

SENATE FILE 365
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 58)

Passed Senate, Date _____ Passed House, 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 1997,
6 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, felonious assault,
10 felonious child endangerment, sexual abuse in the second
11 degree, sexual abuse in the third degree, kidnapping, robbery
12 in the first degree, arson in the first degree, or burglary in
13 the first degree, or any felony included in section 124.401,
14 subsection 1, paragraph "a".

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

22 Sec. 11. Section 811.1, Code 1997, is amended by adding
23 the following new subsection:

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

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

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

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

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

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

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

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

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

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

31 Sec. 13. Section 815.7, Code 1997, is amended to read as
32 follows:

33 815.7 FEES TO ATTORNEYS.

34 An attorney who has not entered into a contract authorized
35 under section 13B.4 and who is appointed by the court to

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

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

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

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

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

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

32 4. If capital murder is charged, but the charge is not
33 submitted to the court or jury, or the court or jury finds the
34 defendant guilty of another offense, upon conviction of the
35 other charge, the court shall follow the sentencing procedures

1 set forth in rule of criminal procedure 22, Iowa court rules,
2 third edition, concerning sentencing for the offense, rather
3 than the sentencing procedures provided for capital murder
4 cases.

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

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

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

20 a. The defendant was under the influence of an extreme
21 mental or emotional disturbance insufficient to constitute a
22 defense.

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

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

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

31 e. The defendant has no significant history of prior adult
32 criminal activity.

33 f. The defendant acted under extreme duress or under the
34 substantial domination of another person.

35 g. The defendant rendered substantial assistance to the

1 state in the prosecution of another person for the crime of
2 capital murder.

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

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

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

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

35 If a person is to be sentenced to life imprisonment under

1 section 20, subsection 7, of this Act, nothing in chapters 901
2 through 909, pertaining to deferred judgment, deferred
3 sentence, suspended sentence, or reconsideration of sentence,
4 applies, and the person shall not be released on parole unless
5 the governor commutes the person's sentence to a term of years
6 and shall not otherwise be released from confinement unless
7 the governor pardons the person.

8 Sec. 16. NEW SECTION. 902.14 DATA COLLECTION FOR DEATH
9 PENALTY.

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

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

25 Sec. 17. NEW SECTION. 903B.1 EXECUTIONS -- REFUSAL TO
26 PERFORM.

27 An employee of the state who may lawfully perform, assist,
28 or participate in the execution of a person pursuant to
29 sections 707.1A and 904.105, and rules adopted by the
30 department of corrections, shall not be required to perform,
31 assist, or participate in the execution. State employees who
32 refuse to perform, assist, or participate in the execution of
33 a person shall not be discriminated against in any way,
34 including, but not limited to, employment, promotion,
35 advancement, transfer, licensing, education, training, or the

1 granting of any privileges or appointments because of the
2 refusal to perform, assist, or participate in an execution.

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

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

10 Sec. 19. Rules of criminal procedure, Iowa court rules,
11 third edition, are amended by adding sections 20 through 23 of
12 this Act.

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

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

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

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

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

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

30 a. If one or more aggravating circumstances have been
31 established, whether one or more of those aggravating
32 circumstances outweigh any one or more mitigating
33 circumstances.

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

35 If the case is not tried to a jury, the court shall

1 determine the issues.

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

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

8 a. It shall answer any issue "yes" if it agrees
9 unanimously.

10 b. It shall answer any issue "no" if the jurors
11 unanimously agree that the answer is "no" or if the jurors do
12 not unanimously agree that the answer is "yes".

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

20 8. Iowa Code chapters 901 through 909 do not apply to a
21 conviction of capital murder if the defendant is sentenced to
22 death.

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

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

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

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

1 the trial court. Upon entry of a judgment of the supreme
2 court which affirms the conviction and sentence, the stay of
3 the judgment and sentence terminates as a matter of law.

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

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

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

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

1 indictment, the plea, the verdict and special findings, the
2 affirmation of judgment and sentence by the supreme court, and
3 the complete transcript of the trial court.

4 3. Notwithstanding subsection 1, if a defendant, for whom
5 a warrant of execution is issued, is pregnant, the execution
6 shall not take place until after the defendant is no longer
7 pregnant.

8 Sec. 23. NEW RULE. EVIDENCE AT SENTENCING IN CAPITAL
9 MURDER CASES -- REQUIRED INFORMATION.

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

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

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

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

27 2. In proceedings to determine whether the sentence shall
28 be death or life imprisonment, evidence may be presented as to
29 any matter which the trial court deems relevant to the
30 sentence, including but not limited to the nature,
31 circumstances, and manner of completion of the murder, and the
32 defendant's character, background, history, and mental and
33 physical condition. However, evidence concerning a
34 defendant's juvenile delinquency adjudications shall not be
35 admitted. The trial court shall admit any relevant evidence

1 respecting any aggravating or mitigating circumstances, if the
2 party has included the circumstance on a list provided
3 pursuant to this rule, or good cause is shown for the failure
4 to do so.

5 Sec. 24. EFFECTIVE DATE -- APPLICABILITY.

6 1. This Act, being deemed of immediate importance, takes
7 effect upon enactment, but applies only to offenses committed
8 on or after January 1, 1998.

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

15 EXPLANATION

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

31 If a person is indigent and is charged with capital murder,
32 payment of costs for two attorneys is authorized. Both the
33 state public defender and the supreme court are required to
34 establish standards for the competency of counsel in death
35 penalty cases. The state public defender is also charged with

1 establishing teams of qualified lead and co-counsel for death
2 penalty cases, as well as conducting specialized training
3 programs for attorneys representing persons who may be
4 executed.

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

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

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

32 The sentence of death is imposed only if the death penalty
33 has not been previously waived and the trier of fact
34 unanimously answers two questions affirmatively: (1) whether
35 aggravating circumstances exist that are sufficient to

1 outweigh any mitigating circumstances that may exist; and (2)
2 whether the defendant should be sentenced to death. The
3 sentencing proceeding is conducted separately from the finding
4 of guilt or innocence by the same trier of fact.

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

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

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

27 A person who is sentenced to death, but who is pregnant
28 when the warrant of execution is issued is not to be executed
29 until the person is no longer pregnant. The bill also
30 provides that it takes effect upon enactment and applies only
31 to offenses committed on or after January 1, 1998.

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SENATE FILE 365

-3416

1 Amend Senate File 365, as follows:
2 1. Page 5, line 19, by striking the figure "4"
3 and inserting the following: "6".
4 2. Page 8, line 6, by striking the words "before
5 the same trier of fact".
6 3. Page 9, by striking lines 11 through 33, and
7 inserting the following: "or the victim."
8 4. By striking page 12, line 12 through page 13,
9 line 19, and inserting the following:
10 "3. Except for good cause shown, as soon as
11 practicable but not later than sixty days after the
12 return of a verdict of guilty or the entry of a plea
13 of guilty to a charge of capital murder, a panel of
14 three judges shall conduct a separate sentencing
15 hearing to determine whether the defendant should be
16 sentenced to death or life imprisonment. The panel of
17 judges shall consist of the judge who presided at the
18 trial or before whom the guilty plea was entered and
19 two additional district court judges, to be appointed
20 by the chief justice of the supreme court. If the
21 trial judge dies, resigns, is incapacitated, or is
22 otherwise disqualified, a replacement for the trial
23 judge shall also be appointed by the chief justice.
24 The two additional district court judges, and any
25 necessary replacement for the trial judge, may be
26 selected from any judicial district in the state but
27 the chief justice shall give preference in selection
28 of judges to judges from the judicial district in
29 which the case was filed or from adjoining judicial
30 districts. In selecting the district court judges for
31 the panel, the chief justice shall select only those
32 district court judges who are regularly sitting
33 judges, except that the chief justice may select a
34 retired justice of the supreme court or a retired
35 judge from the court of appeals as one of the
36 additional judges for the panel. Any district court
37 judge who is appointed to serve on the panel may be
38 subject to disqualification as provided in sections
39 602.1603, 602.1604, 602.1606, 602.1609, 602.1610, and
40 602.1612. The trial judge shall be the presiding
41 judge for purposes of the sentencing hearing. If a
42 replacement judge has been appointed for the trial
43 judge, the district court judges appointed to the
44 panel shall choose a presiding judge from among
45 themselves.
46 4. At the sentencing hearing, in addition to the
47 evidence presented by the parties, the three-judge
48 panel shall consider the certified transcripts of the
49 trial. Any evidence presented by either the
50 prosecuting attorney or the defendant that the panel

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Page 2

1 of judges deems relevant to the nature of the crime,
2 and the character, background, and history of the
3 defendant, including any evidence presented in the
4 initial proceeding of the trial, and any matters
5 relating to any aggravating or mitigating factors may
6 be presented. Any evidence which the panel of judges
7 deems to have probative value may be received, as long
8 as each party is given an opportunity to rebut such
9 evidence, although the introduction of any evidence
10 secured in violation of the Constitution of the United
11 States or of the Constitution of Iowa shall not be
12 authorized. The prosecuting attorney and the
13 defendant or the defendant's counsel shall be
14 permitted to present arguments for or against a
15 sentence of death.

16 5. The burden of proof as to each aggravating
17 factor shall be beyond a reasonable doubt. There shall
18 be no burden of proof as to proving or disproving
19 mitigating factors.

20 6. After hearing all the evidence and arguments of
21 the prosecuting attorney and the defendant or the
22 defendant's counsel, the panel of judges shall
23 unanimously determine whether to impose a sentence of
24 death based upon special verdicts on the following
25 issues:

26 a. Whether at least one aggravating factor has
27 been proved beyond a reasonable doubt.

28 b. Whether no mitigating factors exist which
29 outweigh any aggravating factor or factors found to
30 exist.

31 c. Whether the defendant should be sentenced to
32 death.

33 7. The panel of judges shall not impose a death
34 sentence unless it returns unanimous affirmative
35 written findings on all of the issues in subsection 6.
36 The sentence of the panel of judges, whether to death
37 or to life in prison, shall be supported by specific
38 written findings of fact based upon any aggravating
39 and mitigating factors established and upon the
40 records of the trial and the sentencing hearing. If
41 the panel of judges cannot unanimously agree on a
42 sentence, it shall make a record of each judge's
43 position and shall sentence the defendant to life
44 imprisonment."

45 5. Page 15, line 29, by striking the words "trial
46 court" and inserting the following: "three-judge
47 panel".

48 6. Page 15, line 35, by striking the words "trial
49 court" and inserting the following: "three-judge
50 panel".

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Page 3

1 7. Page 16, line 4, by inserting after the word
2 "so." the following: "Noncompliance with this rule
3 without a showing of good cause shall result in the
4 exclusion of the evidence sought to be introduced
5 without further sanction."

By STEVEN D. HANSEN

S-3416 FILED APRIL 8, 1997

SENATE FILE 365

S-3139

1 Amend Senate File 365, as follows:

2 1. Page 16, by inserting after line 14, the
3 following:

4 "Sec. ____ . PUBLIC MEASURE. The foregoing Act,
5 having been passed by the Seventy-seventh General
6 Assembly, 1997 Session, and approved by the governor,
7 shall be submitted to the qualified electors of the
8 state at the general election in November of the year
9 nineteen hundred ninety-eight in the manner
10 established for consideration of public measures under
11 the laws of the state of Iowa."

12 2. Title page, line 6, by striking the words "and
13 by" and inserting the following: "by".

14 3. Title page, line 7, by inserting after the
15 word "applicability" the following: ", and providing
16 for a public measure".

17 4. By numbering, renumbering, and changing
18 internal references as necessary.

By MATT MCCOY

S-3139 FILED MARCH 17, 1997

**SENATE FILE 365
FISCAL NOTE**

The estimate for **Senate File 365** is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 365 reinstates the death penalty for individuals who commit capital murder. Capital murder is committed when:

1. A person commits murder in the first degree after having been previously convicted of murder in the first degree, sexual abuse in the first degree, or kidnapping in the first degree.
2. A person commits a murder in the first degree while committing another murder in the first degree, sexual abuse in the first degree, or kidnapping in the first degree.

The Bill requires fingerprints, videotape of the offense, genetic (DNA) tests results, or an uncontested confession be admitted into evidence for the death penalty to be applied. It also allows for aggravating and mitigating circumstances, and prohibits imposition of a death sentence based upon discrimination or when the person is less than 18 years old. Pregnant women may not be executed until the termination or completion of the pregnancy.

The Bill requires a bifurcated proceeding, that is, determination of guilt and sentencing are performed separately. It also requires the Office of the Public Defender to contract for or establish defense teams and provide training for attorneys concerning death penalty proceedings.

ASSUMPTIONS

1. This estimate relates to the average cost of a capital case after precedence and accepted procedures have been developed.
2. The estimates are stated in constant FY 1998 and do not include future inflation. Constant dollars allow for valid comparisons across the life spans of the Class A offender and the inmate receiving the death sentence.
3. There will be 10 years between conviction and execution.
4. The average Class A offender under sentence of life without parole will spend 40 years in prison.
5. Annual health care costs, including final illnesses, average \$2,500 more per year for persons over age 65.
6. Both capital and Class A cases will go through all three levels of appeal. Twenty-five percent of the capital cases and 4.0% of the Class A cases will be sent back for retrial.
7. National statistics show that 35.0% of the capital cases have either the sentence or sentence and conviction vacated. It is assumed 25.0% will have the death sentence vacated while confirming the conviction, and 10.0% will have both the death sentence and conviction vacated. Ten percent of

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the Class A felony cases will have the sentence vacated.

8. The Department of Corrections will renovate and reopen the 18-bed death row at the Ft. Madison prison approximately five years after reinstatement of the death penalty. Inmates under a death sentence will be housed in general population when not assigned to death row.

CORRECTIONAL IMPACT

The Criminal and Juvenile Justice Planning Division, Department of Human Rights, estimates that, based on data for convicted felons, there will be an average of 2.6 cases per year that could receive the death penalty. Because of prosecutors' discretion and plea bargaining, it is not known whether the actual number death sentences will be more or fewer than this average.

Reinstating the death penalty will not significantly impact the number of inmates within the prison system.

FISCAL IMPACT

The following are estimates of the average costs for a capital case and for a Class A felony.

| | Capital Offense (Proposed Law) | | |
|--|-----------------------------------|-------------------|-----------------------------|
| | First Year | Second Year | Forty-First Year (Total) |
| Jail | \$ 23,000 | \$ 6,000 | \$ 29,000 |
| Trial | | | |
| Defense | 190,000 | 20,000 | 210,000 |
| Prosecution | 251,000 | 63,000 | 314,000 |
| Courts | 24,000 | 5,000 | 29,000 |
| Appeals and Other | | | |
| Defense | 0 | 68,000 | 681,000 |
| Prosecution | 0 | 31,000 | 308,000 |
| Courts | 0 | 52,000 | 157,000 |
| Incarceration through execution | 0 | 34,000 | 407,000 |
| Death row renovation and lethal inj. equip. | 0 | 0 | 81,000 |
| Vacated death sentence | 0 | 0 | 211,000 |
| Vacated death sentence and conviction | 0 | 0 | (15,000) |
| Total Capital Case | \$ 488,000 | \$ 279,000 | \$ 2,412,000 |

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Class A Felony
(Current Law)

| | First Year | Second Year | Forty-First Year (Total) |
|---|-------------------------|-------------------------|-----------------------------|
| Jail | \$ 16,000 | \$ 0 | \$ 16,000 |
| Trial | | | |
| Defense | 51,000 | 0 | 51,000 |
| Prosecution | 81,000 | 0 | 81,000 |
| Courts | 17,000 | 0 | 17,000 |
| Appeals and Other | | | |
| Defense | 1,000 | 2,000 | 9,000 |
| Prosecution | 2,000 | 6,000 | 33,000 |
| Courts | 13,000 | 38,000 | 153,000 |
| Incarceration through natural death | 7,000 | 30,000 | 1,193,000 |
| Additional medical costs after age 65 | 0 | 0 | 15,000 |
| Vacated conviction | 0 | 0 | (101,000) |
| Total Class A Felony | \$ 188,000 | \$ 76,000 | \$ 1,467,000 |
| Difference of Capital Case vs. Current Law | \$ 300,000 ===== | \$ 203,000 ===== | \$ 945,000 ===== |

If the county chooses to prosecute the capital case, then the county would incur the costs for the jail and trial. If the county chooses to have the Attorney General prosecute the case, then the county would incur the jail costs and certain trial expenses, with the State bearing most of the trial costs.

The Public Defender is required to provide or contract for teams of qualified lead and co-counsel for capital murder cases. The Public Defender has two options:

1. Establishing a death penalty unit. The Public Defender estimates that a death penalty unit, made up of a senior lead attorney, an experienced second attorney, an experienced appellate defender, two investigators, and two secretaries would cost approximately \$360,000 for salary and benefits. Support functions would cost approximately \$240,000 annually.
2. Designating lawyers and other staff in the existing Public Defender Offices. The Public Defender notes that these attorneys have ongoing case loads and could not easily be disengaged to take on the capital case. Cases that otherwise would have been handled by these attorneys will be shifted to contract and private attorneys funded through the Indigent Defense Fund. No estimate is available for the increased costs to the Indigent Defense Fund.

The Public Defender would not be able to contract with private attorneys for a capital case if the fees are limited to the current levels.

The Public Defender is required to provide capital case training for defense attorneys. A seminar by the National Legal Aid and Defender Association is estimated to cost \$50,000. These costs would be partially offset by fees charged to attendees.

SOURCES

Criminal and Juvenile Justice Planning Division,
Department of Human Rights
Department of Corrections
Office of the State Public Defender
Supreme Court of Iowa
Department of Justice
Department of Public Safety
Blue Cross, Des Moines, Iowa
Stephan, James J. and Tracy L. Snell, "Capital Punishment 1994," Bureau of
Justice Statistics, U.S. Department of Justice. February 1996.

(LSB 1376SV, MDF)

FILED MARCH 17, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

McKean, Chair
McKibben
Angelo
Hammond
Halvorsen

SSB 58

Judiciary
S. SECURITY
(SF)HF 365

SENATE/HOUSE FILE
BY (PROPOSED GOVERNOR'S BILL)

Passed Senate, Date _____ Passed House, 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 applicability.

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

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1 Section 1. Section 701.7, Code 1997, is amended to read as
2 follows:

3 701.7 FELONY DEFINED AND CLASSIFIED.

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

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

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

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

19 b. A person commits capital murder if the person commits
20 murder in the first degree pursuant to section 707.2, while
21 the person is incarcerated for a conviction for murder in the
22 second degree in violation of section 707.3, sexual abuse in
23 the second degree in violation of section 709.3, kidnapping in
24 the second degree in violation of section 710.3, or robbery in
25 the first or second degree in violation of section 711.2 or
26 711.3.

27 c. A person commits capital murder if the person commits
28 murder in the first degree pursuant to section 707.2, and the
29 person, in the course of that murder, commits another class
30 "A" felony pursuant to section 707.2, 709.2, or 710.2.

31 2. Capital murder is a felony punishable either by death
32 or by life imprisonment, as determined pursuant to sections 15
33 through 18 of this Act. However, if a person is convicted of
34 capital murder who was under the age of sixteen years at the
35 time the offense was committed, the person shall be sentenced

1 to life imprisonment.

2 3. If a defendant is sentenced to death pursuant to
3 sections 15 through 18 of this Act, the sentence shall be
4 executed by the administration of a lethal injection pursuant
5 to rules adopted by the board of corrections. For the
6 purposes of this section, "lethal injection" means a
7 continuous intravenous injection of a lethal quantity of
8 sodium thiopental or other equally or more effective substance
9 sufficient to cause death.

10 Sec. 3. Section 707.2, unnumbered paragraph 1, Code 1997,
11 is amended to read as follows:

12 A person commits murder in the first degree when the person
13 commits murder which is not capital murder and which is
14 committed under any of the following circumstances:

15 Sec. 4. Section 707.3, unnumbered paragraph 1, Code 1997,
16 is amended to read as follows:

17 A person commits murder in the second degree when the
18 person commits murder which is not capital murder or murder in
19 the first degree.

20 Sec. 5. Section 707.4, unnumbered paragraph 2, Code 1997,
21 is amended to read as follows:

22 Voluntary manslaughter is an included offense under an
23 indictment for capital murder or murder in the first or second
24 degree.

25 Sec. 6. Section 707.5, unnumbered paragraph 1, Code 1997,
26 is amended to read as follows:

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

31 Sec. 7. Section 802.1, Code 1997, is amended to read as
32 follows:

33 802.1 MURDER.

34 A prosecution for capital murder or murder in the first or
35 second degree may be commenced at any time after the death of

1 the victim.

2 Sec. 8. Section 811.1, subsections 1 and 2, Code 1997, are
3 amended to read as follows:

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

12 2. A defendant appealing a conviction of a class "A"
13 felony, capital murder, murder, felonious assault, felonious
14 child endangerment, sexual abuse in the second degree, sexual
15 abuse in the third degree, kidnapping, robbery in the first
16 degree, arson in the first degree, or burglary in the first
17 degree, or any felony included in section 124.401, subsection
18 1, paragraph "a".

19 Sec. 9. Section 811.1, Code 1997, is amended by adding the
20 following new subsection:

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

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

33 1. In a case in which a sentence of death is imposed, the
34 supreme court shall automatically review the judgment and
35 sentence. The case shall not be transferred to the court of

1 appeals.

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

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

- 13 a. Whether the sentence of death was imposed capriciously
- 14 or under the influence of prejudice or other arbitrary factor.
- 15 b. Whether the special verdicts returned under section 15,
- 16 subsection 2, of this Act, are supported by the evidence.
- 17 c. Whether the sentence of death is excessive or
- 18 disproportionate to the penalty imposed in similar cases,
- 19 considering both the crime and the defendant.

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

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

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

29 1. If a charge of capital murder is submitted to the jury
30 or court, but the prosecuting attorney waives the death
31 penalty, upon a verdict of guilty, the court shall sentence
32 the defendant to life imprisonment. If the prosecuting
33 attorney waives the death penalty, the court shall follow the
34 sentencing procedures set forth in rule of criminal procedure
35 22, Iowa court rules, third edition, and need not follow the

1 special sentencing procedures provided for capital murder
2 cases.

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

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

18 Upon a verdict of guilty to a capital murder charge, a
19 separate sentencing proceeding shall be conducted as provided
20 in sections 15 through 18 of this Act. If a defendant enters
21 a plea of guilty to a capital murder charge, the court shall
22 conduct a separate sentencing proceeding as provided in
23 sections 15 through 18 of this Act.

24 Sec. 12. NEW SECTION. 902.13 CAPITAL MURDER.

25 If a person is to be sentenced to life imprisonment under
26 section 15, subsection 5, of this Act, nothing in chapters 901
27 through 909, pertaining to deferred judgment, deferred
28 sentence, suspended sentence, or reconsideration of sentence,
29 applies, and the person shall not be released on parole unless
30 the governor commutes the person's sentence to a term of years
31 and shall not otherwise be released from confinement unless
32 the governor pardons the person.

33 Sec. 13. Section 904.105, Code 1997, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A

1 pertaining to executions of persons convicted of capital
2 murder.

3 Sec. 14. Rules of criminal procedure, Iowa court rules,
4 third edition, are amended by adding sections 15 through 18 of
5 this Act.

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

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

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

25 a. Whether the conduct of the defendant that caused the
26 death of the deceased was committed willfully, deliberately,
27 and with the reasonable expectation that the death of the
28 deceased or another would result.

29 b. Whether a probability exists that in the future the
30 defendant would commit criminal acts of violence that would
31 constitute a continuing threat to society.

32 c. Whether aggravating circumstances exist that are
33 sufficient to outweigh any mitigating circumstances that may
34 exist.

35 If the case is not tried to a jury, the court shall

1 determine the issues.

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

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

8 a. It shall answer any issue "yes" if it agrees
9 unanimously.

10 b. It shall answer any issue "no" if the jurors
11 unanimously agree that the answer is "no" or if the jurors do
12 not unanimously agree that the answer is "yes".

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

20 6. Iowa Code chapters 901 through 909 do not apply to a
21 conviction of capital murder if the defendant is sentenced to
22 death.

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

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

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

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

1 the trial court. Upon entry of a judgment of the supreme
2 court which affirms the conviction and sentence, the stay of
3 the judgment and sentence terminates as a matter of law.

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

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

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

34 2. Immediately after issuance of a warrant ordering a
35 sentence of death, the clerk of the trial court issuing the

1 warrant shall transmit by mail to the governor a copy of the
2 indictment, the plea, the verdict and special findings, the
3 affirmation of judgment and sentence by the supreme court, and
4 the complete transcript of the trial court.

5 Sec. 18. NEW RULE. EVIDENCE AT SENTENCING IN CAPITAL
6 MURDER CASES -- REQUIRED INFORMATION.

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

10 a. A list of all aggravating or mitigating circumstances
11 which the party intends to prove during the sentencing
12 proceedings.

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

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

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

35 Sec. 19. APPLICABILITY. This Act applies to offenses

1 committed on or after the effective date of this Act.

2 EXPLANATION

3 This bill amends the Iowa criminal code to provide for
 4 punishment by death for murder committed under specified
 5 circumstances if the trial jury, or the judge if there is no
 6 jury, makes specific affirmative findings respecting the
 7 nature of the act of murder and the characteristics of the
 8 defendant in a separate sentencing proceeding held after the
 9 close of the trial. Under the bill, the offense of capital
 10 murder involves a murder which would constitute murder in the
 11 first degree committed by a person who has previously
 12 committed capital murder or a class "A" felony; a person who
 13 has been previously convicted of and is incarcerated for
 14 murder in the second degree, sexual abuse in the second
 15 degree, kidnapping in the second degree, or robbery in the
 16 first or second degree; or a person who commits another class
 17 "A" felony in the course of a first degree murder. Class "A"
 18 felonies for this purpose include murder in the first degree,
 19 sexual abuse in the first degree, and kidnapping in the first
 20 degree. With respect to previously committed crimes, murder
 21 in the second degree, sexual abuse in the second degree,
 22 kidnapping in the second degree, and robbery in the first
 23 degree are class "B" felonies. Robbery in the second degree
 24 is a class "C" felony. Murder in the second degree, sexual
 25 abuse in the second degree, kidnapping in the second degree,
 26 and robbery in the first and second degrees are all forcible
 27 felonies for which a convicted person must serve 100 percent
 28 of the sentence, subject to a possible reduction of up to 15
 29 percent of the sentence for good behavior.

30 The sentence of death is imposed only if the trier of fact
 31 unanimously answers three questions affirmatively: (1)
 32 whether the conduct of the defendant that caused the death of
 33 the deceased was committed willfully, deliberately, and with
 34 reasonable expectation that the death of the deceased or
 35 another would result; (2) whether a probability exists that in

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1 the future the defendant would commit criminal acts of
2 violence that would constitute a continuing threat to society;
3 and (3) whether aggravating circumstances exist that are
4 sufficient to outweigh any mitigating circumstances that may
5 exist. The sentencing proceeding is conducted separately from
6 the finding of guilt or innocence by the same trier of fact.
7 If the jury fails to agree unanimously on the required
8 affirmative findings or if the supreme court determines that
9 error was committed in the sentencing proceeding, the penalty
10 would be life imprisonment.

11 The death penalty sentence would be reviewed automatically
12 by the supreme court. The bill requires the supreme court to
13 examine whether the sentence is excessive or disproportionate
14 to penalties in similar cases. If affirmed by the supreme
15 court, the penalty would be accomplished by lethal injection.
16 The bill requires the board of corrections to adopt rules
17 pertaining to executions.

18 The bill further provides that in order to receive a
19 sentence of death, the defendant must be at least 16 years of
20 age at the time the offense is committed. The bill also
21 provides that it applies only to offenses committed on or
22 after the bill's effective date.

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