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Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ . 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 effectiveness and  
7 applicability.

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

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1 Section 1. Section 13B.4, Code 1997, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 6A. The state public defender shall  
4 coordinate the provision of legal representation of all  
5 indigents under arrest or charged with capital murder as  
6 follows:

7 a. Establish or contract to establish multiple teams of  
8 qualified lead counsel and co-counsel to furnish legal  
9 services in capital murder cases, appeals from capital murder  
10 cases, postconviction relief related to capital murder cases,  
11 and appeals from postconviction relief related to capital  
12 murder cases.

13 b. Adopt rules which establish minimum standards for  
14 qualifications for persons who are appointed by the court and  
15 compensated by the state to furnish legal services as lead  
16 counsel and co-counsel to indigent persons arrested or charged  
17 with capital murder. Standards established shall comply with  
18 standards established by the supreme court for qualification  
19 of counsel in capital murder cases.

20 c. Conduct or sponsor specialized training programs for  
21 attorneys representing persons who may be executed.

22 Sec. 2. NEW SECTION. 602.10111A QUALIFICATIONS OF  
23 COUNSEL IN DEATH PENALTY CASES.

24 The supreme court shall prescribe rules which establish  
25 minimum standards and procedures by which attorneys may become  
26 qualified to provide legal services as lead counsel and co-  
27 counsel in capital murder cases. Standards for lead counsel  
28 shall include minimum training and felony defense experience  
29 requirements in addition to admission to the practice of law  
30 in this state. In establishing the standards, the court shall  
31 consider standards established by the American bar  
32 association, associations of criminal defense attorneys, or  
33 other organizations.

34 Sec. 3. Section 701.7, Code 1997, is amended to read as  
35 follows:

1 701.7 FELONY DEFINED AND CLASSIFIED.

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

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

9 Sec. 4. NEW SECTION. 707.1A CAPITAL MURDER.

10 1. a. A person commits capital murder if the person  
11 commits murder in the first degree pursuant to section 707.2,  
12 and the person previously has been convicted of capital  
13 murder, a class "A" felony pursuant to section 707.2, 709.2,  
14 or 710.2, or a criminal offense in another jurisdiction which  
15 would constitute capital murder or a class "A" felony under  
16 section 707.2, 709.2, or 710.2 if committed in this state.

17 For purposes of this subsection, a conviction which occurs  
18 prior to the filing of an indictment or information for  
19 capital murder and which relates to an offense which was  
20 committed prior to the commission of the acts which are  
21 alleged in the capital murder indictment or information shall  
22 be considered to be a previous conviction.

23 b. A person commits capital murder if the person commits  
24 murder in the first degree pursuant to section 707.2, and the  
25 person, in the course of that murder, commits another class  
26 "A" felony pursuant to section 707.2, 709.2, or 710.2.

27 2. Capital murder is a felony punishable either by death  
28 or by life imprisonment, as determined pursuant to sections 20  
29 through 23 of this Act. However, if a person convicted of  
30 capital murder was under the age of eighteen at the time the  
31 offense was committed, is mentally retarded, or did not  
32 directly commit the act which constituted murder in the first  
33 degree, the person shall be sentenced to life imprisonment.

34 For purposes of this section, "mentally retarded" means  
35 significant subaverage general intellectual functioning

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

5 3. If a defendant is sentenced to death pursuant to  
6 sections 20 through 23 of this Act, the sentence shall be  
7 executed by the administration of a lethal injection pursuant  
8 to rules adopted by the board of corrections. For the  
9 purposes of this section, "lethal injection" means a  
10 continuous intravenous injection of a lethal quantity of  
11 sodium thiopental or other equally or more effective substance  
12 sufficient to cause death.

13 Sec. 5. Section 707.2, unnumbered paragraph 1, Code 1997,  
14 is amended to read as follows:

15 A person commits murder in the first degree when the person  
16 commits murder which is not capital murder and which is  
17 committed under any of the following circumstances:

18 Sec. 6. Section 707.3, unnumbered paragraph 1, Code 1997,  
19 is amended to read as follows:

20 A person commits murder in the second degree when the  
21 person commits murder which is not capital murder or murder in  
22 the first degree.

23 Sec. 7. Section 707.4, unnumbered paragraph 2, Code 1997,  
24 is amended to read as follows:

25 Voluntary manslaughter is an included offense under an  
26 indictment for capital murder or murder in the first or second  
27 degree.

28 Sec. 8. Section 707.5, unnumbered paragraph 1, Code 1997,  
29 is amended to read as follows:

30 Involuntary manslaughter as defined in this section is an  
31 included offense under an indictment for capital murder or  
32 murder in the first or second degree or voluntary  
33 manslaughter.

34 Sec. 9. Section 802.1, Code 1997, is amended to read as  
35 follows:

1 802.1 MURDER.

2 A prosecution for capital murder or murder in the first or  
3 second degree may be commenced at any time after the death of  
4 the victim.

5 Sec. 10. Section 811.1, subsections 1 and 2, Code  
6 Supplement 1997, are amended to read as follows:

7 1. A defendant awaiting judgment of conviction and  
8 sentencing following either a plea or verdict of guilty of a  
9 class "A" felony, capital murder, murder, any class "B" felony  
10 included in section 707.6A, felonious assault, felonious child  
11 endangerment, sexual abuse in the second degree, sexual abuse  
12 in the third degree, kidnapping, robbery in the first degree,  
13 arson in the first degree, or burglary in the first degree, or  
14 any felony included in section 124.401, subsection 1,  
15 paragraph "a".

16 2. A defendant appealing a conviction of a class "A"  
17 felony, capital murder, murder, any class "B" felony included  
18 in section 707.6A, felonious assault, felonious child  
19 endangerment, sexual abuse in the second degree, sexual abuse  
20 in the third degree, kidnapping, robbery in the first degree,  
21 arson in the first degree, or burglary in the first degree, or  
22 any felony included in section 124.401, subsection 1,  
23 paragraph "a".

24 Sec. 11. Section 811.1, Code Supplement 1997, is amended  
25 by adding the following new subsection:

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

1 offense.

2 Sec. 12. NEW SECTION. 814.28 REVIEW OF DEATH SENTENCE.

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

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

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

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

20 b. Whether the special verdicts returned under section 20,  
21 subsection 4, of this Act, are supported by the evidence.

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

25 4. If the supreme court determines that the sentence of  
26 death was not lawfully imposed, the court shall set aside the  
27 sentence and shall remand the case to the trial court for  
28 imposition of a sentence of life imprisonment.

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

33 Sec. 13. Section 815.7, Code Supplement 1997, is amended  
34 to read as follows:

35 815.7 FEES TO ATTORNEYS.

1 An attorney who has not entered into a contract authorized  
2 under section 13B.4 and who is appointed by the court to  
3 represent any person charged with a crime in this state or to  
4 serve as counsel or guardian ad litem to a person in juvenile  
5 court in this state shall be entitled to a reasonable  
6 compensation which shall be the ordinary and customary charges  
7 for like services in the community to be decided in each case  
8 by a judge of the district court or of the juvenile court, as  
9 applicable, including such sum or sums as the court may  
10 determine are necessary for investigation in the interests of  
11 justice and in the event of appeal the cost of obtaining the  
12 transcript of the trial and the printing of the trial record  
13 and necessary briefs in behalf of the defendant. However, the  
14 reasonable compensation awarded an attorney shall not be  
15 calculated based upon an hourly rate that exceeds the rate a  
16 contract attorney as provided in section 13B.4 would receive  
17 in a similar case. Such attorney need not follow the case  
18 into another county or into the appellate court unless so  
19 directed by the court at the request of the defendant, where  
20 grounds for further litigation are not capricious or  
21 unreasonable, but if such attorney does so, the attorney's fee  
22 shall be determined accordingly. Only one attorney fee shall  
23 be so awarded in any one case, except that in class "A" felony  
24 cases, two may be authorized and in capital murder cases two  
25 shall be authorized.

26 Sec. 14. NEW SECTION. 901.11 CAPITAL MURDER PROCEEDINGS.

27 1. Upon the indictment of a person for a charge of capital  
28 murder, if the prosecutor has not previously given notice of  
29 waiver of intent to seek the death penalty, objections to the  
30 imposition of the death penalty based upon allegations that a  
31 defendant was mentally retarded at the time of the commission  
32 of the offense may be raised within the time provided for the  
33 filing of pretrial motions under rule of criminal procedure  
34 10, Iowa court rules, third edition. The court may, for good  
35 cause shown, allow late filing of the motion. Hearing on the

1 motion shall be held prior to trial and the burden of proof  
2 shall be on the defendant to prove mental retardation by a  
3 preponderance of the evidence. However, a rebuttable  
4 presumption of mental retardation arises if a defendant has an  
5 intelligence quotient of seventy or below. If the court finds  
6 that the defendant is mentally retarded and the defendant is  
7 convicted of capital murder, the court shall follow the  
8 sentencing procedures set forth in rule of criminal procedure  
9 22, Iowa court rules, third edition, and shall sentence the  
10 defendant to life imprisonment. A finding by the court that  
11 the mental retardation evidence presented by the defendant  
12 does not preclude the imposition of the death penalty in the  
13 sentencing proceeding, does not preclude the introduction of  
14 evidence of mental retardation as a mitigating circumstance in  
15 the sentencing proceeding. If the court finds that the mental  
16 retardation evidence presented by the defendant does not  
17 preclude the imposition of the death penalty in the sentencing  
18 proceeding, the jury shall not be informed of the court's  
19 finding at any time.

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

29 3. If a charge of capital murder is submitted to the jury  
30 or court, but the evidence admitted in the trial, which was  
31 used to establish that the defendant committed the offense,  
32 did not include fingerprints, a videotape of the offense,  
33 genetic test results, or an uncontested confession by the  
34 defendant, upon a verdict of guilty, the court shall sentence  
35 the defendant to life imprisonment.

1 4. If capital murder is charged, but the charge is not  
2 submitted to the court or jury, or the court or jury finds the  
3 defendant guilty of another offense, upon conviction of the  
4 other charge, the court shall follow the sentencing procedures  
5 set forth in rule of criminal procedure 22, Iowa court rules,  
6 third edition, concerning sentencing for the offense, rather  
7 than the sentencing procedures provided for capital murder  
8 cases.

9 5. Capital murder proceedings shall be conducted in  
10 bifurcated proceedings before the same trier of fact. During  
11 the initial proceeding, the jury, or the court, if the  
12 defendant waives the right to a jury trial, shall decide only  
13 whether the defendant is guilty or not guilty of any submitted  
14 offense. The issue of punishment shall not be submitted  
15 during the initial proceeding.

16 Upon a verdict of guilty to a capital murder charge, a  
17 separate sentencing proceeding shall be conducted as provided  
18 in sections 20 through 23 of this Act. If a defendant enters  
19 a plea of guilty to a capital murder charge, the court shall  
20 conduct a separate sentencing proceeding as provided in  
21 sections 20 through 23 of this Act.

22 6. In the sentencing proceeding, evidence of the following  
23 mitigating circumstances may be presented:

24 a. The defendant was under the influence of an extreme  
25 mental or emotional disturbance insufficient to constitute a  
26 defense.

27 b. The victim solicited, participated in, or consented to  
28 the conduct which resulted in the victim's death.

29 c. The age of the defendant at the time of the offense.

30 d. The defendant's capacity to appreciate the wrongfulness  
31 of the defendant's conduct and to conform that conduct to the  
32 requirements of law was impaired by a mental disease or defect  
33 or mental retardation, but not to a degree sufficient to  
34 constitute a defense.

35 e. The defendant has no significant history of prior adult

1 criminal activity.

2 f. The defendant acted under extreme duress or under the  
3 substantial domination of another person.

4 g. The defendant rendered substantial assistance to the  
5 state in the prosecution of another person for the crime of  
6 capital murder.

7 h. The evidence which establishes that the defendant  
8 committed murder in the first degree does not include direct  
9 evidence from at least two different sources.

10 i. Any other factor which is relevant to the defendant's  
11 character or record or the circumstances of the offense.

12 7. A sentence of death shall not be imposed if the  
13 recommendation is based on the race, color, religious beliefs,  
14 national origin, sexual orientation, or sex of the defendant  
15 or any victim. After submission of the issues, but prior to  
16 the return of a finding in the penalty proceeding, if the  
17 matter is tried before a jury, the court shall, upon the  
18 request of the defendant, instruct the jury that in  
19 considering whether a sentence of death is justified, the  
20 race, color, religious beliefs, national origin, sexual  
21 orientation, or sex of the defendant or of any victim shall  
22 not be considered. The court shall further instruct the jury  
23 that a recommendation for a sentence of death shall not be  
24 returned unless the jury has concluded that such a sentence  
25 would be recommended no matter what the race, color, religious  
26 beliefs, national origin, sexual orientation, or sex of the  
27 defendant or any victim may be. The jury, upon a finding that  
28 a defendant shall be sentenced to death and if the defendant  
29 has submitted a request, shall also return to the court a  
30 certificate, signed by each juror, that consideration of race,  
31 color, religious beliefs, national origin, sexual orientation,  
32 or sex of the defendant or any victim, was not involved in the  
33 juror's individual decision, and that the juror would have  
34 made the same recommendation regarding the sentence no matter  
35 what the race, color, religious beliefs, national origin,

1 sexual orientation, or sex of the defendant or any victim may  
2 be.

3 Sec. 15. NEW SECTION. 902.13 CAPITAL MURDER.

4 If a person is to be sentenced to life imprisonment under  
5 section 20, subsection 7, of this Act, nothing in chapters 901  
6 through 909, pertaining to deferred judgment, deferred  
7 sentence, suspended sentence, or reconsideration of sentence,  
8 applies, and the person shall not be released on parole unless  
9 the governor commutes the person's sentence to a term of years  
10 and shall not otherwise be released from confinement unless  
11 the governor pardons the person.

12 Sec. 16. NEW SECTION. 902.14 DATA COLLECTION FOR DEATH  
13 PENALTY.

14 1. The division of criminal and juvenile justice planning  
15 of the department of human rights, in cooperation with the  
16 supreme court, the department of corrections, the department  
17 of public safety, the office of attorney general, and the  
18 state public defender, shall collect data on all murder  
19 charges in which the death penalty is or was not waived, and  
20 which are filed and processed in the courts in this state.  
21 The data may be used by the supreme court to determine whether  
22 death sentences imposed are excessive or disproportionate, or  
23 were imposed under the influence of prejudice as a result of  
24 racial discrimination. The court shall make the data  
25 available to litigants in death penalty cases.

26 2. Data collected by public officials concerning factors  
27 relevant to the imposition of the death penalty are public  
28 records open to inspection and copying under chapter 22.

29 Sec. 17. NEW SECTION. 903B.1 EXECUTIONS -- REFUSAL TO  
30 PERFORM.

31 An employee of the state who may lawfully perform, assist,  
32 or participate in the execution of a person pursuant to  
33 sections 707.1A and 904.105, and rules adopted by the  
34 department of corrections, shall not be required to perform,  
35 assist, or participate in the execution. State employees who

1 refuse to perform, assist, or participate in the execution of  
2 a person shall not be discriminated against in any way,  
3 including, but not limited to, employment, promotion,  
4 advancement, transfer, licensing, education, training, or the  
5 granting of any privileges or appointments because of the  
6 refusal to perform, assist, or participate in an execution.

7 Sec. 18. Section 904.105, Code 1997, is amended by adding  
8 the following new subsection:

9 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A  
10 pertaining to executions of persons convicted of capital  
11 murder. Rules adopted shall include, but are not limited to,  
12 rules relating to the witnessing of executions by members of  
13 the public.

14 Sec. 19. Rules of criminal procedure, Iowa court rules,  
15 third edition, are amended by adding sections 20 through 23 of  
16 this Act.

17 Sec. 20. NEW RULE. CAPITAL MURDER -- PROCEDURE.

18 1. Upon the indictment of a person for a charge of capital  
19 murder, if the prosecutor has not previously given notice of  
20 waiver of intent to seek the death penalty, objections to the  
21 imposition of the death penalty based upon allegations that a  
22 defendant was mentally retarded at the time of the commission  
23 of the offense may be raised within the time provided for the  
24 filing of pretrial motions under rule of criminal procedure  
25 10, Iowa court rules, third edition. The court may, for good  
26 cause shown, allow late filing of the motion. Hearing on the  
27 motion shall be held prior to trial and the burden of proof  
28 shall be on the defendant to prove mental retardation by a  
29 preponderance of the evidence. However, a rebuttable  
30 presumption of mental retardation arises if a defendant has an  
31 intelligence quotient of seventy or below. If the court finds  
32 that the defendant is mentally retarded and the defendant is  
33 convicted of capital murder, the court shall follow the  
34 sentencing procedures set forth in rule of criminal procedure  
35 22, Iowa court rules, third edition, and shall sentence the

1 defendant to life imprisonment. A finding by the court that  
2 the mental retardation evidence presented by the defendant  
3 does not preclude the imposition of the death penalty in the  
4 sentencing proceeding, does not preclude the introduction of  
5 evidence of mental retardation as a mitigating circumstance in  
6 the sentencing proceeding. If the court finds that the mental  
7 retardation evidence presented by the defendant does not  
8 preclude the imposition of the death penalty in the sentencing  
9 proceeding, the jury shall not be informed of the court's  
10 finding at any time.

11 2. If a charge of capital murder is to be tried to a jury  
12 and the prosecutor has not previously given notice of waiver  
13 of intent to seek the death penalty, each party shall have the  
14 right to individualized, sequestered, counsel-conducted voir  
15 dire.

16 3. Upon a finding or plea that a defendant is guilty of  
17 capital murder, the court shall conduct a separate sentencing  
18 proceeding to determine whether the defendant shall be  
19 sentenced to death or to life imprisonment. The proceeding  
20 shall be conducted in the trial court before the trial jury,  
21 or the court if there is no jury, as soon as practicable. In  
22 the proceeding, additional evidence may be presented as to any  
23 matter which is relevant to the sentence. The court shall  
24 receive when offered any evidence that is required by the  
25 rules of criminal procedure. This subsection does not  
26 authorize the introduction of any evidence secured in  
27 violation of the Constitution of the United States or of the  
28 Constitution of the State of Iowa. The state and the  
29 defendant or the defendant's counsel shall be permitted to  
30 cross-examine witnesses and to present arguments for or  
31 against a sentence of death.

32 4. On conclusion of the presentation of the evidence, the  
33 court shall submit each of the following issues to the jury:

34 a. If one or more aggravating circumstances have been  
35 established, whether one or more of those aggravating

1 circumstances outweigh any one or more mitigating  
2 circumstances.

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

4 If the case is not tried to a jury, the court shall  
5 determine the issues.

6 5. The state must prove each aggravating circumstance in  
7 subsection 4 beyond a reasonable doubt, and the jury, or the  
8 court if there is no jury, shall return a special verdict of  
9 "yes" or "no" on each issue.

10 6. If the case is tried to a jury, the court shall charge  
11 the jury that:

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

14 b. It shall answer any issue "no" if the jurors  
15 unanimously agree that the answer is "no" or if the jurors do  
16 not unanimously agree that the answer is "yes".

17 7. If the jury, or the court if there is no jury, returns  
18 an affirmative finding on all applicable issues, the court  
19 shall sentence the defendant to death. If the jury or the  
20 court returns a negative finding on any applicable issue, the  
21 court shall sentence the defendant to the custody of the  
22 director of the department of corrections for confinement for  
23 the rest of the defendant's life.

24 8. Iowa Code chapters 901 through 909 do not apply to a  
25 conviction of capital murder if the defendant is sentenced to  
26 death.

27 Sec. 21. NEW RULE. AUTOMATIC REVIEW -- STAY OF JUDGMENT.

28 1. A judgment of conviction and sentence of death shall be  
29 reviewed automatically in the manner provided in Iowa Code  
30 section 814.28, and the Iowa supreme court has exclusive  
31 jurisdiction of the review.

32 2. Upon entry of judgment and sentence of death, the trial  
33 court shall prepare a complete record and transcript of the  
34 action in the manner provided in the rules of criminal  
35 procedure and shall docket the record and transcript with the

1 clerk of the supreme court.

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

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

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

13 1. Upon exhaustion of the defendant's appeal and  
14 postconviction remedies, the court shall enter the affirmation  
15 of judgment and shall issue a warrant under the seal of the  
16 court for the execution of the sentence of death. The warrant  
17 shall specifically set forth the offense and the fact of  
18 conviction, shall state the judgment and sentence of the  
19 court, shall state that the judgment and sentence were  
20 affirmed by the supreme court and the date of entry of the  
21 final affirmation of judgment in the trial court, and shall  
22 specify the date fixed for execution of the defendant which  
23 shall be not less than fifty nor more than sixty days after  
24 the date of entry in the trial court of the final affirmation  
25 of judgment and sentence of death. The warrant shall be  
26 directed to the director of the department of corrections  
27 commanding the director to cause the warrant to be executed on  
28 the date specified. The trial court shall deliver the warrant  
29 to the sheriff of the county in which judgment of conviction  
30 was entered and the sheriff shall deliver the warrant and the  
31 defendant to the custody of the department of corrections for  
32 confinement in the state penitentiary. The director of the  
33 department of corrections shall acknowledge receipt of the  
34 warrant and the defendant, and the sheriff shall return the  
35 acknowledgment to the office of the clerk of the trial court

1 from which the warrant was issued.

2 2. Immediately after issuance of a warrant ordering a  
3 sentence of death, the clerk of the trial court issuing the  
4 warrant shall transmit by mail to the governor a copy of the  
5 indictment, the plea, the verdict and special findings, the  
6 affirmation of judgment and sentence by the supreme court, and  
7 the complete transcript of the trial court.

8 3. Notwithstanding subsection 1, if a defendant, for whom  
9 a warrant of execution is issued, is pregnant, the execution  
10 shall not take place until after the defendant is no longer  
11 pregnant.

12 Sec. 23. NEW RULE. EVIDENCE AT SENTENCING IN CAPITAL  
13 MURDER CASES -- REQUIRED INFORMATION.

14 1. At a reasonable time before the commencement of  
15 sentencing proceedings in a capital murder case, each party  
16 shall file and serve upon the other party the following:

17 a. A list of all aggravating or any of the mitigating  
18 circumstances specified in section 901.11 which the party  
19 intends to prove during the sentencing proceedings.

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

22 c. Notwithstanding rule 13, copies, or for inspection  
23 purposes, the location, of all documents, including books,  
24 papers, writings, drawings, graphs, charts, photographs,  
25 phonorecords, and other data compilations from which  
26 information can be obtained, or other objects which the party  
27 intends to offer into evidence during the sentencing  
28 proceedings. If copies are not supplied to opposing counsel,  
29 the party shall make the items available for inspection and  
30 copying without order of the court.

31 2. In proceedings to determine whether the sentence shall  
32 be death or life imprisonment, evidence may be presented as to  
33 any matter which the trial court deems relevant to the  
34 sentence, including but not limited to the nature,  
35 circumstances, and manner of completion of the murder, and the

1 defendant's character, background, history, and mental and  
2 physical condition. However, evidence concerning a  
3 defendant's juvenile delinquency adjudications shall not be  
4 admitted. The trial court shall admit any relevant evidence  
5 respecting any aggravating or mitigating circumstances, if the  
6 party has included the circumstance on a list provided  
7 pursuant to this rule, or good cause is shown for the failure  
8 to do so.

9 Sec. 24. EFFECTIVE DATE -- APPLICABILITY.

10 1. This Act, being deemed of immediate importance, takes  
11 effect upon enactment, but applies only to offenses committed  
12 on or after January 1, 1999.

13 2. If the imposition of a sentence of death under this Act  
14 is found to be unconstitutional, the sentence of any person  
15 who has been sentenced to death under this Act shall  
16 automatically be commuted to life imprisonment and the  
17 provisions of sections 902.1 and 902.2 shall apply to the  
18 conditions of the person's sentence.

19 EXPLANATION

20 This bill amends the Iowa criminal code to provide for  
21 punishment by death for murder committed under specified  
22 circumstances if the trial jury, or the judge if there is no  
23 jury, makes specific affirmative findings respecting the act  
24 of murder and whether the jury believes the defendant should  
25 be put to death in a separate sentencing proceeding held after  
26 the close of the trial. Under the bill, the offense of  
27 capital murder involves a murder which would constitute murder  
28 in the first degree committed by a person who has previously  
29 committed capital murder or a class "A" felony; or a situation  
30 in which a person commits another class "A" felony in the  
31 course of committing a first degree murder. Class "A"  
32 felonies for this purpose include murder in the first degree,  
33 sexual abuse in the first degree, and kidnapping in the first  
34 degree.

35 If a person is indigent and is charged with capital murder,

1 payment of costs for two attorneys is authorized. Both the  
2 state public defender and the supreme court are required to  
3 establish standards for the competency of counsel in death  
4 penalty cases. The state public defender is also charged with  
5 establishing teams of qualified lead and co-counsel for death  
6 penalty cases, as well as conducting specialized training  
7 programs for attorneys representing persons who may be  
8 executed.

9 If a capital murder case proceeds to trial, in addition to  
10 any other defenses which may be presented to the charge, the  
11 defendant may raise the issue of mental retardation during the  
12 time of filing pretrial motions, and the defendant is entitled  
13 to a rebuttable presumption of mental retardation if the  
14 defendant establishes that the defendant has an intelligence  
15 quotient of 70 or below.

16 If the death penalty is not waived, both parties are  
17 entitled to conduct sequestered, counsel-conducted voir dire.  
18 Once the evidence is submitted to the jury, the court will  
19 instruct the jury, at the defendant's request, that in  
20 considering whether a sentence of death is justified, the  
21 race, color, religious beliefs, national origin, sexual  
22 orientation, or sex of the defendant or of any victim is not  
23 to be considered. If a verdict of guilty is submitted, again  
24 at the defendant's request, the jury will be required to  
25 submit a certificate that none of those considerations  
26 influenced the verdict. Evidence relating to whether the  
27 death sentences imposed are excessive, disproportionate, or  
28 imposed under the influence of prejudice at trial will be  
29 collected and available to litigants and members of the  
30 general public.

31 If a verdict of guilty is returned, but the evidence  
32 admitted at trial did not include fingerprints, a videotape of  
33 the offense, genetic test results, or an uncontested  
34 confession, the defendant shall be sentenced to life  
35 imprisonment.

1 The sentence of death is imposed only if the death penalty  
2 has not been previously waived and the trier of fact  
3 unanimously answers two questions affirmatively: (1) whether  
4 aggravating circumstances exist that are sufficient to  
5 outweigh any mitigating circumstances that may exist; and (2)  
6 whether the defendant should be sentenced to death. The  
7 sentencing proceeding is conducted separately from the finding  
8 of guilt or innocence by the same trier of fact.

9 For the sentencing proceeding, the trier of fact is to  
10 weigh any aggravating circumstances established beyond a  
11 reasonable doubt by the state against any of the enumerated  
12 mitigating circumstances which may be presented by the  
13 defendant. Evidence of juvenile delinquency adjudications is  
14 not admissible in any proceeding to determine the sentence.  
15 If the jury fails to agree unanimously on the required  
16 affirmative findings or if the supreme court determines that  
17 error was committed in the sentencing proceeding, the penalty  
18 would be life imprisonment.

19 The death penalty sentence would be reviewed automatically  
20 by the supreme court. The bill requires the supreme court to  
21 examine whether the sentence is excessive or disproportionate  
22 to penalties in similar cases. If affirmed by the supreme  
23 court, the penalty would be accomplished by lethal injection.  
24 The bill requires the board of corrections to adopt rules  
25 pertaining to executions.

26 The bill further provides that in order to receive a  
27 sentence of death, the defendant must be at least 18 years of  
28 age at the time the offense is committed, must not be mentally  
29 retarded, and must have directly committed the act which  
30 constituted murder in the first degree.

31 A person who is sentenced to death, but who is pregnant  
32 when the warrant of execution is issued is not to be executed  
33 until the person is no longer pregnant. The bill also  
34 provides that it takes effect upon enactment and applies only  
35 to offenses committed on or after January 1, 1999.

HOUSE FILE 2096

H-8007

1 Amend House File 2096 as follows:

2 1. Page 1, line 32, by inserting before the words  
3 "A person" the following: "Civil penalties collected  
4 pursuant to this subsection shall be deposited into  
5 the anhydrous ammonia equipment security fund created  
6 in section 200.23."

7 2. Page 2, by inserting after line 2, the  
8 following:

9 "Sec. \_\_\_\_ . NEW SECTION. 200.23 ANHYDROUS AMMONIA  
10 EQUIPMENT SECURITY AND SITE CLEANUP FUND.

11 1. As used in this section, "alliance" means the  
12 governor's alliance on substance abuse.

13 2. An anhydrous ammonia equipment security fund is  
14 created in the state treasury under the control of the  
15 head of the alliance. The fund is composed of any  
16 moneys appropriated by the general assembly and of any  
17 other moneys available to and obtained or accepted by  
18 the alliance from the federal government or private  
19 sources for placement in the fund. Civil penalties  
20 collected for violations of section 200.14 shall be  
21 deposited into the fund. Proceeds from forfeited  
22 property shall be deposited into the fund as provided  
23 in section 809A.17.

24 3. Moneys in the fund are subject to an annual  
25 audit by the auditor of state. The fund is subject to  
26 warrants written by the director of revenue and  
27 finance, drawn upon the written requisition of the  
28 head of the alliance.

29 4. Section 8.33 shall not apply to moneys in the  
30 fund. Notwithstanding section 12C.7, moneys earned as  
31 income, including as interest, from moneys in the fund  
32 shall remain in the fund until expended as provided in  
33 this section. The alliance shall not in any manner  
34 directly or indirectly pledge the credit of the state.

35 5. Moneys in the fund shall be used for the  
36 following purposes:

37 a. To assist owners of anhydrous ammonia equipment  
38 in purchasing or installing devices necessary to  
39 secure the equipment from intentional tampering,  
40 including locks, lights, or fencing, according to  
41 requirements established by the alliance in  
42 cooperation with the department of public safety.

43 b. To reimburse counties for costs associated with  
44 cleaning up clandestine laboratory sites as defined in  
45 section 124C.1.

46 The moneys in the fund may be used on a cost-share  
47 basis as determined practical by the alliance.

48 Sec. \_\_\_\_ . Section 809A.17, subsection 5, Code  
49 1997, is amended by adding the following new  
50 paragraph:

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WILLIAM T. HAWKIN

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Page 2

1 NEW PARAGRAPH. e. Forfeited property used in  
 2 connection with a violation of section 200.14 shall be  
 3 deposited with the department of public safety to be  
 4 disposed of in accordance with the rules of the  
 5 department. However, the department shall distribute  
 6 not more than one thousand five hundred dollars per  
 7 forfeiture to the anhydrous ammonia equipment security  
 8 fund created pursuant to section 200.23. The  
 9 department may dispose of the property by a  
 10 commercially reasonable public sale in order to carry  
 11 out this paragraph."

12 3. Title page, line 4, by inserting after the  
 13 word "ammonia," the following: "providing for the  
 14 allocation of moneys to support security needs and the  
 15 cleanup of clandestine laboratory sites,".

By KREIMAN of Davis

H-8007 FILED JANUARY 29, 1998

**WITHDRAWN** 2-10-98 (P.190)

HOUSE FILE 2096

H-8008

1 Amend House File 2096 as follows:  
 2 1. Page 2, by inserting after line 2 the  
 3 following:  
 4 "Sec. \_\_\_\_ . EFFECTIVE DATE. This Act, being deemed  
 5 of immediate importance, takes effect upon enactment."  
 6 2. Title page, line 4, by striking the word  
 7 "and".  
 8 3. Title page, line 4, by inserting after the  
 9 word "penalties" the following: ", and providing an  
 10 effective date".

By RAYHONS of Hancock

H-8008 FILED FEBRUARY 3, 1998

*Adapted 2/10/98 (P.190)*

HOUSE FILE 2096

H-8016

1 Amend House File 2096 as follows:  
 2 1. Page 2, by inserting after line 2, the  
 3 following:  
 4 "Sec. \_\_\_\_ . Section 809A.14, subsection 7, Code  
 5 1997, is amended by adding the following new paragraph  
 6 and relettering subsequent paragraphs:  
 7 NEW PARAGRAPH. a. Forfeited property used in  
 8 connection with a violation of section 200.14 shall be  
 9 first used to satisfy the civil penalty imposed upon  
 10 the person as provided in section 200.18."  
 11 2. By renumbering as necessary.

By KREIMAN of Davis

H-8016 FILED FEBRUARY 5, 1998

**WITHDRAWN** 2-10-98 (P.190)