

Senate File 2095 - Introduced

SENATE FILE 2095

BY BEHN

A BILL FOR

1 An Act creating the penalty of death for the commission of
2 murder in the first degree, kidnapping, and sexual abuse
3 against the same minor, providing a penalty, and including
4 effective date provisions.

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

1 Section 1. Section 13B.4, Code 2011, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6A. The state public defender shall perform
4 all of the following duties with respect to the appointment of
5 counsel for indigent persons in cases in which a sentence of
6 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,
10 kidnapping, and sexual abuse under section 902.15, and the
11 state has given notice of intent to seek the death penalty or
12 in cases in which a sentence of death is to be imposed.

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

15 Sec. 2. NEW SECTION. 602.10112 **Qualifications of counsel**
16 **in death penalty cases.**

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

21 Sec. 3. NEW SECTION. 812A.1 **Procedure to determine sanity**
22 **of condemned inmate.**

23 1. At any time prior to execution of an inmate under section
24 902.1, if the director of the department of corrections or
25 the counsel for a person who is under a sentence of execution
26 has cause to believe that the inmate is suffering from such
27 a diseased or deranged condition of the mind as to prevent
28 the defendant from knowing the nature and quality of the act
29 the defendant has been convicted of, or from understanding
30 that trial on the offense has taken place and that execution
31 proceedings are about to take place, or to otherwise cause the
32 defendant to lack the capacity to understand the sentence which
33 has been imposed and to participate in any legal proceedings
34 relating to the sentence, the director or counsel may file a
35 request with the court that issued the warrant for execution

1 for a determination of the inmate's sanity. If the district
2 court determines that there is not sufficient reason to believe
3 that the inmate is insane, the court shall enter an order
4 denying the request and shall state the grounds for denying the
5 request. If the court believes that there is sufficient reason
6 to believe that the inmate is insane, the court shall suspend
7 the execution and conduct a hearing to determine the sanity of
8 the inmate.

9 2. At the hearing, the court shall determine the issue of
10 the inmate's sanity. Prior to the hearing, the court shall
11 appoint two licensed physicians or licensed psychologists, or
12 one licensed physician and one licensed psychologist, who are
13 qualified by training and practice, for purposes of conducting
14 a psychiatric or psychological examination of the inmate. The
15 physicians or psychologists shall examine the inmate and report
16 any findings in writing to the court within ten days after
17 the order of examination is issued. The inmate shall have
18 the right to present evidence and cross-examine any witnesses
19 at the hearing. Any statement made by the inmate during the
20 course of any examination provided for in this section, whether
21 or not the inmate consents to the examination, shall not be
22 admitted into evidence against the inmate in any criminal
23 proceeding for purposes other than a determination of the
24 inmate's sanity.

25 3. If, at the conclusion of a hearing held pursuant to
26 this section, the court determines that the inmate is sane,
27 the court shall enter an order setting a date for the inmate's
28 execution, which shall be carried into effect in the same
29 manner as provided in the original sentence. A copy of the
30 order shall be sent to the director of the department of
31 corrections and the governor.

32 4. If, at the conclusion of a hearing held pursuant to this
33 section, the court determines that the inmate is insane, the
34 court shall suspend the execution until further order. At any
35 time after issuance of the order, if the court has sufficient

1 reason to believe that the inmate has become sane, the court
2 shall again determine the sanity of the inmate as provided
3 by this section. Proceedings pursuant to this section may
4 continue to be held at such times as the court orders until
5 it is either determined that the inmate is sane or incurably
6 insane.

7 Sec. 4. NEW SECTION. **814.28 Review of death sentence.**

8 1. In a case in which a sentence of death is imposed, the
9 supreme court shall automatically review the judgment and
10 sentence. The court's review of the case shall be de novo. The
11 case shall not be transferred to the court of appeals.

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

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

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

24 b. Whether the special verdicts returned under section
25 901.11 are supported by the evidence.

26 c. Whether the sentence of death is excessive or
27 disproportionate to the penalty imposed in similar cases,
28 considering both the crime and the defendant.

29 4. If the supreme court determines that the sentence of
30 death was not lawfully imposed, the court shall set aside the
31 sentence and shall remand the case to the trial court for a
32 second sentencing proceeding to determine if the imposition of
33 death is warranted.

34 5. If the supreme court affirms the judgment and sentence
35 of death, the clerk of the supreme court shall certify the

1 judgment of the supreme court under the seal of the court to
2 the clerk of the trial court.

3 Sec. 5. Section 815.10, Code 2011, is amended by adding the
4 following new subsection:

5 NEW SUBSECTION. 1A. If two attorneys have not already
6 been appointed pursuant to section 13B.4 or 13B.9, the court
7 shall appoint, for each indigent person who is charged with
8 murder, kidnapping, and sexual abuse under section 902.15, and
9 in which a notice of intent to seek the death penalty has been
10 filed, two attorneys who are qualified under section 602.10112
11 to represent the person in the proceedings and in all state
12 legal proceedings which take place from the time the person
13 is indicted or arraigned until the person is sentenced on the
14 charge. In addition, if at any point in federal postconviction
15 proceedings an indigent person is not afforded court-appointed
16 counsel, the state shall provide counsel to the person to
17 present any claims determined meritorious by the federal court
18 if the person is not otherwise represented by legal counsel.
19 Only private attorneys and public defenders who are qualified
20 to provide representation in cases in which the death penalty
21 may be imposed are eligible for appointment or assignment to a
22 case in which the death penalty may be imposed.

23 Sec. 6. NEW SECTION. 901.11 **Murder proceedings — request**
24 **for death penalty — penalty proceedings.**

25 1. If a notice of intent to seek the death penalty has been
26 filed, objections to the imposition of the death penalty based
27 upon allegations that a defendant was mentally retarded or
28 mentally ill at the time of the commission of the offense shall
29 be raised within the time provided for the filing of pretrial
30 motions under rule of criminal procedure 2.11, Iowa court
31 rules. The court may, for good cause shown, allow late filing
32 of the motion. Hearing on the motion shall be held prior to
33 trial and the burden of proof shall be on the defendant to
34 prove mental retardation or mental illness by a preponderance
35 of the evidence. However, a rebuttable presumption of mental

1 retardation arises if a defendant has an intelligence quotient
2 of seventy or below. If the court finds that the defendant
3 is mentally retarded, the defendant, if convicted of murder,
4 kidnapping, and sexual abuse under section 902.15, shall not be
5 sentenced to death but shall be sentenced to life imprisonment
6 in the manner provided in section 902.1, subsection 1. A
7 finding by the court that the evidence presented by the
8 defendant at the hearing does not preclude the imposition of
9 the death penalty under this section and section 902.15 shall
10 not preclude the introduction of evidence of mental retardation
11 or mental illness during the penalty proceeding. If the court
12 finds that evidence of mental retardation or mental illness
13 does not preclude imposition of the death penalty, evidence
14 of mental retardation or mental illness may be reviewed by
15 the jury in the penalty proceeding and the jury shall not be
16 informed of the finding in the initial proceeding at any time
17 during the penalty proceeding.

18 2. If at the trial on a charge of murder, kidnapping,
19 and sexual abuse under section 902.15, the state intends to
20 request that the death penalty be imposed under section 902.1,
21 subsection 3, the prosecutor shall file a notice of intent
22 to seek the death penalty, at the time of and as part of the
23 information or indictment filed in the case.

24 3. If a notice of intent to seek the death penalty has been
25 filed, the trial shall be conducted in bifurcated proceedings
26 before the same trier of fact. During the initial proceeding,
27 the jury, or the court, if the defendant waives the right to a
28 jury trial, shall decide only whether the defendant is guilty
29 or not guilty of murder, kidnapping, and sexual abuse under
30 section 902.15.

31 a. If, in the initial proceeding, the court or jury finds
32 the defendant guilty of, or the defendant pleads guilty to,
33 an offense other than murder, kidnapping, and sexual abuse
34 under section 902.15, the court shall sentence the defendant
35 in accordance with the sentencing procedures set forth in rule

1 of criminal procedure 2.23, Iowa court rules, and chapters 901
2 through 909, which are applicable to the offense.

3 *b.* If the court or jury finds the defendant guilty of, or
4 the defendant pleads guilty to, murder, kidnapping, and sexual
5 abuse under section 902.15, but the prosecuting attorney waives
6 the death penalty, the court shall sentence the defendant to
7 life imprisonment in accordance with the sentencing procedures
8 set forth in rule of criminal procedure 2.23, Iowa court rules,
9 and chapters 901 through 909, which are otherwise applicable
10 to convictions of murder in the first degree, kidnapping, and
11 sexual abuse.

12 *c.* If the court or jury finds the defendant guilty of
13 murder, kidnapping, and sexual abuse under section 902.15, or a
14 defendant enters a plea of guilty in the initial proceeding,
15 and the prosecuting attorney does not waive imposition of the
16 death penalty, a penalty proceeding shall be held in the manner
17 provided in subsections 4 through 12.

18 4. No sooner than twenty-four hours after a verdict of
19 guilty or a plea of guilty to the charge of murder, kidnapping,
20 and sexual abuse under section 902.15 is returned in the
21 initial proceeding, a penalty proceeding shall be held to
22 determine whether the defendant shall be sentenced to death
23 or to life imprisonment. The proceeding shall be conducted
24 in the trial court before the trial jury, or the court if
25 the defendant has waived the right to a jury trial or has
26 waived the right for the proceeding to be before the trial
27 jury. Both the state and the defendant shall have the right to
28 present opening statements at the commencement of the penalty
29 proceedings. In the proceeding, evidence relevant to the
30 existence of any aggravating or mitigating circumstances may
31 be presented as follows:

32 *a.* The state or the defendant may present evidence relevant
33 to the conviction of the criminal offenses enumerated in
34 section 902.15 and any aggravating circumstances other than
35 juvenile delinquency adjudications for offenses which carry

1 penalties equivalent to the penalties imposed for simple or
2 serious misdemeanors. The state may introduce evidence of the
3 actual harm caused by the commission of the murder, kidnapping,
4 and sexual abuse under section 902.15, including but not
5 limited to evidence relating to the life of the victim and the
6 impact of the loss of the victim to the victim's family and
7 society.

8 *b.* The defendant may present evidence that the defendant was
9 mentally retarded at the time of the commission of the offense.
10 The burden of proof shall be on the defendant to prove mental
11 retardation by a preponderance of the evidence. However,
12 a rebuttable presumption of mental retardation arises if a
13 defendant has an intelligence quotient of seventy or below.

14 *c.* The state or the defendant may present evidence relevant
15 to any mitigating circumstances which may exist. Mitigating
16 circumstances may include the following circumstances:

17 (1) The defendant was under the influence of an extreme
18 mental or emotional disturbance insufficient to constitute a
19 defense.

20 (2) The age of the defendant at the time of the murder.

21 (3) The defendant's capacity to appreciate the wrongfulness
22 of the defendant's conduct and to conform that conduct to the
23 requirements of law was significantly impaired as a result of a
24 mental disease or defect or mental retardation, but not to a
25 degree sufficient to constitute a defense.

26 (4) The defendant has no significant history of prior adult
27 criminal activity.

28 (5) The defendant acted under extreme duress or under the
29 substantial domination of another person.

30 (6) The defendant did not directly commit the murder,
31 kidnapping, and sexual abuse and the defendant did not intend
32 to kill or anticipate that lethal force would be used.

33 (7) Any other factor which is relevant to the defendant's
34 character or record or to the circumstances of the offense.

35 *d.* The state and the defendant or the defendant's counsel

1 shall be permitted to present and cross-examine witnesses and
2 present arguments for or against a sentence of death. Evidence
3 regarding aggravating and mitigating circumstances shall not
4 be governed by the rules governing admissibility of evidence,
5 except that introduction of evidence secured in violation of
6 the Constitution of the United States or of the Constitution of
7 the State of Iowa shall not be permitted.

8 5. At the conclusion of presentation of evidence in
9 the penalty proceeding, the state and the defendant or the
10 defendant's counsel shall be permitted to make closing
11 arguments, including any rebuttal arguments, in the same manner
12 as in the initial proceeding and the following issues shall be
13 determined by the jury or the court, if there is no jury:

14 a. Whether the aggravating circumstance or circumstances
15 have been established beyond a reasonable doubt and outweigh
16 any one or more mitigating circumstances.

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

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

32 7. After submission of the issues, but prior to the
33 commencement of the jury deliberations in the penalty
34 proceeding, the court shall instruct the jury that if the
35 defendant is not sentenced to death, the court is required by

1 law to impose a sentence of imprisonment until death without
2 parole. The court shall further instruct the jury that
3 the sentence of imprisonment until death without parole is
4 required by law if the jury fails to reach a unanimous verdict
5 recommending a sentence of death.

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

9 a. Which aggravating circumstances were established beyond a
10 reasonable doubt and were considered in reaching the verdict.

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

14 9. If the jury, or the court if there is no jury, returns a
15 unanimous affirmative finding on each of the issues submitted
16 under subsection 5, paragraphs "a" and "b", the court shall
17 enter a judgment of conviction and shall sentence the defendant
18 to death as provided in section 902.1, subsection 3.

19 10. However, if evidence that the defendant was not a major
20 participant in the commission of the murder, kidnapping, and
21 sexual abuse under section 902.15, and that the defendant's
22 conduct did not manifest a reckless indifference to human life
23 is presented to the jury, or the court if there is no jury, the
24 jury or the court shall also return a special verdict on the
25 issue. If the jury unanimously determines, or the court, if
26 there is no jury, finds that a preponderance of evidence exists
27 that shows that the defendant was not a major participant in
28 the commission of the murder, kidnapping, and sexual abuse
29 under section 902.15, and that the defendant's conduct did not
30 manifest a reckless indifference to human life, the court shall
31 enter a judgment of conviction and shall sentence the defendant
32 to life imprisonment as provided in section 902.1, subsection
33 1, even if the jury or the court returns unanimous affirmative
34 findings on each of the issues submitted under subsection 5.

35 11. If the jury, or the court if there is no jury, returns

1 a negative finding on any of the issues submitted under
2 subsection 5, paragraphs "a" or "b", the court shall enter a
3 judgment of conviction and shall sentence the defendant to life
4 imprisonment as provided in section 902.1, subsection 1.

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

22 13. This section shall not apply to a defendant who
23 was under the age of eighteen at the time the offense was
24 committed.

25 Sec. 7. Section 902.1, subsection 1, Code Supplement 2011,
26 is amended to read as follows:

27 1. ~~Upon~~ Except as otherwise provided in subsection 2 or
28 3, upon a plea of guilty, a verdict of guilty, or a special
29 verdict upon which a judgment of conviction of a class "A"
30 felony may be rendered, the court shall enter a judgment of
31 conviction and shall commit the defendant into the custody of
32 the director of the Iowa department of corrections for the
33 rest of the defendant's life. Nothing in the Iowa corrections
34 code pertaining to deferred judgment, deferred sentence,
35 suspended sentence, or reconsideration of sentence applies

1 to a sentence of life imprisonment for a class "A" felony,
2 and a person convicted of a class "A" felony and sentenced to
3 life imprisonment shall not be released on parole unless the
4 governor commutes the sentence to a term of years.

5 Sec. 8. Section 902.1, Code Supplement 2011, is amended by
6 adding the following new subsection:

7 NEW SUBSECTION. 3. Notwithstanding subsection 1, upon
8 return of a plea or verdict of guilty to the offense of murder
9 in the first degree, kidnapping, and sexual abuse under section
10 902.15, and a return of a verdict in favor of a sentence of
11 death in a penalty proceeding conducted as provided in section
12 901.11, the court shall enter a judgment of conviction and
13 shall commit the defendant into the custody of the director
14 of the Iowa department of corrections. The sentence shall
15 be carried out by the administration of a lethal injection
16 pursuant to rules adopted by the board of corrections. If
17 a defendant, for whom a warrant of execution is issued, is
18 pregnant, the execution shall not take place until after the
19 defendant is no longer pregnant. If a defendant, for whom
20 a warrant of execution is issued, is suffering from such a
21 diseased or deranged condition of the mind as to prevent the
22 defendant from knowing the nature and quality of the act
23 the defendant has been convicted of, or from understanding
24 that trial on the offense has taken place and that execution
25 proceedings are about to take place, or otherwise causes the
26 defendant to lack the capacity to understand the sentence which
27 has been imposed and to participate in any legal proceedings
28 relating to the sentence, the execution shall not take place
29 until after the defendant's capacity is restored. If the
30 director of the department of corrections or the defendant's
31 counsel files a request with the court which issued the warrant
32 of execution, alleging that the defendant suffers from such
33 a diseased or deranged condition, a hearing on the matter
34 shall be held in the manner provided in section 812A.1. If a
35 defendant was under the age of eighteen at the time the offense

1 was committed, the defendant shall be sentenced as provided
2 in subsection 1. For the purposes of this section, "*lethal*
3 *injection*" means a continuous intravenous injection of a lethal
4 substance sufficient to cause death.

5 Sec. 9. NEW SECTION. 902.15 **First degree murder,**
6 **kidnapping, and sexual abuse.**

7 A person who commits murder in the first degree, kidnapping,
8 and sexual abuse with respect to the same victim, who is not
9 mentally retarded or mentally ill, and who is age eighteen or
10 older at the time the offense is committed, shall be eligible
11 for a sentence of death under section 902.1, subsection 3, if
12 the victim was a minor.

13 For purposes of this section, "*mentally retarded*" means
14 significant subaverage general intellectual functioning
15 accompanied by significant deficits or impairments in adaptive
16 functioning manifested in the developmental period, but no
17 later than the age of eighteen years, and accompanied by
18 deficits in adaptive behavior.

19 For purposes of this section, "*mentally ill*" means the
20 condition of a person who is suffering from a chronic and
21 persistent serious mental disease or disorder and who, by
22 reason of that condition, lacks sufficient judgment to make
23 responsible decisions regarding treatment and is reasonably
24 likely to injure the person's self or others who may come into
25 contact with the person if the person is allowed to remain at
26 liberty without treatment.

27 Sec. 10. NEW SECTION. 902.16 **Data collection for death**
28 **penalty.**

29 1. The supreme court shall collect data on all murder,
30 kidnapping, and sexual abuse charges in which the death
31 penalty is or was not waived, which are filed and processed
32 in the courts in this state. This data may be used by the
33 supreme court to determine whether death sentences imposed
34 are excessive or disproportionate, or under the influence of
35 prejudice as a result of racial discrimination under section

1 814.28. The court shall make this data available to litigants
2 in death penalty cases.

3 2. Data collected by public officials concerning factors
4 relevant to the imposition of the death sentence shall be made
5 publicly available.

6 Sec. 11. NEW SECTION. 903C.1 Executions — refusal to
7 perform.

8 An employee of the state who may lawfully perform, assist, or
9 participate in the execution of a person pursuant to section
10 902.1, and rules adopted by the department of corrections,
11 shall not be required to perform, assist, or participate in
12 the execution. State employees who refuse to perform, assist,
13 or participate in the execution of a person shall not be
14 discriminated against in any way, including but not limited
15 to employment, promotion, advancement, transfer, licensing,
16 education, training, or the granting of any privileges or
17 appointments because of the refusal to perform, assist, or
18 participate in the execution.

19 Sec. 12. Section 904.105, Code 2009, is amended by adding
20 the following new subsection:

21 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
22 pertaining to executions of persons convicted of murder,
23 kidnapping, and sexual abuse under section 902.15. Rules
24 adopted shall include, but are not limited to, rules permitting
25 the witnessing of executions by members of the public and the
26 victim's family. Invitations to witness an execution shall at
27 least be extended to the following representatives of the news
28 media:

29 a. A representative from a wire service serving Iowa.

30 b. A representative from a broadcasting network serving
31 Iowa.

32 c. A representative from a television station located in
33 Iowa.

34 d. A representative from a radio station located in Iowa.

35 e. A representative from a daily newspaper published in

1 Iowa.

2 *f.* A representative from a weekly newspaper published in
3 Iowa.

4 *g.* A representative from the news media from the community
5 in which the condemned person resided, if that community is
6 located in Iowa.

7 Sec. 13.

8 Rules of criminal procedure, Iowa court rules, are amended
9 by adding the following four sections of this Act.

10 Sec. 14.

11 2. ___ DEATH PENALTY – PROCEDURE.

12 2. ___(1) If a notice of intent to seek the death penalty
13 has been filed, objections to the imposition of the death
14 penalty based upon allegations that a defendant was mentally
15 retarded at the time of the commission of the offense shall
16 be raised within the time provided for the filing of pretrial
17 motions under R.Cr.P. 2.11, Iowa court rules. The court may,
18 for good cause shown, allow late filing of the motion. Hearing
19 on the motion shall be held prior to trial and the burden of
20 proof shall be on the defendant to prove mental retardation
21 by a preponderance of the evidence. However, a rebuttable
22 presumption of mental retardation arises if a defendant has
23 an intelligence quotient of seventy or below. A finding of
24 the court that the evidence presented by the defendant at the
25 hearing does not preclude the imposition of the death penalty
26 under this rule and Iowa Code section 902.15 shall not preclude
27 the introduction of evidence of mental retardation during the
28 penalty proceeding. If the court finds that the evidence
29 presented by the defendant does not preclude the imposition
30 of the death penalty, evidence of mental retardation may be
31 reviewed by the jury during the penalty proceeding and the jury
32 shall not be informed of the finding in the initial proceeding
33 at any time during the penalty proceeding.

34 2. ___(2) Upon a finding or plea that a defendant is guilty of
35 murder, kidnapping, and sexual abuse under Iowa Code section

1 902.15, in an initial proceeding, if a notice of intent to seek
2 the death penalty has been filed and has not been waived, the
3 court shall conduct a separate penalty proceeding to determine
4 whether the defendant shall be sentenced to death or to life
5 imprisonment. The penalty proceeding shall be conducted in
6 the trial court before the trial jury, or the court, if there
7 is no jury, no sooner than twenty-four hours after the return
8 of the verdict or plea in the initial proceeding. In the
9 penalty proceeding, additional evidence may be presented as to
10 the conviction for murder, kidnapping, and sexual abuse under
11 section 902.15, or any aggravating or mitigating circumstance
12 which may exist. Presentation of evidence which is relevant
13 to the existence of an aggravating or mitigating circumstance
14 shall not be bound by the rules of evidence. This subsection
15 does not authorize the introduction of any evidence secured in
16 violation of the Constitution of the United States or of the
17 Constitution of the State of Iowa. The state and the defendant
18 or the defendant's counsel shall be permitted to cross-examine
19 witnesses and to present arguments for or against a sentence of
20 death.

21 2.__(3) On conclusion of the presentation of the evidence
22 in the penalty proceeding, the state and the defendant or
23 the defendant's counsel shall be permitted to make closing
24 arguments, including any rebuttal arguments, in the same manner
25 as in the initial proceeding and the court shall submit each of
26 the following issues to the jury:

27 a. Whether one or more aggravating circumstances outweigh
28 any one or more mitigating circumstances.

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

30 If the case is not tried to a jury, the court shall determine
31 the issues.

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

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

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

4 b. It shall answer any issue "no" if the jurors unanimously
5 agree that the answer is "no" or if the jurors do not
6 unanimously agree that the answer is "yes".

7 2.__(6) Concurrently with the return of the special
8 verdicts under rule 2.__(3), the jury, or the court if there
9 is no jury, shall also return special verdicts as follows:

10 a. Which aggravating circumstances were established beyond
11 a reasonable doubt and were considered in reaching the verdict
12 returned on the issue specified in rule 2.__(3)(a).

13 b. Which mitigating circumstances were established and
14 were considered in reaching the verdict returned on the issue
15 specified in rule 2.__(3)(a).

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

23 2.__(8) 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 asked
26 by the court whether the verdict returned is their true and
27 correct verdict. Even though no juror makes any declaration
28 to the contrary, the jury shall, if either party so requests,
29 be polled and each juror shall be separately asked whether the
30 verdict rendered by the jury foreperson is the juror's true
31 and correct verdict. If, upon either the collective or the
32 separate inquiry, any juror denies that the verdict is the
33 juror's verdict, the court shall refuse to accept the verdict.
34 The court may direct inquiry or permit inquiry by counsel to
35 ascertain whether any juror has been subjected to coercion

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

6 2.__(9) Provisions relating to deferred judgment, deferred
7 sentence, suspended sentence, reconsideration of sentence,
8 probation, parole, or work release contained in Iowa Code
9 chapters 901 through 909 do not apply to a conviction of
10 murder, kidnapping, and sexual abuse under Iowa Code section
11 902.15 if the defendant is sentenced to death.

12 Sec. 15.

13 2.__(9) AUTOMATIC REVIEW — STAY OF 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
25 the judgment of the supreme court is certified to and entered
26 by 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.

34 2.__(9) ISSUANCE OF WARRANT.

35 2.__(1) Upon entry by the trial court of the judgment of

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

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

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

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

11 Sec. 17.

12 2. ___ EVIDENCE AT PENALTY PROCEEDING WHERE DEATH SENTENCE
13 REQUESTED.

14 2. ___(1) At a reasonable time before the commencement of
15 initial proceedings in a murder, kidnapping, and sexual abuse
16 trial in which a sentence of death has been requested, each
17 party shall file and serve upon the other party the following:

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

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

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

32 2. ___(2) In proceedings to determine whether the sentence
33 shall be death or life imprisonment, evidence may be presented
34 as to any matter which the trial court deems relevant to
35 the sentence, including but not limited to the nature,

1 circumstances, and manner of completion of the murder,
2 kidnapping, and sexual abuse, and the defendant's character,
3 background, history, and mental and physical condition. The
4 trial court shall admit any relevant admissible evidence
5 respecting any aggravating or mitigating circumstances, if the
6 party has included the circumstance on a list provided pursuant
7 to this rule, or good cause is shown for the failure to do so.

8 Sec. 18. IMPLEMENTATION OF ACT. Section 25B.2, subsection
9 3, shall not apply to this Act.

10 Sec. 19. EFFECTIVE DATE — SEVERABILITY.

11 1. This Act takes effect January 1, 2013, and applies to
12 offenses committed on or after that date.

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

18 EXPLANATION

19 This bill amends the Iowa criminal code to provide for
20 punishment by death for murder in the first degree, kidnapping,
21 and sexual abuse committed with respect to the same victim
22 who is a minor if the trial jury, or the judge if there
23 is no jury, makes specific findings and whether the jury
24 believes the defendant should be put to death in a separate
25 penalty proceeding held after the close of the initial trial
26 proceeding. Under the bill, a death sentence could be imposed
27 if the murder would constitute murder in the first degree and
28 the state pleads and proves the defendant also kidnapped and
29 committed sexual abuse against the murder victim who was a
30 minor.

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

1 for death penalty cases, as well as conducting or sponsoring
2 specialized training programs for attorneys representing
3 persons who may be executed.

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

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

21 The sentence of death is imposed only when the trier of fact
22 (the jury or the court if the defendant has waived the right to
23 a jury trial) unanimously answers two questions affirmatively:
24 (1) whether aggravating circumstances established beyond a
25 reasonable doubt outweigh any mitigating circumstances that
26 may exist; and (2) whether the defendant should be sentenced
27 to death. Mitigating factors the trier of fact may consider
28 include the following: the defendant was under the influence
29 of an extreme mental or emotional disturbance; the age of
30 the defendant; the defendant's ability to appreciate the
31 wrongfulness of the conduct due to mental disease but not
32 to a degree to constitute a defense; the defendant has no
33 significant prior criminal history; the defendant was under
34 extreme duress; the defendant did not directly commit the
35 murder, kidnapping, and sexual abuse; and the defendant's

1 character or record or the circumstances of the offense. The
2 sentencing proceeding is conducted separately from the finding
3 of guilt or innocence by the same trier of fact.

4 For the sentencing proceeding, the trier of fact (the jury
5 or the court if the defendant has waived the right to have
6 the jury hear the proceedings) is to weigh any aggravating
7 circumstances established beyond a reasonable doubt by the
8 state against any of the enumerated mitigating circumstances
9 which may be presented by the defendant. Evidence of certain
10 juvenile delinquency adjudications is not admissible in any
11 proceeding to determine the sentence. If the jury fails to
12 agree unanimously on the required affirmative findings, the
13 penalty would be life imprisonment.

14 The death penalty sentence would be reviewed automatically
15 by the supreme court. The supreme court shall review the trial
16 and judgment separately from the sentencing proceeding. If the
17 supreme court finds error in the sentencing proceeding, the
18 supreme court may remand the case back to district court for a
19 new sentencing hearing. The bill requires the supreme court to
20 examine whether the sentence is excessive or disproportionate
21 to penalties in similar cases. If affirmed by the supreme
22 court, the penalty would be accomplished by lethal injection.
23 The bill requires the board of corrections to adopt rules
24 pertaining to executions, including rules pertaining to the
25 witnessing of executions.

26 The bill further provides that in order to receive a sentence
27 of death, the defendant must be at least 18 years of age at
28 the time the offense is committed, must not be mentally ill
29 or mentally retarded, and must have been a major participant
30 in the commission of the crime or must have shown a manifest
31 indifference to human life.

32 A person who is sentenced to death, but who is pregnant when
33 the warrant of execution is issued, is not to be executed until
34 the person is no longer pregnant. A procedure is also provided
35 to stay execution of a condemned inmate who becomes insane

1 after conviction but before execution.

2 An employee of the state shall not be required to perform or
3 assist in any execution and shall not be discriminated against
4 for refusing to participate.

5 The bill may include a state mandate as defined in Code
6 section 25B.3. The bill makes inapplicable Code section 25B.2,
7 subsection 3, which would relieve a political subdivision from
8 complying with a state mandate if funding for the cost of
9 the state mandate is not provided or specified. Therefore,
10 political subdivisions are required to comply with any state
11 mandate included in the bill.

12 The bill contains severability provisions and takes effect
13 January 1, 2013, and applies only to offenses committed on or
14 after that date.