

JAN 26 1998
JUDICIARY

HOUSE FILE 2095
BY LARSON, ARNOLD, CORMACK,
LAMBERTI, HAHN, BRUNKHORST,
LORD, BRAUNS, MEYER, KLEMME,
EDDIE, RANTS, DRAKE, BODDICKER,
SUKUP, VEENSTRA, KREMER,
BLODGETT, VANDE HOEF, VAN FOSSEN,
CARROLL, CHURCHILL, and WELTER

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:

9
10
11
12
13
14
15
16
17
18
19

HF
2095

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:

H-8007

WILLIAM

H-8007

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)