

JUDICIARY

SENATE FILE 2205
BY HALVORSON

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

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

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

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S.F. 2205

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 6, 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 for any district court proceedings.

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. During the initial proceeding, the
11 jury, or the court, if the defendant waives the right to a
12 jury trial, shall decide only whether the defendant is guilty
13 or not guilty of any submitted offense. The issue of
14 punishment shall not be submitted during the initial
15 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 the victim.

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

17 If a person is to be sentenced to life imprisonment under
18 section 20, subsection 7, of this Act, nothing in chapters 901
19 through 909, pertaining to deferred judgment, deferred
20 sentence, suspended sentence, or reconsideration of sentence,
21 applies, and the person shall not be released on parole unless
22 the governor commutes the person's sentence to a term of years
23 and shall not otherwise be released from confinement unless
24 the governor pardons the person.

25 Sec. 16. NEW SECTION. 902.14 DATA COLLECTION FOR DEATH
26 PENALTY.

27 1. The division of criminal and juvenile justice planning
28 of the department of human rights, in cooperation with the
29 supreme court, the department of corrections, the department
30 of public safety, the office of attorney general, and the
31 state public defender, shall collect data on all murder
32 charges in which the death penalty is or was not waived, and
33 which are filed and processed in the courts in this state.
34 The data may be used by the supreme court to determine whether
35 death sentences imposed are excessive or disproportionate, or

1 were imposed under the influence of prejudice as a result of
2 racial discrimination. The court shall make the data
3 available to litigants in death penalty cases.

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

7 Sec. 17. NEW SECTION. 903B.1 EXECUTIONS -- REFUSAL TO
8 PERFORM.

9 An employee of the state who may lawfully perform, assist,
10 or participate in the execution of a person pursuant to
11 sections 707.1A and 904.105, and rules adopted by the
12 department of corrections, shall not be required to perform,
13 assist, or participate in the execution. State employees who
14 refuse to perform, assist, or participate in the execution of
15 a person shall not be discriminated against in any way,
16 including, but not limited to, employment, promotion,
17 advancement, transfer, licensing, education, training, or the
18 granting of any privileges or appointments because of the
19 refusal to perform, assist, or participate in an execution.

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

22 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
23 pertaining to executions of persons convicted of capital
24 murder. Rules adopted shall include, but are not limited to,
25 rules relating to the witnessing of executions by members of
26 the public.

27 Sec. 19. Rules of criminal procedure, Iowa court rules,
28 third edition, are amended by adding sections 20 through 23 of
29 this Act.

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

31 1. Upon the indictment of a person for a charge of capital
32 murder, if the prosecutor has not previously given notice of
33 waiver of intent to seek the death penalty, objections to the
34 imposition of the death penalty based upon allegations that a
35 defendant was mentally retarded at the time of the commission

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

24 2. If a charge of capital murder is to be tried to a jury
25 and the prosecutor has not previously given notice of waiver
26 of intent to seek the death penalty, each party shall have the
27 right to individualized, sequestered, counsel-conducted voir
28 dire.

29 3. Except for good cause shown, as soon as practicable but
30 not later than sixty days after the return of a verdict of
31 guilty or the entry of a plea of guilty to a charge of capital
32 murder, a panel of three judges shall conduct a separate
33 sentencing hearing to determine whether the defendant should
34 be sentenced to death or life imprisonment. The panel of
35 judges shall consist of the judge who presided at the trial or

1 before whom the guilty plea was entered and two additional
2 district judges, to be appointed by the chief justice of the
3 supreme court. If the trial judge dies, resigns, is
4 incapacitated, or is otherwise disqualified, a replacement for
5 the trial judge shall also be appointed by the chief justice.
6 The two additional district judges, and any necessary
7 replacement for the trial judge, may be selected from any
8 judicial district in the state but the chief justice shall
9 give preference in selection of judges to judges from the
10 judicial district in which the case was filed or from
11 adjoining judicial districts. In selecting the district
12 judges for the panel, the chief justice shall select only
13 those district judges who are regularly sitting judges, except
14 that the chief justice may select a retired justice of the
15 supreme court or a retired judge from the court of appeals as
16 one of the additional judges for the panel. Any district
17 judge who is appointed to serve on the panel may be subject to
18 disqualification as provided in sections 602.1603, 602.1604,
19 602.1606, 602.1609, 602.1610, and 602.1612. The trial judge
20 shall be the presiding judge for purposes of the sentencing
21 hearing. If a replacement judge has been appointed for the
22 trial judge, the district judges appointed to the panel shall
23 choose a presiding judge from among themselves.

24 4. At the sentencing hearing, in addition to the evidence
25 presented by the parties, the three-judge panel shall consider
26 the certified transcripts of the trial. Any evidence
27 presented by either the prosecuting attorney or the defendant
28 that the panel of judges deems relevant to the nature of the
29 crime, and the character, background, and history of the
30 defendant, including any evidence presented in the initial
31 proceeding of the trial, and any matters relating to any
32 aggravating or mitigating factors may be presented. Any
33 evidence which the panel of judges deems to have probative
34 value may be received, as long as each party is given an
35 opportunity to rebut such evidence, although the introduction

1 of any evidence secured in violation of the Constitution of
2 the United States or of the Constitution of the State of Iowa
3 shall not be authorized. The prosecuting attorney and the
4 defendant or the defendant's counsel shall be permitted to
5 present arguments for or against a sentence of death.

6 5. The burden of proof as to each aggravating factor shall
7 be beyond a reasonable doubt. There shall be no burden of
8 proof as to proving or disproving mitigating factors.

9 6. After hearing all the evidence and arguments of the
10 prosecuting attorney and the defendant or the defendant's
11 counsel, the panel of judges shall unanimously determine
12 whether to impose a sentence of death based upon special
13 verdicts on the following issues:

14 a. Whether at least one aggravating factor has been proved
15 beyond a reasonable doubt.

16 b. Whether no mitigating factors exist which outweigh any
17 aggravating factor or factors found to exist.

18 c. Whether the defendant should be sentenced to death.

19 7. The panel of judges shall not impose a death sentence
20 unless it returns unanimous affirmative written findings on
21 all of the issues in subsection 6. The sentence of the panel
22 of judges, whether to death or to life in prison, shall be
23 supported by specific written findings of fact based upon any
24 aggravating and mitigating factors established and upon the
25 records of the trial and the sentencing hearing. If the panel
26 of judges cannot unanimously agree on a sentence, it shall
27 make a record of each judge's position and shall sentence the
28 defendant to life imprisonment.

29 8. Iowa Code chapters 901 through 909 do not apply to a
30 conviction of capital murder if the defendant is sentenced to
31 death.

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

33 1. A judgment of conviction and sentence of death shall be
34 reviewed automatically in the manner provided in Iowa Code
35 section 814.28, and the Iowa supreme court has exclusive

1 jurisdiction of the review.

2 2. Upon entry of judgment and sentence of death, the trial
3 court shall prepare a complete record and transcript of the
4 action in the manner provided in the rules of criminal
5 procedure and shall docket the record and transcript with the
6 clerk of the supreme court.

7 3. The judgment and sentence of the trial court is stayed
8 as a matter of law from the time of its entry until the
9 judgment of the supreme court is certified to and entered by
10 the trial court. Upon entry of a judgment of the supreme
11 court which affirms the conviction and sentence, the stay of
12 the judgment and sentence terminates as a matter of law.

13 4. All court costs required due to the automatic
14 preparation of the record and transcript, docketing with the
15 supreme court, and stay of judgment and sentence shall be
16 assessed to the state.

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

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

1 defendant to the custody of the department of corrections for
2 confinement in the state penitentiary. The director of the
3 department of corrections shall acknowledge receipt of the
4 warrant and the defendant, and the sheriff shall return the
5 acknowledgment to the office of the clerk of the trial court
6 from which the warrant was issued.

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

13 3. Notwithstanding subsection 1, if a defendant, for whom
14 a warrant of execution is issued, is pregnant, the execution
15 shall not take place until after the defendant is no longer
16 pregnant.

17 Sec. 23. NEW RULE. EVIDENCE AT SENTENCING IN CAPITAL
18 MURDER CASES -- REQUIRED INFORMATION.

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

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

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

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

1 in the first degree committed by a person who has previously
2 committed capital murder or a class "A" felony; or a situation
3 in which a person commits another class "A" felony in the
4 course of committing a first degree murder. Class "A"
5 felonies for this purpose include murder in the first degree,
6 sexual abuse in the first degree, and kidnapping in the first
7 degree.

8 If a person is indigent and is charged with capital murder,
9 payment of costs for two attorneys is authorized at the trial
10 court level. Both the state public defender and the supreme
11 court are required to establish standards for the competency
12 of counsel in death penalty cases. The state public defender
13 is also charged with establishing teams of qualified lead and
14 co-counsel for death penalty cases, as well as conducting
15 specialized training programs for attorneys representing
16 persons who may be executed.

17 If a capital murder case proceeds to trial, in addition to
18 any other defenses which may be presented to the charge, the
19 defendant may raise the issue of mental retardation during the
20 time of filing pretrial motions, and the defendant is entitled
21 to a rebuttable presumption of mental retardation if the
22 defendant establishes that the defendant has an intelligence
23 quotient of 70 or below.

24 If the death penalty is not waived, both parties are
25 entitled to conduct sequestered, counsel-conducted voir dire.
26 In considering whether a sentence of death is justified, the
27 race, color, religious beliefs, national origin, sexual
28 orientation, or sex of the defendant or of any victim is not
29 to be considered. Evidence relating to whether the death
30 sentences imposed are excessive, disproportionate, or imposed
31 under the influence of prejudice at trial will be collected
32 and available to litigants and members of the general public.

33 If a verdict of guilty is returned, but the evidence
34 admitted at trial did not include fingerprints, a videotape of
35 the offense, genetic test results, or an uncontested

1 confession, the defendant shall be sentenced to life
2 imprisonment.

3 The sentence of death is imposed only if the death penalty
4 has not been previously waived and the three-judge sentencing
5 panel unanimously answers two questions affirmatively: (1)
6 whether aggravating circumstances exist that are sufficient to
7 outweigh any mitigating circumstances that may exist; and (2)
8 whether the defendant should be sentenced to death. The
9 sentencing proceeding is conducted separately from the finding
10 of guilt or innocence before a three-judge panel consisting of
11 the trial judge and two additional district judges who are to
12 be appointed by the chief justice of the supreme court.

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

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

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

35 A person who is sentenced to death, but who is pregnant

1 when the warrant of execution is issued is not to be executed
2 until the person is no longer pregnant. The bill also
3 provides that it takes effect upon enactment and applies only
4 to offenses committed on or after January 1, 1999.

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