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HOUSE FILE 2

JAN 9 1995

JUDICIARY

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COON, HAHN, CHURCHILL, RENKEN,  
and MEYER

(p.544)  
Passed House, Date 2/23/95 Passed Senate, Date \_\_\_\_\_  
Vote: Ayes 54 Nays 44 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act applying the death penalty or life imprisonment, by  
2 establishing the offense of capital murder, by providing a  
3 minimum age for imposition of a death sentence, by providing  
4 for review of death sentences, by providing for execution by  
5 lethal injection, by amending the rules of criminal procedure,  
6 and by providing for the Act's applicability.

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

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UNPRINTED

1 Section 1. Section 701.7, Code 1995, is amended to read as  
2 follows:

3 701.7 FELONY DEFINED AND CLASSIFIED.

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

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

11 Sec. 2. NEW SECTION. 707.1A CAPITAL MURDER.

12 1. a. A person commits capital murder if the person  
13 commits murder in the first degree pursuant to section 707.2,  
14 and the person previously has been convicted of capital murder  
15 or a class "A" felony pursuant to section 707.2, 709.2, or  
16 710.2.

17 b. A person commits capital murder if the person commits  
18 murder in the first degree pursuant to section 707.2, and the  
19 person, in the course of that murder, commits another capital  
20 murder or another class "A" felony pursuant to section 707.2,  
21 709.2, or 710.2.

22 2. Capital murder is a felony punishable either by death  
23 or by life imprisonment, as determined pursuant to sections 15  
24 through 18 of this Act. However, if a person is convicted of  
25 capital murder who was under the age of eighteen years at the  
26 time the offense was committed, the person shall be sentenced  
27 to life imprisonment.

28 3. If a defendant is sentenced to death pursuant to  
29 sections 15 through 18 of this Act, the sentence shall be  
30 executed by the administration of a lethal injection pursuant  
31 to rules adopted by the board of corrections. For the  
32 purposes of this section, "lethal injection" means a  
33 continuous intravenous injection of a lethal quantity of  
34 sodium thiopental or other equally or more effective substance  
35 sufficient to cause death.

1     Sec. 3. Section 707.2, unnumbered paragraph 1, Code 1995,  
2 is amended to read as follows:

3     A person commits murder in the first degree when the person  
4 commits murder which is not capital murder and which is  
5 committed under any of the following circumstances:

6     Sec. 4. Section 707.3, unnumbered paragraph 1, Code 1995,  
7 is amended to read as follows:

8     A person commits murder in the second degree when the  
9 person commits murder which is not capital murder or murder in  
10 the first degree.

11    Sec. 5. Section 707.4, unnumbered paragraph 2, Code 1995,  
12 is amended to read as follows:

13    Voluntary manslaughter is an included offense under an  
14 indictment for capital murder or murder in the first or second  
15 degree.

16    Sec. 6. Section 707.5, unnumbered paragraph 1, Code 1995,  
17 is amended to read as follows:

18    Involuntary manslaughter as defined in this section is an  
19 included offense under an indictment for capital murder or  
20 murder in the first or second degree or voluntary  
21 manslaughter.

22    Sec. 7. Section 802.1, Code 1995, is amended to read as  
23 follows:

24    802.1 MURDER.

25    A prosecution for capital murder or murder in the first or  
26 second degree may be commenced at any time after the death of  
27 the victim.

28    Sec. 8. Section 811.1, subsections 1 and 2, Code 1995, are  
29 amended to read as follows:

30    1. A defendant awaiting judgment of conviction and  
31 sentencing following either a plea or verdict of guilty of a  
32 class "A" felony, capital murder, murder, felonious assault,  
33 sexual abuse in the second degree, sexual abuse in the third  
34 degree, kidnapping, robbery in the first degree, arson in the  
35 first degree, or burglary in the first degree, or any felony

1 included in section 124.401, subsection 1, paragraph "a".

2 2. A defendant appealing a conviction of a class "A"  
3 felony, capital murder, murder, felonious assault, sexual  
4 abuse in the second degree, sexual abuse in the third degree,  
5 kidnapping, robbery in the first degree, arson in the first  
6 degree, or burglary in the first degree, or any felony  
7 included in section 124.401, subsection 1, paragraph "a".

8 Sec. 9. Section 811.1, Code 1995, is amended by adding the  
9 following new subsection:

10 NEW SUBSECTION. 4. A defendant charged with capital  
11 murder, if upon hearing held under the conditions required by  
12 section 812.2, the prosecuting attorney establishes by clear  
13 and convincing evidence that the release of the defendant from  
14 custody is likely to pose a danger of physical harm to another  
15 person. The court shall consider all lawfully obtained  
16 evidence relevant to the required determination, whether or  
17 not the evidence would be admissible at trial, but testimony  
18 of the person charged is not admissible at a subsequent trial  
19 on the issue of guilt of the offense charged or of any other  
20 offense.

21 Sec. 10. NEW SECTION. 814.28 REVIEW OF DEATH SENTENCE.

22 1. In a case in which a sentence of death is imposed, the  
23 supreme court shall automatically review the judgment and  
24 sentence. The case shall not be transferred to the court of  
25 appeals.

26 2. A review by the supreme court of a judgment and  
27 sentence imposing the punishment of death has priority over  
28 all other criminal and other actions pending before the  
29 supreme court.

30 3. The supreme court shall review the trial and judgment,  
31 and separately shall review the sentencing proceeding. Upon  
32 determining that errors did not occur at the trial requiring  
33 reversal or modification of the judgment, the supreme court  
34 shall proceed to determine if the sentence of death is  
35 lawfully imposed. In its review of the sentencing proceeding

1 the supreme court shall determine all of the following:

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

4 b. Whether the special verdicts returned under section 15,  
5 subsection 2 of this Act are supported by the evidence.

6 c. Whether the sentence of death is excessive or  
7 disproportionate to the penalty imposed in similar cases,  
8 considering both the crime and the defendant.

9 4. If the supreme court determines that the sentence of  
10 death was not lawfully imposed the court shall set aside the  
11 sentence and shall remand the case to the trial court for  
12 imposition of a sentence of life imprisonment.

13 5. If the supreme court affirms the judgment and sentence  
14 of death, the clerk of the supreme court shall certify the  
15 judgment of the supreme court under the seal of the court to  
16 the clerk of the trial court.

17 Sec. 11. NEW SECTION. 901.11 CAPITAL MURDER PROCEEDINGS.

18 1. If a charge of capital murder is submitted to the jury  
19 or court, but the prosecuting attorney waives the death  
20 penalty, upon a verdict of guilty, the court shall sentence  
21 the defendant to life imprisonment. If the prosecuting  
22 attorney waives the death penalty, the court shall follow the  
23 sentencing procedures set forth in rule of criminal procedure  
24 22, Iowa court rules, third edition, and need not follow the  
25 special sentencing procedures provided for capital murder  
26 cases.

27 2. If capital murder is charged, but the charge is not  
28 submitted to the court or jury, or the court or jury finds the  
29 defendant guilty of another offense, upon conviction of the  
30 other charge, the court shall follow the sentencing procedures  
31 set forth in rule of criminal procedure 22, Iowa court rules,  
32 third edition, concerning sentencing for the offense, rather  
33 than the sentencing procedures provided for capital murder  
34 cases.

35 3. Capital murder proceedings shall be conducted in

1 bifurcated proceedings before the same trier of fact. During  
2 the initial proceeding, the jury, or the court, if the  
3 defendant waives the right to a jury trial, shall decide only  
4 whether the defendant is guilty or not guilty of any submitted  
5 offense. The issue of punishment shall not be submitted  
6 during the initial proceeding.

7 Upon a verdict of guilty to a capital murder charge, a  
8 separate sentencing proceeding shall be conducted as provided  
9 in sections 15 through 18 of this Act. If a defendant enters  
10 a plea of guilty to a capital murder charge, the court shall  
11 conduct a separate sentencing proceeding as provided in  
12 sections 15 through 18 of this Act.

13 Sec. 12. NEW SECTION. 902.12 CAPITAL MURDER.

14 If a person is to be sentenced to life imprisonment under  
15 section 15, subsection 5 of this Act, nothing in chapters 901  
16 through 909, pertaining to deferred judgment, deferred  
17 sentence, suspended sentence, or reconsideration of sentence,  
18 applies, and the person shall not be released on parole unless  
19 the governor commutes the person's sentence to a term of years  
20 and shall not otherwise be released from confinement unless  
21 the governor pardons the person.

22 Sec. 13. Section 904.105, Code 1995, is amended by adding  
23 the following new subsection:

24 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A  
25 pertaining to executions of persons convicted of capital  
26 murder.

27 Sec. 14. Rules of criminal procedure, Iowa court rules,  
28 third edition, are amended by adding sections 15 through 18 of  
29 this Act.

30 Sec. 15. NEW RULE. CAPITAL MURDER -- PROCEDURE.

31 1. Upon a finding or plea that a defendant is guilty of  
32 capital murder, the court shall conduct a separate sentencing  
33 proceeding to determine whether the defendant shall be  
34 sentenced to death or to life imprisonment. The proceeding  
35 shall be conducted in the trial court before the trial jury,

1 or the court if there is no jury, as soon as practicable. In  
2 the proceeding, additional evidence may be presented as to any  
3 matter which is relevant to the sentence. The court shall  
4 receive when offered any evidence that is required by the  
5 rules of criminal procedure. This subsection does not  
6 authorize the introduction of any evidence secured in  
7 violation of the Constitution of the United States or of the  
8 Constitution of the State of Iowa. The state and the  
9 defendant or the defendant's counsel shall be permitted to  
10 cross-examine witnesses and to present argument for or against  
11 a sentence of death.

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

14 a. Whether the conduct of the defendant that caused the  
15 death of the deceased was committed willfully, deliberately,  
16 and with the reasonable expectation that the death of the  
17 deceased or another would result.

18 b. Whether a probability exists that in the future the  
19 defendant would commit criminal acts of violence that would  
20 constitute a continuing threat to society.

21 c. Whether aggravating circumstances exist that are  
22 sufficient to outweigh any mitigating circumstances that may  
23 exist.

24 If the case is not tried to a jury, the court shall  
25 determine the issues.

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

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

32 a. It shall answer any issue "yes" if it agrees  
33 unanimously.

34 b. It shall answer any issue "no" if the jurors  
35 unanimously agree that the answer is "no" or if the jurors do

1 not unanimously agree that the answer is "yes".

2 5. If the jury, or the court if there is no jury, returns  
3 an affirmative finding on all applicable issues, the court  
4 shall sentence the defendant to death. If the jury or the  
5 court returns a negative finding on any applicable issue, the  
6 court shall sentence the defendant to the custody of the  
7 director of the department of corrections for confinement for  
8 the rest of the defendant's life.

9 6. Iowa Code chapters 901 through 909 do not apply to a  
10 conviction of capital murder if the defendant is sentenced to  
11 death.

12 Sec. 16. NEW RULE. AUTOMATIC REVIEW -- STAY OF JUDGMENT.

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

17 2. Upon entry of judgment and sentence of death, the trial  
18 court shall prepare a complete record and transcript of the  
19 action in the manner provided in the rules of criminal  
20 procedure and shall docket the record and transcript with the  
21 clerk of the supreme court.

22 3. The judgment and sentence of the trial court is stayed  
23 as a matter of law from the time of its entry until the  
24 judgment of the supreme court is certified to and entered by  
25 the trial court. Upon entry of a judgment of the supreme  
26 court which affirms the conviction and sentence, the stay of  
27 the judgment and sentence terminates as a matter of law.

28 4. All court costs required due to the automatic  
29 preparation of the record and transcript, docketing with the  
30 supreme court, and stay of judgment and sentence shall be  
31 assessed to the state.

32 Sec. 17. NEW RULE. ISSUANCE OF WARRANT.

33 1. Upon entry by the trial court of the judgment of the  
34 supreme court affirming a judgment and sentence of death, a  
35 district judge shall within five days of the entry issue a



1 warrant under the seal of the court for the execution of the  
2 sentence of death. The warrant shall specifically set forth  
3 the offense and the fact of conviction, shall state the  
4 judgment and sentence of the court, shall state that the  
5 judgment and sentence were affirmed by the supreme court and  
6 the date of entry of judgment of the supreme court in the  
7 trial court, and shall specify the date fixed for execution of  
8 the defendant which shall be not less than fifty nor more than  
9 sixty days after the date of entry in the trial court of the  
10 judgment of the supreme court affirming the judgment and  
11 sentence of death. The warrant shall be directed to the  
12 director of the department of corrections commanding the  
13 director to cause the warrant to be executed on the date  
14 specified. The trial court shall deliver the warrant to the  
15 sheriff of the county in which judgment of conviction was  
16 entered and the sheriff shall deliver the warrant and the  
17 defendant to the custody of the department of corrections for  
18 confinement in the state penitentiary. The director of the  
19 department of corrections shall acknowledge receipt of the  
20 warrant and the defendant, and the sheriff shall return the  
21 acknowledgment to the office of the clerk of the trial court  
22 from which the warrant was issued.

23 2. Immediately after issuance of a warrant ordering a  
24 sentence of death, the clerk of the trial court issuing the  
25 warrant shall transmit by mail to the governor a copy of the  
26 indictment, the plea, the verdict and special findings, the  
27 affirmation of judgment and sentence by the supreme court, and  
28 the complete transcript of the trial court.

29 3. Notwithstanding subsection 1, if a defendant, for whom  
30 a warrant of execution is issued, is pregnant, the execution  
31 shall not take place until after the defendant is no longer  
32 pregnant.

33 Sec. 18. NEW RULE. EVIDENCE AT SENTENCING IN CAPITAL  
34 MURDER CASES -- REQUIRED INFORMATION.

35 1. At a reasonable time before the commencement of

1 sentencing proceedings in a capital murder case, each party  
2 shall file and serve upon the other party the following:

3 a. A list of all aggravating or mitigating circumstances  
4 which the party intends to prove during the sentencing  
5 proceedings.

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

8 c. Notwithstanding rule 13, copies, or for inspection  
9 purposes, the location, of all documents, including books,  
10 papers, writings, drawings, graphs, charts, photographs,  
11 phonorecords, and other data compilations from which  
12 information can be obtained, or other objects which the party  
13 intends to offer into evidence during the sentencing  
14 proceedings. If copies are not supplied to opposing counsel,  
15 the party shall make the items available for inspection and  
16 copying without order of the court.

17 2. In proceedings to determine whether the sentence shall  
18 be death or life imprisonment, evidence may be presented as to  
19 any matter which the trial court deems relevant to the  
20 sentence, including but not limited to the nature,  
21 circumstances, and manner of completion of the murder, and the  
22 defendant's character, background, history, and mental and  
23 physical condition. The trial court shall admit any relevant  
24 evidence respecting any aggravating or mitigating  
25 circumstances, if the party has included the circumstance on a  
26 list provided pursuant to this rule, or good cause is shown  
27 for the failure to do so.

28 Sec. 19. APPLICABILITY. This Act applies to offenses  
29 committed on or after the effective date of this Act.

30 EXPLANATION

31 This bill amends the Iowa criminal code to provide for  
32 punishment by death for murder committed under specified  
33 circumstances if the trial jury, or the judge if there is no  
34 jury, makes specific affirmative findings respecting the  
35 nature of the act of murder and the characteristics of the

1 defendant in a separate sentencing proceeding held after the  
2 close of the trial. Under the bill, the offense of capital  
3 murder involves a murder which would constitute murder in the  
4 first degree committed by a person who has previously  
5 committed a class "A" felony or a person who commits another  
6 class "A" felony in the course of the murder. Class "A"  
7 felonies include murder in the first degree, sexual abuse in  
8 the first degree, and kidnapping in the first degree.

9 The sentence of death is imposed only if the trier of fact  
10 unanimously answers three questions affirmatively: (1)  
11 whether the conduct of the defendant that caused the death of  
12 the deceased was committed deliberately and with reasonable  
13 expectation that the death of the deceased or another would  
14 result; (2) whether a probability exists that in the future  
15 the defendant would commit criminal acts of violence that  
16 would constitute a continuing threat to society; and (3)  
17 whether aggravating circumstances exist that are sufficient to  
18 outweigh any mitigating circumstances that may exist. The  
19 sentencing proceeding is conducted separately from the finding  
20 of guilt or innocence by the same trier of fact. If the jury  
21 fails to agree unanimously on the required affirmative  
22 findings or if the supreme court determines that error was  
23 committed in the sentencing proceeding, the penalty would be  
24 life imprisonment.

25 The death penalty sentence would be reviewed automatically  
26 by the supreme court. The bill requires the supreme court to  
27 examine whether the sentence is excessive or disproportionate  
28 to penalties in similar cases. If affirmed by the supreme  
29 court, the penalty would be accomplished by lethal injection.  
30 If a defendant is pregnant, the execution will not take place  
31 until after the defendant is no longer pregnant. The bill  
32 requires the board of corrections to adopt rules pertaining to  
33 executions.

34 The bill further provides that in order to receive a  
35 sentence of death, the defendant must be at least 18 years of

1 age at the time the offense is committed. The bill also  
2 provides that it applies only to offenses committed on or  
3 after the bill's effective date.

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**HOUSE FILE 2  
FISCAL NOTE**

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The estimate for Amendment H 3109 to House File 2 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Amendment H 3109 to House File 2 provides for the death penalty for certain offenses of murder in the first degree. The defendant must be at least 18 years old, sane, not pregnant, and not mentally retarded to receive the death penalty. In addition to committing a first degree murder, the offender must do one or more of the following: have previously committed a class A felony or commit another class A felony while committing the first degree murder; murder a witness, prosecutor, or judicial officer to keep them from performing their duties or in retaliation; murder a Department of Corrections or jail employee while they are performing their official duties; or commit an exceptionally brutal and wantonly cruel murder of a child less than 12 years old. Guilt and the sentence are determined in separate proceedings. A review by the Supreme Court is required. The execution is by lethal injection.

**Assumptions:**

1. This estimate relates to the average cost of a capital case after precedence and accepted procedures have been developed.
2. There will be nine years between the conviction and execution.
3. The average Class A offender under a sentence of life without parole will spend 40 years in prison.
4. Capital cases will go through all three levels of appeal, and 25% will be sent back for retrial.
5. National statistics show that 29% of the capital cases have the death sentence vacated while maintaining the conviction. An additional 11% of the capital cases have both the death sentence and the conviction vacated. Since this estimate applies to the same crimes, it is assumed that 11% of these Class A felonies will have the conviction vacated.
6. The Department of Corrections will not need additional renovations to convert a cell house at Ft. Madison into a death row.

**Fiscal Impact:**

It is estimated there will be seven cases per year that could be tried as a capital case. Because of the discretion permitted prosecuting attorneys in deciding whether to seek the death penalty, all, some, or none of these cases could be tried as capital cases.

No estimate is available for the effect of the death penalty on the plea bargaining process.

If current practices are maintained, the larger counties will prosecute the

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cases in their counties, and the Department of Justice will prosecute the cases in other counties. It is estimated that 56.5% of the capital murder cases will be prosecuted by county attorneys, and the counties will bear those prosecution costs. Appeals would be handled by the Department of Justice.

The following are estimates of the average costs for one capital case and for one Class A felony. The estimates are stated in real FY 1996 dollars and not adjusted for future inflation.

	Capital Offense (Proposed Law)		
	FY 1996	FY 1997	FY 2036 (Total)
Jail	\$ 23,000	\$ 6,000	\$ 29,000
Trial			
Defense	173,000	43,000	216,000
Prosecution	199,000	50,000	249,000
Courts	17,000	16,000	34,000
Appeals			
Defense	0	17,000	620,000
Prosecution	0	10,000	376,000
Courts	0	48,000	144,000
Incarceration through execution	0	29,000	342,000
Lethal injection equipment	25,000	0	25,000
Vacated death sentence	0	0	231,000
Vacated death sentence and conviction	0	0	(84,000)
<b>Total Capital Case</b>	<b>\$ 437,000</b>	<b>\$ 219,000</b>	<b>\$ 2,182,000</b>
	Class A Felony (Current Law)		
	FY 1996	FY 1997	FY 2036 (Total)
Jail	\$ 15,000	\$ 0	\$ 15,000
Trial			
Defense	45,000	0	45,000
Prosecution	66,000	0	66,000
Courts	12,000	0	12,000
Appeals			
Defense	0	1,000	8,000
Prosecution	2,000	7,000	54,000
Courts	0	47,000	140,000
Incarceration through natural death	9,000	28,000	1,118,000
Vacated conviction	0	0	(111,000)

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Total Class A			
Felony	\$ 149,000	\$ 83,000	\$ 1,347,000
Difference	\$ 288,000	\$ 136,000	\$ 835,000

If the county chose to prosecute the capital case, the county would have a per case cost increase of \$141,000 in FY 1996 and \$55,000 in FY 1997 for a total per case cost increase of \$196,000. If the county chose to have the Attorney General's Office prosecute the capital case, then the per case cost increase for the county would be \$8,000 in FY 1996 and \$6,000 in FY 1997 for a total increase of \$14,000. All remaining cost increases would be absorbed by State agencies.

The above estimate does not account for the Supreme Court sitting en banc since it is not required by the bill. The Supreme Court, at its own discretion, hears cases en banc and has indicated that it intends to sit en banc for capital cases. If this were done, the total increase for a capital case would be approximately \$1.1 million.

The Bill provides for a psychiatric or psychological evaluation by two psychiatrists or psychologists, upon request of counsel or the Department of Corrections, to determine the sanity of inmates awaiting execution. The inmate is to be sane to be executed. The cost of both evaluations is estimated to be \$3,000. No estimate is available as to how many evaluations will be required.

No attempt has been made to estimate the training or staffing needs for the Department of Justice, Office of the Public Defender, or the Courts. Each additional attorney would cost approximately \$75,000. Each panel of 3 judges and support staff would cost approximately \$525,000.

The Public Defender is required to conduct or sponsor training programs for attorneys representing persons who may be executed. The Public Defender expects to cooperate with the Public Defender Association to provide the training. Participating attorneys will be charged a fee to cover the costs of the training.

#### Correctional Impact:

This change would not significantly affect the correctional system populations and programs.

#### Sources:

Criminal and Juvenile Justice Planning Division, Department of Human Rights  
 Department of Corrections  
 Office of the State Public Defender  
 Supreme Court of Iowa  
 Department of Justice  
 Department of Public Safety  
 Polk County Jail  
 Polk County Attorney's Office

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Indiana Office of the Attorney General  
Missouri Office of the Attorney General  
Nebraska Office of the Attorney General  
Colorado Office of the Attorney General  
Department of Health  
Greenfield, Lawrence A. "Capital Punishment 1991," Bureau of Justice  
Statistics, U.S. Department of Justice. October, 1992. (LSB 1150hh.2, MDF)

FILED FEBRUARY 22, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR



HOUSE FILE 2  
FISCAL NOTE

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The estimate for House File 2 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House File 2 creates the crime of capital murder, punishable either by death or by life imprisonment, for committing two murders or a murder in conjunction with certain Class A felonies. The defendant must be 18 years old to be charged with capital murder. Guilt and the sentence are determined in separate proceedings. A review by the Supreme Court is required. The execution is by lethal injection.

**Assumptions:**

1. This estimate relates to the average cost of a capital case after precedence and accepted procedures have been developed.
2. There will be nine years between the conviction and execution.
3. The average Class A offender under a sentence of life without parole will spend 40 years in prison.
4. Capital cases will go through all three levels of appeal, and 25% will be sent back for retrial.
5. National statistics show that 29% of the capital cases have the death sentence vacated while maintaining the conviction. An additional 11% of the capital cases have both the death sentence and the conviction vacated. Since this estimate applies to the same crimes, it is assumed that 11% of these Class A felonies will have the conviction vacated.
6. The Department of Corrections will not need additional renovations to convert a cell house at Ft. Madison into a death row.

**Fiscal Impact:**

It is estimated there will be three cases per year that could be tried as capital murder. Because of the discretion permitted prosecuting attorneys in deciding whether to seek the death penalty, all, some, or none of these cases could be tried as capital cases.

If current practices are maintained, the larger counties will prosecute the cases in their counties, and the Department of Justice will prosecute the cases in other counties. It is estimated that 56.5% of the capital murder cases will be prosecuted by county attorneys, and the counties will bear those prosecution costs. Appeals would be handled by the Department of Justice.

The following are estimates of the average costs for one capital case and for one Class A felony. The estimates are stated in real FY 1996 dollars and not adjusted for future inflation.

-2-

Capital Offense  
(Proposed Law)

	FY 1996	FY 1997	FY 2036 (Total)
Jail	\$ 23,000	\$ 6,000	\$ 29,000
Trial			
Defense	173,000	43,000	217,000
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Incarceration through execution	0	29,000	342,000
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Vacated death sentence	0	-0	231,000
Vacated death sentence and conviction	0	0	(84,000)
<b>Total Capital Case</b>	<b>\$ 437,000</b>	<b>\$ 219,000</b>	<b>\$ 2,182,000</b>

Class A Felony  
(Current Law)

	FY 1996	FY 1997	FY 2036 (Total)
Jail	\$ 15,000	\$ 0	\$ 15,000
Trial			
Defense	45,000	0	45,000
Prosecution	66,000	0	66,000
Courts	12,000	0	12,000
Appeals			
Defense	0	1,000	8,000
Prosecution	2,000	7,000	54,000
Courts	0	47,000	140,000
Incarceration through natural death	9,000	28,000	1,118,000
Vacated conviction	0	0	(111,000)
<b>Total Class A     Felony</b>	<b>\$ 149,000</b>	<b>\$ 83,000</b>	<b>\$ 1,347,000</b>
<b>Difference</b>	<b>\$ 288,000</b>	<b>\$ 136,000</b>	<b>\$ 835,000</b>

The above estimate does not account for the Supreme Court sitting en banc since it is not required by the bill. The Supreme Court, at its own discretion,

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hears cases en banc and has indicated that it intends to sit en banc for capital cases. If this were done, the total increase for a capital case would be approximately \$1.1 million.

No attempt has been made to estimate the training or staffing needs for the Department of Justice, Office of the Public Defender, or the Courts. Each additional attorney would cost approximately \$75,000. Each panel of 3 judges and support staff would cost approximately \$525,000.

**Correctional Impact:**

This change would not significantly affect the correctional system populations and programs.

**Sources:**

Criminal and Juvenile Justice Planning Division, Department of Human Rights  
Department of Corrections  
Office of the State Public Defender  
Supreme Court of Iowa  
Department of Justice  
Department of Public Safety  
Polk County Jail  
Polk County Attorney's Office  
Indiana Office of the Attorney General  
Missouri Office of the Attorney General  
Nebraska Office of the Attorney General  
Colorado Office of the Attorney General  
Department of Health  
Greenfield, Lawrence A. "Capital Punishment 1991," Bureau of Justice  
Statistics, U.S. Department of Justice. October, 1992. (LSB 1150hh, MDF)

FILED JANUARY 25, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

SEVENTY-SIXTH GENERAL ASSEMBLY  
1995 REGULAR SESSION

DAILY  
HOUSE CLIP SHEET

FEBRUARY 17, 1995

HOUSE FILE 2

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1 Amend House File 2 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

4 "Section 1. Section 13B.4, Code 1995, is amended  
5 by adding the following new subsection:

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

11 a. Provide or contract with attorneys for  
12 appointment as lead counsel and co-counsel to provide  
13 legal services in cases where a person is charged with  
14 murder in the first degree and the state has given  
15 notice of intent to seek the death penalty or in cases  
16 in which a sentence of death is to be imposed.

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

19 Sec. 2. NEW SECTION. 13D.1 QUALIFICATIONS OF  
20 COUNSEL IN DEATH PENALTY CASES.

21 The supreme court shall prescribe rules which  
22 establish minimum standards and procedures by which  
23 attorneys may become qualified to provide legal  
24 services as lead counsel in cases in which a sentence  
25 of death may be or is to be imposed.

26 Sec. 3. NEW SECTION. 812A.1 PROCEDURE TO  
27 DETERMINE SANITY OF CONDEMNED INMATE.

28 1. At any time prior to execution of an inmate  
29 under section 902.1, if the director of the department  
30 of corrections or the counsel for a person who is  
31 under a sentence of execution has cause to believe  
32 that the inmate is suffering from such a diseased or  
33 deranged condition of the mind as to prevent the  
34 defendant from knowing the nature and quality of the  
35 act the defendant has been convicted of, or from  
36 understanding that trial on the offense has taken  
37 place and that execution proceedings are about to take  
38 place, or otherwise causes the defendant to lack the  
39 capacity to understand the sentence which has been  
40 imposed and to participate in any legal proceedings  
41 relating to the sentence, the director or counsel may  
42 file a request with the court that issued the warrant  
43 for execution for a determination of the inmate's  
44 sanity. If the district court determines that there  
45 is not sufficient reason to believe that the inmate is  
46 insane, the court shall enter an order denying the  
47 request and shall state the grounds for denying the  
48 request. If the court believes that there is  
49 sufficient reason to believe that the inmate is  
50 sufficient reason to believe that the inmate is

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1 insane, the court shall suspend the execution and  
2 conduct a hearing to determine the sanity of the  
3 inmate.

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

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

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

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

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

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

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

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

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

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

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

23 5. If the supreme court affirms the judgment and  
24 sentence of death, the clerk of the supreme court  
25 shall certify the judgment of the supreme court under  
26 the seal of the court to the clerk of the trial court.

27 Sec. 5. Section 815.10, Code 1995, is amended by  
adding the following new subsection:

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

40 Sec. 6. NEW SECTION. 901.11 MURDER PROCEEDINGS  
41 -- REQUEST FOR DEATH PENALTY -- PENALTY PROCEEDINGS.

42 1. If a notice of intent to seek the death penalty  
43 has been filed, objections to the imposition of the  
44 death penalty based upon allegations that a defendant  
45 was mentally retarded at the time of the commission of  
46 the offense shall be raised within the time provided  
47 for the filing of pretrial motions under rule of  
48 criminal procedure 10, Iowa court rules, third  
49 edition. The court may, for good cause shown, allow  
50

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1 late filing of the motion. Hearing on the motion  
2 shall be held prior to trial and the burden of proof  
3 shall be on the defendant to prove mental retardation  
4 by a preponderance of the evidence. However, a  
5 rebuttable presumption of mental retardation arises if  
6 a defendant has an intelligence quotient of seventy or  
7 below. A finding of the court that the evidence  
8 presented by the defendant at the hearing does not  
9 preclude the imposition of the death penalty under  
10 this section and section 902.12 shall not preclude the  
11 introduction of evidence of mental retardation during  
12 the penalty proceeding. If the court finds that  
13 evidence of mental retardation does not preclude  
14 imposition of the death penalty, evidence of mental  
15 retardation may be reviewed by the jury in the penalty  
16 proceeding and the jury shall not be informed of the  
17 finding in the initial proceeding at any time during  
18 the penalty proceeding.

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

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

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

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

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1 murder in the first degree.

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

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

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

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

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

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

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

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

48 (4) The defendant's capacity to appreciate the  
49 wrongfulness of the defendant's conduct and to conform  
50 that conduct to the requirements of law was

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1 significantly impaired as a result of a mental disease  
2 or defect or mental retardation, but not to a degree  
3 sufficient to constitute a defense.

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

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

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

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

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

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

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

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

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

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

49 6. A recommendation for a sentence of death shall  
50 not be permitted if the recommendation is based on the

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

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

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

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

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

46 Sec. 7. Section 902.1, Code 1995, is amended to  
47 read as follows:

48 902.1 CLASS "A" FELONY.

49 1. Upon Except as otherwise provided in subsection  
50 2, upon a plea of guilty, a verdict of guilty, or a

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

14 2. Upon return of a plea or verdict of guilty to  
15 the offense of murder in the first degree under  
16 section 707.2 and a return of a verdict in favor of a  
17 sentence of death in a penalty proceeding conducted as  
18 provided in section 901.11, the court shall enter a  
19 judgment of conviction and shall commit the defendant  
20 into the custody of the director of the Iowa  
21 department of corrections. The sentence shall be  
22 carried out by the administration of a lethal  
23 injection pursuant to rules adopted by the board of  
24 corrections. If a defendant, for whom a warrant of  
25 execution is issued, is pregnant, the execution shall  
26 not take place until after the defendant is no longer  
27 pregnant. If a defendant, for whom a warrant of  
28 execution is issued, is suffering from such a diseased  
29 or deranged condition of the mind as to prevent the  
30 defendant from knowing the nature and quality of the  
31 act the defendant has been convicted of, or from  
32 understanding that trial on the offense has taken  
33 place and that execution proceedings are about to take  
34 place, or otherwise causes the defendant to lack the  
35 capacity, to understand the sentence which has been  
36 imposed and to participate in any legal proceedings  
37 relating to the sentence the execution shall not take  
38 place until after the defendant's capacity is  
39 restored. If the director of the department of  
40 corrections or the defendant's counsel files a request  
41 with the court which issued the warrant of execution,  
42 alleging that the defendant suffers from such a  
43 diseased or deranged condition, a hearing on the  
44 matter shall be held in the manner provided in section  
45 812A.1. If a defendant was under the age of eighteen  
46 at the time the offense was committed, the defendant  
47 shall be sentenced as provided in subsection 1. For  
48 the purposes of this section, "lethal injection" means  
49 a continuous intravenous injection of a lethal  
50 quantity of sodium thiopental or other equally or more

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1 effective substance sufficient to cause death.

2 Sec. 8. Section 902.2, Code 1995, is amended to  
3 read as follows:

4 902.2 RECORD OF CLASS "A" FELON REVIEWED.

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

14 Sec. 9. NEW SECTION. 902.12 FIRST DEGREE MURDER  
15 -- ADDITIONAL FACTORS.

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

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

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

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

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

50 5. The victim was a judicial officer as defined

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

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

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

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

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

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

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

36 Sec. 11. NEW SECTION. 903B.1 EXECUTIONS --  
37 REFUSAL TO PERFORM.

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

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1 Sec. 12. Section 904.105, Code 1995, is amended by  
2 adding the following new subsection:

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

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

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

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

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

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

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

23 g. A representative from the news media from the  
24 community in which the condemned person resided, if  
25 that community is located in Iowa.

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

29 Sec. 14. NEW RULE. MURDER IN THE FIRST DEGREE --  
30 PROCEDURE.

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

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1 defendant does not preclude the imposition of the  
2 death penalty, evidence of mental retardation may be  
3 reviewed by the jury during the penalty proceeding and  
4 the jury shall not be informed of the finding in the  
5 initial proceeding at any time during the penalty  
6 proceeding.

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

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

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

39 b. If one or more aggravating circumstances have  
40 been established, whether one or more of those  
41 circumstances outweigh any one or more mitigating  
42 circumstances.

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

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

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

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

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

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

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

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

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

39 Sec. 15. NEW RULE. AUTOMATIC REVIEW -- STAY OF  
40 EXECUTION OF JUDGMENT.

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

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

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

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

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

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

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

48 3. Notwithstanding subsection 1, if a defendant,  
49 for whom a warrant of execution is issued, is  
50 pregnant, the execution shall not take place until

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

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

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

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

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

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

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

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- 1     Sec. 18. APPLICABILITY. This Act applies to  
2 offenses committed on or after the effective date of  
3 this Act."  
4     2. Title page, line 1, by inserting after the  
5 word "imprisonment" the following: "for the offense  
6 of first degree murder".  
7     3. Title page, by striking line 2 and inserting  
8 the following: "establishing circumstances under  
9 which the death penalty will be applied, by providing  
10 a".

By COMMITTEE ON JUDICIARY  
HURLEY of Fayette, Chairperson

H-3109 FILED FEBRUARY 16, 1995

ADOPTED  
2/23/95  
(P. 543)

HOUSE FILE 2

H-3129

1 Amend the amendment, H-3109, to House File 2, as  
2 follows:

3 1. Page 7, by inserting after line 45 the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 901.12 NEW EVIDENCE IN  
6 DEATH PENALTY CASES.

7 Notwithstanding Iowa rules of criminal procedure  
8 23, Iowa court rules, third edition, if a defendant  
9 has discovered important and material evidence in the  
10 defendant's favor since the verdict in the defendant's  
11 case, which the defendant could not with reasonable  
12 diligence have discovered and produced at the trial,  
13 the defendant may file a motion based upon this  
14 ground, without unreasonable delay, at any time. If a  
15 motion for a new trial is made under this section, the  
16 defendant must produce, at the hearing, the affidavits  
17 or testimony of the witnesses by whom the evidence is  
18 expected to be given. If time is required by the  
19 defendant to procure the affidavits or testimony, the  
20 court may postpone the hearing of the motion for a  
21 reasonable period of time."

22 2. By numbering, renumbering, and correcting  
23 internal references as necessary.

By HOLVECK of Polk MASCHER of Johnson  
JOCHUM of Dubuque SHOULTZ of Black Hawk  
CONNORS of Polk BRAND of Benton  
BERNAU of Story KOENIGS of Mitchell  
WITT of Black Hawk BURNETT of Story

H-3129 FILED FEBRUARY 21, 1995

*Last 2/23/95  
(P. 542)*

HOUSE FILE 2

H-3130

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 7, by inserting after line 14 the  
4 following:

5 " \_\_\_\_ . After submission of the issues, but prior to  
6 the commencement of the jury deliberations in the  
7 penalty proceeding, the court shall instruct the jury  
8 that if the defendant is not sentenced to death, the  
9 court is required by law to impose a sentence of  
10 imprisonment until death without parole. The court  
11 shall further instruct the jury that the sentence of  
12 imprisonment until death without parole is required by  
13 law if the jury fails to reach a unanimous verdict  
14 recommending a sentence of death."

15 2. By numbering, renumbering, and correcting  
16 internal references as necessary.

By SHOULTZ of Black Hawk MASCHER of Johnson  
FALLON of Polk KOENIGS of Mitchell  
JOCHUM of Dubuque BURNETT of Story  
BERNAU of Story

H-3130 FILED FEBRUARY 21, 1995

*(P. 509) adopted 2/22/95*

## HOUSE FILE 2

H-3131

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 7, by inserting after line 45 the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 901.12 INFERENCE OF RACE  
6 AS BASIS FOR DEATH SENTENCE.

7 1. An inference that race was the basis of  
8 imposition of a death sentence is established if  
9 relevant evidence is presented demonstrating that, at  
10 the time the death sentence was imposed, race was a  
11 significant factor influencing decisions to seek or  
12 impose the sentence of death in the jurisdiction in  
13 question.

14 2. Evidence relevant to establish an inference  
15 that race was the basis of a death sentence may  
16 include both qualitative or quantitative evidence that  
17 death sentences, at the time in which the particular  
18 sentence was sought or imposed, were being sought or  
19 imposed significantly more frequently in the  
20 jurisdiction in question as follows:

21 a. Against or upon persons of one race rather than  
22 upon persons of another race.

23 b. As punishment for capital murder committed  
24 against persons of one race rather than as punishment  
25 for capital murder committed against persons of  
26 another race.

27 3. If statistical evidence is presented to  
28 establish an inference that race was the basis for  
29 seeking or imposing a sentence of death, the court  
30 shall determine the validity and statistical  
31 significance of the evidence. Valid and statistically  
32 significant evidence shall include, to the extent such  
33 information is compiled and made publicly available,  
34 evidence of the statutory aggravating factors of the  
35 crimes involved and comparisons of similar cases  
36 involving persons of different races.

37 4. If an inference is made that race was the basis  
38 for seeking or imposing a death sentence, the person  
39 shall not be executed under section 902.12, unless the  
40 state rebuts the inference by a preponderance of the  
41 evidence. The state cannot rely on mere assertions  
42 that it did not intend to discriminate or that the  
43 case or cases in question meet the statutory criteria  
44 for eligibility for imposition of the death penalty."

45 2. By numbering and renumbering and correcting  
46 internal references as necessary.

By SHOULTZ of Black Hawk

FALLON of Polk

JOCHUM of Dubuque

BERNAU of Story

MASCHER of Johnson

KOENIGS of Mitchell

H-3131 FILED FEBRUARY 21, 1995

(P. 514) Lost  
2/22/95

## HOUSE FILE 2

H-3123

- 1 Amend the amendment, H-3109, to House File 2 as  
2 follows:
- 3 1. Page 3, by striking lines 31 and 32 and  
4 inserting the following: "first degree two attorneys  
5 to".
- 6 2. Page 3, by striking lines 39 and 40 and  
7 inserting the following: "eligible for appointment or  
8 assignment to a first degree murder case."
- 9 3. Page 4, line 10, by striking the words and  
10 figure "and section 902.12".
- 11 4. Page 4, by inserting after line 18 the  
12 following:
- 13 "For purposes of this subsection, "mentally  
14 retarded" means significant subaverage general  
15 intellectual functioning accompanied by significant  
16 deficits or impairments in adaptive functioning  
17 manifested in the developmental period, but no later  
18 than the age of eighteen years, and accompanied by  
19 deficits in adaptive behavior."
- 20 5. Page 4, by striking lines 23 through 27 and  
21 inserting the following: "intent to seek the death  
22 penalty as part of the information or indictment filed  
23 in the case."
- 24 6. Page 5, by striking lines 20 and 21 and  
25 inserting the following: "relevant to any aggravating  
26 circumstances other than".
- 27 7. Page 5, by striking lines 24 through 27 and  
28 inserting the following: "for simple or serious  
29 misdemeanors."
- 30 8. Page 6, by striking lines 25 through 29 and  
31 inserting the following: "under the rules of criminal  
32 procedure. Evidence regarding aggravating and".
- 33 9. Page 6, by striking lines 40 through 42.
- 34 10. Page 7, lines 17 and 18, by striking the  
35 words "'a", "b", and "c'" and inserting the following:  
36 "'a" and "b"".
- 37 11. Page 7, lines 39 and 40, by striking the  
38 words "'a", "b", and "c'" and inserting the following:  
39 "'a" and "b"".
- 40 12. By striking page 9, line 14, through page 10,  
41 line 20.
- 42 13. Page 11, line 47, by striking the words and  
43 figure "and section 902.12".
- 44 14. Page 12, by striking lines 18 and 19 and  
45 inserting the following: "additional evidence may be  
46 presented as to any".
- 47 15. Page 12, by striking lines 21 through 23 and  
48 inserting the following: "exist."
- 49 16. Page 12, by striking lines 37 and 38.
- 50 17. Page 12, by striking lines 47 and 48 and

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Page 2

- 1 inserting the following:
- 2 "4. The jury,".
- 3 18. By renumbering and correcting internal
- 4 references as necessary.

By CONNORS of Polk

H-3123 FILED FEBRUARY 21, 1995

*Last 2/22/95 (9.502)*

HOUSE FILE 2

H-3124

- 1 Amend the amendment, H-3109, to House File 2 as
- 2 follows:
- 3 1. Page 10, by inserting after line 13 the
- 4 following:
- 5 "\_\_\_\_. The murder was committed while inflicting
- 6 torture upon the victim. For purposes of this
- 7 paragraph, "torture" means the infliction of extreme
- 8 physical pain, without regard to the length of time
- 9 that pain is inflicted."
- 10 2. By numbering, renumbering, and correcting
- 11 internal references as necessary.

By MILLAGE of Scott

H-3124 FILED FEBRUARY 21, 1995

**WITHDRAWN**

*2-22-95*

HOUSE FILE 2

H-3125

- 1 Amend the amendment, H-3109, to House File 2 as
- 2 follows:
- 3 1. Page 10, by inserting after line 13 the
- 4 following:
- 5 "\_\_\_\_. The murder was especially heinous,
- 6 atrocious, cruel, or manifesting exceptional
- 7 depravity. For purposes of this subsection, the
- 8 phrase "especially heinous, atrocious, cruel, or
- 9 manifesting exceptional depravity" means a
- 10 conscienceless or pitiless crime which is
- 11 unnecessarily torturous to the victim."
- 12 2. By numbering, renumbering, and correcting
- 13 internal references as necessary.

By MILLAGE of Scott

H-3125 FILED FEBRUARY 21, 1995

*(p. 516) Adapted 2/22/95*

HOUSE FILE 2

H-3122

- 1 Amend the amendment, H-3109, to House File 2 as
- 2 follows:
- 3 1. Page 10, by inserting after line 10 the
- 4 following:
- 5 "\_\_\_\_. The victim was a peace officer, as defined
- 6 under section 801.4, subsection 11, or a former peace
- 7 officer and the murder is in retaliation for or to
- 8 prevent the victim from carrying out the victim's
- 9 official duties."
- 10 2. By numbering, renumbering, and correcting
- 11 internal references as necessary.

By WEIDMAN of Cass  
MILLAGE of Scott  
RANTS of Woodbury

H-3122 FILED FEBRUARY 21, 1995

*(p. 515) adopted 2/22/95*





## HOUSE FILE 2

H-3133

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 9, by inserting after line 1 the  
4 following:

5 "Sec. 101. NEW SECTION. 902.1A CLASS "A" FELONY.

6 Upon a plea of guilty, a verdict of guilty, or a  
7 special verdict upon which a judgment of conviction of  
8 a class "A" felony may be rendered, the court shall  
9 enter a judgment of conviction and shall commit the  
10 defendant into the custody of the director of the Iowa  
11 department of corrections until the defendant's death.  
12 Nothing in the Iowa corrections code pertaining to  
13 deferred judgment, deferred sentence, suspended  
14 sentence, or reconsideration of sentence applies to a  
15 class "A" felony, and a person convicted of a class  
16 "A" felony shall not be released on parole unless the  
17 governor commutes the sentence to a term of years."

18 2. Page 9, by inserting after line 13 the  
19 following:

20 "Sec. 102. NEW SECTION. 902.2A RECORD OF CLASS  
21 "A" FELON REVIEWED.

22 The board shall interview a class "A" felon within  
23 five years of the felon's confinement and regularly  
24 thereafter. If, in the opinion of the board, the  
25 person should be considered for release on parole, the  
26 board shall recommend to the governor that the  
27 person's sentence be commuted to a term of years. If  
28 the person's sentence is so commuted, the person shall  
29 be eligible for parole as provided in chapter 906."

30 3. Page 16, by inserting after line 3 the  
31 following:

32 "Sec.           . EFFECTIVE DATE -- REPEAL -- TRANSITION.

33 1. Sections 101 and 102 of this Act take effect  
34 July 1, 2000.

35 2. Sections 1 through 18 of this Act, and sections  
36 902.1 and 902.2, are repealed effective June 30, 2000.

37 3. Persons who have been convicted and sentenced  
38 to death, but who have not been executed before July  
39 1, 2000, shall not be executed and the sentences  
40 imposed shall automatically be commuted to a term of  
41 imprisonment until death on that date. Persons who  
42 have been charged or indicted with an offense which  
43 may be punishable by a sentence of death before July  
44 1, 2000, under the provisions of this Act shall not be  
45 sentenced to death upon conviction of the offense in  
46 any proceeding which takes place on or after July 1,  
47 2000, but shall be sentenced in accordance with  
48 section 101 of this Act."

49 4. By designating, redesignating, and correcting  
50 internal references as necessary.

By BRAND of Benton

MAY of Worth

WISE of Lee

SHOULTZ of Black Hawk

FALLON of Polk

BURNETT of Story

H-3133 FILED FEBRUARY 21, 1995

WITHDRAWN

2/22/95

WITHDRAWN

(P.514)

## HOUSE FILE 2

H-3136

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 2, by inserting after line 39 the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 813.5 DEATH PENALTY  
6 REQUEST REVIEW PANEL.

7 1. The death penalty request review panel is  
8 established, consisting of three retired judges or  
9 justices who shall be appointed by the governor,  
10 subject to confirmation by the senate. The duties of  
11 the death penalty request review panel shall be to  
12 review proposed requests for imposition of the death  
13 penalty filed with the panel by the attorney  
14 representing the interests of the state and to  
15 authorize or disallow the requests. The members of  
16 the panel shall serve four-year staggered terms, which  
17 shall begin and end as provided in section 69.19. The  
18 panel shall be balanced, as nearly as is possible, by  
19 gender and political affiliation as provided in  
20 sections 69.16 and 69.16A. Members appointed shall be  
21 compensated for any actual and necessary expenses of  
22 office in the manner provided in section 7E.6.

23 2. An attorney representing the interests of the  
24 state who wishes to seek the death penalty in any  
25 case, must first submit the request to seek the death  
26 penalty to the panel and seek permission to file the  
27 notice. The attorney must demonstrate to the panel  
28 how the facts of the particular case meet the  
29 requirements of section 902.12 and why a sentence of  
30 imprisonment until death is insufficient. The  
31 attorney shall not file a notice of intent to seek the  
32 death penalty in any case in which the panel has  
33 disallowed the request. If the panel fails to approve  
34 or disapprove the request within thirty days of  
35 submission of the request or the panel approves the  
36 request, the attorney may file the notice as provided  
37 in section 901.11.

38 3. Before the panel approves or disapproves a  
39 request to seek the death penalty, the counsel for the  
40 defendant shall be notified of the filing of the  
41 request and shall be given the opportunity, both  
42 orally and in writing, to contest the request and to  
43 demonstrate that the request is inappropriate in the  
44 particular case. The panel may deny the attorney  
45 representing the interests of the state's request, if  
46 the panel determines that the ends of justice would  
47 not be served by the imposition of a death sentence.  
48 All factual information submitted by the attorney  
49 representing the interests of the state shall be  
50 retained by the panel for an indefinite period of

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Page 2

1 time. The panel shall make the information available  
 2 to members of the general public upon request, at the  
 3 conclusion of the trial court proceedings, and to the  
 4 defendant prior to or during the course of trial  
 5 pursuant to a subpoena."

6 2. By designating, redesignating, and correcting  
 7 internal references as necessary.

By KREIMAN of Davis

H-3136 FILED FEBRUARY 22, 1995  
 LOST

## HOUSE FILE 2

H-3137

1 Amend the amendment, H-3109, to House File 2, as  
 2 follows:

3 1. Page 4, line 7, by inserting after the word  
 4 "below." the following: "If the court finds that the  
 5 defendant is mentally retarded, the defendant, if  
 6 convicted of murder in the first degree, shall be  
 7 sentenced to life imprisonment in the manner provided  
 8 in section 902.1, subsection 1."

By DODERER of Johnson

H-3137 FILED FEBRUARY 22, 1995  
 ADOPTED

(P. 503)

## HOUSE FILE 2

H-3134

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:

3 1. Page 16, line 1, by inserting after the word  
 4 "Act" the following: "takes effect January 1, 1996,  
 5 and".

6 2. Page 16, lines 2 and 3, by striking the words  
 7 "the effective date of this Act" and inserting the  
 8 following: "that date".

By DODERER fo Johnson  
 SHOULTZ of Black Hawk  
 FALLON of Polk

JOCHUM of Dubuque  
 BURNETT of Story  
 BERNAU of Story

H-3134 FILED FEBRUARY 22, 1995  
 OUT OF ORDER

## HOUSE FILE 2

H-3135

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:

3 1. Page 5, line 24, by inserting after the word  
 4 "misdemeanors." the following: "The state may  
 5 introduce evidence of the actual harm caused by the  
 6 commission of the murder including, but not limited  
 7 to, evidence relating to the life of the victim and  
 8 the impact of the loss of the victim to the victim's  
 9 family and society."

By MILLAGE of Scott

H-3135 FILED FEBRUARY 22, 1995  
 ADOPTED

## HOUSE FILE 2

H-3138

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 3, line 22, by striking the words "life  
4 imprisonment" and inserting the following:  
5 "imprisonment until death".

6 2. Page 3, by inserting after line 40 the  
7 following:

8 "Sec. \_\_\_\_ . Section 818.14, Code 1995, is amended  
9 to read as follows:

10 818.14 BAIL.

11 Unless the crime with which the prisoner is charged  
12 is shown to be an offense punishable by death or ~~life~~  
13 imprisonment until death under the laws of the  
14 demanding state, a judge or magistrate in the asylum  
15 state may admit the person arrested to bail by bond  
16 with sufficient sureties, and in such sum as the judge  
17 or magistrate deems proper, conditioned for the  
18 prisoner's appearance before the judge or magistrate  
19 at a time specified in such bond, and for the  
20 prisoner's surrender. In the event of a violation of  
21 the conditions of said bond, forfeiture thereof and  
22 recovery thereon may be had as in the case of  
23 appearance bonds given by accused persons in criminal  
24 proceedings in the asylum state.

25 Sec. \_\_\_\_ . Section 820.16, Code 1995, is amended to  
26 read as follows:

27 820.16 BAIL -- EXCEPTIONS.

28 Unless the offense with which the prisoner is  
29 charged is shown to be an offense punishable by death  
30 or ~~life~~ imprisonment until death under the laws of the  
31 state in which it was committed, a judge or magistrate  
32 in this state may admit the person arrested to bail by  
33 bond, with sufficient sureties, and in such sum as the  
34 judge or magistrate deems proper, conditioned for the  
35 prisoner's appearance before the judge or magistrate  
36 at a time specified in such bond, and for the  
37 prisoner's surrender, to be arrested upon the warrant  
38 of the governor of this state."

39 3. Page 4, line 47, by striking the words "life  
40 imprisonment" and inserting the following:  
41 "imprisonment until death".

42 4. Page 5, line 13, by striking the words "life  
43 imprisonment" and inserting the following:  
44 "imprisonment until death".

45 5. Page 7, line 33, by striking the words "life  
46 imprisonment" and inserting the following:  
47 "imprisonment until death".

48 6. Page 7, line 41, by striking the words "life  
49 imprisonment" and inserting the following:  
50 "imprisonment until death".

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-1-

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Page 2

1 7. Page 8, lines 5 and 6, by striking the words  
2 "for the rest of the defendant's life" and inserting  
3 the following: "~~for-the-rest-of-the-defendant's-life~~  
4 until the defendant's death".

5 8. Page 8, line 9, by striking the words "life  
6 imprisonment" and inserting the following:  
7 "imprisonment until death".

8 9. Page 8, line 11, by striking the words "life  
9 imprisonment" and inserting the following:  
10 "imprisonment until death".

11 10. Page 9, line 6, by striking the words "life  
12 imprisonment" and inserting the following:  
13 "imprisonment until death".

14 11. Page 10, by inserting after line 35 the  
15 following:

16 "Sec. \_\_\_\_ . Section 903A.2, subsections 4 and 5,  
17 Code 1995, are amended to read as follows:

18 4. Good conduct time earned and not forfeited  
19 shall accrue to an inmate serving a ~~life~~ sentence of  
20 imprisonment until death. The good conduct time so  
21 accrued does not apply to reduce the ~~life~~ sentence of  
22 imprisonment until death, but shall be credited to the  
23 inmate on the date of commutation, if the ~~life~~  
24 sentence of imprisonment until death is commuted to a  
25 term of years.

26 5. Except in ~~life~~ sentences of imprisonment until  
27 death, good conduct time shall be credited to the  
28 maximum sentence annually on the date of admission."

29 12. Page 12, line 13, by striking the words "life  
30 imprisonment" and inserting the following:  
31 "imprisonment until death".

32 13. Page 13, by striking lines 15 and 16 and  
33 inserting the following: "of the department of  
34 corrections for confinement until the defendant's  
35 death."

36 14. Page 13, line 29, by striking the words "life  
37 imprisonment" and inserting the following:  
38 "imprisonment until death".

39 15. Page 15, line 39, by striking the words "life  
40 imprisonment" and inserting the following: "imprison-  
41 ment until death".

42 16. By designating and redesignating and  
43 correcting internal references as necessary.

By DODERER of Johnson  
JOCHUM of Dubuque  
CONNORS of Polk

BERNAU of Story  
MASCHER of Johnson  
BURNETT of Story

H-3138 FILED FEBRUARY 22, 1995

LOST

## HOUSE FILE 2

H-3141

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 16, by striking lines 1 through 3 and  
4 inserting the following:

5 "Sec. \_\_\_\_ . EFFECTIVE DATE -- SEVERABILITY --  
6 SENTENCES COMMUTED TO LIFE IMPRISONMENT IF ACT  
7 UNCONSTITUTIONAL.

8 1. This Act takes effect October 1, 1995, and  
9 applies to offenses committed on or after that date.

10 2. If any provision of this Act or the application  
11 thereof to any person is invalid, the invalidity shall  
12 not affect the provisions or application of this Act  
13 which can be given effect without the invalid  
14 provisions or application and to this end the  
15 provisions of this Act are severable.

16 3. If the imposition of a sentence of death under  
17 this Act is found to be unconstitutional, the sentence  
18 of any person who has been sentenced to death under  
19 this Act shall automatically be commuted to a term of  
20 life imprisonment."

21 2. Page 16, by inserting after line 10 the  
22 following:

23 " \_\_\_\_ . Title page, line 6, by inserting after the  
24 word "providing" the following: "an effective date  
25 and".

26 3. By numbering, renumbering, and correcting  
27 internal references, as necessary.

By GRUBBS of Scott

H-3141 FILED FEBRUARY 22, 1995  
ADOPTED

(P. 518)

## HOUSE FILE 2

H-3142

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 7, by striking lines 21 through 24 and  
4 inserting the following:

5 "8. However, if evidence that the defendant was  
6 not a major participant in the commission of the  
7 murder and that the defendant's conduct did not  
8 manifest a reckless indifference to human life is  
9 presented to the jury, or the court, if".

10 2. Page 7, by striking lines 29 through 31 and  
11 inserting the following: "that the defendant was not  
12 a major participant in the commission of the murder  
13 and that the defendant's conduct did not manifest a  
14 reckless indifference to human life, the court shall  
15 enter".

16 3. Page 13, by striking lines 17 through 20 and  
17 inserting the following:

18 "7. However, if evidence that the defendant was  
19 not a major participant in the commission of the  
20 murder and that the defendant's conduct did not  
21 manifest a reckless indifference to human life is  
22 presented to the jury, or the court, if".

23 4. Page 13, by striking lines 25 through 27 and  
24 inserting the following: "that the defendant was not  
25 a major participant in the commission of the murder  
26 and that the defendant's conduct did not manifest a  
27 reckless indifference to human life, the court shall  
28 enter".

By GRUBBS of Scott

H-3142 FILED FEBRUARY 22, 1995

ADOPTED

(P.510)

## HOUSE FILE 2

H-3146

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 3, by inserting after line 17 the  
4 following:

5 "\_\_\_\_\_. The court shall also, upon the request of  
6 the defendant, in addition to any other determination,  
7 review whether the sentence of death is excessive or  
8 disproportionate to the penalty imposed in similar  
9 cases by virtue of the race of the defendant or the  
10 victim of the crime for which the defendant was  
11 convicted. For purposes of this section:

12 a. The universe of potentially similar cases  
13 considered by the courts shall include all cases in  
14 which an indictment was returned for the charge of  
15 first degree murder on or after the effective date of  
16 this Act, which did not result in the dismissal of the  
17 indictment or a judgment of acquittal, and in which  
18 one or more of the statutory factors enumerated in  
19 section 902.12 is present.

20 b. Cases similar to the case under review shall be  
21 identified by assessing and comparing the overall  
22 culpability of offenders' conduct as determined by the  
23 presence or absence of aggravating or mitigating  
24 factors in potentially similar cases, combined with  
25 such other criteria as the court deems appropriate.

26 c. The determination of whether the sentence is  
27 excessive or disproportionate shall be based upon the  
28 relative frequency with which death sentences are  
29 imposed in similar cases."

30 2. Page 3, by inserting after line 22 the  
31 following:

32 "\_\_\_\_\_. The court may suspend consideration of death  
33 penalty cases until such time as the court determines  
34 that the court is prepared to perform the comparative  
35 assessments required under this section. The court  
36 shall appoint one or more special administrative  
37 assistants possessing appropriate expertise and  
38 training to accumulate the case records and to compile  
39 and provide such other information as the court deems  
40 necessary for their review.

41 \_\_\_\_\_. The briefs filed on the appeal by the state  
42 and the defendant shall include written argument  
43 regarding the propriety of the sentence that was  
44 imposed and shall specifically address the issue of  
45 whether the imposition of the death sentence is  
46 excessive or disproportionate to the sentence imposed  
47 in similar cases, if any, considering both the crime  
48 and the defendant."

49 3. Page 3, line 26, by inserting after the word  
50 "court." the following: "Decisions of the court shall

H-3146



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Page 2

1 include findings relating to the aggravating and  
 2 mitigating factors established in the record on  
 3 appeal, including an assessment of the offender's  
 4 level of culpability, and similar cases, if any, which  
 5 the court took into consideration, in affirming or  
 6 reversing the trial court judgment."  
 7 4. By numbering, renumbering, and correcting  
 8 internal references as necessary.

MORELAND of Wapello

H-3146 FILED FEBRUARY 22, 1995  
LOST

HOUSE FILE 2

H-3147

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 6, line 46, by inserting after the word  
 4 "circumstances" the following: "beyond a reasonable  
 5 doubt".  
 6 2. Page 6, by striking lines 47 and 48 and  
 7 inserting the following:  
 8 "c. Whether the jury, or the court if there is no  
 9 jury, concludes beyond a reasonable doubt that the  
 10 defendant should be sentenced to death."  
 11 3. Page 12, line 42, by inserting after the word  
 12 "circumstances" the following: "beyond a reasonable  
 13 doubt".  
 14 4. Page 12, by striking lines 43 and 44 and  
 15 inserting the following:  
 16 "c. Whether the jury concludes beyond a reasonable  
 17 doubt that the defendant should be sentenced to  
 18 death."

By MORELAND of Wapello  
 JOCHUM of Dubuque  
 BERNAU of Story  
 MASCHER of Johnson

WITT of Black Hawk  
 BRAND of Benton  
 KOENIGS of Mitchell

H-3147 FILED FEBRUARY 22, 1995  
LOST

(p. 509)

## HOUSE FILE 2

H-3143

1 Amend the amendment, H-3109, to House File 2, as  
2 follows:

3 1. Page 4, line 34, by inserting after the word  
4 "degree." the following: "If a notice of intent to  
5 seek the death penalty has been filed, and has not  
6 been waived prior to trial, at trial each party shall  
7 have the right to individualized, sequestered,  
8 counsel-conducted voir dire. The court shall be  
9 present throughout voir dire proceedings and the  
10 proceedings shall be recorded and transcribed."

11 2. Page 12, by inserting after line 6 the  
12 following:

13 "\_\_\_\_\_. If a notice of intent to seek the death  
14 penalty has been filed, and has not been waived prior  
15 to trial, at trial each party shall have the right to  
16 individualized, sequestered, counsel-conducted voir  
17 dire. The court shall be present throughout voir dire  
18 proceedings and the proceedings shall be recorded and  
19 transcribed."

20 3. By designating, redesignating, and changing  
21 internal references as necessary.

By KREIMAN of Davis

H-3143 FILED FEBRUARY 22, 1995

LOST

(p.504)

## HOUSE FILE 2

H-3144

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 16, by inserting after line 3 the  
4 following:

5 "\_\_\_\_\_. EFFECTIVE DATE. This Act shall not take  
6 effect unless an appropriation is made in accordance  
7 with section 25B.2, subsection 3, which fully funds or  
8 funds a proportionate share of the costs of  
9 implementing this Act."

10 2. By numbering, renumbering, and correcting  
11 internal references as necessary.

By DODERER of Johnson

H-3144 FILED FEBRUARY 22, 1995

LOST

(p.519)

## HOUSE FILE 2

H-3145

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 11, line 6, by inserting after the word  
4 "rules" the following: "which require that executions  
5 be carried out by a single individual and rules".

By HOLVECK of Polk

H-3145 FILED FEBRUARY 22, 1995

WITHDRAWN

(p.517)

## HOUSE FILE 2

H-3148

- 1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 6, by inserting after line 19 the  
 4 following:  
 5 "( ). The evidence which establishes that the  
 6 defendant committed murder in the first degree either  
 7 does not include the testimony of two or more  
 8 eyewitnesses or is not irrefutable."  
 9 2. By numbering, renumbering, and correcting  
 10 internal references as necessary.

By HURLEY of Fayette  
 DRAKE of Pottawattamie

H-3148 FILED FEBRUARY 22, 1995

ADOPTED MOTION TO RECONSIDER (P.521)

(P.507) Motion R/C 2/23/95 - adopted  
 H. 3148 - LOST 2/23/95 (P.543)

## HOUSE FILE 2

H-3155

- 1 Amend the amendment, H-3109, to House File 2, as  
 2 follows:  
 3 1. Page 5, line 16, by inserting after the word  
 4 "trial." the following: "Both the state and the  
 5 defendant shall have the right to present opening  
 6 statements at the commencement of the penalty  
 7 proceedings."  
 8 2. Page 5, by striking lines 21 through 24 and  
 9 inserting the following: "902.12 and any aggravating  
 10 circumstances. The state shall".

By KREIMAN of Davis  
 MORELAND of Wapello  
 BERNAU of Story

H-3155 FILED FEBRUARY 22, 1995

DIV A-ADOPTED DIV B-WITHDRAWN

P. 504

## HOUSE FILE 2

H-3150

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 7, by inserting after line 42 the  
4 following:

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

25 2. Page 13, by inserting after line 32 the  
26 following:

27 "\_\_\_\_\_. After a verdict has been rendered it shall  
28 be recorded on the jury verdict form and shall be read  
29 and recorded in open court. The jurors shall be  
30 collectively asked by the court whether the verdict  
31 returned is their true and correct verdict. Even  
32 though no juror makes any declaration to the contrary,  
33 the jury shall, if either party so requests, be polled  
34 and each juror shall be separately asked whether the  
35 verdict rendered by the jury foreperson is the juror's  
36 true and correct verdict. If, upon either the  
37 collective or the separate inquiry, any juror denies  
38 that the verdict is the juror's verdict, the court  
39 shall refuse to accept the verdict. The court may  
40 direct inquiry or permit inquiry by counsel to  
41 ascertain whether any juror has been subjected to  
42 coercion or has become confused during the jury  
43 deliberation process. The court may, as appropriate,  
44 direct the jury to resume deliberation in the case.  
45 If no disagreement on the verdict is expressed by any  
46 of the jurors, the court shall discharge the jury."

47 3. By designating, redesignating, and correcting  
48 internal references as necessary.

By KREIMAN of Davis  
MORELAND of Wapello  
BERNAU of Story

H-3150 FILED FEBRUARY 22, 1995

ADOPTED

(p. 512)

## HOUSE FILE 2

H-3151

1 Amend the amendment, H-3109, to House File 2, as  
2 follows:

A 3 1. Page 7, by striking lines 29 through 31 and  
4 inserting the following: "any of the following, the  
5 court shall enter".

6 2. Page 7, line 36, by striking the figure "5."  
7 and inserting the following: "5:

8 a. That the defendant did not directly commit the  
9 murder and the defendant did not intend to kill or  
10 anticipate that lethal force would be used.

11 b. That the defendant's capacity to appreciate the  
12 wrongfulness of the defendant's conduct and to conform  
13 that conduct to the requirements of law was  
14 significantly impaired as a result of a mental disease  
15 or defect or mental retardation, but not to a degree  
B 16 sufficient to constitute a defense.

17 c. That the defendant acted under extreme duress  
18 or under the substantial domination of another  
19 person."

By FALLON of Polk  
BERNAU of Story

H-3151 FILED FEBRUARY 22, 1995  
DIV A - WITHDRAWN DIV B - LOST

## HOUSE FILE 2

H-3152

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 1, by inserting after line 26 the  
4 following:

5 "Sec. \_\_\_\_ . Section 331.757, subsection 1, Code  
6 1995, is amended to read as follows:

7 1. The county attorney may employ, with the  
8 approval of a judge of the district court, a temporary  
9 assistant to assist in the trial of a person charged  
10 with a felony. The temporary assistant shall be paid  
11 a reasonable compensation as determined by the board  
12 upon certification of the services rendered by the  
13 district judge before whom the defendant was tried.  
14 If the temporary assistant is employed for purposes of  
15 assisting in the trial of a person who has been  
16 charged with first degree murder, in which a notice of  
17 intent to seek the death penalty has been filed, the  
18 determination of the amount of compensation determined  
19 to be reasonable by the board shall be forwarded to  
20 the treasurer of state and the compensation shall be  
21 paid by the state."

22 Sec. \_\_\_\_ . Section 356.15, Code 1995, is amended to  
23 read as follows:

24 356.15 EXPENSES.

25 All charges and expenses for the safekeeping and  
26 maintenance of prisoners shall be allowed by the board  
27 of supervisors, except those committed or detained by  
28 the authority of the courts of the United States, in  
29 which cases the United States must pay such expenses  
30 to the county, those detained during a penalty  
31 proceeding in a first degree murder case in which a  
32 notice of intent to seek the death penalty has been  
33 filed, in which cases the state shall pay the  
34 expenses to the county, and those committed for  
35 violation of a city ordinance, in which case the city  
36 shall pay expenses to the county."

37 2. Page 3, by inserting after line 40 the  
38 following:

39 "Sec. \_\_\_\_ . Section 815.13, Code 1995, is amended  
40 to read as follows:

41 815.13 PAYMENT OF PROSECUTION COSTS.

42 1. The Except as provided in subsection 2, county  
43 or city which has the duty to prosecute a criminal  
44 action shall pay the costs of depositions taken on  
45 behalf of the prosecution, the costs of transcripts  
46 requested by the prosecution, and in criminal actions  
47 prosecuted by the county or city under county or city  
48 ordinance the fees that are payable to the clerk of  
49 the district court for services rendered and the court  
50 costs taxed in connection with the trial of the action

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Page 2

1 or appeals from the judgment. The county or city  
 2 shall pay witness fees and mileage in trials of  
 3 criminal actions prosecuted by the county or city  
 4 under county or city ordinance. These fees and costs  
 5 are recoverable by the county or city from the  
 6 defendant unless the defendant is found not guilty or  
 7 the action is dismissed, in which case the state shall  
 8 pay the witness fees and mileage in cases prosecuted  
 9 under state law.

10 2. In a criminal action for first degree murder  
 11 under section 707.2, where a notice of intent to seek  
 12 the death penalty has been filed, the state shall pay  
 13 the costs of depositions, transcripts, the fees  
 14 payable to the clerk of district court, court costs  
 15 taxed in connection with the trial or appeal which are  
 16 incurred by the county, as well as any witness fees  
 17 and mileage."

18 3. By designating, redesignating, and correcting  
 19 internal references as necessary.

By WEIGEL of Chickasaw  
 FALLON of Polk

MASCHER of Johnson  
 BERNAU of Story

H-3152 FILED FEBRUARY 22, 1995

DEFER

*Last*  
*2/23/95 (p. 541)*

HOUSE FILE 2

H-3154

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:

3 1. Page 1, by inserting after line 26, the  
 4 following:

5 "Sec. \_\_\_\_ . Section 216A.133, Code 1995, is amended  
 6 by adding the following new subsection:

7 NEW SUBSECTION. 8. Review the effects of the  
 8 reinstatement of the death penalty on arrest,  
 9 prosecution, conviction, and incarceration rates; law  
 10 enforcement duties and ability to obtain evidence  
 11 necessary for arrests; court dockets and workload;  
 12 prison space; recidivism rates of persons charged with  
 13 crimes of violence against persons; and other aspects  
 14 of the criminal justice system. Based on the review  
 15 and other factors deemed relevant, the council shall  
 16 make findings and develop recommendations resulting  
 17 from those findings. Commencing January 1, 1997, the  
 18 council shall report its findings and any related  
 19 recommendations annually to the governor and to the  
 20 general assembly."

21 2. By designating, redesignating, and correcting  
 22 internal references, as necessary.

By BRAND of Benton  
 BERNAU of Story

MASCHER of Johnson  
 SHOULTZ of Black Hawk

H-3154 FILED FEBRUARY 22, 1995

ADOPTED

## HOUSE FILE 2

H-3156

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 6, by striking lines 36 and 37 and  
4 inserting the following:

5 "5. a. At the conclusion of presentation of  
6 evidence in the penalty proceeding, if the matter is  
7 tried to a jury, the court shall instruct the jury on  
8 all of the following:

9 (1) The factors enumerated under section 902.12,  
10 and any aggravating circumstances that it must  
11 consider and the state's burden of proof as to the  
12 factors.

13 (2) The concept of mitigation and the mitigating  
14 circumstances offered by the defense or which may be  
15 deduced from the evidence presented, the fact that the  
16 defense is not required to prove any mitigating  
17 circumstance offered, and how such evidence may be  
18 considered in arriving at a decision on the  
19 appropriate penalty in the case.

20 (3) That if the jury concludes that the state has  
21 failed to demonstrate at least one statutory factor  
22 exists beyond a reasonable doubt, the jury must  
23 conclude its deliberations and return a verdict which  
24 shows the negative finding, and the defendant will be  
25 sentenced to imprisonment until death.

26 (4) That if one or more of the statutory factors  
27 are found to exist, the jury must record this finding  
28 in writing as part of its verdict, weigh those factors  
29 and any other aggravating circumstances against any  
30 mitigating circumstances offered by the defendant, and  
31 record its finding as to whether the aggravating  
32 circumstances outweigh the mitigating circumstances.

33 (5) That a sentence of death shall not be imposed  
34 unless the prosecution has demonstrated beyond a  
35 reasonable doubt that the aggravating circumstances  
36 substantially outweigh the mitigating circumstances.

37 (6) That the jury may, even if the statutory  
38 factors have been proven and the aggravating  
39 circumstances outweigh the mitigating circumstances,  
40 conclude that a sentence of death is not appropriate  
41 and determine that the defendant shall be imprisoned  
42 until the defendant's death.

43 b. Upon the submission of the instructions to the  
44 jury, the court shall also submit the following issues  
45 to".

46 2. Page 6, line 40, by striking the letter "a."  
47 and inserting the following: "(1)".

48 3. Page 6, line 43, by striking the letter "b."  
49 and inserting the following: "(2)".

50 4. Page 6, line 47, by striking the letter "c."

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Page 2

1 and inserting the following: "(3)".

2 5. Page 12, by striking line 35 and inserting the  
3 following: "evidence in the penalty proceeding, if  
4 the matter is tried to a jury, the court shall  
5 instruct the jury on all of the following:

6 a. The factors enumerated under section 902.12,  
7 and any aggravating circumstances that it must  
8 consider and the state's burden of proof as to the  
9 factors.

10 b. The concept of mitigation and the mitigating  
11 circumstances offered by the defense or which may be  
12 deduced from the evidence presented, the fact that the  
13 defense is not required to prove any mitigating  
14 circumstance offered, and how such evidence may be  
15 considered in arriving at a decision on the  
16 appropriate penalty in the case.

17 c. That if the jury concludes that the state has  
18 failed to demonstrate at least one statutory factor  
19 exists beyond a reasonable doubt, the jury must  
20 conclude its deliberations and return a verdict which  
21 shows the negative finding, and the defendant will be  
22 sentenced to imprisonment until death.

23 d. That if one or more of the statutory factors  
24 are found to exist, the jury must record this finding  
25 in writing as part of its verdict, weigh those factors  
26 and any other aggravating circumstances against any  
27 mitigating circumstances offered by the defendant, and  
28 record its finding as to whether the aggravating  
29 circumstances outweigh the mitigating circumstances.

30 e. That a sentence of death may not be imposed  
31 unless the prosecution has demonstrated beyond a  
32 reasonable doubt that the aggravating circumstances  
33 substantially outweigh the mitigating circumstances.

34 f. That the jury may, even if the statutory  
35 factors have been proven and the aggravating  
36 circumstances outweigh the mitigating circumstances,  
37 conclude that a sentence of death is not appropriate  
38 and determine that the defendant shall be imprisoned  
39 until the defendant's death.

40 3A. Upon the submission of the instructions to the  
41 jury, the court shall also submit the following".

42 6. By redesignating and correcting internal  
43 references as necessary.

By MORELAND of Wapello  
FALLON of Polk  
BERNAU of Story

H-3156 FILED FEBRUARY 22, 1995  
DEFER

**WITHDRAWN**

2/23/95  
(p. 542)

HOUSE FILE 2

H-3166

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 6, line 35, by inserting after the word  
4 "permitted." the following: "At the conclusion of  
5 evidence in the penalty proceeding, both the state and  
6 the defendant shall be permitted to make rebuttal  
7 arguments."

A 8 2. Page 6, line 36, by inserting after the word  
9 "evidence" the following: "and arguments".

B 10 3. Page 6, line 37, by inserting after the word  
11 "proceeding," the following: "neither the state nor  
12 the defendant shall be permitted to make any further  
13 rebuttal arguments and".

By KREIMAN of Davis

H-3166 FILED FEBRUARY 22, 1995

DIV A - DEFER DIV B - DEFER

WITHDRAWN

WITHDRAWN

2/23/95

P. 542

2/23/95

HOUSE FILE 2

H-3167

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 6, by inserting after line 13 the  
4 following:

5 "( ) Another defendant, who is equally culpable  
6 in the murder, will not receive or has not received a  
7 sentence of death for participation in the offense."

8 2. By designating, redesignating, and correcting  
9 internal references as necessary.

By KREIMAN of Davis

BERNAU of Story

H-3167 FILED FEBRUARY 22, 1995

LOST (P. 507)

HOUSE FILE 2

H-3168

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 3, by inserting after line 17 the  
4 following:

5 " . Whether another defendant, who is equally  
6 culpable in the murder, will not receive or has not  
7 received a sentence of death for participation in the  
8 offense."

9 2. By designating, redesignating, and correcting  
10 internal references as necessary.

By KREIMAN of Davis

BERNAU of Story

H-3168 FILED FEBRUARY 22, 1995

(P. 531) Lost 2/23/95

H-3164

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 4, line 30, by inserting after the word  
 4 "fact." the following: "However, during the course of  
 5 jury selection, no prospective juror shall be  
 6 disqualified for cause from serving during the initial  
 7 proceeding under this section unless the prospective  
 8 juror's conscientious opinions would preclude the  
 9 juror from rendering a fair and impartial verdict  
 10 during the proceeding. A prospective juror who holds  
 11 an opinion, either for or against the imposition of  
 12 the death penalty, which would preclude the juror from  
 13 properly exercising the discretion conferred by law in  
 14 the determination of a sentence in the penalty portion  
 15 of the trial, but whose opinion would not preclude the  
 16 person from rendering an impartial verdict during the  
 17 initial proceeding, shall be considered an "initial  
 18 phase includable" juror and shall not be disqualified  
 19 for cause during the initial proceeding based solely  
 20 on the holding of those opinions. Initial phase  
 21 includable jurors may be excluded during the penalty  
 22 phase in the event that the defendant is convicted of  
 23 first degree murder and a penalty proceeding is held  
 24 to determine whether a sentence of death should be  
 25 imposed. In a penalty proceeding, initial phase  
 26 includable jurors may be replaced by alternate jurors  
 27 qualified to render an impartial sentencing verdict."

By FALLON of Polk

H-3164 FILED FEBRUARY 22, 1995

DEFER

*Lost*  
*2/23/95 (p. 542)*

H-3165

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 3, line 36, by striking the word  
 4 "sentencing" and inserting the following:  
 5 "execution".

By HOLVECK of Polk

H-3165 FILED FEBRUARY 22, 1995

DEFER

WITHDRAWN

*2/23/95*

*(p. 541)*

## HOUSE FILE 2

H-3161

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 5, line 27, by inserting after the word  
4 "doubt" the following: "by evidence that includes the  
5 testimony of at least two witnesses to the murder who  
6 viewed the murder from the same vantage point".

7 2. Page 6, line 29, by inserting after the word  
8 "trial" the following: ", except that the testimony  
9 of the defendant or a parent, child, or sibling of the  
10 defendant shall not be admissible for purposes of  
11 establishing the existence of a factor enumerated  
12 under section 902.12, or any aggravating  
13 circumstance".

14 3. Page 12, line 23, by inserting after the word  
15 "evidence" the following: ", except that the  
16 testimony of the defendant or a parent, child, or  
17 sibling of the defendant shall not be admissible for  
18 purposes of establishing the existence of a factor  
19 enumerated under section 902.12, or any aggravating  
20 circumstance".

21 4. Page 12, line 48, by inserting after the word  
22 "doubt" the following: "by evidence that includes the  
23 testimony of at least two witnesses to the murder who  
24 viewed the murder from the same vantage point".

By HOLVECK of Polk

H-3161 FILED FEBRUARY 22, 1995

LOST

(P. 506)

## HOUSE FILE 2

H-3162

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 6, line 29, by inserting after the word  
4 "trial" the following: ", except that the testimony  
5 of the defendant or a parent, child, or sibling of the  
6 defendant shall not be admissible for purposes of  
7 establishing the existence of a factor enumerated  
8 under section 902.12, or any aggravating  
9 circumstance".

10 2. Page 12, line 23, by inserting after the word  
11 "evidence" the following: ", except that the  
12 testimony of the defendant or a parent, child, or  
13 sibling of the defendant shall not be admissible for  
14 purposes of establishing the existence of a factor  
15 enumerated under section 902.12, or any aggravating  
16 circumstance".

By HOLVECK of Polk

H-3162 FILED FEBRUARY 22, 1995

WITHDRAWN

(P. 507)

## HOUSE FILE 2

H-3158

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 11, line 8, by inserting after the word  
4 "public" the following: "and live television and  
5 radio transmission of the execution".

By HOLVECK of Polk

H-3158 FILED FEBRUARY 22, 1995

LOST

(P. 518)

## HOUSE FILE 2

H-3159

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 11, line 6, by inserting after the words  
4 "limited to," the following: "a rule which requires  
5 that any person responsible for or who takes part in  
6 administering the intravenous injection of the lethal  
7 quantity of sodium thiopental or other substance shall  
8 at a minimum be licensed to practice as a registered  
9 nurse and".

By HOLVECK of Polk

H-3159 FILED FEBRUARY 22, 1995

WITHDRAWN

(P. 517)

## HOUSE FILE 2

H-3160

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 4, line 30, by inserting after the word  
4 "fact." the following: "However, if there was no jury  
5 in the initial proceeding or the defendant waived the  
6 right to jury trial in the initial proceeding, the  
7 defendant may demand a jury for the penalty proceeding  
8 by filing an oral or written request with the court."  
9 2. Page 5, line 14, by striking the words "the  
10 trial jury" and inserting the following: "a jury".  
11 3. Page 5, line 16, by inserting after the word  
12 "trial" the following: "in the initial proceeding and  
13 has not filed a demand for jury trial or has waived  
14 the right to trial by jury in the penalty proceeding".  
15 4. Page 12, line 14, by striking the words "the  
16 trial jury" and inserting the following: "a jury".

By KREIMAN of Davis  
MAY of Worth  
BURNETT of Story

H-3160 FILED FEBRUARY 22, 1995

LOST

(P. 503)

HOUSE FILE 2

H-3172

- 1 Amend the amendment, H-3109, to House File 2 as
- 2 follows:
- 3 1. Page 8, by striking line 50.
- 4 2. Page 9, line 1, by striking the word
- 5 "effective".

By MORELAND of Wapello

H-3172 FILED FEBRUARY 22, 1995

ADOPTED

(P. 514)

HOUSE FILE 2

H-3173

- 1 Amend the amendment, H-3109, to House File 2 as
- 2 follows:
- 3 1. Page 14, line 29, by inserting after the word
- 4 "warrant" the following: "shall be transmitted to the
- 5 governor for endorsement and".

By FALLON of Polk

H-3173 FILED FEBRUARY 22, 1995

DEFER

WITHDRAWN

2/23/95 (P. 543)

HOUSE FILE 2

H-3174

- 1 Amend the amendment, H-3109, to House File 2 as
- 2 follows:
- 3 1. Page 7, by inserting after line 14 the
- 4 following:
- 5 "\_\_\_\_". As part of the findings on the issues
- 6 submitted under subsection 5, the jury shall enumerate
- 7 each of the factors which the jury has unanimously
- 8 found that the state has established beyond a
- 9 reasonable doubt under subsection 5, paragraph "a",
- 10 and any aggravating or mitigating circumstances that
- 11 the jury has found and used in its determination under
- 12 subsection 5, paragraph "b".
- 13 2. Page 13, by inserting after line 8 the
- 14 following:
- 15 "\_\_\_\_". As part of the findings on the issues
- 16 submitted under subsection 3, the jury shall enumerate
- 17 each of the factors which the jury has unanimously
- 18 found that the state has established beyond a
- 19 reasonable doubt under subsection 3, paragraph "a",
- 20 and any aggravating or mitigating circumstances that
- 21 the jury has found and used in its determination under
- 22 subsection 3, paragraph "b".
- 23 3. By renumbering and correcting internal
- 24 references as necessary.

By KREIMAN of Davis

H-3174 FILED FEBRUARY 22, 1995

WITHDRAWN

WITHDRAWN

2/23/95  
(P. 542)

## HOUSE FILE 2

H-3170

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 3, line 46, by inserting after the word  
 4 "retarded" the following: "or mentally ill".  
 5 2. Page 4, line 3, by inserting after the word  
 6 "retardation" the following: "or mental illness".  
 7 3. Page 4, line 11, by inserting after the word  
 8 "retardation" the following: "or mental illness".  
 9 4. Page 4, line 13, by inserting after the word  
 10 "retardation" the following: "or mental illness".  
 11 5. Page 4, line 15, by inserting after the word  
 12 "retardation" the following: "or mental illness".  
 13 6. Page 9, line 17, by inserting after the word  
 14 "retarded" the following: "or mentally ill".  
 15 7. Page 10, by inserting after line 20 the  
 16 following:  
 17 "For purposes of this section, "mentally ill" means  
 18 the condition of a person who is suffering from a  
 19 mental disease or disorder and who, by reason of that  
 20 condition, lacks sufficient judgment to make  
 21 responsible decisions regarding treatment and is  
 22 reasonably likely to injure the person's self or  
 23 others who may come into contact with the person if  
 24 the person is allowed to remain at liberty without  
 25 treatment."

By GRUNDBERG of Polk	MASCHER of Johnson
FALLON of Polk	BURNETT of Story
HARPER of Black Hawk	HOLVECK of Polk
WITT of Black Hawk	

H-3170 FILED FEBRUARY 22, 1995

(p. 532) WITHDRAWN 2/23/95

## HOUSE FILE 2

H-3171

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 11, line 6, by inserting after the word  
 4 "rules" the following: "which require that executions  
 5 be carried out by only one individual and that all of  
 6 the duties to be performed to carry out the execution  
 7 are performed by that one individual and rules".

By HOLVECK of Polk

H-3171 FILED FEBRUARY 22, 1995

LOST

(p. 517)

## HOUSE FILE 2

H-3177

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 3, line 46, by inserting after the word  
 4 "retarded" the following: "or mentally ill".  
 5 2. Page 4, line 3, by inserting after the word  
 6 "retardation" the following: "or mental illness".  
 7 3. Page 4, line 11, by inserting after the word  
 8 "retardation" the following: "or mental illness".  
 9 4. Page 4, line 13, by inserting after the word  
 10 "retardation" the following: "or mental illness".  
 11 5. Page 4, line 15, by inserting after the word  
 12 "retardation" the following: "or mental illness".  
 13 6. Page 9, line 17, by inserting after the word  
 14 "retarded" the following: "or mentally ill".  
 15 7. Page 10, by inserting after line 20 the  
 16 following:  
 17 "For purposes of this section, "mentally ill" means  
 18 the condition of a person who is suffering from a  
 19 chronic and persistent serious mental disease or  
 20 disorder and who, by reason of that condition, lacks  
 21 sufficient judgment to make responsible decisions  
 22 regarding treatment and is reasonably likely to injure  
 23 the person's self or others who may come into contact  
 24 with the person if the person is allowed to remain at  
 25 liberty without treatment."

By GRUNDBERG of Polk  
 FALLON of Polk

H-3177 FILED FEBRUARY 22, 1995

(P.533) adopted 2/23/95

## HOUSE FILE 2

H-3178

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 6, line 37, by inserting after the word  
 4 "proceeding," the following: "the state and the  
 5 defendant or the defendant's counsel shall be  
 6 permitted to make closing arguments, including any  
 7 rebuttal arguments, in the same manner as in the  
 8 initial proceeding and".  
 9 2. Page 12, line 35, by inserting after the word  
 10 "evidence," the following: "the state and the  
 11 defendant or the defendant's counsel shall be  
 12 permitted to make closing arguments, including any  
 13 rebuttal arguments, in the same manner as in the  
 14 initial proceeding and".

By KREIMAN of Davis

H-3178 FILED FEBRUARY 22, 1995

(P.534) adopted 2/23/95



## HOUSE FILE 2

H-3175

- 1 Amend the amendment, H-3109, to House File 2, as  
 2 follows:  
 3 1. Page 15, by striking lines 20 through 37 and  
 4 inserting the following: "party shall file and serve  
 5 upon the other party requests for discovery pursuant  
 6 to the rules of criminal procedure."  
 7 2. Page 15, by striking lines 47 through 50 and  
 8 inserting the following: "aggravating or mitigating  
 9 circumstances."

By KREIMAN of Davis

H-3175 FILED FEBRUARY 22, 1995

LOST

(P. 518)

## HOUSE FILE 2

H-3176

- 1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 6, by striking lines 5 through 8 and  
 4 inserting the following: "prior adult criminal  
 5 activity."

By DODERER of Johnson

H-3176 FILED FEBRUARY 22, 1995

(P. 534) adopted 2/23/95

## HOUSE FILE 2

H-3169

- 1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 1, by inserting after line 26 the  
 4 following:  
 5 "Sec. \_\_\_\_ . Section 669.14, Code 1995, is amended  
 6 by adding the following new subsection:  
 7 NEW SUBSECTION. 14. A claim to compensate for  
 8 miscarriages of justice for any person innocent of any  
 9 homicidal act who is erroneously sentenced to death.  
 10 For purposes of this section, damages shall include  
 11 actual, nominal, and special damages, and may include,  
 12 but are not limited to, claims for loss of income,  
 13 consortium, medical expenses, emotional distress, loss  
 14 of enjoyment of life, and any related legal fees or  
 15 expenses."  
 16 2. By renumbering and correcting internal  
 17 references as necessary.

By BERNAU of Story

MASCHER of Johnson

BRAND of Benton

KOENIGS of Mitchell

CONNORS of Polk

HOLVECK of Polk

H-3169 FILED FEBRUARY 22, 1995

DEFER

WITHDRAWN

2/23/95 (P. 538)

## HOUSE FILE 2

H-3180

- 1 Amend the amendment, H-3109, to House File 2, as  
 2 follows:  
 3 1. Page 10, by inserting after line 10 the  
 4 following:  
 5 "\_\_\_\_\_. The victim was murdered within one hundred  
 6 fifty feet of a medical clinic and the victim was  
 7 either a medical services provider or a person seeking  
 8 or receiving services from the clinic."  
 9 2. By designating, redesignating, and correcting  
 10 internal references as necessary.

By MURPHY of Dubuque  
 CONNORS of Polk

H-3180 FILED FEBRUARY 22, 1995

*2/23/95 (p 537)*

WITHDRAWN

## HOUSE FILE 2

H-3181

- 1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 3, line 36, by inserting after the word  
 4 "charge." the following: "In addition, if at any  
 5 point in federal post-conviction proceedings an  
 6 indigent defendant is not afforded court-appointed  
 7 counsel, the state shall provide counsel to the  
 8 defendant to present any claims determined meritorious  
 9 by the federal court if the defendant is not otherwise  
 10 represented by legal counsel."

By HOLVECK of Polk  
 GRUBBS of Scott

H-3181 FILED FEBRUARY 22, 1995

*(p. 532) adopted 2/23/95*

## HOUSE FILE 2

H-3182

- 1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 16, by inserting after line 3 the  
 4 following:  
 5 "\_\_\_\_\_. EFFECTIVE DATE. This Act shall not take  
 6 effect unless an appropriation is made in accordance  
 7 with section 25B.2, subsection 3, which fully funds or  
 8 funds a proportionate share of the costs of  
 9 implementing this Act."  
 10 2. By numbering, renumbering, and correcting  
 11 internal references as necessary.

By DODERER of Johnson

H-3182 FILED FEBRUARY 22, 1995

WITHDRAWN

*(p. 519)*

## HOUSE FILE 2

H-3179

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 9, by inserting after line 1 the  
4 following:

5 "Sec. 101. NEW SECTION. 902.1A CLASS "A" FELONY.

6 Upon a plea of guilty, a verdict of guilty, or a  
7 special verdict upon which a judgment of conviction of  
8 a class "A" felony may be rendered, the court shall  
9 enter a judgment of conviction and shall commit the  
10 defendant into the custody of the director of the Iowa  
11 department of corrections until the defendant's death.  
12 Nothing in the Iowa corrections code pertaining to  
13 deferred judgment, deferred sentence, suspended  
14 sentence, or reconsideration of sentence applies to a  
15 class "A" felony, and a person convicted of a class  
16 "A" felony shall not be released on parole unless the  
17 governor commutes the sentence to a term of years."

18 2. Page 9, by inserting after line 13 the  
19 following:

20 "Sec. 102. NEW SECTION. 902.2A RECORD OF CLASS  
21 "A" FELON REVIEWED.

22 The board shall interview a class "A" felon within  
23 five years of the felon's confinement and regularly  
24 thereafter. If, in the opinion of the board, the  
25 person should be considered for release on parole, the  
26 board shall recommend to the governor that the  
27 person's sentence be commuted to a term of years. If  
28 the person's sentence is so commuted, the person shall  
29 be eligible for parole as provided in chapter 906."

30 3. Page 16, by inserting after line 3 the  
31 following:

32 "Sec. \_\_\_\_ . EFFECTIVE DATE -- REPEAL -- TRANSITION.

33 1. Sections 101 and 102 of this Act take effect  
34 July 1, 2000.

35 2. Sections 1 through 18 of this Act, and sections  
36 902.1 and 902.2, are repealed effective June 30, 2000.

37 3. Persons who have been convicted and sentenced  
38 to death, but who have not been executed before July  
39 1, 2000, shall not be executed and the sentences  
40 imposed shall be commuted to a term of imprisonment  
41 until death if the general assembly so provides.  
42 Persons who have been charged or indicted with an  
43 offense which may be punishable by a sentence of death  
44 before July 1, 2000, under the provisions of this Act  
45 shall not be sentenced to death upon conviction of the  
46 offense in any proceeding which takes place on or  
47 after July 1, 2000, but shall be sentenced in  
48 accordance with section 101 of this Act."

49 4. By designating, redesignating, and correcting  
50 internal references as necessary.

By BRAND of Benton

MAY of Worth

WISE of Lee

SHOULTZ of Black Hawk

FALLON of Polk

BURNETT of Story

H-3179 FILED FEBRUARY 22, 1995

(P. 537)

Let 2/23/95

H-3185

1 Amend the amendment, H-3109, to House File 2 as  
 2 follows:  
 3 1. Page 7, by inserting after line 14 the  
 4 following:  
 5 "\_\_\_\_\_. Concurrently with the return of the findings  
 6 on the issues submitted under subsection 5, the jury,  
 7 or the court if there is no jury, shall return special  
 8 verdicts as follows:  
 9 a. Which of the factor, or factors, enumerated in  
 10 section 902.12, has been unanimously found to have  
 11 been established beyond a reasonable doubt.  
 12 b. Which aggravating circumstances were  
 13 established and were considered in reaching the  
 14 verdict returned on the issue specified in subsection  
 15 5, paragraph "b".  
 16 c. Which mitigating circumstances were established  
 17 and were considered in reaching the verdict returned  
 18 on the issue specified in subsection 5, paragraph  
 19 "b".  
 20 2. Page 13, by inserting after line 8 the  
 21 following:  
 22 "\_\_\_\_\_. Concurrently with the return of the findings  
 23 on the issues submitted under subsection 5, the jury,  
 24 or the court if there is no jury, shall return special  
 25 verdicts as follows:  
 26 a. Which of the factor, or factors, enumerated in  
 27 section 902.12, has been unanimously found to have  
 28 been established beyond a reasonable doubt.  
 29 b. Which aggravating circumstances were  
 30 established and were considered in reaching the  
 31 verdict returned on the issue specified in subsection  
 32 3, paragraph "b".  
 33 c. Which mitigating circumstances were established  
 34 and were considered in reaching the verdict returned  
 35 on the issue specified in subsection 3, paragraph  
 36 "b".  
 37 3. By renumbering and correcting internal  
 38 references as necessary.

By KREIMAN of Davis

H-3185 FILED FEBRUARY 22, 1995

*(P.535) Adapted  
 2/23/95*

H-3186

1 Amend the amendment, H-3109, to House File 2, as  
 2 follows:  
 3 1. Page 10, by inserting after line 10 the  
 4 following:  
 5 "\_\_\_\_\_. The victim was murdered within one hundred  
 6 fifty feet of a hospital or medical clinic and the  
 7 victim was either a medical services provider or a  
 8 person seeking or receiving services from the hospital  
 9 or clinic."  
 10 2. By designating, redesignating, and correcting  
 11 internal references as necessary.

By MURPHY of Dubuque  
 CONNORS of Polk

H-3186 FILED FEBRUARY 22, 1995

*WITN 2/23/95*

WITHDRAWN

## HOUSE FILE 2

H-3184

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 6, by inserting after line 19 the  
4 following:

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

9 2. By numbering, renumbering, and correcting  
10 internal references as necessary.

By HURLEY of Fayette  
DRAKE of Pottawattamie  
GRUBBS of Scott

H-3184 FILED FEBRUARY 22, 1995

(P. 543) adopted 2/23/95

## HOUSE FILE 2

H-3183

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 1, by inserting before line 27 the  
4 following:

5 "Sec. . NEW SECTION. 624.13A JURY INSTRUCTION  
6 -- DEATH PENALTY -- RIGHT TO JUDGE LAW.

7 1. A defendant's right to trial by jury in a case  
8 under section 901.11 includes the right to inform the  
9 jury of the jury's prerogative to judge the law as  
10 well as all the evidence, and to render a verdict  
11 dictated by conscientious consideration. This right  
12 shall not be limited by the rules of civil or criminal  
13 procedure, juror's oath, court order, or procedure or  
14 practice of the court, including the use of any method  
15 of jury selection which could preclude or limit the  
16 impanelment of jurors willing to exercise this power.  
17 2. Once the jury has been informed in accordance  
18 with subsection 1, a party to the action shall not be  
19 prohibited from presenting arguments to the jury which  
20 may pertain to issues of law and conscience, including  
21 the following:

22 a. The merit, intent, constitutionality, or  
23 applicability of the law to the defendant's case.  
24 b. The motive, moral perspective, or circumstances  
25 of the defendant.  
26 c. The degree and direction of guilt or actual  
27 harm done.  
28 d. The sanctions which may be applied to the  
29 losing party.

30 3. Failure to allow the defendant to so inform the  
31 jury shall be grounds for a mistrial and another trial  
32 by jury."

33 2. Page 16, line 9, by inserting after the word  
34 "applied," the following: "by providing for certain  
35 instructions to the jury,".

By RUNNING of Linn  
FALLON of Polk

H-3183 FILED FEBRUARY 22, 1995

(P. 521)

H-3187

1 Amend the amendment, H-3109, to House File 2, as  
2 follows:

3 1. Page 10, by inserting after line 10 the  
4 following:

5 "\_\_\_\_. The victim was murdered in or within one  
6 hundred fifty feet of a hospital or medical clinic and  
7 the victim was either a medical services provider or a  
8 person seeking or receiving services from the hospital  
9 or clinic."

10 2. By designating, redesignating, and correcting  
11 internal references as necessary.

By MURPHY of Dubuque

H-3187 FILED FEBRUARY 23, 1995

LOST

(P. 538)

H-3189

1 Amend the amendment, H-3109, to House File 2 as  
2 follows:

3 1. Page 1, by inserting after line 26 the  
4 following:

5 "Sec. \_\_\_\_ . Section 669.14, Code 1995, is amended  
6 by adding the following new subsection:

7 NEW SUBSECTION. 14. A claim to compensate for  
8 miscarriages of justice for any person innocent of any  
9 homicidal act who is erroneously sentenced to death.  
10 For purposes of this section, damages shall include  
11 actual, nominal, and special damages, and may include,  
12 but are not limited to, claims for loss of income,  
13 consortium, medical expenses, emotional distress, loss  
14 of enjoyment of life, and any related legal fees or  
15 expenses.

16 Sec. \_\_\_\_ . NEW SECTION. 669.25 LIABILITY FOR  
17 ERRONEOUS DEATH SENTENCES.

18 Notwithstanding any provision of this chapter to  
19 the contrary, claims against the state which request  
20 the payment of damages to compensate for miscarriages  
21 of justice for any person innocent of any homicidal  
22 act who is erroneously sentenced to death shall be  
23 permitted and may be filed directly in the district  
24 court of the state of Iowa for the district in which  
25 the plaintiff is resident or in which the act or  
26 omission occurred."

27 2. By renumbering and correcting internal  
28 references as necessary.

By BERNAU of Story

MASCHER of Johnson

BRAND of Benton

KOENIGS of Mitchell

CONNORS of Polk

HOLVECK of Polk

H-3189 FILED FEBRUARY 23, 1995

LOST

(P. 539)

S- 2/27/95 *for carry*  
S- 3/1/95 *Without Recommendation*  
S- 3/2/95 *Motion to R/C by Honorable*  
3/2/95 *Deferred*  
S- 3-6-95 *Motion to R/C by Land*

HOUSE FILE 2

BY LARSON, GREINER, GREIG,  
BRUNKHORST, BLODGETT, KLEMME,  
SCHULTE, BODDICKER, VAN FOSSEN,  
HARRISON, NUTT, DRAKE, RANTS,  
HOUSER, MAIN, BRADLEY, TEIG,  
HUSEMAN, SUKUP, SALTON, HAMMITT,  
LORD, DISNEY, VANDE HOEF, BRAUNS,  
COON, HAHN, CHURCHILL, RENKEN,  
and MEYER

*S- 3/8/95 Motion to R/C Withdrawn*

(As Amended and Passed by the House February 23, 1995)

Passed House, Date \_\_\_\_\_ *Failed* Passed Senate, Date 3/2/95  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 11 Nays 39  
Approved \_\_\_\_\_

**A BILL FOR**

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

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

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14

All New Language by the House

1 Section 1. Section 13B.4, Code 1995, is amended by adding  
2 the following new subsection:

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

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

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

14 Sec. 2. NEW SECTION. 13D.1 QUALIFICATIONS OF COUNSEL IN  
15 DEATH PENALTY CASES.

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

20 Sec. 3. Section 216A.133, Code 1995, is amended by adding  
21 the following new subsection:

22 NEW SUBSECTION. 8. Review the effects of the  
23 reinstatement of the death penalty on arrest, prosecution,  
24 conviction, and incarceration rates; law enforcement duties  
25 and ability to obtain evidence necessary for arrests; court  
26 dockets and workload; prison space; recidivism rates of  
27 persons charged with crimes of violence against persons; and  
28 other aspects of the criminal justice system. Based on the  
29 review and other factors deemed relevant, the council shall  
30 make findings and develop recommendations resulting from those  
31 findings. Commencing January 1, 1997, the council shall  
32 report its findings and any related recommendations annually  
33 to the governor and to the general assembly.

34 Sec. 4. NEW SECTION. 812A.1 PROCEDURE TO DETERMINE  
35 SANITY OF CONDEMNED INMATE.



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

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

1 criminal proceeding.

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

9 4. If, at the conclusion of a hearing held pursuant to  
10 this section, the court determines that the convict is insane,  
11 the court shall suspend the execution until further order. At  
12 any time after issuance of the order, if the court has  
13 sufficient reason to believe that the inmate has become sane,  
14 the court shall again determine the sanity of the inmate as  
15 provided by this section. Proceedings pursuant to this  
16 section may continue to be held at such times as the court  
17 orders until it is either determined that the inmate is sane  
18 or incurably insane.

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

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

24 2. A review by the supreme court of a judgment and  
25 sentence imposing the punishment of death has priority over  
26 all other criminal and other actions pending before the  
27 supreme court.

28 3. The supreme court shall review the trial and judgment,  
29 and separately shall review the sentencing proceeding. Upon  
30 determining that errors did not occur at the trial requiring  
31 reversal or modification of the judgment, the supreme court  
32 shall proceed to determine if the sentence of death is  
33 lawfully imposed. In its review of the sentencing proceeding  
34 the supreme court shall determine all of the following:

35 a. Whether the sentence of death was imposed capriciously

1 or under the influence of prejudice or other arbitrary factor.

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

4 c. Whether the sentence of death is excessive or  
5 disproportionate to the penalty imposed in similar cases,  
6 considering both the crime and the defendant.

7 4. If the supreme court determines that the sentence of  
8 death was not lawfully imposed, the court shall set aside the  
9 sentence and shall remand the case to the trial court for  
10 imposition of a sentence of life imprisonment.

11 5. If the supreme court affirms the judgment and sentence  
12 of death, the clerk of the supreme court shall certify the  
13 judgment of the supreme court under the seal of the court to  
14 the clerk of the trial court.

15 Sec. 6. Section 815.10, Code 1995, is amended by adding  
16 the following new subsection:

17 NEW SUBSECTION. 1A. The court shall appoint for each  
18 indigent person who is charged with murder in the first degree  
19 and in which a notice of intent to seek the death penalty has  
20 been filed two attorneys to represent the person in the murder  
21 proceedings and in all state legal proceedings which take  
22 place from the time the person is arraigned until the time of  
23 sentencing on the charge. In addition, if at any point in  
24 federal post-conviction proceedings an indigent defendant is  
25 not afforded court-appointed counsel, the state shall provide  
26 counsel to the defendant to present any claims determined  
27 meritorious by the federal court if the defendant is not  
28 otherwise represented by legal counsel. Only private  
29 attorneys and public defenders who are qualified for  
30 representation in cases in which the death penalty may be  
31 imposed are eligible for appointment or assignment to a case  
32 in which the death penalty may be imposed.

33 Sec. 7. NEW SECTION. 901.11 MURDER PROCEEDINGS --  
34 REQUEST FOR DEATH PENALTY -- PENALTY PROCEEDINGS.

35 1. If a notice of intent to seek the death penalty has

1 been filed, objections to the imposition of the death penalty  
2 based upon allegations that a defendant was mentally retarded  
3 or mentally ill at the time of the commission of the offense  
4 shall be raised within the time provided for the filing of  
5 pretrial motions under rule of criminal procedure 10, Iowa  
6 court rules, third edition. The court may, for good cause  
7 shown, allow late filing of the motion. Hearing on the motion  
8 shall be held prior to trial and the burden of proof shall be  
9 on the defendant to prove mental retardation or mental illness  
10 by a preponderance of the evidence. However, a rebuttable  
11 presumption of mental retardation arises if a defendant has an  
12 intelligence quotient of seventy or below. If the court finds  
13 that the defendant is mentally retarded, the defendant, if  
14 convicted of murder in the first degree, shall be sentenced to  
15 life imprisonment in the manner provided in section 902.1,  
16 subsection 1. A finding of the court that the evidence  
17 presented by the defendant at the hearing does not preclude  
18 the imposition of the death penalty under this section and  
19 section 902.12 shall not preclude the introduction of evidence  
20 of mental retardation or mental illness during the penalty  
21 proceeding. If the court finds that evidence of mental  
22 retardation or mental illness does not preclude imposition of  
23 the death penalty, evidence of mental retardation or mental  
24 illness may be reviewed by the jury in the penalty proceeding  
25 and the jury shall not be informed of the finding in the  
26 initial proceeding at any time during the penalty proceeding.  
27 2. If at the trial of a charge of murder in the first  
28 degree, the state intends to request that the death penalty be  
29 imposed under section 902.1, subsection 2, the prosecutor  
30 shall file a notice of intent to seek the death penalty,  
31 listing the factors enumerated under section 902.12 that the  
32 state intends to establish in support of imposition of the  
33 death penalty, at the time of and as part of the information  
34 or indictment filed in the case.  
35 3. If a notice of intent to seek the death penalty has

1 been filed, the trial shall be conducted in bifurcated  
2 proceedings before the same trier of fact. During the initial  
3 proceeding, the jury, or the court, if the defendant waives  
4 the right to a jury trial, shall decide only whether the  
5 defendant is guilty or not guilty of murder in the first  
6 degree.

7 a. If, in the initial proceeding, the court or jury finds  
8 the defendant guilty of, or the defendant pleads guilty to, an  
9 offense other than murder in the first degree, the court shall  
10 sentence the defendant in accordance with the sentencing  
11 procedures set forth in rule of criminal procedure 22, Iowa  
12 court rules, third edition, and chapters 901 through 909,  
13 which are applicable to the offense.

14 b. If the court or jury finds the defendant guilty of, or  
15 the defendant pleads guilty to, murder in the first degree,  
16 but the prosecuting attorney waives the death penalty, the  
17 court shall sentence the defendant to life imprisonment in  
18 accordance with the sentencing procedures set forth in rule of  
19 criminal procedure 22, Iowa court rules, third edition, and  
20 chapters 901 through 909, which are applicable to convictions  
21 of murder in the first degree.

22 c. If the court or jury finds the defendant guilty of  
23 murder in the first degree, or a defendant enters a plea of  
24 guilty in the initial proceeding, and the prosecuting attorney  
25 does not waive imposition of the death penalty, a penalty  
26 proceeding shall be held in the manner provided in subsections  
27 4 through 12.

28 4. No sooner than twenty-four hours after a verdict of  
29 guilty or a plea of guilty to the charge of murder in the  
30 first degree is returned in the initial proceeding, a penalty  
31 proceeding shall be held to determine whether the defendant  
32 shall be sentenced to death or to life imprisonment. The  
33 proceeding shall be conducted in the trial court before the  
34 trial jury, or the court if the defendant has waived the right  
35 to a jury trial. Both the state and the defendant shall have

1 the right to present opening statements at the commencement of  
2 the penalty proceedings. In the proceeding, evidence relevant  
3 to the existence of any aggravating or mitigating  
4 circumstances may be presented as follows:

5 a. The state or the defendant may present evidence  
6 relevant to any of the factors enumerated in section 902.12  
7 and any aggravating circumstances other than juvenile  
8 delinquency adjudications for offenses which carry penalties  
9 equivalent to the penalties imposed for simple or serious  
10 misdemeanors. The state may introduce evidence of the actual  
11 harm caused by the commission of the murder including, but not  
12 limited to, evidence relating to the life of the victim and  
13 the impact of the loss of the victim to the victim's family  
14 and society. The state shall be required to prove the  
15 existence of any of the factors enumerated in section 902.12  
16 beyond a reasonable doubt.

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

24 c. The state or the defendant may present evidence  
25 relevant to any mitigating circumstances which may exist.  
26 Mitigating circumstances may include the following  
27 circumstances:

28 (1) The defendant was under the influence of an extreme  
29 mental or emotional disturbance insufficient to constitute a  
30 defense.

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

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

34 (4) The defendant's capacity to appreciate the  
35 wrongfulness of the defendant's conduct and to conform that

1 conduct to the requirements of law was significantly impaired  
2 as a result of a mental disease or defect or mental  
3 retardation, but not to a degree sufficient to constitute a  
4 defense.

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

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

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

12 (8) Any other factor which is relevant to the defendant's  
13 character or record or to the circumstances of the offense.

14 (9) The defendant rendered substantial assistance to the  
15 state in the prosecution of another person for the crime of  
16 murder.

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

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

33 5. At the conclusion of presentation of evidence in the  
34 penalty proceeding, the state and the defendant or the  
35 defendant's counsel shall be permitted to make closing

1 arguments, including any rebuttal arguments, in the same  
2 manner as in the initial proceeding and the following issues  
3 shall be determined by the jury or the court, if there is no  
4 jury:

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

8 b. If one or more aggravating circumstances are  
9 established, whether the aggravating circumstance or  
10 circumstances outweigh any one or more mitigating  
11 circumstances.

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

13 6. 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 or  
16 the victim. After submission of the issues, but prior to the  
17 return of a finding in the penalty proceeding, if the matter  
18 is tried before a jury, the court shall instruct the jury that  
19 in considering whether a sentence of death is justified, it  
20 shall not consider race, color, religious beliefs, national  
21 origin, or sex of the defendant or of any victim. The court  
22 shall further instruct the jury that it shall not return a  
23 sentence of death unless it concludes that such a sentence  
24 would be recommended no matter what the race, color, religious  
25 beliefs, national origin, or sex of the defendant or victim  
26 may be.

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



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

4 a. Which of the factor, or factors, enumerated in section  
5 902.12, has been unanimously found to have been established  
6 beyond a reasonable doubt.

7 b. Which aggravating circumstances were established and  
8 were considered in reaching the verdict returned on the issue  
9 specified in subsection 5, paragraph "b".

10 c. Which mitigating circumstances were established and  
11 were considered in reaching the verdict returned on the issue  
12 specified in subsection 5, paragraph "b".

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

19 10. However, if evidence that the defendant was not a  
20 major participant in the commission of the murder and that the  
21 defendant's conduct did not manifest a reckless indifference  
22 to human life is presented to the jury, or the court, if there  
23 is no jury, the jury or the court shall return a special  
24 verdict on the issue. If the jury unanimously determines, or  
25 the court, if there is no jury, finds that a preponderance of  
26 evidence exists that shows that the defendant was not a major  
27 participant in the commission of the murder and that the  
28 defendant's conduct did not manifest a reckless indifference  
29 to human life, the court shall enter a judgment of conviction  
30 and shall sentence the defendant to life imprisonment as  
31 provided in section 902.1, subsection 1, even if the jury or  
32 the court returns unanimous affirmative findings on each of  
33 the issues submitted under subsection 5.

34 11. If the jury, or the court, if there is no jury,  
35 returns a negative finding on any of the issues submitted

1 under subsection 5, paragraphs "a", "b", and "c", the court  
2 shall enter a judgment of conviction and shall sentence the  
3 defendant to life imprisonment as provided in section 902.1,  
4 subsection 1.

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

23 13. This section shall not apply to a defendant who was  
24 under the age of eighteen at the time the offense was  
25 committed.

26 Sec. 8. Section 902.1, Code 1995, is amended to read as  
27 follows:

28 902.1 CLASS "A" FELONY.

29 1. Upon Except as otherwise provided in subsection 2, upon  
30 a plea of guilty, a verdict of guilty, or a special verdict  
31 upon which a judgment of conviction of a class "A" felony may  
32 be rendered, the court shall enter a judgment of conviction  
33 and shall commit the defendant into the custody of the  
34 director of the Iowa department of corrections for the rest of  
35 the defendant's life. Nothing in the Iowa corrections code

1 pertaining to deferred judgment, deferred sentence, suspended  
2 sentence, or reconsideration of sentence applies to a sentence  
3 of life imprisonment for a class "A" felony, and a person  
4 convicted of a class "A" felony and sentenced to life  
5 imprisonment shall not be released on parole unless the  
6 governor commutes the sentence to a term of years.

7     2. Upon return of a plea or verdict of guilty to the  
8 offense of murder in the first degree under section 707.2 and  
9 a return of a verdict in favor of a sentence of death in a  
10 penalty proceeding conducted as provided in section 901.11,  
11 the court shall enter a judgment of conviction and shall  
12 commit the defendant into the custody of the director of the  
13 Iowa department of corrections. The sentence shall be carried  
14 out by the administration of a lethal injection pursuant to  
15 rules adopted by the board of corrections. If a defendant,  
16 for whom a warrant of execution is issued, is pregnant, the  
17 execution shall not take place until after the defendant is no  
18 longer pregnant. If a defendant, for whom a warrant of  
19 execution is issued, is suffering from such a diseased or  
20 deranged condition of the mind as to prevent the defendant  
21 from knowing the nature and quality of the act the defendant  
22 has been convicted of, or from understanding that trial on the  
23 offense has taken place and that execution proceedings are  
24 about to take place, or otherwise causes the defendant to lack  
25 the capacity, to understand the sentence which has been  
26 imposed and to participate in any legal proceedings relating  
27 to the sentence the execution shall not take place until after  
28 the defendant's capacity is restored. If the director of the  
29 department of corrections or the defendant's counsel files a  
30 request with the court which issued the warrant of execution,  
31 alleging that the defendant suffers from such a diseased or  
32 deranged condition, a hearing on the matter shall be held in  
33 the manner provided in section 812A.1. If a defendant was  
34 under the age of eighteen at the time the offense was  
35 committed, the defendant shall be sentenced as provided in

1 subsection 1. For the purposes of this section, "lethal  
2 injection" means a continuous intravenous injection of a  
3 lethal substance sufficient to cause death.

4 Sec. 9. Section 902.2, Code 1995, is amended to read as  
5 follows:

6 902.2 RECORD OF CLASS "A" FELON REVIEWED.

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

15 Sec. 10. NEW SECTION. 902.12 FIRST DEGREE MURDER --  
16 ADDITIONAL FACTORS.

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

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

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

35 3. The victim was a witness to a crime and the murder is

1 for the purpose of preventing the victim from testifying in  
2 any criminal proceeding and the murder was not committed  
3 during the commission of the crime that the victim witnessed,  
4 or the victim was a witness to a crime and the murder is in  
5 retaliation for the victim's testimony in any criminal  
6 proceeding.

7 4. The victim was a prosecutor or former prosecutor, as  
8 defined in section 801.4, subsection 12, or was a prosecutor  
9 or former prosecutor for any federal prosecutor's office, and  
10 the murder is in retaliation for or to prevent the victim from  
11 carrying out the victim's official duties.

12 5. The victim was a judicial officer as defined under  
13 section 602.1101, subsection 8, or a former judicial officer  
14 of any court of record in this state or any other state and  
15 the murder is in retaliation for or to prevent the victim from  
16 carrying out the victim's official duties.

17 6. The victim was an employee of an institution or  
18 facility under the control of the department of corrections or  
19 a judicial district department of correctional services or of  
20 a city or county jail who was performing the victim's official  
21 duties.

22 7. The victim was a peace officer, as defined under  
23 section 801.4, subsection 11, or a former peace officer and  
24 the murder is in retaliation for or to prevent the victim from  
25 carrying out the victim's official duties.

26 8. The victim was under the age of twelve years and the  
27 death results from exceptionally brutal or heinous behavior  
28 indicative of wanton cruelty.

29 9. The murder was especially heinous, atrocious, cruel, or  
30 manifesting exceptional depravity. For purposes of this  
31 subsection, the phrase "especially heinous, atrocious, cruel,  
32 or manifesting exceptional depravity" means a conscienceless  
33 or pitiless crime which is unnecessarily torturous to the  
34 victim.

35 For purposes of this section, "mentally retarded" means

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

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

14 Sec. 11. NEW SECTION. 902.13 DATA COLLECTION FOR DEATH  
15 PENALTY.

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

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

27 Sec. 12. NEW SECTION. 903B.1 EXECUTIONS -- REFUSAL TO  
28 PERFORM.

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

1 not limited to, employment, promotion, advancement, transfer,  
2 licensing, education, training, or the granting of any  
3 privileges or appointments because of the refusal to perform,  
4 assist, or participate in the execution.

5 Sec. 13. Section 904.105, Code 1995, is amended by adding  
6 the following new subsection:

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

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

15 b. A representative from a broadcasting network serving  
16 Iowa.

17 c. A representative from a television station located in  
18 Iowa.

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

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

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

24 g. A representative from the news media from the community  
25 in which the condemned person resided, if that community is  
26 located in Iowa.

27 Sec. 14. Rules of criminal procedure, Iowa court rules,  
28 third edition, are amended by adding sections 15 through 18 of  
29 this Act.

30 Sec. 15. NEW RULE. MURDER IN THE FIRST DEGREE --  
31 PROCEDURE.

32 1. If a notice of intent to seek the death penalty has  
33 been filed, objections to the imposition of the death penalty  
34 based upon allegations that a defendant was mentally retarded  
35 at the time of the commission of the offense shall be raised

1 within the time provided for the filing of pretrial motions  
2 under R.Cr.P. 10, Iowa court rules, third edition. The court  
3 may, for good cause shown, allow late filing of the motion.  
4 Hearing on the motion shall be held prior to trial and the  
5 burden of proof shall be on the defendant to prove mental  
6 retardation by a preponderance of the evidence. However, a  
7 rebuttable presumption of mental retardation arises if a  
8 defendant has an intelligence quotient of seventy or below. A  
9 finding of the court that the evidence presented by the  
10 defendant at the hearing does not preclude the imposition of  
11 the death penalty under this section and section 902.12 shall  
12 not preclude the introduction of evidence of mental  
13 retardation during the penalty proceeding. If the court finds  
14 that the evidence presented by the defendant does not preclude  
15 the imposition of the death penalty, evidence of mental  
16 retardation may be reviewed by the jury during the penalty  
17 proceeding and the jury shall not be informed of the finding  
18 in the initial proceeding at any time during the penalty  
19 proceeding.

20 2. Upon a finding or plea that a defendant is guilty of  
21 murder in the first degree in an initial proceeding, if a  
22 notice of intent to seek the death penalty has been filed and  
23 has not been waived, the court shall conduct a separate  
24 penalty proceeding to determine whether the defendant shall be  
25 sentenced to death or to life imprisonment. The proceeding  
26 shall be conducted in the trial court before the trial jury,  
27 or the court, if there is no jury, no sooner than twenty-four  
28 hours after the return of the verdict or plea in the initial  
29 proceeding. In the proceeding, additional evidence may be  
30 presented as to any factor enumerated in Iowa Code section  
31 902.12 or any aggravating or mitigating circumstance which may  
32 exist. Evidence presented which is relevant to the existence  
33 of a factor enumerated in Iowa Code section 902.12 shall be  
34 subject to the rules of evidence. Presentation of evidence  
35 which is relevant to the existence of an aggravating or



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

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

14 a. Whether one or more of the factors enumerated in Iowa  
15 Code section 902.12 have been proven.

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

19 c. Whether the defendant shall be sentenced to death.  
20 If the case is not tried to a jury, the court shall  
21 determine the issues.

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

26 5. If the case is tried to a jury, the court shall charge  
27 the jury that:

28 a. It shall answer any issue "yes" if it agrees  
29 unanimously.

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

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

1 a. Which of the factor, or factors, enumerated in section  
2 902.12, has been unanimously found to have been established  
3 beyond a reasonable doubt.

4 b. Which aggravating circumstances were established and  
5 were considered in reaching the verdict returned on the issue  
6 specified in subsection 3, paragraph "b".

7 c. Which mitigating circumstances were established and  
8 were considered in reaching the verdict returned on the issue  
9 specified in subsection 3, paragraph "b".

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

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

32 9. After a verdict has been rendered it shall be recorded  
33 on the jury verdict form and shall be read and recorded in  
34 open court. The jurors shall be collectively asked by the  
35 court whether the verdict returned is their true and correct

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

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

21 Sec. 16. NEW RULE. AUTOMATIC REVIEW -- STAY OF EXECUTION  
22 OF JUDGMENT.

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

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

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

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

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

7 Sec. 17. NEW RULE. ISSUANCE OF WARRANT.

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

33 2. Immediately after issuance of a warrant ordering a  
34 sentence of death, the clerk of the trial court issuing the  
35 warrant shall transmit by certified mail to the governor a

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

19 Sec. 18. NEW RULE. EVIDENCE AT PENALTY PROCEEDING WHERE  
20 DEATH SENTENCE REQUESTED.

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

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

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

30 c. Notwithstanding R.Cr.P. 13, copies, or for inspection  
31 purposes, the location, of all documents, including books,  
32 papers, writings, drawings, graphs, charts, photographs, phone  
33 records, and other data compilations from which information  
34 can be obtained, or other objects which the party intends to  
35 offer into evidence during the sentencing proceedings. If

1 copies are not supplied to opposing counsel, the party shall  
2 make the items available for inspection and copying without  
3 order of the court.

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

15 Sec. 19. EFFECTIVE DATE -- SEVERABILITY -- SENTENCES  
16 COMMUTED TO LIFE IMPRISONMENT IF ACT UNCONSTITUTIONAL.

17 1. This Act takes effect October 1, 1995, and applies to  
18 offenses committed on or after that date.

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

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

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## HOUSE FILE 2

S-3085

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

3 1. Page 10, by inserting after line 33 the  
4 following:

5 " \_\_\_\_\_. If the evidence relied upon by the jury, or  
6 the court, if there is no jury, in reaching the  
7 verdict, finding that the defendant has been proven  
8 guilty beyond a reasonable doubt, in the initial  
9 proceeding does not include a confession by the  
10 defendant, a DNA profiling match, a fingerprint match,  
11 or the testimony of two eyewitnesses to the murder,  
12 the jury, or the court, if there is no jury, shall  
13 return a special verdict on the issue. If the jury,  
14 or the court, if there is no jury, did not rely upon a  
15 confession, a DNA profiling match, a fingerprint  
16 match, or the testimony of two eyewitnesses to the  
17 murder, the court shall enter a judgment of conviction  
18 and shall sentence the defendant to life imprisonment  
19 as provided in section 902.1, subsection 1, even if  
20 the jury or the court returns unanimous affirmative  
21 findings on each of the issues submitted under  
22 subsection 5. "DNA profiling" means as defined in  
23 section 13.10."

24 2. Page 19, by inserting after line 31 the  
25 following:

26 " \_\_\_\_\_. If the evidence relied upon by the jury, or  
27 the court, if there is no jury, in reaching the  
28 verdict, finding that the defendant has been proven  
29 guilty beyond a reasonable doubt, in the initial  
30 proceeding does not include a confession by the  
31 defendant, a DNA profiling match, a fingerprint match,  
32 or the testimony of two eyewitnesses to the murder,  
33 the jury, or the court, if there is no jury, shall  
34 return a special verdict on the issue. If the jury,  
35 or the court, if there is no jury, did not rely upon a  
36 confession, a DNA profiling match, a fingerprint  
37 match, or the testimony of two eyewitnesses to the  
38 murder, the court shall enter a judgment of conviction  
39 and shall sentence the defendant to life imprisonment  
40 as provided in section 902.1, subsection 1, even if  
41 the jury or the court returns unanimous affirmative  
42 findings on each of the issues submitted under  
43 subsection 3. "DNA profiling" means as defined in  
44 section 13.10."

45 3. By numbering, renumbering, and correcting  
46 internal references as necessary.

By ROD HALVORSON

S-3085 FILED MARCH 1, 1995

(P502) 3/2/95 *Last*

## HOUSE FILE 2

S-3088

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

3 1. Page 1, by inserting before line 1, the  
4 following:

5 "Section 1. NEW SECTION. 13.32 DEATH PENALTY  
6 TRAINING.

7 The attorney general, in conjunction with the  
8 prosecuting attorneys training coordinator, shall  
9 conduct or sponsor specialized training programs for  
10 prosecutors who will or may be representing the state  
11 in cases where a defendant may be executed. The  
12 programs shall be free of charge to the program  
13 participants. The costs of sponsoring the programs  
14 shall be paid by the state under section 902.14."

15 2. Page 1, line 11, by inserting after the word  
16 "imposed." the following: "The costs of providing or  
17 contracting with the attorneys shall be paid by the  
18 state under section 902.14."

19 3. Page 1, line 13, by inserting after the word  
20 "executed." the following: "The programs shall be  
21 free of charge to the program participants. The costs  
22 of sponsoring or conducting the programs shall be paid  
23 by the state under section 902.14."

24 4. Page 1, by inserting after line 33 the  
25 following:

26 "Sec. \_\_\_\_ . Section 331.757, subsection 1, Code  
27 1995, is amended to read as follows:

28 1. The county attorney may employ, with the  
29 approval of a judge of the district court, a temporary  
30 assistant to assist in the trial of a person charged  
31 with a felony. The temporary assistant shall be paid  
32 a reasonable compensation as determined by the board  
33 upon certification of the services rendered by the  
34 district judge before whom the defendant was tried.  
35 If the temporary assistant is employed for purposes of  
36 assisting in the trial of a person who has been  
37 charged with first degree murder, in which a notice of  
38 intent to seek the death penalty has been filed, the  
39 determination of the amount of compensation determined  
40 to be reasonable by the board shall be forwarded to  
41 the treasurer of state and the compensation shall be  
42 paid by the state under section 902.14.

43 Sec. \_\_\_\_ . Section 356.15, Code 1995, is amended to  
44 read as follows:

45 356.15 EXPENSES.

46 All charges and expenses for the safekeeping and  
47 maintenance of prisoners shall be allowed by the board  
48 of supervisors, except those committed or detained by  
49 the authority of the courts of the United States, in  
50 which cases case the United States must shall pay such

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1 expenses to the county, except those detained during a  
2 penalty proceeding in a first degree murder case in  
3 which a notice of intent to seek the death penalty has  
4 been filed, in which case the state shall pay the  
5 expenses to the county under section 902.14, and  
6 except those committed for violation of a city  
7 ordinance, in which case the city shall pay expenses  
8 to the county.

9 Sec. \_\_\_\_\_. Section 669.14, Code 1995, is amended by  
10 adding the following new subsection:

11 NEW SUBSECTION. 14. A claim to compensate for  
12 miscarriages of justice for any person innocent of any  
13 homicidal act who is erroneously sentenced to death.  
14 For purposes of this section, damages shall include  
15 actual, nominal, and special damages, and may include,  
16 but are not limited to, claims for loss of income,  
17 consortium, medical expenses, emotional distress, loss  
18 of enjoyment of life, and any related legal fees or  
19 expenses.

20 Sec. \_\_\_\_\_. NEW SECTION. 669.25 LIABILITY FOR  
21 ERRONEOUS DEATH SENTENCES.

22 Notwithstanding any provision of this chapter to  
23 the contrary, if a person establishes a claim against  
24 the state for damages to compensate for miscarriages  
25 of justice for any person innocent of any homicidal  
26 act who is erroneously sentenced to death, the state's  
27 liability to each such person shall be limited to one  
28 million dollars. Claims against the state made under  
29 this section may be filed directly in the district  
30 court of the county in which the plaintiff is a  
31 resident or in which the act or omission occurred and,  
32 if allowed, shall be paid under section 902.14."

33 5. Page 4, by inserting after line 32 the  
34 following:

35 "Sec. \_\_\_\_\_. Section 815.13, Code 1995, is amended  
36 to read as follows:

37 815.13 PAYMENT OF PROSECUTION COSTS.

38 1. The Except as provided in subsection 2, county  
39 or city which has the duty to prosecute a criminal  
40 action shall pay the costs of depositions taken on  
41 behalf of the prosecution, the costs of transcripts  
42 requested by the prosecution, and in criminal actions  
43 prosecuted by the county or city under county or city  
44 ordinance the fees that are payable to the clerk of  
45 the district court for services rendered and the court  
46 costs taxed in connection with the trial of the action  
47 or appeals from the judgment. The county or city  
48 shall pay witness fees and mileage in trials of  
49 criminal actions prosecuted by the county or city  
50 under county or city ordinance. These fees and costs

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1 are recoverable by the county or city from the  
2 defendant unless the defendant is found not guilty or  
3 the action is dismissed, in which case the state shall  
4 pay the witness fees and mileage in cases prosecuted  
5 under state law.

6 2. In a criminal action for first degree murder  
7 under section 707.2, where a notice of intent to seek  
8 the death penalty has been filed, the state shall pay  
9 under section 902.14 the costs of depositions,  
10 transcripts, the fees payable to the clerk of district  
11 court, court costs taxed in connection with the trial  
12 or appeal which are incurred by the county, as well as  
13 any witness fees and mileage."

14 6. Page 15, by inserting after line 26, the  
15 following:

16 "Sec. \_\_\_\_ . NEW SECTION. 902.14 DEATH PENALTY  
17 EXPENSE FUND.

18 1. A death penalty expense fund is established as  
19 a separate fund in the state treasury to serve as a  
20 repository for the moneys received under the death  
21 penalty income surtax imposed pursuant to section  
22 902.15. There is appropriated to the department of  
23 management out of any moneys in the fund an amount, or  
24 so much thereof as may be necessary, to pay any claims  
25 against the fund for costs associated with the  
26 administration and imposition of the death penalty  
27 under the laws of this state.

28 2. If in any year, there are insufficient funds  
29 available in the death penalty expense fund to pay all  
30 of the costs associated with the administration and  
31 imposition of the death penalty, there is appropriated  
32 from funds in the state treasury not otherwise  
33 appropriated a sum sufficient to pay for the unpaid  
34 expenses associated with the administration and  
35 imposition of the death penalty. The moneys in the  
36 death penalty expense fund received during the next  
37 fiscal year shall be used to reimburse the state  
38 treasury for any moneys expended under this  
39 subsection.

40 Sec. \_\_\_\_ . NEW SECTION. 902.15 DEATH PENALTY --  
41 INCOME SURTAX.

42 1. Effective for each year beginning with the  
43 taxable year commencing on January 1, 1995, a death  
44 penalty income surtax is imposed on the state  
45 individual income tax. The department of management  
46 shall establish the amount of the death penalty income  
47 surtax to be imposed. During the first year of the  
48 imposition of the surtax, the department shall  
49 determine the amount of tax necessary to raise from  
50 the surtax based upon the most recent figures

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1 available from other states as to the costs associated  
2 with the administration and imposition of the death  
3 penalty which are in addition to the costs associated  
4 in this state with the trial of class "A" felonies.  
5 In subsequent years, the determination of the amount  
6 of tax necessary to raise from the surtax shall be  
7 based on the amount of the claims made against the  
8 fund in the previous year. The death penalty surtax  
9 shall be imposed on the state individual income tax on  
10 the last day of the applicable tax year. As used in  
11 this section, "state individual income tax" means the  
12 taxes computed under section 422.5, less the credits  
13 allowed in sections 422.11A, 422.11B, 422.11C, 422.12,  
14 and 422.12B.

15 2. The director of revenue and finance shall  
16 administer the death penalty income surtax imposed  
17 under this chapter, and sections 422.20, 422.22 to  
18 422.31, 422.68, and 422.72 to 422.75 shall apply with  
19 respect to administration of the death penalty income  
20 surtax.

21 3. The death penalty income surtax shall be made a  
22 part of the Iowa individual income tax return subject  
23 to the conditions and restrictions set forth in  
24 section 422.21.

25 4. The director of revenue and finance shall  
26 deposit all moneys received as death penalty income  
27 surtax to the credit of the death penalty expense fund  
28 which is established in section 902.14.

29 5. On or before October 20 each year, the director  
30 of revenue and finance shall make an accounting of the  
31 death penalty income surtax collected under this  
32 chapter applicable to tax returns for the last  
33 preceding calendar year, and shall certify to the  
34 department of management the amount of total death  
35 penalty income surtax credited from the taxpayers."

36 7. By designating, redesignating, and correcting  
37 internal references as necessary.

By MARY NEUHAUSER

S-3088 FILED MARCH 1, 1995

WITHDRAWN

3/2/95

(p. 502)

## HOUSE FILE 2

S-3090

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

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 8.6, Code 1995, is amended by  
6 adding the following new subsection:

7 NEW SUBSECTION. 16. DEATH PENALTY COSTS AND  
8 CLAIMS. In a criminal action for first degree murder  
9 under section 707.2, where a notice of intent to seek  
10 the death penalty has been filed, determine the costs  
11 directly attributable to the administration and  
12 imposition of the death penalty."

13 2. Page 1, line 21, by striking the word  
14 "subsection" and inserting the following:  
15 "subsections".

16 3. Page 1, by inserting after line 33 the  
17 following:

18 "NEW SUBSECTION. 9. In a criminal action for  
19 first degree murder under section 707.2, where a  
20 notice of intent to seek the death penalty has been  
21 filed, provide the department of management with  
22 information relating to the costs directly  
23 attributable to the administration and imposition of  
24 the death penalty."

25 4. Page 16, by inserting after line 4 the  
26 following:

27 "Sec. . NEW SECTION. 903B.2 EXECUTIONS --  
28 PAYMENT OF PROSECUTION COSTS.

29 1. In a criminal action for first degree murder  
30 under section 707.2, where a notice of intent to seek  
31 the death penalty has been filed, the state shall pay  
32 all costs directly attributable to the administration  
33 and imposition of the death penalty, which shall  
34 include all of the following:

35 a. The employment of temporary assistants by the  
36 county attorney under section 331.757, for purposes of  
37 assisting in the trial.

38 b. The expenses incurred by the county for the  
39 safekeeping and maintenance of prisoners detained in a  
40 county jail or other facility during a penalty  
41 proceeding.

42 c. The costs of depositions, transcripts, fees  
43 payable to the clerk of the district court, court  
44 costs taxed in connection with the trial of appeal,  
45 and witness fees and mileage.

46 d. Any other costs allowed by law.

47 2. The determination of whether a cost is directly  
48 attributable to the administration and imposition of  
49 the death penalty under subsection 1 shall be made by  
50 the department of management under section 8.6,

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1 subsection 16, with information and assistance from  
2 the division of criminal and juvenile justice planning  
3 of the department of human rights, within one hundred  
4 twenty days of the completion of the trial  
5 proceedings. Within sixty days following the  
6 completion of a trial proceeding in which the death  
7 penalty was requested, the county may submit a written  
8 estimate of the costs attributable to the death  
9 penalty which were incurred during the trial."  
10 5. By designating, redesignating, and correcting  
11 internal references as necessary.

By O. GENE MADDOX

S-3090 FILED MARCH 2, 1995

ADOPTED

(p. 502)

HOUSE FILE 2

S-3089

1 Amend House File 2, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. By striking page 13, line 35, through page 14,  
4 line 34.  
5 2. By renumbering as necessary.

By ANDY MCKEAN

S-3089 FILED MARCH 2, 1995

LOST

(p. 505) (p. 528) Motion to R/c by Lind 3/6/95

## HOUSE FILE 2

## S-3092

- 1 Amend House File 2 as amended, passed, and  
2 reprinted by the House, as follows:
- 3 1. Page 4, by striking lines 19 and 20 and  
4 inserting the following: "two attorneys to represent  
5 the person in the murder".
- 6 2. Page 4, by striking lines 31 and 32 and  
7 inserting the following: "imposed are eligible for  
8 appointment or assignment to a first degree murder  
9 case."
- 10 3. Page 5, lines 18 and 19, by striking the words  
11 and figure "and section 902.12".
- 12 4. Page 5, by inserting after line 26 the  
13 following:  
14 "For purposes of this subsection, "mentally  
15 retarded" means significant subaverage general  
16 intellectual functioning accompanied by significant  
17 deficits or impairments in adaptive functioning  
18 manifested in the developmental period, but no later  
19 than the age of eighteen years, and accompanied by  
20 deficits in adaptive behavior."
- 21 5. Page 5, line 30, by striking the word  
22 "penalty," and inserting the following: "penalty".
- 23 6. Page 5, by striking lines 31 through 33 and  
24 inserting the following: "as part of the  
25 information".
- 26 7. Page 7, by striking lines 6 and 7 and  
27 inserting the following: "relevant to any aggravating  
28 circumstances other than juvenile".
- 29 8. Page 7, by striking lines 14 through 16 and  
30 inserting the following: "and society."
- 31 9. Page 8, by striking lines 24 through 27 and  
32 inserting the following: "be presented under the  
33 rules of criminal procedure."
- 34 10. Page 9, by striking lines 5 through 7.
- 35 11. Page 10, by striking lines 4 through 6.
- 36 12. Page 10, line 15, by striking the words "'a",  
37 "b", and "c" and inserting the following: "'a" and  
38 "b".
- 39 13. Page 11, line 1, by striking the words "'a",  
40 "b", and "c" and inserting the following: "'a" and  
41 "b".
- 42 14. By striking page 13, line 15, through page  
43 15, line 13.
- 44 15. Page 17, line 11, by striking the words and  
45 figure "and section 902.12".
- 46 16. Page 17, by striking line 30 and inserting  
47 the following: "presented as to".
- 48 17. Page 17, line 31, by striking the words  
49 "902.12 or".
- 50 18. Page 17, by striking lines 32 through 34 and

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Page 2

- 1 inserting the following: "exist. Presentation of
- 2 evidence".
- 3 19. Page 18, by striking lines 14 and 15.
- 4 20. Page 18, by striking lines 22 and 23 and
- 5 inserting the following:
- 6 "4. The jury, or the".
- 7 21. Page 19, by striking lines 1 through 3.
- 8 22. By renumbering and correcting internal
- 9 references as necessary.

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