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SENATE FILE

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

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

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SF 338 JUDICIARY

1 Section 1. Section 13B.4, Code 2003, is amended by adding
2 the following new subsection:

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

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

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

14 Sec. 2. Section 216A.133, Code 2003, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 8. Review the effects of the
17 reinstatement of the death penalty on arrest, prosecution,
18 conviction, and incarceration rates; law enforcement duties
19 and ability to obtain evidence necessary for arrests; court
20 dockets and workload; prison space; recidivism rates of
21 persons charged with crimes of violence against persons; and
22 other aspects of the criminal justice system. Based on the
23 review and other factors deemed relevant, the council shall
24 make findings and develop recommendations resulting from those
25 findings. Commencing January 1, 2005, the council shall
26 report its findings and any related recommendations annually
27 to the governor and to the general assembly.

28 Sec. 3. NEW SECTION. 602.10111A QUALIFICATIONS OF
29 COUNSEL IN DEATH PENALTY CASES.

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

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

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

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

1 inmate in any criminal proceeding for purposes other than a
2 determination of the inmate's sanity.

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

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

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

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

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

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

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

3 b. Whether the special verdicts returned under section
4 901.11 are supported by the evidence.

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

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

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

16 Sec. 6. Section 815.10, Code 2003, is amended by adding
17 the following new subsection:

18 NEW SUBSECTION. 1A. If two attorneys have not already
19 been appointed pursuant to section 13B.4 or 13B.9, the court
20 shall appoint, for each indigent person who is charged with
21 murder in the first degree and in which a notice of intent to
22 seek the death penalty has been filed, two attorneys who are
23 qualified under section 602.10111A to represent the person in
24 the murder proceedings and in all state legal proceedings
25 which take place from the time the person is indicted or
26 arraigned until the person is sentenced on the charge. In
27 addition, if at any point in federal postconviction
28 proceedings an indigent person is not afforded court-appointed
29 counsel, the state shall provide counsel to the person to
30 present any claims determined meritorious by the federal court
31 if the person is not otherwise represented by legal counsel.
32 Only private attorneys and public defenders who are qualified
33 to provide representation in cases in which the death penalty
34 may be imposed are eligible for appointment or assignment to a
35 case in which the death penalty may be imposed.

1 Sec. 7. NEW SECTION. 901.11 MURDER PROCEEDINGS --
2 REQUEST FOR DEATH PENALTY -- PENALTY PROCEEDINGS.

3 1. If a notice of intent to seek the death penalty has
4 been filed, objections to the imposition of the death penalty
5 based upon allegations that a defendant was mentally retarded
6 or mentally ill at the time of the commission of the offense
7 shall be raised within the time provided for the filing of
8 pretrial motions under rule of criminal procedure 2.11, Iowa
9 court rules. The court may, for good cause shown, allow late
10 filing of the motion. Hearing on the motion shall be held
11 prior to trial and the burden of proof shall be on the
12 defendant to prove mental retardation or mental illness by a
13 preponderance of the evidence. However, a rebuttable
14 presumption of mental retardation arises if a defendant has an
15 intelligence quotient of seventy or below. If the court finds
16 that the defendant is mentally retarded, the defendant, if
17 convicted of murder in the first degree, shall not be
18 sentenced to death but shall be sentenced to life imprisonment
19 in the manner provided in section 902.1, subsection 1. A
20 finding by the court that the evidence presented by the
21 defendant at the hearing does not preclude the imposition of
22 the death penalty under this section and section 902.14 shall
23 not preclude the introduction of evidence of mental
24 retardation or mental illness during the penalty proceeding.
25 If the court finds that evidence of mental retardation or
26 mental illness does not preclude imposition of the death
27 penalty, evidence of mental retardation or mental illness may
28 be reviewed by the jury in the penalty proceeding and the jury
29 shall not be informed of the finding in the initial proceeding
30 at any time during the penalty proceeding.

31 2. If at the trial on a charge of murder in the first
32 degree, the state intends to request that the death penalty be
33 imposed under section 902.1, subsection 2, the prosecutor
34 shall file a notice of intent to seek the death penalty,
35 listing the factors enumerated under section 902.14 that the

1 state intends to establish in support of imposition of the
2 death penalty, at the time of and as part of the information
3 or indictment filed in the case.

4 3. If a notice of intent to seek the death penalty has
5 been filed, the trial shall be conducted in bifurcated
6 proceedings before the same trier of fact. During the initial
7 proceeding, the jury, or the court, if the defendant waives
8 the right to a jury trial, shall decide only whether the
9 defendant is guilty or not guilty of murder in the first
10 degree.

11 a. If, in the initial proceeding, the court or jury finds
12 the defendant guilty of, or the defendant pleads guilty to, an
13 offense other than murder in the first degree, the court shall
14 sentence the defendant in accordance with the sentencing
15 procedures set forth in rule of criminal procedure 2.23, Iowa
16 court rules, and chapters 901 through 909, which are
17 applicable to the offense.

18 b. If the court or jury finds the defendant guilty of, or
19 the defendant pleads guilty to, murder in the first degree,
20 but the prosecuting attorney waives the death penalty, the
21 court shall sentence the defendant to life imprisonment in
22 accordance with the sentencing procedures set forth in rule of
23 criminal procedure 2.23, Iowa court rules, and chapters 901
24 through 909, which are applicable to convictions of murder in
25 the first degree.

26 c. If the court or jury finds the defendant guilty of
27 murder in the first degree, or a defendant enters a plea of
28 guilty in the initial proceeding, and the prosecuting attorney
29 does not waive imposition of the death penalty, a penalty
30 proceeding shall be held in the manner provided in subsections
31 4 through 12.

32 4. No sooner than twenty-four hours after a verdict of
33 guilty or a plea of guilty to the charge of murder in the
34 first degree is returned in the initial proceeding, a penalty
35 proceeding shall be held to determine whether the defendant

1 shall be sentenced to death or to life imprisonment. The
2 proceeding shall be conducted in the trial court before the
3 trial jury, or the court if the defendant has waived the right
4 to a jury trial or has waived the right for the proceeding to
5 be before the trial jury. Both the state and the defendant
6 shall have the right to present opening statements at the
7 commencement of the penalty proceedings. In the proceeding,
8 evidence relevant to the existence of any aggravating or
9 mitigating circumstances may be presented as follows:

10 a. The state or the defendant may present evidence
11 relevant to any of the factors enumerated in section 902.14
12 and any aggravating circumstances other than juvenile
13 delinquency adjudications for offenses which carry penalties
14 equivalent to the penalties imposed for simple or serious
15 misdemeanors. The state may introduce evidence of the actual
16 harm caused by the commission of the murder including, but not
17 limited to, evidence relating to the life of the victim and
18 the impact of the loss of the victim to the victim's family
19 and society. The state shall be required to prove the
20 existence of one or more of the factors enumerated in section
21 902.14 beyond a reasonable doubt.

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

29 c. The state or the defendant may present evidence
30 relevant to any mitigating circumstances which may exist.
31 Mitigating circumstances may include the following
32 circumstances:

33 (1) The defendant was under the influence of an extreme
34 mental or emotional disturbance insufficient to constitute a
35 defense.

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

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

4 (4) The defendant's capacity to appreciate the
5 wrongfulness of the defendant's conduct and to conform that
6 conduct to the requirements of law was significantly impaired
7 as a result of a mental disease or defect or mental
8 retardation, but not to a degree sufficient to constitute a
9 defense.

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

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

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

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

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

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

25 d. The state and the defendant or the defendant's counsel
26 shall be permitted to present and cross-examine witnesses and
27 present arguments for or against a sentence of death. The
28 admission of evidence in support of the existence of a factor
29 enumerated in section 902.14 shall be governed by the rules
30 governing admissibility of evidence at a criminal trial.
31 Evidence regarding aggravating and mitigating circumstances
32 shall not be governed by the rules governing admissibility of
33 evidence, except that introduction of evidence secured in
34 violation of the Constitution of the United States or of the
35 Constitution of the State of Iowa shall not be permitted.

1 5. At the conclusion of presentation of evidence in the
2 penalty proceeding, the state and the defendant or the
3 defendant's counsel shall be permitted to make closing
4 arguments, including any rebuttal arguments, in the same
5 manner as in the initial proceeding and the following issues
6 shall be determined by the jury or the court, if there is no
7 jury:

8 a. Whether one or more of the factors enumerated in
9 section 902.14 have been established beyond a reasonable
10 doubt.

11 b. If one or more aggravating circumstances are
12 established, whether the aggravating circumstance or
13 circumstances outweigh any one or more mitigating
14 circumstances.

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

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

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

1 sentence of imprisonment until death without parole is
2 required by law if the jury fails to reach a unanimous verdict
3 recommending a sentence of death.

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

7 a. Which factors, as enumerated in section 902.14, have
8 been unanimously found to have been established beyond a
9 reasonable doubt.

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

13 c. Which mitigating circumstances were established and
14 were considered in reaching the verdict returned on the issue
15 specified in subsection 5, paragraph "b".

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

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

1 the issues submitted under subsection 5.

2 11. If the jury, or the court, if there is no jury,
3 returns a negative finding on any of the issues submitted
4 under subsection 5, paragraphs "a", "b", and "c", the court
5 shall enter a judgment of conviction and shall sentence the
6 defendant to life imprisonment as provided in section 902.1,
7 subsection 1.

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

26 13. This section shall not apply to a defendant who was
27 under the age of eighteen at the time the offense was
28 committed.

29 Sec. 8. Section 902.1, Code 2003, is amended to read as
30 follows:

31 902.1 CLASS "A" FELONY.

32 1. Upon Except as otherwise provided in subsection 2, upon
33 a plea of guilty, a verdict of guilty, or a special verdict
34 upon which a judgment of conviction of a class "A" felony may
35 be rendered, the court shall enter a judgment of conviction

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

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

1 the manner provided in section 812A.1. If a defendant was
2 under the age of eighteen at the time the offense was
3 committed, the defendant shall be sentenced as provided in
4 subsection 1. For the purposes of this section, "lethal
5 injection" means a continuous intravenous injection of a
6 lethal substance sufficient to cause death.

7 Sec. 9. NEW SECTION. 902.14 FIRST DEGREE MURDER --
8 ADDITIONAL FACTORS.

9 A person who commits murder in the first degree, who is not
10 mentally retarded or mentally ill, and who is age eighteen or
11 older at the time the offense is committed, shall be eligible
12 for a sentence of death under section 902.1, subsection 2, if
13 one or more of the following factors is established:

14 1. The person has been previously convicted of a class "A"
15 felony in this state or a criminal offense in any other state
16 which would constitute a class "A" felony under section 707.2,
17 709.2, or 710.2 if committed in this state. For purposes of
18 this section, a conviction which occurs prior to the filing of
19 an indictment or information for murder in the first degree
20 shall be considered to be a previous conviction. An
21 adjudication of delinquency does not constitute a conviction
22 for purposes of this subsection.

23 2. The person is convicted of murder in the first degree
24 in violation of section 707.2, subsection 6.

25 For purposes of this section, "mentally retarded" means
26 significant subaverage general intellectual functioning
27 accompanied by significant deficits or impairments in adaptive
28 functioning manifested in the developmental period, but no
29 later than the age of eighteen years, and accompanied by
30 deficits in adaptive behavior.

31 For purposes of this section, "mentally ill" means the
32 condition of a person who is suffering from a chronic and
33 persistent serious mental disease or disorder and who, by
34 reason of that condition, lacks sufficient judgment to make
35 responsible decisions regarding treatment and is reasonably

1 likely to injure the person's self or others who may come into
2 contact with the person if the person is allowed to remain at
3 liberty without treatment.

4 Sec. 10. NEW SECTION. 902.15 DATA COLLECTION FOR DEATH
5 PENALTY.

6 1. The supreme court shall collect data on all murder
7 charges in which the death penalty is or was not waived, which
8 are filed and processed in the courts in this state. This
9 data may be used by the supreme court to determine whether
10 death sentences imposed are excessive or disproportionate, or
11 under the influence of prejudice as a result of racial
12 discrimination under section 814.28. The court shall make
13 this data available to litigants in death penalty cases.

14 2. Data collected by public officials concerning factors
15 relevant to the imposition of the death sentence shall be made
16 publicly available.

17 Sec. 11. NEW SECTION. 903C.1 EXECUTIONS -- REFUSAL TO
18 PERFORM.

19 An employee of the state who may lawfully perform, assist,
20 or participate in the execution of a person pursuant to
21 section 902.1, and rules adopted by the department of
22 corrections, shall not be required to perform, assist, or
23 participate in the execution. State employees who refuse to
24 perform, assist, or participate in the execution of a person
25 shall not be discriminated against in any way, including, but
26 not limited to, employment, promotion, advancement, transfer,
27 licensing, education, training, or the granting of any
28 privileges or appointments because of the refusal to perform,
29 assist, or participate in the execution.

30 Sec. 12. Section 904.105, Code 2003, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
33 pertaining to executions of persons convicted of murder in the
34 first degree. Rules adopted shall include, but are not
35 limited to, rules permitting the witnessing of executions by

1 members of the public. Invitations to witness an execution
2 shall at least be extended to the following representatives of
3 the news media:

- 4 a. A representative from a wire service serving Iowa.
- 5 b. A representative from a broadcasting network serving
6 Iowa.
- 7 c. A representative from a television station located in
8 Iowa.
- 9 d. A representative from a radio station located in Iowa.
- 10 e. A representative from a daily newspaper published in
11 Iowa.
- 12 f. A representative from a weekly newspaper published in
13 Iowa.
- 14 g. A representative from the news media from the community
15 in which the condemned person resided, if that community is
16 located in Iowa.

17 Sec. 13. Rules of criminal procedure, Iowa court rules,
18 are amended by adding sections 14 through 17 of this Act.

19 Sec. 14. NEW RULE. 2. MURDER IN THE FIRST DEGREE --
20 PROCEDURE.

21 2.__(1) If a notice of intent to seek the death penalty
22 has been filed, objections to the imposition of the death
23 penalty based upon allegations that a defendant was mentally
24 retarded at the time of the commission of the offense shall be
25 raised within the time provided for the filing of pretrial
26 motions under R.Cr.P. 2.11, Iowa court rules. The court may,
27 for good cause shown, allow late filing of the motion.
28 Hearing on the motion shall be held prior to trial and the
29 burden of proof shall be on the defendant to prove mental
30 retardation by a preponderance of the evidence. However, a
31 rebuttable presumption of mental retardation arises if a
32 defendant has an intelligence quotient of seventy or below. A
33 finding of the court that the evidence presented by the
34 defendant at the hearing does not preclude the imposition of
35 the death penalty under this rule and Iowa Code section 902.14

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

9 2.__(2) Upon a finding or plea that a defendant is guilty
10 of murder in the first degree in an initial proceeding, if a
11 notice of intent to seek the death penalty has been filed and
12 has not been waived, the court shall conduct a separate
13 penalty proceeding to determine whether the defendant shall be
14 sentenced to death or to life imprisonment. The penalty
15 proceeding shall be conducted in the trial court before the
16 trial jury, or the court, if there is no jury, no sooner than
17 twenty-four hours after the return of the verdict or plea in
18 the initial proceeding. In the penalty proceeding, additional
19 evidence may be presented as to any factor enumerated in Iowa
20 Code section 902.14 or any aggravating or mitigating
21 circumstance which may exist. Evidence presented which is
22 relevant to the existence of a factor enumerated in Iowa Code
23 section 902.14 shall be subject to the rules of evidence.
24 Presentation of evidence which is relevant to the existence of
25 an aggravating or mitigating circumstance shall not be bound
26 by the rules of evidence. This subsection does not authorize
27 the introduction of any evidence secured in violation of the
28 Constitution of the United States or of the Constitution of
29 the State of Iowa. The state and the defendant or the
30 defendant's counsel shall be permitted to cross-examine
31 witnesses and to present arguments for or against a sentence
32 of death.

33 2.__(3) On conclusion of the presentation of the evidence
34 in the penalty proceeding, the state and the defendant or the
35 defendant's counsel shall be permitted to make closing

1 arguments, including any rebuttal arguments, in the same
2 manner as in the initial proceeding and the court shall submit
3 each of the following issues to the jury:

4 a. Whether one or more of the factors enumerated in Iowa
5 Code section 902.14 have been established beyond a reasonable
6 doubt.

7 b. If one or more aggravating circumstances have been
8 established, whether one or more of those circumstances
9 outweigh any one or more mitigating circumstances.

10 c. Whether the defendant shall be sentenced to death.
11 If the case is not tried to a jury, the court shall
12 determine the issues.

13 2.__(4) The state must prove the issue in rule 2.
14 __(3)(a) beyond a reasonable doubt, and the jury, or the
15 court if there is no jury, shall return a special verdict of
16 "yes" or "no" on each issue.

17 2.__(5) If the case is tried to a jury, the court shall
18 charge the jury that:

19 a. It shall answer any issue "yes" if it agrees
20 unanimously.

21 b. It shall answer any issue "no" if the jurors
22 unanimously agree that the answer is "no" or if the jurors do
23 not unanimously agree that the answer is "yes".

24 2.__(6) Concurrently with the return of the special
25 verdicts under rule 2.__(4), the jury, or the court if there
26 is no jury, shall also return special verdicts as follows:

27 a. Which of the factor, or factors, enumerated in Iowa
28 Code section 902.14, has been unanimously found to have been
29 established beyond a reasonable doubt.

30 b. Which aggravating circumstances were established and
31 were considered in reaching the verdict returned on the issue
32 specified in rule 2.__(3)(b).

33 c. Which mitigating circumstances were established and
34 were considered in reaching the verdict returned on the issue
35 specified in rule 2.__(3)(b).

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

8 2.__(8) However, if evidence that the defendant was not a
9 major participant in the commission of the murder and that the
10 defendant's conduct did not manifest a reckless indifference
11 to human life is presented to the jury, or the court, if there
12 is no jury, the jury or the court shall also return a special
13 verdict on the issue. If the jury unanimously determines, or
14 the court, if there is no jury, finds that a preponderance of
15 evidence exists that shows that the defendant was not a major
16 participant in the commission of the murder and that the
17 defendant's conduct did not manifest a reckless indifference
18 to human life, the court shall enter a judgment of conviction
19 and shall sentence the defendant to life imprisonment as
20 provided in Iowa Code section 902.1, subsection 1, even if the
21 jury or the court returns unanimous affirmative findings on
22 each of the issues submitted under rule 2.__(3).

23 2.__(9) After a verdict has been rendered it shall be
24 recorded on the jury verdict form and shall be read and
25 recorded in open court. The jurors shall be collectively
26 asked by the court whether the verdict returned is their true
27 and correct verdict. Even though no juror makes any
28 declaration to the contrary, the jury shall, if either party
29 so requests, be polled and each juror shall be separately
30 asked whether the verdict rendered by the jury foreperson is
31 the juror's true and correct verdict. If, upon either the
32 collective or the separate inquiry, any juror denies that the
33 verdict is the juror's verdict, the court shall refuse to
34 accept the verdict. The court may direct inquiry or permit
35 inquiry by counsel to ascertain whether any juror has been

1 subjected to coercion or has become confused during the jury
2 deliberation process. The court may, as appropriate, direct
3 the jury to resume deliberation in the case. If no
4 disagreement on the verdict is expressed by any of the jurors,
5 the court shall discharge the jury.

6 2.__(10) Provisions relating to deferred judgment,
7 deferred sentence, suspended sentence, reconsideration of
8 sentence, probation, parole, or work release contained in Iowa
9 Code chapters 901 through 909 do not apply to a conviction of
10 murder in the first degree if the defendant is sentenced to
11 death.

12 Sec. 15. NEW RULE. 2.____ AUTOMATIC REVIEW -- STAY OF
13 EXECUTION OF JUDGMENT.

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

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

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

29 2.__(4) All court costs required due to the automatic
30 preparation of the record and transcript, docketing with the
31 supreme court, and stay of execution of judgment shall be
32 assessed to the state.

33 Sec. 16. NEW RULE. 2.____ ISSUANCE OF WARRANT.

34 2.__(1) Upon entry by the trial court of the judgment of
35 the supreme court affirming a judgment and sentence of death,

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

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

30 2.__(3) Notwithstanding rule 2.__(1), if a defendant,
31 for whom a warrant of execution is issued, is pregnant, the
32 execution shall not take place until after the defendant is no
33 longer pregnant. Notwithstanding rule 2.__(1), if a
34 defendant, for whom a warrant of execution is issued, is
35 suffering from such a diseased or deranged condition of the

1 mind as to prevent the defendant from knowing the nature and
2 quality of the act the defendant has been convicted of, or
3 from understanding that trial on the offense has taken place
4 and that execution proceedings are about to take place, or to
5 otherwise cause the defendant to lack the capacity to
6 understand the sentence which has been imposed and to
7 participate in any legal proceedings relating to the sentence,
8 the execution shall not take place until after the defendant
9 is no longer suffering from the condition.

10 Sec. 17. NEW RULE. 2.____ EVIDENCE AT PENALTY PROCEEDING
11 WHERE DEATH SENTENCE REQUESTED.

12 2.____(1) At a reasonable time before the commencement of
13 initial proceedings in a first degree murder trial in which a
14 sentence of death has been requested, each party shall file
15 and serve upon the other party the following:

16 a. A list of all aggravating or mitigating circumstances
17 which the party intends to prove during the sentencing
18 proceedings.

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

21 c. Notwithstanding rule 2.14, copies, or for inspection
22 purposes, the location, of all documents, including books,
23 papers, writings, drawings, graphs, charts, photographs,
24 telephone records, and other data compilations from which
25 information can be obtained, or other objects which the party
26 intends to offer into evidence during the sentencing
27 proceedings. If copies are not supplied to opposing counsel,
28 the party shall make the items available for inspection and
29 copying without order of the court.

30 2.____(2) In proceedings to determine whether the sentence
31 shall be death or life imprisonment, evidence may be presented
32 as to any matter which the trial court deems relevant to the
33 sentence, including but not limited to the nature,
34 circumstances, and manner of completion of the murder, and the
35 defendant's character, background, history, and mental and

1 physical condition. The trial court shall admit any relevant
2 admissible evidence respecting any aggravating or mitigating
3 circumstances, if the party has included the circumstance on a
4 list provided pursuant to this rule, or good cause is shown
5 for the failure to do so.

6 Sec. 18. EFFECTIVE DATE -- SEVERABILITY -- SENTENCES
7 COMMUTED TO LIFE IMPRISONMENT IF ACT UNCONSTITUTIONAL.

8 1. This Act takes effect January 1, 2004, and applies to
9 offenses committed on or after that date.

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

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

19 EXPLANATION

20 This bill amends the Iowa criminal code to provide for
21 punishment by death for murder committed under specified
22 circumstances if the trial jury, or the judge if there is no
23 jury, makes specific affirmative findings respecting the act
24 of murder and whether the jury believes the defendant should
25 be put to death in a separate penalty proceeding held after
26 the close of the initial trial proceeding. Under the bill, a
27 death sentence could be imposed if the murder would constitute
28 murder in the first degree and the state pleads and proves the
29 existence of certain aggravating circumstances. Those
30 circumstances include the following: the murder was committed
31 by a person who has previously been convicted of a class "A"
32 felony; or the person was convicted of murder in the first
33 degree while participating in an act of terrorism.

34 If a person is indigent and is charged with capital murder,
35 payment of costs for two attorneys is authorized. The supreme

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

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

15 Once the evidence is submitted to the jury, the court will
16 instruct the jury, at the defendant's request, that in
17 considering whether a sentence of death is justified, the
18 race, color, religious beliefs, national origin, or sex of the
19 defendant or of any victim is not to be considered. The
20 supreme court shall collect evidence relating to whether the
21 death sentences imposed are excessive, disproportionate, or
22 imposed under the influence of prejudice at trial which will
23 be available to litigants.

24 The sentence of death is imposed only when the trier of
25 fact (the jury or the court if the defendant has waived the
26 right to a jury trial) unanimously answers three questions
27 affirmatively: (1) whether aggravating circumstances have
28 been established beyond a reasonable doubt; (2) whether the
29 aggravating circumstances outweigh any mitigating
30 circumstances that may exist; and (3) whether the defendant
31 should be sentenced to death. Mitigating factors the trier of
32 fact may consider include the following: the defendant was
33 under the influence of an extreme mental or emotional
34 disturbance; the victim solicited or participated in the
35 conduct; the age of the defendant; the defendant's ability to

1 appreciate the wrongfulness of the conduct due to mental
2 disease but not to a degree to constitute a defense; the
3 defendant has no significant prior criminal history; the
4 defendant was under extreme duress; the defendant did not
5 directly commit the murder; the defendant's character; the
6 defendant gave substantial assistance to the prosecution in
7 the prosecution of another person for the crime of murder; and
8 the evidence which convicted the defendant does not include
9 direct evidence from two sources. The sentencing proceeding
10 is conducted separately from the finding of guilt or innocence
11 by the same trier of fact.

12 For the sentencing proceeding, the trier of fact (the jury
13 or the court if the defendant has waived the right to have the
14 jury hear the proceedings) is to weigh any aggravating
15 circumstances established beyond a reasonable doubt by the
16 state against any of the enumerated mitigating circumstances
17 which may be presented by the defendant. Evidence of juvenile
18 delinquency adjudications is not admissible in any proceeding
19 to determine the sentence. If the jury fails to agree
20 unanimously on the required affirmative findings or if the
21 supreme court determines that error was committed in the
22 sentencing 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, including rules pertaining to the
30 witnessing of executions. The criminal and juvenile justice
31 planning advisory council is required to review the effects of
32 the reinstatement of the death penalty, make findings and
33 develop recommendations, and report the findings annually
34 commencing January 1, 2005.

35 The bill further provides that in order to receive a

1 sentence of death, the defendant must be at least 18 years of
2 age at the time the offense is committed, must not be mentally
3 ill or mentally retarded, and must have been a major
4 participant in the commission of the murder or must have shown
5 a manifest indifference to human life.

6 A person who is sentenced to death, but who is pregnant
7 when the warrant of execution is issued, is not to be executed
8 until the person is no longer pregnant. A procedure is also
9 provided to stay execution of a condemned inmate who becomes
10 insane after conviction but before execution.

11 An employee of the state shall not be required to perform
12 or assist in any execution and shall not be discriminated
13 against for refusing to participate.

14 The bill contains severability provisions and takes effect
15 January 1, 2004, and applies only to offenses committed on or
16 after that date.

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