
7 27 parole, pardon, reprieve, and commutation. DNA
7 28 samples obtained pursuant to this section may be
7 29 included in the DNA databank, and DNA profiles and DNA
7 30 records developed pursuant to this section may be
7 31 included in the DNA database.

7 32 10. A criminal or juvenile justice agency, as
7 33 defined in section 692.1, shall maintain DNA samples
7 34 and evidence that could be tested for DNA for a period
7 35 of three years beyond the limitations for the
7 36 commencement of criminal actions as set forth in
7 37 chapter 802. This section does not create a cause of
7 38 action for damages or a presumption of spoliation in
7 39 the event evidence is no longer available for testing.

7 40 11. If the court determines a defendant who files
7 41 a motion under this section is indigent, the defendant
7 42 shall be entitled to appointment of counsel as
7 43 provided in chapter 815.

7 44 12. If the court determines after DNA analysis
7 45 ordered pursuant to this section that the results
7 46 indicate conclusively that the DNA profile of the
7 47 defendant matches the profile from the analyzed
7 48 evidence used against the defendant, the court may
7 49 order the defendant to pay the costs of these
7 50 proceedings, including costs of all testing, court
8 1 costs, and costs of court-appointed counsel, if any.

8 2 Sec. 11. Section 229A.7, Code 2005, is amended by
8 3 adding the following new subsection:

8 4 NEW SUBSECTION. 5A. If the court or jury
8 5 determines that the respondent is a sexually violent
8 6 predator, the court shall order the respondent to
8 7 submit a DNA sample for DNA profiling pursuant to
8 8 section 81.4.

8 9 Sec. 12. Section 232.52, Code 2005, is amended by
8 10 adding the following new subsection:

8 11 NEW SUBSECTION. 10. The court shall order a
8 12 juvenile adjudicated a delinquent for an offense that
8 13 requires DNA profiling under section 81.2 to submit a
8 14 DNA sample for DNA profiling pursuant to section 81.4.

8 15 Sec. 13. Section 669.14, Code 2005, is amended by
8 16 adding the following new subsection:

8 17 NEW SUBSECTION. 15. Any claim arising from or
8 18 related to the collection of a DNA sample for DNA
8 19 profiling pursuant to section 81.4 or a DNA profiling
8 20 procedure performed by the division of criminal
8 21 investigation, department of public safety.

8 22 Sec. 14. Section 901.5, subsection 8A, Code 2005,
8 23 is amended to read as follows:

8 24 8A. a. The court shall order DNA profiling of a
8 25 defendant convicted of an offense that requires
8 26 profiling under section ~~13.10~~ 81.2.

8 27 b. Notwithstanding section ~~13.10~~ 81.2, the court
8 28 may order the defendant to provide a ~~physical specimen~~
8 29 DNA sample to be submitted for DNA profiling if
8 30 appropriate. In determining the appropriateness of
8 31 ordering DNA profiling, the court shall consider the
8 32 deterrent effect of DNA profiling, the likelihood of
8 33 repeated offenses by the defendant, and the
8 34 seriousness of the offense.

8 35 Sec. 15. Section 906.4, unnumbered paragraph 3,
8 36 Code 2005, is amended to read as follows:

8 37 ~~Notwithstanding section 13.10, the~~ The board may
8 38 order the defendant to provide a physical specimen to
8 39 be submitted for DNA profiling as a condition of
8 40 parole or work release, if ~~appropriate~~ a DNA profile
8 41 ~~has not been previously conducted pursuant to chapter~~

8 42 81. In determining the appropriateness of ordering
8 43 DNA profiling, the board shall consider the deterrent
8 44 effect of DNA profiling, the likelihood of repeated
8 45 offenses by the defendant, and the seriousness of the
8 46 offense.

8 47 Sec. 16. 2002 Iowa Acts, chapter 1080, is
8 48 repealed.

8 49 Sec. 17. Section 13.10, Code 2005, is repealed.

8 50 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE
9 1 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.
9 2 A person convicted, adjudicated a delinquent, civilly
9 3 committed as a sexually violent predator, or found not
9 4 guilty by reason of insanity, prior to the effective
9 5 date of this Act, who would otherwise be required to
9 6 submit a DNA sample under this Act, and who is under
9 7 the custody, control, or jurisdiction of a supervising
9 8 agency, shall submit a DNA sample prior to being
9 9 released from the supervising agency's custody,
9 10 control, or jurisdiction.

9 11 Sec. 19. EFFECTIVE DATE. This division of this
9 12 Act, being deemed of immediate importance, takes
9 13 effect upon enactment.

9 14 DIVISION II
9 15 SEX OFFENDER REGISTRY AND TREATMENT

9 16 Sec. 20. Section 321.11, subsection 3, Code 2005,
9 17 is amended to read as follows:

9 18 3. Notwithstanding other provisions of this
9 19 section to the contrary, the department shall not
9 20 release personal information to a person, other than
9 21 to an officer or employee of a law enforcement agency,
9 22 an employee of a federal or state agency or political
9 23 subdivision in the performance of the employee's
9 24 official duties, a contract employee of the department
9 25 of inspections and appeals in the conduct of an
9 26 investigation, or a licensed private investigation
9 27 agency or a licensed security service or a licensed
9 28 employee of either, if the information is requested by
9 29 the presentation of a registration plate number. In
9 30 addition, an officer or employee of a law enforcement
9 31 agency may release the name, address, and telephone
9 32 number of a motor vehicle registrant to a person
9 33 requesting the information by the presentation of a
9 34 registration plate number if the officer or employee
9 35 of the law enforcement agency believes that the
9 36 release of the information is necessary in the
9 37 performance of the officer's or employee's duties.
9 38 For purposes of this section, "personal information"
9 39 includes whether the person is on the sex offender
9 40 registry as provided in chapter 692A.

9 41 Sec. 21. Section 692A.1, subsection 8, Code 2005,
9 42 is amended to read as follows:

9 43 8. "Residence" means the place where a person
9 44 sleeps, which may include more than one location, and
9 45 may be mobile or transitory, including a shelter or
9 46 group home.

9 47 Sec. 22. Section 692A.2, Code 2005, is amended by
9 48 adding the following new subsection:

9 49 NEW SUBSECTION. 1A. If a person is required to
9 50 register for a period of ten years under subsection 1
10 1 and the period under subsection 1 has expired, the
10 2 person shall be required to remain on the registry if
10 3 the person has been sentenced to a special sentence as
10 4 required under section 903B.0A or 903B.0B, for a
10 5 period equal to the term of the special sentence.

10 6 Sec. 23. NEW SECTION. 692A.2B RESTRICTIONS ON
10 7 RESIDENCY NEAR CHILD CARE FACILITIES OR SCHOOLS.

10 8 1. For purposes of this section, "person" means a
10 9 person who is required to register under this chapter.

10 10 2. A person shall not reside within one thousand
10 11 feet of the real property comprising a public or
10 12 nonpublic elementary or secondary school or a child
10 13 care facility.

10 14 3. A person who resides within one thousand feet
10 15 of the real property comprising a public or nonpublic
10 16 elementary or secondary school, or a child care
10 17 facility, commits an aggravated misdemeanor.

10 18 4. A person residing within one thousand feet of
10 19 the real property comprising a public or nonpublic
10 20 elementary or secondary school or a child care
10 21 facility does not commit a violation of this section
10 22 if any of the following apply:

10 23 a. The person is required to serve a sentence at a
10 24 jail, prison, juvenile facility, or other correctional
10 25 institution or facility.

10 26 b. The person is subject to an order of commitment
10 27 under chapter 229A.

10 28 c. The person has established a residence prior to
10 29 July 1, 2005, or a school or child care facility is

10 30 newly located on or after July 1, 2005.
10 31 d. The person is a minor or a ward under a
10 32 guardianship.
10 33 Sec. 24. Section 692A.4, Code 2005, is amended to
10 34 read as follows:
10 35 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
10 36 PHOTOGRAPH.
10 37 1. The address of a person required to register
10 38 under this chapter shall be verified annually as
10 39 follows:
10 40 a. On a date which falls within the month in which
10 41 the person was initially required to register, the
10 42 department shall mail a verification form to the last
10 43 reported address of the person. Verification forms
10 44 shall not be forwarded to the person who is required
10 45 to register under this chapter if the person no longer
10 46 resides at the address, but shall be returned to the
10 47 department.
10 48 b. The person shall complete and mail the
10 49 verification to the department within ten days of
10 50 receipt of the form.
11 1 c. The verification form shall be signed by the
11 2 person, and state the address at which the person
11 3 resides. If the person is in the process of changing
11 4 residences, the person shall state that fact as well
11 5 as the old and new addresses or places of residence.
11 6 2. Verification of address for a person who has
11 7 been convicted of an offense under the laws of this
11 8 state or of another state which would qualify the
11 9 person as a sexually violent predator shall be
11 10 accomplished in the same manner as in subsection 1,
11 11 except that the verification shall be done every three
11 12 months at times established by the department.
11 13 3. A photograph of a person required to register
11 14 under this chapter shall be updated, at a minimum,
11 15 annually. When the department mails the address
11 16 verification notice in subsection 1, the department
11 17 shall also enclose a form informing the person to
11 18 annually submit to being photographed by the sheriff
11 19 of the county of the person's residence within ten
11 20 days of receipt of the address verification form. The
11 21 sheriff shall send the updated photograph to the
11 22 department within ten days of the photograph being
11 23 taken and the department shall post the updated
11 24 photograph on the sex offender registry's web page.
11 25 The sheriff may require the person to submit to being
11 26 photographed by the sheriff more than once a year by
11 27 mailing another notice informing the person to submit
11 28 to being photographed.
11 29 Sec. 25. NEW SECTION. 692A.4A ELECTRONIC
11 30 MONITORING.
11 31 A person required to register under this chapter
11 32 who is placed on probation, parole, work release,
11 33 special sentence, or any other type of conditional
11 34 release, may be supervised by an electronic tracking
11 35 and monitoring system in addition to any other
11 36 conditions of supervision.
11 37 Sec. 26. Section 692A.5, subsection 1, paragraph
11 38 h, Code 2005, is amended to read as follows:
11 39 h. Inform the person, if the person's residency is
11 40 restricted under section 692A.2A, that the person
11 41 shall not reside within two thousand feet of the real
11 42 property comprising a public or nonpublic elementary
11 43 or secondary school, or a child care facility. After
11 44 June 30, 2005, inform the person, if the person's
11 45 residency is restricted under section 692A.2B, that
11 46 the person shall not reside within one thousand feet
11 47 of the real property comprising a public or nonpublic
11 48 elementary or secondary school, or a child care
11 49 facility.
11 50 Sec. 27. Section 692A.5, subsection 1, Code 2005,
12 1 is amended by adding the following new paragraph:
12 2 NEW PARAGRAPH. i. Inform the person that the
12 3 person must, at a minimum, annually submit to being
12 4 photographed by the sheriff of the county of the
12 5 person's residence.
12 6 Sec. 28. Section 692A.13, subsection 3, Code 2005,
12 7 is amended to read as follows:
12 8 3. Any member of the public may contact a county
12 9 sheriff's office or police department to request
12 10 relevant information from the registry regarding a

12 11 specific person required to register under this
12 12 chapter. ~~The request for information shall be in~~
~~12 13 writing, and A person making a request for relevant~~
~~12 14 information may make the request by telephone, in~~
~~12 15 writing, or in person, and the request shall include~~
12 16 the name of the person and at least one of the
12 17 following identifiers pertaining to the person about
12 18 whom the information is sought:
12 19 a. The date of birth of the person.
12 20 b. The social security number of the person.
12 21 c. The address of the person.
12 22 ~~d. The name of the person.~~
12 23 A county sheriff shall not charge a fee relating to
12 24 a request for relevant information.

12 25 Sec. 29. Section 692A.10, Code 2005, is amended by
12 26 adding the following new subsection:
12 27 NEW SUBSECTION. 2A. Notify the state department
12 28 of transportation of the name of any person required
12 29 to register, and subsequently notify the state
12 30 department of transportation of the name of any person
12 31 no longer required to register.

12 32 Sec. 30. Section 692A.13, subsection 5, Code 2005,
12 33 is amended to read as follows:

12 34 5. Relevant information provided to the general
12 35 public may include the offender's name, address, a
12 36 photograph, locations frequented by the offender,
12 37 relevant criminal history information from the
12 38 registry, and any other relevant information.
12 39 Relevant information provided to the public shall not
12 40 include the identity of any victim. For purposes of
12 41 inclusion in the sex offender registry's web page or
12 42 dissemination to the general public, a conviction for
12 43 incest shall be disclosed as either a violation of
12 44 section 709.4 or 709.8.

12 45 Sec. 31. Section 903A.2, subsection 1, paragraph
12 46 a, Code 2005, is amended to read as follows:

12 47 a. Category "A" sentences are those sentences
12 48 which are not subject to a maximum accumulation of
12 49 earned time of fifteen percent of the total sentence
12 50 of confinement under section 902.12. To the extent
13 1 provided in subsection 5, category "A" sentences also
13 2 include life sentences imposed under section 902.1.
13 3 An inmate of an institution under the control of the
13 4 department of corrections who is serving a category
13 5 "A" sentence is eligible for a reduction of sentence
13 6 equal to one and two-tenths days for each day the
13 7 inmate demonstrates good conduct and satisfactorily
13 8 participates in any program or placement status
13 9 identified by the director to earn the reduction. The
13 10 programs include but are not limited to the following:
13 11 (1) Employment in the institution.
13 12 (2) Iowa state industries.
13 13 (3) An employment program established by the
13 14 director.
13 15 (4) A treatment program established by the
13 16 director.
13 17 (5) An inmate educational program approved by the
13 18 director.

13 19 However, an inmate required to participate in a sex
13 20 offender treatment program shall not be eligible for a
13 21 reduction of sentence unless the inmate participates
13 22 in and completes a sex offender treatment program
13 23 established by the director.

13 24 An inmate serving a category "A" sentence is
13 25 eligible for an additional reduction of sentence of up
13 26 to three hundred sixty-five days of the full term of
13 27 the sentence of the inmate for exemplary acts. In
13 28 accordance with section 903A.4, the director shall by
13 29 policy identify what constitutes an exemplary act that
13 30 may warrant an additional reduction of sentence.

13 31 DIVISION III
13 32 ENHANCED CRIMINAL PENALTIES AND
13 33 STATUTE OF LIMITATIONS

13 34 Sec. 32. Section 709.8, Code 2005, is amended to
13 35 read as follows:

13 36 709.8 LASCIVIOUS ACTS WITH A CHILD.

13 37 It is unlawful for any person ~~eighteen sixteen~~
13 38 years of age or older to perform any of the following
13 39 acts with a child with or without the child's consent
13 40 unless married to each other, for the purpose of
13 41 arousing or satisfying the sexual desires of either of

13 42 them:
13 43 1. Fondle or touch the pubes or genitals of a
13 44 child.
13 45 2. Permit or cause a child to fondle or touch the
13 46 person's genitals or pubes.
13 47 3. Solicit a child to engage in a sex act or
13 48 solicit a person to arrange a sex act with a child.
13 49 4. Inflict pain or discomfort upon a child or
13 50 permit a child to inflict pain or discomfort on the
14 1 person.
14 2 Any person who violates a provision of this section
14 3 shall, upon conviction, be guilty of a class ~~"D"~~ "C"
14 4 felony. A person who violates a provision of this
14 5 section and who is sentenced to a term of confinement
14 6 shall also be sentenced to an additional term of
14 7 parole or work release not to exceed two years. The
14 8 board of parole shall determine whether the person
14 9 should be released on parole or placed in a work
14 10 release program. The sentence of an additional term
14 11 of parole or work release supervision shall commence
14 12 immediately upon the expiration of the preceding
14 13 sentence and shall be under the terms and conditions
14 14 as set out in chapter 906. Violations of parole or
14 15 work release shall be subject to the procedures set
14 16 out in chapter 905 or 908 or rules adopted under those
14 17 chapters. The sentence of an additional term of
14 18 parole or work release shall be consecutive to the
14 19 original term of confinement.
14 20 Sec. 33. Section 709.12, unnumbered paragraph 1,
14 21 Code 2005, is amended to read as follows:
14 22 A person eighteen years of age or older is upon
14 23 conviction guilty of ~~an aggravated misdemeanor~~ a class
14 24 "D" felony if the person commits any of the following
14 25 acts with a child, not the person's spouse, with or
14 26 without the child's consent, for the purpose of
14 27 arousing or satisfying the sexual desires of either of
14 28 them:
14 29 Sec. 34. Section 802.2, Code 2005, is amended to
14 30 read as follows:
14 31 802.2 SEXUAL ABUSE == FIRST, SECOND, OR THIRD
14 32 DEGREE.
14 33 1. An information or indictment for sexual abuse
14 34 in the first, second, or third degree committed on or
14 35 with a person who is under the age of eighteen years
14 36 shall be found within ten years after the person upon
14 37 whom the offense is committed attains eighteen years
14 38 of age, or if the identity of the person against whom
14 39 the information or indictment is sought is established
14 40 through the use of a DNA profile, an information or
14 41 indictment shall be found within three years from the
14 42 date the identity of the person is identified by the
14 43 person's DNA profile, whichever is later.
14 44 2. An information or indictment for any other
14 45 sexual abuse in the first, second, or third degree
14 46 shall be found within ten years after its commission,
14 47 or if the identity of the person against whom the
14 48 information or indictment is sought is established
14 49 through the use of a DNA profile, an information or
14 50 indictment shall be found within three years from the
15 1 date the identity of the person is identified by the
15 2 person's DNA profile, whichever is later.
15 3 3. As used in this section, "identified" means a
15 4 person's legal name is known and the person has been
15 5 determined to be the source of the DNA.
15 6 Sec. 35. Section 901.5, Code 2005, is amended by
15 7 adding the following new subsection:
15 8 NEW SUBSECTION. 13. In addition to any other
15 9 sentence or other penalty imposed against the
15 10 defendant, the court shall impose a special sentence
15 11 if required under section 903B.0A or 903B.0B.
15 12 Sec. 36. NEW SECTION. 902.15 ENHANCED PENALTY ==
15 13 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.
15 14 1. A person commits a class "A" felony if the
15 15 person commits a second or subsequent offense
15 16 involving any combination of the following offenses:
15 17 a. Sexual abuse in the second degree in violation
15 18 of section 709.3.
15 19 b. Sexual abuse in the third degree in violation
15 20 of section 709.4.
15 21 c. Lascivious acts with a child in violation of
15 22 section 709.8, subsection 1 or 2.

15 23 2. In determining if a violation charged is a
15 24 second or subsequent offense for purposes of criminal
15 25 sentencing in this section, each previous violation on
15 26 which conviction or deferral of judgment was entered
15 27 prior to the date of the violation charged shall be
15 28 considered and counted as a separate previous offense,
15 29 regardless of whether the previous offense occurred
15 30 before, on, or after the effective date of this Act.
15 31 Convictions or the equivalent of deferred judgments
15 32 for violations in any other states under statutes
15 33 substantially corresponding to the offenses listed in
15 34 subsection 1 shall be counted as previous offenses.
15 35 The courts shall judicially notice the statutes of
15 36 other states which define offenses substantially
15 37 equivalent to the offenses listed in subsection 1 and
15 38 can therefore be considered corresponding statutes.

15 39 Sec. 37. NEW SECTION. 903B.0A SPECIAL SENTENCE
15 40 == CLASS "B" OR CLASS "C" FELONIES.

15 41 A person convicted of a class "C" felony or greater
15 42 offense under chapter 709, or a class "C" felony under
15 43 section 728.12, shall also be sentenced, in addition
15 44 to any other punishment provided by law, to a special
15 45 sentence committing the person into the custody of the
15 46 director of the Iowa department of corrections for the
15 47 rest of the person's life, with eligibility for parole
15 48 as provided in chapter 906. The special sentence
15 49 imposed under this section shall commence upon
15 50 completion of the sentence imposed under any
16 1 applicable criminal sentencing provisions for the
16 2 underlying criminal offense and the person shall begin
16 3 the sentence under supervision as if on parole. The
16 4 person shall be placed on the corrections continuum in
16 5 chapter 901B, and the terms and conditions of the
16 6 special sentence, including violations, shall be
16 7 subject to the same set of procedures set out in
16 8 chapters 901B, 905, 906, and chapter 908, and rules
16 9 adopted under those chapters for persons on parole
16 10 shall not be for a period greater than two years upon
16 11 any first revocation, and five years upon any second
16 12 or subsequent revocation. A special sentence shall be
16 13 considered a category "A" sentence for purposes of
16 14 calculating earned time under section 903A.2.

16 15 Sec. 38. NEW SECTION. 903B.0B SPECIAL SENTENCE
16 16 == CLASS "D" FELONIES OR MISDEMEANORS.

16 17 A person convicted of a misdemeanor or a class "D"
16 18 felony offense under chapter 709, section 726.2, or
16 19 section 728.12 shall also be sentenced, in addition to
16 20 any other punishment provided by law, to a special
16 21 sentence committing the person into the custody of the
16 22 director of the Iowa department of corrections for a
16 23 period of ten years, with eligibility for parole as
16 24 provided in chapter 906. The special sentence imposed
16 25 under this section shall commence upon completion of
16 26 the sentence imposed under any applicable criminal
16 27 sentencing provisions for the underlying criminal
16 28 offense and the person shall begin the sentence under
16 29 supervision as if on parole. The person shall be
16 30 placed on the corrections continuum in chapter 901B,
16 31 and the terms and conditions of the special sentence,
16 32 including violations, shall be subject to the same set
16 33 of procedures set out in chapters 901B, 905, 906, and
16 34 908, and rules adopted under those chapters for
16 35 persons on parole. The revocation of release shall
16 36 not be for a period greater than two years upon any
16 37 first revocation, and five years upon any second or
16 38 subsequent revocation. A special sentence shall be
16 39 considered a category "A" sentence for purposes of
16 40 calculating earned time under section 903A.2.

16 41 Sec. 39. Section 903B.1, subsection 3, Code 2005,
16 42 is amended by striking the subsection.

16 43 Sec. 40. Section 906.15, unnumbered paragraph 1,
16 44 Code 2005, is amended to read as follows:

16 45 Unless sooner discharged, a person released on
16 46 parole shall be discharged when the person's term of
16 47 parole equals the period of imprisonment specified in
16 48 the person's sentence, less all time served in
16 49 confinement. Discharge from parole may be granted
16 50 prior to such time, when an early discharge is
17 1 appropriate. The board shall periodically review all
17 2 paroles, and when the board determines that any person
17 3 on parole is able and willing to fulfill the

17 4 obligations of a law-abiding citizen without further
17 5 supervision, the board shall discharge the person from
17 6 parole. A parole officer shall periodically review
17 7 all paroles assigned to the parole officer, and when
17 8 the parole officer determines that any person assigned
17 9 to the officer is able and willing to fulfill the
17 10 obligations of a law-abiding citizen without further
17 11 supervision, the officer may discharge the person from
17 12 parole after notification and approval of the district
17 13 director and notification of the board of parole. In
17 14 any event, discharge from parole shall terminate the
17 15 person's sentence. If a person has been sentenced to
17 16 a special sentence under section 903B.0A or 903B.0B,
17 17 the person may be discharged early from the sentence
17 18 in the same manner as any other person on parole.

17 19 However, a person convicted of a violation of section
17 20 709.3, 709.4, or 709.8 committed on or with a child,
17 21 or a person serving a sentence under section 902.12,
17 22 shall not be discharged from parole until the person's
17 23 term of parole equals the period of imprisonment
17 24 specified in the person's sentence, less all time
17 25 served in confinement.

17 26 Sec. 41. Section 908.5, Code 2005, is amended to
17 27 read as follows:

17 28 908.5 DISPOSITION.

17 29 1. If a violation of parole is established, the
17 30 administrative parole judge may continue the parole
17 31 with or without any modification of the conditions of
17 32 parole. The administrative parole judge may revoke
17 33 the parole and require the parolee to serve the
17 34 sentence originally imposed, or may revoke the parole
17 35 and reinstate the parolee's work release status.

17 36 2. If the person is serving a special sentence
17 37 under chapter 903B, the administrative parole judge
17 38 may revoke the release. Upon the revocation of
17 39 release, the person shall not serve the entire length
17 40 of the special sentence imposed, and the revocation
17 41 shall be for a period not to exceed two years in a
17 42 correctional institution upon a first revocation and
17 43 for a period not to exceed five years in a
17 44 correctional institution upon a second or subsequent
17 45 revocation.

17 46 3. The order of the administrative parole judge
17 47 shall contain findings of fact, conclusions of law,
17 48 and a disposition of the matter.

17 49 DIVISION IV
17 50 DEATH PENALTY

18 1 Sec. 42. Section 13B.4, Code 2005, is amended by
18 2 adding the following new subsection:

18 3 NEW SUBSECTION. 6A. The state public defender
18 4 shall perform all of the following duties with respect
18 5 to the appointment of counsel for indigent persons in
18 6 cases in which a sentence of death may be or is to be
18 7 imposed:

18 8 a. Provide or contract with attorneys for
18 9 appointment as lead counsel and cocounsel to provide
18 10 legal services in cases where a person is charged with
18 11 murder in the first degree, kidnapping, and sexual
18 12 abuse under section 902.15, and the state has given
18 13 notice of intent to seek the death penalty or in cases
18 14 in which a sentence of death is to be imposed.

18 15 b. Conduct or sponsor specialized training
18 16 programs for attorneys representing persons who may be
18 17 executed.

18 18 Sec. 43. Section 216A.133, Code 2005, is amended
18 19 by adding the following new subsection:

18 20 NEW SUBSECTION. 8. Review the effects of the
18 21 reinstatement of the death penalty on arrest,
18 22 prosecution, conviction, and incarceration rates; law
18 23 enforcement duties and ability to obtain evidence
18 24 necessary for arrests; court dockets and workload;
18 25 prison space; recidivism rates of persons charged with
18 26 crimes of violence against persons; and other aspects
18 27 of the criminal justice system. Based on the review
18 28 and other factors deemed relevant, the council shall
18 29 make findings and develop recommendations resulting
18 30 from those findings. Commencing January 1, 2007, the
18 31 council shall report its findings and any related
18 32 recommendations annually to the governor and to the
18 33 general assembly.

18 34 Sec. 44. NEW SECTION. 602.10111A QUALIFICATIONS

18 35 OF COUNSEL IN DEATH PENALTY CASES.

18 36 The supreme court shall prescribe rules which
18 37 establish minimum standards and procedures by which
18 38 attorneys may become qualified to provide legal
18 39 services as lead counsel in cases in which a sentence
18 40 of death may be or is to be imposed.

18 41 Sec. 45. NEW SECTION. 812A.1 PROCEDURE TO
18 42 DETERMINE SANITY OF CONDEMNED INMATE.

18 43 1. At any time prior to execution of an inmate
18 44 under section 902.1, if the director of the department
18 45 of corrections or the counsel for a person who is
18 46 under a sentence of execution has cause to believe
18 47 that the inmate is suffering from such a diseased or
18 48 deranged condition of the mind as to prevent the
18 49 defendant from knowing the nature and quality of the
18 50 act the defendant has been convicted of, or from
19 1 understanding that trial on the offense has taken
19 2 place and that execution proceedings are about to take
19 3 place, or to otherwise cause the defendant to lack the
19 4 capacity to understand the sentence which has been
19 5 imposed and to participate in any legal proceedings
19 6 relating to the sentence, the director or counsel may
19 7 file a request with the court that issued the warrant
19 8 for execution for a determination of the inmate's
19 9 sanity. If the district court determines that there
19 10 is not sufficient reason to believe that the inmate is
19 11 insane, the court shall enter an order denying the
19 12 request and shall state the grounds for denying the
19 13 request. If the court believes that there is
19 14 sufficient reason to believe that the inmate is
19 15 insane, the court shall suspend the execution and
19 16 conduct a hearing to determine the sanity of the
19 17 inmate.

19 18 2. At the hearing, the court shall determine the
19 19 issue of the inmate's sanity. Prior to the hearing,
19 20 the court shall appoint two licensed physicians or
19 21 licensed psychologists, or one licensed physician and
19 22 one licensed psychologist, who are qualified by
19 23 training and practice, for purposes of conducting a
19 24 psychiatric or psychological examination of the
19 25 inmate. The physicians or psychologists shall examine
19 26 the inmate and report any findings in writing to the
19 27 court within ten days after the order of examination
19 28 is issued. The inmate shall have the right to present
19 29 evidence and cross-examine any witnesses at the
19 30 hearing. Any statement made by the inmate during the
19 31 course of any examination provided for in this
19 32 section, whether or not the inmate consents to the
19 33 examination, shall not be admitted into evidence
19 34 against the inmate in any criminal proceeding for
19 35 purposes other than a determination of the inmate's
19 36 sanity.

19 37 3. If, at the conclusion of a hearing held
19 38 pursuant to this section, the court determines that
19 39 the inmate is sane, the court shall enter an order
19 40 setting a date for the inmate's execution, which shall
19 41 be carried into effect in the same manner as provided
19 42 in the original sentence. A copy of the order shall
19 43 be sent to the director of the department of
19 44 corrections and the governor.

19 45 4. If, at the conclusion of a hearing held
19 46 pursuant to this section, the court determines that
19 47 the inmate is insane, the court shall suspend the
19 48 execution until further order. At any time after
19 49 issuance of the order, if the court has sufficient
19 50 reason to believe that the inmate has become sane, the
20 1 court shall again determine the sanity of the inmate
20 2 as provided by this section. Proceedings pursuant to
20 3 this section may continue to be held at such times as
20 4 the court orders until it is either determined that
20 5 the inmate is sane or incurably insane.

20 6 Sec. 46. NEW SECTION. 814.28 REVIEW OF DEATH
20 7 SENTENCE.

20 8 1. In a case in which a sentence of death is
20 9 imposed, the supreme court shall automatically review
20 10 the judgment and sentence. The court's review of the
20 11 case shall be de novo. The case shall not be
20 12 transferred to the court of appeals.

20 13 2. A review by the supreme court of a judgment and
20 14 sentence imposing the punishment of death has priority
20 15 over all other criminal and other actions pending

20 16 before the supreme court.
20 17 3. The supreme court shall review the trial and
20 18 judgment, and shall separately review the sentencing
20 19 proceeding. Upon determining that errors did not
20 20 occur at the trial requiring reversal or modification
20 21 of the judgment, the supreme court shall proceed to
20 22 determine if the sentence of death is lawfully
20 23 imposed. In its review of the sentencing proceeding
20 24 the supreme court shall determine all of the
20 25 following:
20 26 a. Whether the sentence of death was imposed
20 27 capriciously or under the influence of prejudice or
20 28 other arbitrary factor.
20 29 b. Whether the special verdicts returned under
20 30 section 901.11 are supported by the evidence.
20 31 c. Whether the sentence of death is excessive or
20 32 disproportionate to the penalty imposed in similar
20 33 cases, considering both the crime and the defendant.
20 34 4. If the supreme court determines that the
20 35 sentence of death was not lawfully imposed, the court
20 36 shall set aside the sentence and shall remand the case
20 37 to the trial court for a second sentencing proceeding
20 38 to determine if the imposition of death is warranted.
20 39 5. If the supreme court affirms the judgment and
20 40 sentence of death, the clerk of the supreme court
20 41 shall certify the judgment of the supreme court under
20 42 the seal of the court to the clerk of the trial court.
20 43 Sec. 47. Section 815.10, Code 2005, is amended by
20 44 adding the following new subsection:
20 45 NEW SUBSECTION. 1A. If two attorneys have not
20 46 already been appointed pursuant to section 13B.4 or
20 47 13B.9, the court shall appoint, for each indigent
20 48 person who is charged with murder in the first degree
20 49 and in which a notice of intent to seek the death
20 50 penalty has been filed, two attorneys who are
21 1 qualified under section 602.10111A to represent the
21 2 person in the murder proceedings and in all state
21 3 legal proceedings which take place from the time the
21 4 person is indicted or arraigned until the person is
21 5 sentenced on the charge. In addition, if at any point
21 6 in federal postconviction proceedings an indigent
21 7 person is not afforded court-appointed counsel, the
21 8 state shall provide counsel to the person to present
21 9 any claims determined meritorious by the federal court
21 10 if the person is not otherwise represented by legal
21 11 counsel. Only private attorneys and public defenders
21 12 who are qualified to provide representation in cases
21 13 in which the death penalty may be imposed are eligible
21 14 for appointment or assignment to a case in which the
21 15 death penalty may be imposed.
21 16 Sec. 48. NEW SECTION. 901.11 MURDER PROCEEDINGS
21 17 == REQUEST FOR DEATH PENALTY == PENALTY PROCEEDINGS.
21 18 1. If a notice of intent to seek the death penalty
21 19 has been filed, objections to the imposition of the
21 20 death penalty based upon allegations that a defendant
21 21 was mentally retarded or mentally ill at the time of
21 22 the commission of the offense shall be raised within
21 23 the time provided for the filing of pretrial motions
21 24 under rule of criminal procedure 2.11, Iowa court
21 25 rules. The court may, for good cause shown, allow
21 26 late filing of the motion. Hearing on the motion
21 27 shall be held prior to trial and the burden of proof
21 28 shall be on the defendant to prove mental retardation
21 29 or mental illness by a preponderance of the evidence.
21 30 However, a rebuttable presumption of mental
21 31 retardation arises if a defendant has an intelligence
21 32 quotient of seventy or below. If the court finds that
21 33 the defendant is mentally retarded, the defendant, if
21 34 convicted of murder in the first degree, shall not be
21 35 sentenced to death but shall be sentenced to life
21 36 imprisonment in the manner provided in section 902.1,
21 37 subsection 1. A finding by the court that the
21 38 evidence presented by the defendant at the hearing
21 39 does not preclude the imposition of the death penalty
21 40 under this section and section 902.15 shall not
21 41 preclude the introduction of evidence of mental
21 42 retardation or mental illness during the penalty
21 43 proceeding. If the court finds that evidence of
21 44 mental retardation or mental illness does not preclude
21 45 imposition of the death penalty, evidence of mental
21 46 retardation or mental illness may be reviewed by the

21 47 jury in the penalty proceeding and the jury shall not
21 48 be informed of the finding in the initial proceeding
21 49 at any time during the penalty proceeding.

21 50 2. If at the trial on a charge of murder in the
22 1 first degree, the state intends to request that the
22 2 death penalty be imposed under section 902.1,
22 3 subsection 2, the prosecutor shall file a notice of
22 4 intent to seek the death penalty, listing the
22 5 additional factors enumerated under section 902.15
22 6 that the state intends to establish in support of
22 7 imposition of the death penalty, at the time of and as
22 8 part of the information or indictment filed in the
22 9 case.

22 10 3. If a notice of intent to seek the death penalty
22 11 has been filed, the trial shall be conducted in
22 12 bifurcated proceedings before the same trier of fact.
22 13 During the initial proceeding, the jury, or the court,
22 14 if the defendant waives the right to a jury trial,
22 15 shall decide only whether the defendant is guilty or
22 16 not guilty of murder in the first degree, kidnapping,
22 17 and sexual abuse.

22 18 a. If, in the initial proceeding, the court or
22 19 jury finds the defendant guilty of, or the defendant
22 20 pleads guilty to, an offense other than murder in the
22 21 first degree kidnapping, and sexual abuse, the court
22 22 shall sentence the defendant in accordance with the
22 23 sentencing procedures set forth in rule of criminal
22 24 procedure 2.23, Iowa court rules, and chapters 901
22 25 through 909, which are applicable to the offense.

22 26 b. If the court or jury finds the defendant guilty
22 27 of, or the defendant pleads guilty to, murder in the
22 28 first degree, kidnapping, and sexual abuse but the
22 29 prosecuting attorney waives the death penalty, the
22 30 court shall sentence the defendant to life
22 31 imprisonment in accordance with the sentencing
22 32 procedures set forth in rule of criminal procedure
22 33 2.23, Iowa court rules, and chapters 901 through 909,
22 34 which are applicable to convictions of murder in the
22 35 first degree, kidnapping, and sexual abuse.

22 36 c. If the court or jury finds the defendant guilty
22 37 of murder in the first degree, kidnapping, and sexual
22 38 abuse, or a defendant enters a plea of guilty in the
22 39 initial proceeding, and the prosecuting attorney does
22 40 not waive imposition of the death penalty, a penalty
22 41 proceeding shall be held in the manner provided in
22 42 subsections 4 through 12.

22 43 4. No sooner than twenty-four hours after a
22 44 verdict of guilty or a plea of guilty to the charge of
22 45 murder in the first degree, kidnapping, and sexual
22 46 abuse is returned in the initial proceeding, a penalty
22 47 proceeding shall be held to determine whether the
22 48 defendant shall be sentenced to death or to life
22 49 imprisonment. The proceeding shall be conducted in
22 50 the trial court before the trial jury, or the court if
23 1 the defendant has waived the right to a jury trial or
23 2 has waived the right for the proceeding to be before
23 3 the trial jury. Both the state and the defendant
23 4 shall have the right to present opening statements at
23 5 the commencement of the penalty proceedings. In the
23 6 proceeding, evidence relevant to the existence of any
23 7 aggravating or mitigating circumstances may be
23 8 presented as follows:

23 9 a. The state or the defendant may present evidence
23 10 relevant to the conviction of murder in the first
23 11 degree and any of the additional factors enumerated in
23 12 section 902.15 and any aggravating circumstances other
23 13 than juvenile delinquency adjudications for offenses
23 14 which carry penalties equivalent to the penalties
23 15 imposed for simple or serious misdemeanors. The state
23 16 may introduce evidence of the actual harm caused by
23 17 the commission of the murder including, but not
23 18 limited to, evidence relating to the life of the
23 19 victim and the impact of the loss of the victim to the
23 20 victim's family and society.

23 21 b. The defendant may present evidence that the
23 22 defendant was mentally retarded at the time of the
23 23 commission of the offense. The burden of proof shall
23 24 be on the defendant to prove mental retardation by a
23 25 preponderance of the evidence. However, a rebuttable
23 26 presumption of mental retardation arises if a
23 27 defendant has an intelligence quotient of seventy or

23 28 below.

23 29 c. The state or the defendant may present evidence
23 30 relevant to any mitigating circumstances which may
23 31 exist. Mitigating circumstances may include the
23 32 following circumstances:

23 33 (1) The defendant was under the influence of an
23 34 extreme mental or emotional disturbance insufficient
23 35 to constitute a defense.

23 36 (2) The age of the defendant at the time of the
23 37 murder.

23 38 (3) The defendant's capacity to appreciate the
23 39 wrongfulness of the defendant's conduct and to conform
23 40 that conduct to the requirements of law was
23 41 significantly impaired as a result of a mental disease
23 42 or defect or mental retardation, but not to a degree
23 43 sufficient to constitute a defense.

23 44 (4) The defendant has no significant history of
23 45 prior adult criminal activity.

23 46 (5) The defendant acted under extreme duress or
23 47 under the substantial domination of another person.

23 48 (6) The defendant did not directly commit the
23 49 murder and the defendant did not intend to kill or
23 50 anticipate that lethal force would be used.

24 1 (7) Any other factor which is relevant to the
24 2 defendant's character or record or to the
24 3 circumstances of the offense.

24 4 d. The state and the defendant or the defendant's
24 5 counsel shall be permitted to present and cross=
24 6 examine witnesses and present arguments for or against
24 7 a sentence of death. Evidence regarding aggravating
24 8 and mitigating circumstances shall not be governed by
24 9 the rules governing admissibility of evidence, except
24 10 that introduction of evidence secured in violation of
24 11 the Constitution of the United States or of the
24 12 Constitution of the State of Iowa shall not be
24 13 permitted.

24 14 5. At the conclusion of presentation of evidence
24 15 in the penalty proceeding, the state and the defendant
24 16 or the defendant's counsel shall be permitted to make
24 17 closing arguments, including any rebuttal arguments,
24 18 in the same manner as in the initial proceeding and
24 19 the following issues shall be determined by the jury
24 20 or the court, if there is no jury:

24 21 a. Whether the aggravating circumstance or
24 22 circumstances outweigh any one or more mitigating
24 23 circumstances.

24 24 b. Whether the defendant shall be sentenced to
24 25 death.

24 26 6. A recommendation for a sentence of death shall
24 27 not be permitted if the recommendation is based on the
24 28 race, color, religious beliefs, national origin, or
24 29 sex of the defendant or any victim. After submission
24 30 of the issues, but prior to the return of a finding in
24 31 the penalty proceeding, if the matter is tried before
24 32 a jury, the court shall instruct the jury that in
24 33 considering whether a sentence of death is justified,
24 34 it shall not consider race, color, religious beliefs,
24 35 national origin, or sex of the defendant or of any
24 36 victim. The court shall further instruct the jury
24 37 that it shall not return a sentence of death unless it
24 38 concludes that such a sentence would be recommended no
24 39 matter what the race, color, religious beliefs,
24 40 national origin, or sex of the defendant or any victim
24 41 may be.

24 42 7. After submission of the issues, but prior to
24 43 the commencement of the jury deliberations in the
24 44 penalty proceeding, the court shall instruct the jury
24 45 that if the defendant is not sentenced to death, the
24 46 court is required by law to impose a sentence of
24 47 imprisonment until death without parole. The court
24 48 shall further instruct the jury that the sentence of
24 49 imprisonment until death without parole is required by
24 50 law if the jury fails to reach a unanimous verdict

25 1 recommending a sentence of death.

25 2 8. Concurrently with the return of the findings on
25 3 the issues submitted under subsection 5, the jury, or
25 4 the court if there is no jury, shall return special
25 5 verdicts as follows:

25 6 a. Which aggravating circumstances were
25 7 established and were considered in reaching the
25 8 verdict.

25 9 b. Which mitigating circumstances were established
25 10 and were considered in reaching the verdict returned
25 11 on the issue specified in subsection 5, paragraph "a".
25 12 9. If the jury, or the court if there is no jury,
25 13 returns a unanimous affirmative finding on each of the
25 14 issues submitted under subsection 5, paragraphs "a"
25 15 and "b", the court shall enter a judgment of
25 16 conviction and shall sentence the defendant to death
25 17 as provided in section 902.1, subsection 2.
25 18 10. However, if evidence that the defendant was
25 19 not a major participant in the commission of the
25 20 murder and that the defendant's conduct did not
25 21 manifest a reckless indifference to human life is
25 22 presented to the jury, or the court, if there is no
25 23 jury, the jury or the court shall also return a
25 24 special verdict on the issue. If the jury unanimously
25 25 determines, or the court, if there is no jury, finds
25 26 that a preponderance of evidence exists that shows
25 27 that the defendant was not a major participant in the
25 28 commission of the murder and that the defendant's
25 29 conduct did not manifest a reckless indifference to
25 30 human life, the court shall enter a judgment of
25 31 conviction and shall sentence the defendant to life
25 32 imprisonment as provided in section 902.1, subsection
25 33 1, even if the jury or the court returns unanimous
25 34 affirmative findings on each of the issues submitted
25 35 under subsection 5.
25 36 11. If the jury, or the court, if there is no
25 37 jury, returns a negative finding on any of the issues
25 38 submitted under subsection 5, paragraphs "a" and "b",
25 39 the court shall enter a judgment of conviction and
25 40 shall sentence the defendant to life imprisonment as
25 41 provided in section 902.1, subsection 1.
25 42 12. After a verdict has been rendered it shall be
25 43 recorded on the jury verdict form and shall be read
25 44 and recorded in open court. The jurors shall be
25 45 collectively asked by the court whether the verdict
25 46 returned is their true and correct verdict. Even
25 47 though no juror makes any declaration to the contrary,
25 48 the jury shall, if either party so requests, be polled
25 49 and each juror shall be separately asked whether the
25 50 verdict rendered by the jury foreperson is the juror's
26 1 true and correct verdict. If, upon either the
26 2 collective or the separate inquiry, any juror denies
26 3 that the verdict is the juror's verdict, the court
26 4 shall refuse to accept the verdict. The court may
26 5 direct inquiry or permit inquiry by counsel to
26 6 ascertain whether any juror has been subjected to
26 7 coercion or has become confused during the jury
26 8 deliberation process. The court may, as appropriate,
26 9 direct the jury to resume deliberation in the case.
26 10 If no disagreement on the verdict is expressed by any
26 11 of the jurors, the court shall discharge the jury.
26 12 13. This section shall not apply to a defendant
26 13 who was under the age of eighteen at the time the
26 14 offense was committed.

26 15 Sec. 49. Section 902.1, Code 2005, is amended to
26 16 read as follows:

26 17 902.1 CLASS "A" FELONY.

26 18 1. Upon Except as otherwise provided in subsection
26 19 2, upon a plea of guilty, a verdict of guilty, or a
26 20 special verdict upon which a judgment of conviction of
26 21 a class "A" felony may be rendered, the court shall
26 22 enter a judgment of conviction and shall commit the
26 23 defendant into the custody of the director of the Iowa
26 24 department of corrections for the rest of the
26 25 defendant's life. Nothing in the Iowa corrections
26 26 code pertaining to deferred judgment, deferred
26 27 sentence, suspended sentence, or reconsideration of
26 28 sentence applies to a sentence of life imprisonment
26 29 for a class "A" felony, and a person convicted of a
26 30 class "A" felony and sentenced to life imprisonment
26 31 shall not be released on parole unless the governor
26 32 commutes the sentence to a term of years.

26 33 2. Upon return of a plea or verdict of guilty to
26 34 the offense of murder in the first degree under
26 35 section 707.2, kidnapping, and sexual abuse, and a
26 36 return of a verdict in favor of a sentence of death in
26 37 a penalty proceeding conducted as provided in section
26 38 901.11, the court shall enter a judgment of conviction
26 39 and shall commit the defendant into the custody of the

26 40 director of the Iowa department of corrections. The
26 41 sentence shall be carried out by the administration of
26 42 a lethal injection pursuant to rules adopted by the
26 43 board of corrections. If a defendant, for whom a
26 44 warrant of execution is issued, is pregnant, the
26 45 execution shall not take place until after the
26 46 defendant is no longer pregnant. If a defendant, for
26 47 whom a warrant of execution is issued, is suffering
26 48 from such a diseased or deranged condition of the mind
26 49 as to prevent the defendant from knowing the nature
26 50 and quality of the act the defendant has been
27 1 convicted of, or from understanding that trial on the
27 2 offense has taken place and that execution proceedings
27 3 are about to take place, or otherwise causes the
27 4 defendant to lack the capacity to understand the
27 5 sentence which has been imposed and to participate in
27 6 any legal proceedings relating to the sentence, the
27 7 execution shall not take place until after the
27 8 defendant's capacity is restored. If the director of
27 9 the department of corrections or the defendant's
27 10 counsel files a request with the court which issued
27 11 the warrant of execution, alleging that the defendant
27 12 suffers from such a diseased or deranged condition, a
27 13 hearing on the matter shall be held in the manner
27 14 provided in section 812A.1. If a defendant was under
27 15 the age of eighteen at the time the offense was
27 16 committed, the defendant shall be sentenced as
27 17 provided in subsection 1. For the purposes of this
27 18 section, "lethal injection" means a continuous
27 19 intravenous injection of a lethal substance sufficient
27 20 to cause death.

27 21 Sec. 50. NEW SECTION. 902.15 FIRST DEGREE MURDER
27 22 == ADDITIONAL FACTORS.

27 23 A person who commits murder in the first degree,
27 24 who is not mentally retarded or mentally ill, and who
27 25 is age eighteen or older at the time the offense is
27 26 committed, shall be eligible for a sentence of death
27 27 under section 902.1, subsection 2, if the person also
27 28 kidnaps and commits sexual abuse against the murder
27 29 victim who was a minor.

27 30 For purposes of this section, "mentally retarded"
27 31 means significant subaverage general intellectual
27 32 functioning accompanied by significant deficits or
27 33 impairments in adaptive functioning manifested in the
27 34 developmental period, but no later than the age of
27 35 eighteen years, and accompanied by deficits in
27 36 adaptive behavior.

27 37 For purposes of this section, "mentally ill" means
27 38 the condition of a person who is suffering from a
27 39 chronic and persistent serious mental disease or
27 40 disorder and who, by reason of that condition, lacks
27 41 sufficient judgment to make responsible decisions
27 42 regarding treatment and is reasonably likely to injure
27 43 the person's self or others who may come into contact
27 44 with the person if the person is allowed to remain at
27 45 liberty without treatment.

27 46 Sec. 51. NEW SECTION. 902.16 DATA COLLECTION FOR
27 47 DEATH PENALTY.

27 48 1. The supreme court shall collect data on all
27 49 murder charges in which the death penalty is or was
27 50 not waived, which are filed and processed in the
28 1 courts in this state. This data may be used by the
28 2 supreme court to determine whether death sentences
28 3 imposed are excessive or disproportionate, or under
28 4 the influence of prejudice as a result of racial
28 5 discrimination under section 814.28. The court shall
28 6 make this data available to litigants in death penalty
28 7 cases.

28 8 2. Data collected by public officials concerning
28 9 factors relevant to the imposition of the death
28 10 sentence shall be made publicly available.

28 11 Sec. 52. NEW SECTION. 903C.1 EXECUTIONS ==
28 12 REFUSAL TO PERFORM.

28 13 An employee of the state who may lawfully perform,
28 14 assist, or participate in the execution of a person
28 15 pursuant to section 902.1, and rules adopted by the
28 16 department of corrections, shall not be required to
28 17 perform, assist, or participate in the execution.
28 18 State employees who refuse to perform, assist, or
28 19 participate in the execution of a person shall not be
28 20 discriminated against in any way, including, but not

28 21 limited to, employment, promotion, advancement,
28 22 transfer, licensing, education, training, or the
28 23 granting of any privileges or appointments because of
28 24 the refusal to perform, assist, or participate in the
28 25 execution.

28 26 Sec. 53. Section 904.105, Code 2005, is amended by
28 27 adding the following new subsection:
28 28 NEW SUBSECTION. 9A. Adopt rules pursuant to
28 29 chapter 17A pertaining to executions of persons
28 30 convicted of murder in the first degree. Rules
28 31 adopted shall include, but are not limited to, rules
28 32 permitting the witnessing of executions by members of
28 33 the public and the victim's family. Invitations to
28 34 witness an execution shall at least be extended to the
28 35 following representatives of the news media:
28 36 a. A representative from a wire service serving
28 37 Iowa.
28 38 b. A representative from a broadcasting network
28 39 serving Iowa.
28 40 c. A representative from a television station
28 41 located in Iowa.
28 42 d. A representative from a radio station located
28 43 in Iowa.
28 44 e. A representative from a daily newspaper
28 45 published in Iowa.
28 46 f. A representative from a weekly newspaper
28 47 published in Iowa.
28 48 g. A representative from the news media from the
28 49 community in which the condemned person resided, if
28 50 that community is located in Iowa.

29 1 Sec. 54. Rules of criminal procedure, Iowa court
29 2 rules, are amended by adding sections 101 through 104
29 3 of this Act.

29 4 Sec. 55. NEW RULE. 2. MURDER IN THE FIRST DEGREE
29 5 == PROCEDURE.

29 6 2.____(1) If a notice of intent to seek the death
29 7 penalty has been filed, objections to the imposition
29 8 of the death penalty based upon allegations that a
29 9 defendant was mentally retarded at the time of the
29 10 commission of the offense shall be raised within the
29 11 time provided for the filing of pretrial motions under
29 12 R.Cr.P. 2.11, Iowa court rules. The court may, for
29 13 good cause shown, allow late filing of the motion.
29 14 Hearing on the motion shall be held prior to trial and
29 15 the burden of proof shall be on the defendant to prove
29 16 mental retardation by a preponderance of the evidence.
29 17 However, a rebuttable presumption of mental
29 18 retardation arises if a defendant has an intelligence
29 19 quotient of seventy or below. A finding of the court
29 20 that the evidence presented by the defendant at the
29 21 hearing does not preclude the imposition of the death
29 22 penalty under this rule and Iowa Code section 902.15
29 23 shall not preclude the introduction of evidence of
29 24 mental retardation during the penalty proceeding. If
29 25 the court finds that the evidence presented by the
29 26 defendant does not preclude the imposition of the
29 27 death penalty, evidence of mental retardation may be
29 28 reviewed by the jury during the penalty proceeding and
29 29 the jury shall not be informed of the finding in the
29 30 initial proceeding at any time during the penalty
29 31 proceeding.

29 32 2.____(2) Upon a finding or plea that a defendant
29 33 is guilty of murder in the first degree in an initial
29 34 proceeding, if a notice of intent to seek the death
29 35 penalty has been filed and has not been waived, the
29 36 court shall conduct a separate penalty proceeding to
29 37 determine whether the defendant shall be sentenced to
29 38 death or to life imprisonment. The penalty proceeding
29 39 shall be conducted in the trial court before the trial
29 40 jury, or the court, if there is no jury, no sooner
29 41 than twenty-four hours after the return of the verdict
29 42 or plea in the initial proceeding. In the penalty
29 43 proceeding, additional evidence may be presented as to
29 44 the conviction for murder in the first degree and any
29 45 additional factor enumerated in Iowa Code section
29 46 902.15 or any aggravating or mitigating circumstance
29 47 which may exist. Presentation of evidence which is
29 48 relevant to the existence of an aggravating or
29 49 mitigating circumstance shall not be bound by the
29 50 rules of evidence. This subsection does not authorize
30 1 the introduction of any evidence secured in violation

30 2 of the Constitution of the United States or of the
30 3 Constitution of the State of Iowa. The state and the
30 4 defendant or the defendant's counsel shall be
30 5 permitted to cross-examine witnesses and to present
30 6 arguments for or against a sentence of death.

30 7 2.____(3) On conclusion of the presentation of the
30 8 evidence in the penalty proceeding, the state and the
30 9 defendant or the defendant's counsel shall be
30 10 permitted to make closing arguments, including any
30 11 rebuttal arguments, in the same manner as in the
30 12 initial proceeding and the court shall submit each of
30 13 the following issues to the jury:

30 14 a. Whether one or more of those circumstances
30 15 outweigh any one or more mitigating circumstances.

30 16 b. Whether the defendant shall be sentenced to
30 17 death.

30 18 If the case is not tried to a jury, the court shall
30 19 determine the issues.

30 20 2.____(4) The state must prove the issue in rule 2.
30 21 ____ (3)(a) beyond a reasonable doubt, and the jury, or
30 22 the court if there is no jury, shall return a special
30 23 verdict of "yes" or "no" on each issue.

30 24 2.____(5) If the case is tried to a jury, the court
30 25 shall charge the jury that:

30 26 a. It shall answer any issue "yes" if it agrees
30 27 unanimously.

30 28 b. It shall answer any issue "no" if the jurors
30 29 unanimously agree that the answer is "no" or if the
30 30 jurors do not unanimously agree that the answer is
30 31 "yes".

30 32 2.____(6) Concurrently with the return of the
30 33 special verdicts under rule 2.____(4), the jury, or the
30 34 court if there is no jury, shall also return special
30 35 verdicts as follows:

30 36 a. Which aggravating circumstances were
30 37 established and were considered in reaching the
30 38 verdict returned on the issue specified in rule
30 39 2.____(3)(a).

30 40 b. Which mitigating circumstances were established
30 41 and were considered in reaching the verdict returned
30 42 on the issue specified in rule 2.____(3)(a).

30 43 2.____(7) If the jury, or the court, if there is no
30 44 jury, returns an affirmative finding on all applicable
30 45 issues, the court shall sentence the defendant to
30 46 death. If the jury or the court returns a negative
30 47 finding on any applicable issue, the court shall
30 48 sentence the defendant to the custody of the director
30 49 of the department of corrections for confinement for
30 50 the rest of the defendant's life.

31 1 2.____(8) After a verdict has been rendered it
31 2 shall be recorded on the jury verdict form and shall
31 3 be read and recorded in open court. The jurors shall
31 4 be collectively asked by the court whether the verdict
31 5 returned is their true and correct verdict. Even
31 6 though no juror makes any declaration to the contrary,
31 7 the jury shall, if either party so requests, be polled
31 8 and each juror shall be separately asked whether the
31 9 verdict rendered by the jury foreperson is the juror's
31 10 true and correct verdict. If, upon either the
31 11 collective or the separate inquiry, any juror denies
31 12 that the verdict is the juror's verdict, the court
31 13 shall refuse to accept the verdict. The court may
31 14 direct inquiry or permit inquiry by counsel to
31 15 ascertain whether any juror has been subjected to
31 16 coercion or has become confused during the jury
31 17 deliberation process. The court may, as appropriate,
31 18 direct the jury to resume deliberation in the case.
31 19 If no disagreement on the verdict is expressed by any
31 20 of the jurors, the court shall discharge the jury.

31 21 2.____(9) Provisions relating to deferred judgment,
31 22 deferred sentence, suspended sentence, reconsideration
31 23 of sentence, probation, parole, or work release
31 24 contained in Iowa Code chapters 901 through 909 do not
31 25 apply to a conviction of murder in the first degree,
31 26 kidnapping, and sexual abuse under Iowa Code section
31 27 902.15 if the defendant is sentenced to death.

31 28 Sec. 56. NEW RULE. 2.____ AUTOMATIC REVIEW ==
31 29 STAY OF EXECUTION OF JUDGMENT.

31 30 2.____(1) A judgment of conviction and sentence of
31 31 death shall be reviewed automatically in the manner
31 32 provided in Iowa Code section 814.28, and the Iowa

31 33 supreme court has exclusive jurisdiction of the
31 34 review.

31 35 2.____(2) Upon entry of judgment and sentence of
31 36 death, the trial court shall prepare a complete record
31 37 and transcript of the action in the manner provided in
31 38 the rules of criminal procedure and shall docket the
31 39 record and transcript with the clerk of the supreme
31 40 court.

31 41 2.____(3) The execution of judgment of the trial
31 42 court is stayed as a matter of law from the time of
31 43 its entry until the judgment of the supreme court is
31 44 certified to and entered by the trial court. Upon
31 45 entry of a judgment of the supreme court which affirms
31 46 the conviction and sentence, the stay of execution of
31 47 judgment terminates as a matter of law.

31 48 2.____(4) All court costs required due to the
31 49 automatic preparation of the record and transcript,
31 50 docketing with the supreme court, and stay of
32 1 execution of judgment shall be assessed to the state.

32 2 Sec. 57. NEW RULE. 2.____ ISSUANCE OF WARRANT.

32 3 2.____(1) Upon entry by the trial court of the
32 4 judgment of the supreme court affirming a judgment and
32 5 sentence of death, a district judge shall within five
32 6 days of the entry issue a warrant under the seal of
32 7 the court for the execution of the sentence of death.
32 8 The warrant shall specifically set forth the offense
32 9 and the fact of conviction, shall state the judgment
32 10 and sentence of the court, shall state that the
32 11 judgment and sentence were affirmed by the supreme
32 12 court and the date of entry of judgment of the supreme
32 13 court in the trial court, and shall, subject to the
32 14 requirements of Iowa Code section 902.1, subsection 2,
32 15 specify a range of five days for execution of the
32 16 defendant which shall be not less than fifty nor more
32 17 than sixty days after the date of entry in the trial
32 18 court of the judgment of the supreme court affirming
32 19 the judgment and sentence of death. The warrant shall
32 20 be directed to the director of the department of
32 21 corrections commanding the director to cause the
32 22 warrant to be executed within the dates specified.
32 23 The trial court shall deliver the warrant to the
32 24 sheriff of the county in which judgment of conviction
32 25 was entered and the sheriff shall deliver the warrant
32 26 to the director of the department of corrections. The
32 27 director of the department of corrections shall
32 28 acknowledge receipt of the warrant and the defendant,
32 29 and the sheriff shall return the acknowledgment to the
32 30 office of the clerk of the trial court from which the
32 31 warrant was issued.

32 32 2.____(2) Immediately after issuance of a warrant
32 33 ordering a sentence of death, the clerk of the trial
32 34 court issuing the warrant shall transmit by certified
32 35 mail to the governor a copy of the indictment, the
32 36 plea, the verdict and special findings, the
32 37 affirmation of judgment and sentence by the supreme
32 38 court, and the complete transcript of the trial court.

32 39 2.____(3) Notwithstanding rule 2.____(1), if a
32 40 defendant, for whom a warrant of execution is issued,
32 41 is pregnant, the execution shall not take place until
32 42 after the defendant is no longer pregnant.
32 43 Notwithstanding rule 2.____(1), if a defendant, for
32 44 whom a warrant of execution is issued, is suffering
32 45 from such a diseased or deranged condition of the mind
32 46 as to prevent the defendant from knowing the nature
32 47 and quality of the act the defendant has been
32 48 convicted of, or from understanding that trial on the
32 49 offense has taken place and that execution proceedings
32 50 are about to take place, or to otherwise cause the
33 1 defendant to lack the capacity to understand the
33 2 sentence which has been imposed and to participate in
33 3 any legal proceedings relating to the sentence, the
33 4 execution shall not take place until after the
33 5 defendant is no longer suffering from the condition.

33 6 Sec. 58. NEW RULE. 2.____ EVIDENCE AT PENALTY
33 7 PROCEEDING WHERE DEATH SENTENCE REQUESTED.

33 8 2.____(1) At a reasonable time before the
33 9 commencement of initial proceedings in a first degree
33 10 murder trial in which a sentence of death has been
33 11 requested, each party shall file and serve upon the
33 12 other party the following:

33 13 a. A list of all aggravating or mitigating

33 14 circumstances which the party intends to prove during
33 15 the sentencing proceedings.

33 16 b. The names of all persons whom the party intends
33 17 to call as witnesses during the sentencing
33 18 proceedings.

33 19 c. Notwithstanding rule 2.14, copies, or for
33 20 inspection purposes, the location, of all documents,
33 21 including books, papers, writings, drawings, graphs,
33 22 charts, photographs, telephone records, and other data
33 23 compilations from which information can be obtained,
33 24 or other objects which the party intends to offer into
33 25 evidence during the sentencing proceedings. If copies
33 26 are not supplied to opposing counsel, the party shall
33 27 make the items available for inspection and copying
33 28 without order of the court.

33 29 2.__(2) In proceedings to determine whether the
33 30 sentence shall be death or life imprisonment, evidence
33 31 may be presented as to any matter which the trial
33 32 court deems relevant to the sentence, including but
33 33 not limited to the nature, circumstances, and manner
33 34 of completion of the murder, and the defendant's
33 35 character, background, history, and mental and
33 36 physical condition. The trial court shall admit any
33 37 relevant admissible evidence respecting any
33 38 aggravating or mitigating circumstances, if the party
33 39 has included the circumstance on a list provided
33 40 pursuant to this rule, or good cause is shown for the
33 41 failure to do so.

33 42 Sec. 59. EFFECTIVE DATE == SEVERABILITY.

33 43 1. This division of this Act takes effect January
33 44 1, 2006, and applies to offenses committed on or after
33 45 that date.

33 46 2. If any provision of this division of this Act
33 47 or the application thereof to any person is invalid,
33 48 the invalidity shall not affect the provisions or
33 49 application of this division of this Act which can be
33 50 given effect without the invalid provisions or
34 1 application and to this end, the provisions of this
34 2 division of this Act are severable.

34 3 DIVISION V
34 4 VICTIM RIGHTS

34 5 Sec. 60. NEW SECTION. 235D.1 CRIMINAL HISTORY
34 6 CHECK == APPLICANTS AT DOMESTIC ABUSE OR SEXUAL
34 7 ASSAULT CENTERS.

34 8 An applicant for employment at a domestic abuse or
34 9 sexual assault center shall be subject to a national
34 10 criminal history check through the federal bureau of
34 11 investigation. The domestic abuse or sexual assault
34 12 center shall request the criminal history check and
34 13 shall provide the applicant's fingerprints to the
34 14 department of public safety for submission through the
34 15 state criminal history repository to the federal
34 16 bureau of investigation. The applicant shall
34 17 authorize release of the results of the criminal
34 18 history check to the domestic abuse or sexual assault
34 19 center. The applicant shall pay the actual cost of
34 20 the fingerprinting and criminal history check, if any.
34 21 Unless the criminal history check was completed within
34 22 the ninety calendar days prior to the date the
34 23 application is received by the domestic abuse or
34 24 sexual assault center, the center shall reject and
34 25 return the application to the applicant. The results
34 26 of a criminal history check conducted pursuant to this
34 27 subsection shall not be considered a public record
34 28 under chapter 22. For purposes of this section,
34 29 "domestic abuse or sexual assault center" means a
34 30 facility which is used to house victims of domestic
34 31 abuse or sexual assault, and is owned, operated, or
34 32 maintained by a nonprofit organization.

34 33 Sec. 61. NEW SECTION. 709.22 PREVENTION OF
34 34 FURTHER SEXUAL ASSAULT == NOTIFICATION OF RIGHTS.

34 35 If a peace officer has reason to believe that a
34 36 sexual assault as defined in section 915.40 has
34 37 occurred, the officer shall use all reasonable means
34 38 to prevent further violence including but not limited
34 39 to the following:

34 40 1. If requested, remaining on the scene of the
34 41 alleged sexual assault as long as there is a danger to
34 42 the victim's physical safety without the presence of a
34 43 peace officer, including but not limited to staying in
34 44 the dwelling unit, or if unable to remain on the

34 45 scene, assisting the victim in leaving the residence.
34 46 2. Assisting a victim in obtaining medical
34 47 treatment necessitated by the sexual assault,
34 48 including providing assistance to the victim in
34 49 obtaining transportation to the emergency room of the
34 50 nearest hospital.

35 1 3. Providing a victim with immediate and adequate
35 2 notice of the victim's rights. The notice shall
35 3 consist of handing the victim a copy of the following
35 4 statement written in English and Spanish, asking the
35 5 victim to read the statement, and asking whether the
35 6 victim understands the rights:

35 7 "You have the right to ask the court for help with
35 8 any of the following on a temporary basis:

35 9 a. Keeping your attacker away from you, your home,
35 10 and your place of work.

35 11 b. The right to stay at your home without
35 12 interference from your attacker.

35 13 c. The right to seek a no-contact order under
35 14 section 709.20 or 915.22, if your attacker is arrested
35 15 for sexual assault.

35 16 You have the right to register as a victim with the
35 17 county attorney under section 915.12.

35 18 You have the right to file a complaint for threats,
35 19 assaults, or other related crimes.

35 20 You have the right to seek restitution against your
35 21 attacker for harm to you or your property.

35 22 You have the right to apply for victim
35 23 compensation.

35 24 You have the right to contact the county attorney
35 25 or local law enforcement to determine the status of
35 26 your case.

35 27 If you are in need of medical treatment, you have
35 28 the right to request that the officer present assist
35 29 you in obtaining transportation to the nearest
35 30 hospital or otherwise assist you.

35 31 You have the right to a sexual assault examination
35 32 performed at state expense.

35 33 If you believe that police protection is needed for
35 34 your physical safety, you have the right to request
35 35 that the officer present remain at the scene until you
35 36 and other affected parties can leave or until safety
35 37 is otherwise ensured."

35 38 The notice shall also contain the telephone numbers
35 39 of shelters, support groups, and crisis lines
35 40 operating in the area.

35 41 Sec. 62. Section 915.10, subsections 1 and 2, Code
35 42 2005, are amended to read as follows:

35 43 1. "Notification" means mailing by regular mail or
35 44 providing for hand delivery of appropriate information
35 45 or papers. However, this notification procedure does
35 46 not prohibit an office, agency, or department from
35 47 also providing appropriate information to a registered
35 48 victim by telephone, electronic mail, or other means.

35 49 2. "Registered" means having provided the county
35 50 attorney with the victim's written request for
36 1 registration and current mailing address and telephone
36 2 number. If an automated victim notification system is
36 3 implemented pursuant to section 915.10A, "registered"
36 4 also means having filed a request for registration
36 5 with the system.

36 6 Sec. 63. NEW SECTION. 915.10A AUTOMATED VICTIM
36 7 NOTIFICATION SYSTEM.

36 8 1. An automated victim notification system may be
36 9 utilized to assist public officials in informing crime
36 10 victims or other interested persons as provided in
36 11 this subchapter and where otherwise specifically
36 12 provided. The system shall disseminate the
36 13 information to registered users through telephonic,
36 14 electronic, or other means of access.

36 15 2. An office, agency, or department may satisfy a
36 16 notification obligation to registered victims required
36 17 by this subchapter through participation in the system
36 18 to the extent information is available for
36 19 dissemination through the system. Nothing in this
36 20 section shall relieve a notification obligation under
36 21 this subchapter due to the unavailability of
36 22 information for dissemination through the system.

36 23 3. Notwithstanding section 232.147, information
36 24 concerning juveniles charged with a felony offense
36 25 shall be released to the extent necessary to comply

36 26 with this section.
36 27 Sec. 64. Section 915.11, Code 2005, is amended to
36 28 read as follows:
36 29 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.
36 30 A local police department or county sheriff's
36 31 department shall advise a victim of the right to
36 32 register with the county attorney, and shall provide a
36 33 request=for=registration form to each victim. If an
~~36 34 automated victim notification system is available~~
~~36 35 pursuant to section 915.10A, a local police department~~
~~36 36 or county sheriff's department shall provide a~~
~~36 37 telephone number and website to each victim to~~
~~36 38 register with the system.~~

36 39 Sec. 65. Section 915.12, Code 2005, is amended to
36 40 read as follows:
36 41 915.12 REGISTRATION.
36 42 ~~1. The county attorney shall be the sole registrar~~
~~36 43 of victims under this subchapter.~~
36 44 ~~2.~~ 1. A victim may register by filing a written
36 45 request=for=registration form with the county
36 46 attorney. The county attorney shall notify the
36 47 victims in writing and advise them of their
36 48 registration and rights under this subchapter.
36 49 ~~3.~~ The county attorney shall provide a registered
36 50 victim list to the offices, agencies, and departments
37 1 required to provide information under this subchapter
37 2 for notification purposes.
37 3 2. If an automated victim notification system is
~~37 4 available pursuant to section 915.10A, a victim or~~
~~37 5 other interested person may register with the system~~
~~37 6 by filing a request for registration through written,~~
~~37 7 telephonic, or electronic means.~~
37 8 ~~4.~~ 3. Notwithstanding chapter 22 or any other
37 9 contrary provision of law, a victim's or other
~~37 10 interested person's~~ registration shall be strictly
37 11 maintained in a separate confidential file or other
~~37 12 confidential medium,~~ and shall be available only to
37 13 the offices, agencies, and departments required to
37 14 provide information under this subchapter.

37 15 Sec. 66. Section 915.29, Code 2005, is amended by
37 16 adding the following new unnumbered paragraph:
37 17 NEW UNNUMBERED PARAGRAPH. The notification
37 18 required pursuant to this section may occur through
37 19 the automated victim notification system referred to
37 20 in section 915.10A to the extent such information is
37 21 available for dissemination through the system.

37 22 Sec. 67. Section 915.45, Code 2005, is amended by
37 23 adding the following new unnumbered paragraph:
37 24 NEW UNNUMBERED PARAGRAPH. The notification
37 25 required pursuant to this section may occur through
37 26 the automated victim notification system referred to
37 27 in section 915.10A to the extent such information is
37 28 available for dissemination through the system.

37 29 DIVISION VI
37 30 TASK FORCE

37 31 Sec. 68. SEX OFFENDER TREATMENT AND SUPERVISION
37 32 TASK FORCE.
37 33 1. The division of criminal and juvenile justice
37 34 planning shall establish a task force to study and
37 35 make periodic recommendations for treating and
37 36 supervising sex offenders in correctional institutions
37 37 and in the community. The task force shall file a
37 38 report with recommendations with the general assembly
37 39 by January 15, 2006. The task force shall study the
37 40 effectiveness of electronic monitoring and the
37 41 potential effects and costs associated with the
37 42 special sentence created in this Act. The task force
37 43 shall study risk assessment models created for sex
37 44 offenders. The task force shall also review this
37 45 state's efforts and the efforts of other states to
37 46 implement treatment programs and make recommendations
37 47 as to the best treatment options available for sex
37 48 offenders. The task force shall also develop a plan
37 49 to integrate state government databases for the
37 50 purpose of updating addresses of persons on the sex
38 1 offender registry.
38 2 2. Members of the task force shall include
38 3 representatives of the following state agencies and
38 4 organizations:
38 5 a. One representative of the department of human
38 6 services.

- 38 7 b. One representative of the department of public
- 38 8 safety.
- 38 9 c. One representative of the Iowa state sheriffs
- 38 10 and deputies association.
- 38 11 d. One representative of the Iowa county attorneys
- 38 12 association.
- 38 13 e. One representative of the department of
- 38 14 corrections.
- 38 15 f. One representative of the board of parole.
- 38 16 g. One representative of a judicial district
- 38 17 department of correctional services.
- 38 18 h. One representative of the department of
- 38 19 justice.
- 38 20 i. One representative of the state public
- 38 21 defender.
- 38 22 j. One representative of the Iowa coalition
- 38 23 against sexual assault.

DIVISION VII
STATE MANDATE

38 24
38 25 Sec. 69. IMPLEMENTATION OF ACT. Section 25B.2,
38 26 subsection 3, shall not apply to this Act.>
38 27 #2. Title page, by striking lines 1 through 5 and
38 28 inserting the following: <An Act relating to criminal
38 29 sentencing, victim notification, and the sex offender
38 30 registry, including establishing the death penalty,
38 31 and establishing a special sentence for certain
38 32 offenders, requiring DNA testing of certain offenders,
38 33 requiring sex offender treatment in order to
38 34 accumulate earned time, establishing a sex offender
38 35 treatment and supervision task force, providing
38 36 penalties, and providing an effective date and for the
38 37 Act's applicability.>
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38 39
38 40

38 41
38 42 LARRY McKIBBEN
38 43
38 44

38 45
38 46 JEFF LAMBERTI
38 47
38 48

38 49
38 50 JERRY BEHN
39 1
39 2

39 3
39 4 JEFF ANGELO
39 5
39 6

39 7
39 8 JAMES SEYMOUR
39 9
39 10

39 11
39 12 PAUL McKINLEY
39 13
39 14

39 15
39 16 NANCY BOETTGER
39 17
39 18

39 19
39 20 RON WIECK
39 21
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39 23
39 24 PAT WARD
39 25
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39 28 BOB BRUNKHORST
39 29
39 30

39 31
39 32 STEVE KETTERING
39 33
39 34

39 35
39 36 JAMES HAHN
39 37

39 38

39 39

39 40

39 41 STEWART IVERSON, Jr.

39 42 HF 619.308 81

39 43 jm/cf/2930