

Senate File 534

H-1306

1 Amend Senate File 534, as amended, passed, and reprinted by
2 the Senate, as follows:

3 1. Page 1, before line 1 by inserting:

4 <DIVISION 1
5 IMMUNITY — CERTAIN VEHICLE OPERATORS>

6 2. Page 1, before line 20 by inserting:

7 <DIVISION ____
8 ASSAULTS — HARASSMENT — CRIMINAL MISCHIEF — PUBLIC DISORDER>

9 3. Page 7, after line 23 by inserting:

10 <DIVISION ____
11 CAPITAL PUNISHMENT

12 Sec. ____ . Section 13.2, subsection 1, Code 2021, is amended
13 by adding the following new paragraph:

14 NEW PARAGRAPH. *0c*. Prosecute and defend all actions and
15 proceedings involving capital murder as defined in section
16 902.15, when in the attorney general's judgment, the interest
17 of the state requires the attorney general to intervene on
18 behalf of the county attorney, or upon request by the county
19 attorney.

20 Sec. ____ . Section 13B.4, Code 2021, is amended by adding the
21 following new subsection:

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

26 *a*. Provide or contract with attorneys for appointment as
27 lead counsel and cocounsel to provide legal services in cases
28 where a person is charged with capital murder under section
29 902.15, and the state has given notice of intent to seek the
30 death penalty or in cases in which a sentence of death is to be
31 imposed.

32 *b*. Conduct or sponsor specialized training programs for
33 attorneys representing persons who may be executed.

34 Sec. ____ . NEW SECTION. 602.10112 **Qualifications of counsel**
35 **in capital murder cases.**

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

5 Sec. _____. Section 707.2, subsection 1, paragraph d, Code
6 2021, is amended to read as follows:

7 *d.* The person intentionally kills a ~~peace officer,~~
8 correctional officer, public employee, or hostage while the
9 person is imprisoned in a correctional institution under the
10 jurisdiction of the Iowa department of corrections, or in a
11 city or county jail.

12 Sec. _____. Section 707.2, subsection 1, Code 2021, is amended
13 by adding the following new paragraph:

14 NEW PARAGRAPH. *g.* The person intentionally kills a
15 peace officer, who is on duty, under any circumstances, with
16 knowledge that the person killed is a peace officer.

17 Sec. _____. NEW SECTION. **812A.1 Procedure to determine sanity**
18 **of condemned inmate.**

19 1. At any time prior to execution of an inmate under section
20 902.1A, if the director of the department of corrections or
21 the counsel for a person who is under a sentence of execution
22 has cause to believe that the inmate is suffering from such
23 a diseased or deranged condition of the mind as to prevent
24 the defendant from knowing the nature and quality of the act
25 the defendant has been convicted of, or from understanding
26 that trial on the offense has taken place and that execution
27 proceedings are about to take place, or to otherwise cause the
28 defendant to lack the capacity to understand the sentence which
29 has been imposed and to participate in any legal proceedings
30 relating to the sentence, the director or counsel may file a
31 request with the court that issued the warrant for execution
32 for a determination of the inmate's sanity. If the court
33 determines that there is not sufficient reason to believe
34 that the inmate is insane, the court shall enter an order
35 denying the request and shall state the grounds for denying the

1 request. If the court believes that there is sufficient reason
2 to believe that the inmate is insane, the court shall suspend
3 the execution and conduct a hearing to determine the sanity of
4 the inmate.

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

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

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

1 it is either determined that the inmate is sane or incurably
2 insane.

3 Sec. _____. NEW SECTION. 814.30 **Review of capital murder**
4 **death sentence.**

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

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

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

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

21 b. Whether the special verdicts returned under section
22 901E.1 are supported by the evidence.

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

26 4. If the supreme court determines that the sentence of
27 death was not lawfully imposed, the supreme court shall set
28 aside the sentence and shall remand the case to the trial
29 court for a second sentencing proceeding to determine if the
30 imposition of death is warranted.

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

35 Sec. _____. Section 815.10, Code 2021, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 1A. If two attorneys have not already been
3 appointed pursuant to section 13B.4 or 13B.9, the court shall
4 appoint, for each indigent person who is charged with capital
5 murder under section 902.15, and in which a notice of intent
6 to seek the death penalty has been filed, two attorneys who
7 are qualified under section 602.10112 to represent the person
8 in the proceedings and in all state legal proceedings which
9 take place from the time the person is indicted or arraigned
10 until the person is sentenced on the charge. In addition, if
11 at any point in federal postconviction proceedings an indigent
12 person is not afforded court-appointed counsel, the state shall
13 provide counsel to the person to present any claims determined
14 meritorious by the federal court if the person is not otherwise
15 represented by legal counsel. Only private attorneys and
16 public defenders who are qualified to provide representation in
17 cases in which the death penalty may be imposed are eligible
18 for appointment or assignment to a case in which the death
19 penalty may be imposed.

20 Sec. ____ . NEW SECTION. 901E.1 Capital murder proceedings —
21 request for death penalty — penalty proceedings.

22 1. As used in this section:

23 a. *“Intellectually disabled”* means the same as defined in
24 section 902.15.

25 b. *“Mentally ill”* or *“mental illness”* means the same as
26 defined in section 902.15.

27 2. If a notice of intent to seek the death penalty has
28 been filed, objections to the imposition of the death penalty
29 based upon allegations that a defendant was intellectually
30 disabled or mentally ill at the time of the commission of
31 the offense shall be raised within the time provided for the
32 filing of pretrial motions under rule of criminal procedure
33 2.11, Iowa court rules. The court may, for good cause shown,
34 allow late filing of the motion. Hearing on the motion shall
35 be held prior to trial and the burden of proof shall be on the

1 defendant to prove intellectual disability or mental illness
2 by a preponderance of the evidence. If the court finds that
3 the defendant is intellectually disabled, the defendant, if
4 convicted of capital murder under section 902.15, shall not be
5 sentenced to death but shall be sentenced to life imprisonment
6 in the manner provided in section 902.1. A finding by the
7 court that the evidence presented by the defendant at the
8 hearing does not preclude the imposition of the death penalty
9 under this section and section 902.15 shall not preclude the
10 introduction of evidence of intellectual disability or mental
11 illness during the penalty proceeding. If the court finds
12 that evidence of intellectual disability or mental illness
13 does not preclude imposition of the death penalty, evidence of
14 intellectual disability or mental illness may be reviewed by
15 the jury in the penalty proceeding and the jury shall not be
16 informed of the finding in the initial proceeding at any time
17 during the penalty proceeding.

18 3. If at the trial on a charge of capital murder under
19 section 902.15, the state intends to request that the death
20 penalty be imposed under section 902.1A, the prosecutor shall
21 file a notice of intent to seek the death penalty, at the time
22 of and as part of the information or indictment filed in the
23 case.

24 4. If a notice of intent to seek the death penalty has been
25 filed, the trial shall be conducted in bifurcated proceedings
26 before the same trier of fact. During the initial proceeding,
27 the jury, or the court if the defendant waives the right to a
28 jury trial, shall decide only whether the defendant is guilty
29 or not guilty of capital murder under section 902.15.

30 a. If, in the initial proceeding, the court or jury finds
31 the defendant guilty of, or the defendant pleads guilty to,
32 an offense other than capital murder under section 902.15,
33 the court shall sentence the defendant in accordance with the
34 sentencing procedures set forth in rule of criminal procedure
35 2.23, Iowa court rules, and chapters 901 through 909, which are

1 applicable to the offense.

2 *b.* If the court or jury finds the defendant guilty of, or
3 the defendant pleads guilty to, capital murder under section
4 902.15, but the prosecuting attorney waives the death penalty,
5 the court shall sentence the defendant to life imprisonment in
6 accordance with the sentencing procedures set forth in rule of
7 criminal procedure 2.23, Iowa court rules, and chapters 901
8 through 909, which are otherwise applicable to convictions of
9 murder in the first degree.

10 *c.* If the court or jury finds the defendant guilty of
11 capital murder under section 902.15, or a defendant enters a
12 plea of guilty in the initial proceeding, and the prosecuting
13 attorney does not waive imposition of the death penalty, a
14 penalty proceeding shall be held in the manner provided in
15 subsections 5 through 13.

16 5. No sooner than twenty-four hours after a verdict of
17 guilty or a plea of guilty to capital murder under section
18 902.15 is returned in the initial proceeding, a penalty
19 proceeding shall be held to determine whether the defendant
20 shall be sentenced to death or to life imprisonment. The
21 proceeding shall be conducted in the trial court before the
22 trial jury, or before the court if the defendant has waived
23 the right to a jury trial or has waived the right for the
24 proceeding to be before the trial jury. Both the state and the
25 defendant shall have the right to present opening statements
26 at the commencement of the proceeding. In the proceeding,
27 evidence relevant to the existence of any aggravating or
28 mitigating circumstances may be presented as follows:

29 *a.* The state or the defendant may present evidence relevant
30 to the conviction of capital murder under section 902.15 and
31 any aggravating circumstances other than juvenile delinquency
32 adjudications for offenses which carry penalties equivalent to
33 the penalties imposed for simple or serious misdemeanors. The
34 state may introduce evidence of the actual harm caused by the
35 commission of the capital murder offense under section 902.15,

1 including but not limited to evidence relating to the life of
2 the victim and the impact of the loss of the victim to the
3 victim's family and society.

4 *b.* The defendant may present evidence that the defendant
5 was intellectually disabled or mentally ill at the time of the
6 commission of the offense. The burden of proof shall be on the
7 defendant to prove intellectual disability or mental illness by
8 a preponderance of the evidence.

9 *c.* The state or the defendant may present evidence relevant
10 to any mitigating circumstances which may exist. Mitigating
11 circumstances may include the following circumstances:

12 (1) The defendant was under the influence of an extreme
13 mental or emotional disturbance insufficient to constitute a
14 defense.

15 (2) The age of the defendant at the time of the offense.

16 (3) The defendant's capacity to appreciate the wrongfulness
17 of the defendant's conduct and to conform that conduct to the
18 requirements of law was significantly impaired as a result of a
19 mental disease or defect or intellectual disability, but not to
20 a degree sufficient to constitute a defense.

21 (4) The defendant has no significant history of prior adult
22 criminal activity.

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

25 (6) The defendant did not directly commit the capital murder
26 offense and the defendant did not intend to kill or anticipate
27 that lethal force would be used.

28 (7) Any other factor which is relevant to the defendant's
29 character or record or to the circumstances of the offense.

30 *d.* The state and the defendant or the defendant's counsel
31 shall be permitted to present and cross-examine witnesses and
32 present arguments for or against a sentence of death. Evidence
33 regarding aggravating and mitigating circumstances shall not
34 be governed by the rules governing admissibility of evidence,
35 except that introduction of evidence secured in violation of

1 the Constitution of the United States or of the Constitution of
2 the State of Iowa shall not be permitted.

3 6. At the conclusion of presentation of evidence in
4 the penalty proceeding, the state and the defendant or the
5 defendant's counsel shall be permitted to make closing
6 arguments, including any rebuttal arguments, in the same manner
7 as in the initial proceeding and the following issues shall be
8 determined by the jury or by the court if there is no jury:

9 a. Whether the aggravating circumstance or circumstances
10 have been established beyond a reasonable doubt and outweigh
11 any one or more mitigating circumstances.

12 b. Whether the defendant shall be sentenced to death.

13 7. A recommendation for a sentence of death shall not be
14 permitted if the recommendation is based on the race, color,
15 religious beliefs, national origin, or sex of the defendant
16 or of any victim, or based on any other protected class under
17 chapter 216. After submission of the issues, but prior to the
18 return of a finding in the penalty proceeding, if the matter
19 is tried before a jury, the court shall instruct the jury
20 that in considering whether a sentence of death is justified,
21 the jury shall not consider race, color, religious beliefs,
22 national origin, or sex of the defendant or of any victim, or
23 consider any other protected class under chapter 216. The
24 court shall further instruct the jury that the jury shall not
25 return a sentence of death unless the jury concludes that such
26 a sentence would be recommended no matter what the race, color,
27 religious beliefs, national origin, sex, or other protected
28 class of the defendant or of any victim may be.

29 8. After submission of the issues, but prior to the
30 commencement of the jury deliberations in the penalty
31 proceeding, the court shall instruct the jury that if the
32 defendant is not sentenced to death, the court is required by
33 law to impose a sentence of imprisonment until death without
34 parole. The court shall further instruct the jury that
35 the sentence of imprisonment until death without parole is

1 required by law if the jury fails to reach a unanimous verdict
2 recommending a sentence of death.

3 9. Concurrently with the return of the findings on the
4 issues submitted under subsection 6, the jury, or the court if
5 there is no jury, shall return special verdicts as follows:

6 a. Which aggravating circumstances were established beyond a
7 reasonable doubt and were considered in reaching the verdict.

8 b. Which mitigating circumstances were established and
9 were considered in reaching the verdict returned on the issue
10 specified in subsection 6, paragraph "a".

11 10. If the jury, or the court if there is no jury, returns
12 a unanimous affirmative finding on each of the issues submitted
13 under subsection 6, paragraphs "a" and "b", the court shall
14 enter a judgment of conviction and shall sentence the defendant
15 to death as provided in section 902.1A.

16 11. However, if evidence that the defendant was not a
17 major participant in the commission of the capital murder
18 under section 902.15, and that the defendant's conduct did not
19 manifest a reckless indifference to human life is presented
20 to the jury, or to the court if there is no jury, the jury or
21 the court shall also return a special verdict on the issue.
22 If the jury unanimously determines, or the court if there is
23 no jury, determines that a preponderance of evidence exists
24 that shows that the defendant was not a major participant in
25 the commission of the capital murder under section 902.15,
26 and that the defendant's conduct did not manifest a reckless
27 indifference to human life, the court shall enter a judgment
28 of conviction and shall sentence the defendant to life
29 imprisonment as provided in section 902.1, even if the jury or
30 the court returns unanimous affirmative findings on each of the
31 issues submitted under subsection 6.

32 12. If the jury, or the court if there is no jury, returns
33 a negative finding on any of the issues submitted under
34 subsection 6, paragraph "a" or "b", the court shall enter a
35 judgment of conviction and shall sentence the defendant to life

1 imprisonment as provided in section 902.1.

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

19 Sec. _____. Section 902.1, subsection 1, Code 2021, is amended
20 to read as follows:

21 1. ~~Upon~~ Except as provided in section 902.1A, a plea of
22 guilty, a verdict of guilty, or a special verdict upon which a
23 judgment of conviction of a class "A" felony may be rendered,
24 the court shall enter a judgment of conviction and shall commit
25 the defendant into the custody of the director of the Iowa
26 department of corrections for the rest of the defendant's
27 life. Nothing in the Iowa corrections code pertaining to
28 deferred judgment, deferred sentence, suspended sentence, or
29 reconsideration of sentence applies to a class "A" felony, and
30 a person convicted of a class "A" felony shall not be released
31 on parole unless the governor commutes the sentence to a term
32 of years.

33 Sec. _____. NEW SECTION. 902.1A Capital murder — death
34 penalty.

35 1. For the purposes of this section, "*lethal injection*"

1 means a continuous intravenous injection of a lethal substance
2 sufficient to cause death.

3 2. Notwithstanding section 902.1, upon return of a plea
4 or verdict of guilty to capital murder under section 902.15,
5 and a return of a verdict in favor of a sentence of death in
6 a penalty proceeding conducted as provided in section 901E.1,
7 the court shall enter a judgment of conviction and shall commit
8 the defendant into the custody of the director of the Iowa
9 department of corrections. The sentence shall be carried out
10 by the administration of a lethal injection pursuant to rules
11 adopted by the board of corrections. If a defendant, for whom
12 a warrant of execution is issued, is pregnant, the execution
13 shall not take place until after the defendant is no longer
14 pregnant. If a defendant, for whom a warrant of execution is
15 issued, is suffering from such a diseased or deranged condition
16 of the mind as to prevent the defendant from knowing the nature
17 and quality of the act the defendant has been convicted of,
18 or from understanding that trial on the offense has taken
19 place and that execution proceedings are about to take place,
20 or to otherwise cause the defendant to lack the capacity
21 to understand the sentence which has been imposed and to
22 participate in any legal proceedings relating to the sentence,
23 the execution shall not take place until after the defendant's
24 capacity is restored. If the director of the department of
25 corrections or the defendant's counsel files a request with the
26 court which issued the warrant of execution, alleging that the
27 defendant suffers from such a diseased or deranged condition, a
28 hearing on the matter shall be held in the manner provided in
29 section 812A.1.

30 Sec. ____ . NEW SECTION. 902.15 Capital murder.

31 1. As used in this section:

32 a. (1) "*Capital murder*" means any murder that makes a
33 person eligible for the death penalty.

34 (2) A person is eligible for the death penalty when a person
35 is convicted of murder in the first degree in violation of

1 section 707.2.

2 *b. "Intellectually disabled"* means significant subaverage
3 general intellectual functioning accompanied by significant
4 deficits or impairments in adaptive functioning manifested in
5 the developmental period, but no later than the age of eighteen
6 years, and accompanied by deficits in adaptive behavior.

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

14 2. A person who commits capital murder, who is not
15 intellectually disabled or mentally ill, and who is age
16 eighteen or older at the time of the murder in the first
17 degree, shall be eligible for a sentence of death under section
18 902.1A.

19 Sec. _____. NEW SECTION. 902.16 **Data collection for capital**
20 **murder — death penalty.**

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

29 2. Data collected by public officials concerning factors
30 relevant to the imposition of the death sentence shall be made
31 publicly available.

32 Sec. _____. NEW SECTION. 903C.1 **Executions — refusal to**
33 **perform.**

34 An employee of the state who may lawfully perform, assist, or
35 participate in the execution of a person pursuant to section

1 902.1A, and rules adopted by the department of corrections,
2 shall not be required to perform, assist, or participate in
3 the execution. State employees who refuse to perform, assist,
4 or participate in the execution of a person shall not be
5 discriminated against in any way, including but not limited
6 to employment, promotion, advancement, transfer, licensing,
7 education, training, or the granting of any privileges or
8 appointments because of the refusal to perform, assist, or
9 participate in the execution.

10 Sec. _____. Section 904.105, Code 2021, is amended by adding
11 the following new subsection:

12 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
13 pertaining to executions of persons convicted of capital murder
14 under section 902.15. Rules adopted shall include but are not
15 limited to rules permitting the witnessing of executions by
16 members of the public and the victim's family. Invitations
17 to witness an execution shall at least be extended to the
18 following representatives of the news media:

19 a. A representative from a wire service serving Iowa.

20 b. A representative from a broadcasting network serving
21 Iowa.

22 c. A representative from a television station located in
23 Iowa.

24 d. A representative from a radio station located in Iowa.

25 e. A representative from a daily newspaper published in
26 Iowa.

27 f. A representative from a weekly newspaper published in
28 Iowa.

29 g. A representative from the news media from the community
30 in which the condemned person resided, if that community is
31 located in Iowa.

32 Sec. _____. IMPLEMENTATION OF ACT. Section 25B.2, subsection
33 3, shall not apply to this Act.

34 Sec. _____. SEVERABILITY. If any provision of this Act or the
35 application thereof to any person is invalid, the invalidity

1 shall not affect the provisions or application of this Act
2 which can be given effect without the invalid provisions or
3 application and to this end, the provisions of this Act are
4 severable.

5 Sec. _____. EFFECTIVE DATE. This division of this Act takes
6 effect January 1, 2022.

7 Sec. _____. APPLICABILITY. This division of this Act applies
8 to offenses committed on or after the effective date of this
9 Act.>

10 4. Title page, by striking lines 1 and 2 and inserting <An
11 Act relating to law enforcement and certain criminal offenses,
12 creating a capital murder offense by establishing the penalty
13 of death for murder in the first degree, providing penalties,
14 and including effective date and applicability provisions.>

15 5. By renumbering as necessary.

JACOBSEN of Pottawattamie