

Senate File 76 - Introduced

SENATE FILE 76

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A BILL FOR

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

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

1 Section 1. Section 13B.4, Code 2013, 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, and
10 with either kidnapping in the first degree or sexual abuse in
11 the first degree, or both, under section 902.15, and the state
12 has given notice of intent to seek the death penalty or in
13 cases in which a sentence of death is to be imposed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 *b.* Whether the special verdicts returned under section
26 901.11 are supported by the evidence.

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

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

35 5. If the supreme court affirms the judgment and sentence

1 of death, the clerk of the supreme court shall certify the
2 judgment of the supreme court under the seal of the court to
3 the clerk of the trial court.

4 Sec. 5. Section 815.10, Code 2013, is amended by adding the
5 following new subsection:

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

25 Sec. 6. NEW SECTION. 901.11 **Murder proceedings — request**
26 **for death penalty — penalty proceedings.**

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

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

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

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

34 a. If, in the initial proceeding, the court or jury finds
35 the defendant guilty of, or the defendant pleads guilty to,

1 an offense other than murder, and kidnapping or sexual abuse,
2 or both, under section 902.15, the court shall sentence the
3 defendant in accordance with the sentencing procedures set
4 forth in rule of criminal procedure 2.23, Iowa court rules, and
5 chapters 901 through 909, which are applicable to the offense.

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

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

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

1 *a.* The state or the defendant may present evidence relevant
2 to the conviction of the criminal offenses enumerated in
3 section 902.15 and any aggravating circumstances other than
4 juvenile delinquency adjudications for offenses which carry
5 penalties equivalent to the penalties imposed for simple or
6 serious misdemeanors. The state may introduce evidence of the
7 actual harm caused by the commission of the murder, and either
8 the kidnapping or sexual abuse, or both, under section 902.15,
9 including but not limited to evidence relating to the life of
10 the victim and the impact of the loss of the victim to the
11 victim's family and society.

12 *b.* The defendant may present evidence that the defendant
13 was intellectually disabled at the time of the commission of
14 the offense. The burden of proof shall be on the defendant
15 to prove an intellectual disability by a preponderance of the
16 evidence. However, a rebuttable presumption of intellectual
17 disability arises if a defendant has an intelligence quotient
18 of seventy or below.

19 *c.* The state or the defendant may present evidence relevant
20 to any mitigating circumstances which may exist. Mitigating
21 circumstances may include the following circumstances:

22 (1) The defendant was under the influence of an extreme
23 mental or emotional disturbance insufficient to constitute a
24 defense.

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

26 (3) The defendant's capacity to appreciate the wrongfulness
27 of the defendant's conduct and to conform that conduct to the
28 requirements of law was significantly impaired as a result of a
29 mental disease or defect or intellectual disability, but not to
30 a degree sufficient to constitute a defense.

31 (4) The defendant has no significant history of prior adult
32 criminal activity.

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

35 (6) The defendant did not directly commit the murder,

1 and either the kidnapping or sexual abuse, or both, and the
2 defendant did not intend to kill or anticipate that lethal
3 force would be used.

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

6 d. The state and the defendant or the defendant's counsel
7 shall be permitted to present and cross-examine witnesses and
8 present arguments for or against a sentence of death. Evidence
9 regarding aggravating and mitigating circumstances shall not
10 be governed by the rules governing admissibility of evidence,
11 except that introduction of evidence secured in violation of
12 the Constitution of the United States or of the Constitution of
13 the State of Iowa shall not be permitted.

14 5. At the conclusion of presentation of evidence in
15 the penalty proceeding, the state and the defendant or the
16 defendant's counsel shall be permitted to make closing
17 arguments, including any rebuttal arguments, in the same manner
18 as in the initial proceeding and the following issues shall be
19 determined by the jury or the court, if there is no jury:

20 a. Whether the aggravating circumstance or circumstances
21 have been established beyond a reasonable doubt and outweigh
22 any one or more mitigating circumstances.

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

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

1 race, color, religious beliefs, national origin, or sex of the
2 defendant or of any victim may be.

3 7. After submission of the issues, but prior to the
4 commencement of the jury deliberations in the penalty
5 proceeding, the court shall instruct the jury that if the
6 defendant is not sentenced to death, the court is required by
7 law to impose a sentence of imprisonment until death without
8 parole. The court shall further instruct the jury that
9 the sentence of imprisonment until death without parole is
10 required by law if the jury fails to reach a unanimous verdict
11 recommending a sentence of death.

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

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

17 b. Which mitigating circumstances were established and
18 were considered in reaching the verdict returned on the issue
19 specified in subsection 5, paragraph "a".

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

25 10. However, if evidence that the defendant was not a major
26 participant in the commission of the murder, and either the
27 kidnapping or sexual abuse, or both, under section 902.15,
28 and that the defendant's conduct did not manifest a reckless
29 indifference to human life is presented to the jury, or the
30 court if there is no jury, the jury or the court shall also
31 return a special verdict on the issue. If the jury unanimously
32 determines, or the court, if there is no jury, finds that a
33 preponderance of evidence exists that shows that the defendant
34 was not a major participant in the commission of the murder,
35 and either the kidnapping or sexual abuse, or both, under

1 section 902.15, and that the defendant's conduct did not
2 manifest a reckless indifference to human life, the court shall
3 enter a judgment of conviction and shall sentence the defendant
4 to life imprisonment as provided in section 902.1, subsection
5 1, even if the jury or the court returns unanimous affirmative
6 findings on each of the issues submitted under subsection 5.

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

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

29 13. This section shall not apply to a defendant who
30 was under the age of eighteen at the time the offense was
31 committed.

32 Sec. 7. Section 902.1, subsection 1, Code 2013, is amended
33 to read as follows:

34 1. ~~Upon~~ Except as otherwise provided in subsection 2 or
35 3, upon a plea of guilty, a verdict of guilty, or a special

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

12 Sec. 8. Section 902.1, Code 2013, is amended by adding the
13 following new subsection:

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

1 relating to the sentence, the execution shall not take place
 2 until after the defendant's capacity is restored. If the
 3 director of the department of corrections or the defendant's
 4 counsel files a request with the court which issued the warrant
 5 of execution, alleging that the defendant suffers from such
 6 a diseased or deranged condition, a hearing on the matter
 7 shall be held in the manner provided in section 812A.1. If a
 8 defendant was under the age of eighteen at the time the offense
 9 was committed, the defendant shall be sentenced as provided
 10 in subsection 1. For the purposes of this section, "*lethal*
 11 *injection*" means a continuous intravenous injection of a lethal
 12 substance sufficient to cause death.

13 **Sec. 9. NEW SECTION. 902.15 Commission of first degree**
 14 **murder, and first degree kidnapping or first degree sexual abuse.**

15 A person who commits murder in the first degree in violation
 16 of section 707.2, and either kidnapping in the first degree in
 17 violation of section 710.2 or sexual abuse in the first degree
 18 in violation of section 709.2, or both, with respect to the
 19 same victim, who is not intellectually disabled or mentally
 20 ill, and who is age eighteen or older at the time the offense
 21 is committed, shall be eligible for a sentence of death under
 22 section 902.1, subsection 3, if the victim was a minor.

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

29 For purposes of this section, "*mentally ill*" means the
 30 condition of a person who is suffering from a chronic and
 31 persistent serious mental disease or disorder and who, by
 32 reason of that condition, lacks sufficient judgment to make
 33 responsible decisions regarding treatment and is reasonably
 34 likely to injure the person's self or others who may come into
 35 contact with the person if the person is allowed to remain at

1 liberty without treatment.

2 Sec. 10. NEW SECTION. 902.16 Data collection for death
3 penalty.

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

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

16 Sec. 11. NEW SECTION. 903C.1 Executions — refusal to
17 perform.

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

29 Sec. 12. Section 904.105, Code 2013, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
32 pertaining to executions of persons convicted of murder, and
33 kidnapping or sexual abuse, or both, under section 902.15.
34 Rules adopted shall include but are not limited to rules
35 permitting the witnessing of executions by members of the

1 public and the victim's family. Invitations to witness
2 an execution shall at least be extended to the following
3 representatives of 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 AMENDED. Rules of
18 criminal procedure, Iowa court rules, are amended by adding the
19 following four sections of this Act.

20 Sec. 14. Rule 2. ___ Death penalty — procedure.

21 2. ___(1) If a notice of intent to seek the death penalty has
22 been filed, objections to the imposition of the death penalty
23 based upon allegations that a defendant was intellectually
24 disabled at the time of the commission of the offense shall
25 be raised within the time provided for the filing of pretrial
26 motions under R.Cr.P. 2.11, Iowa court rules. The court
27 may, 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 intellectual
30 disability by a preponderance of the evidence. However, a
31 rebuttable presumption of intellectual disability arises if a
32 defendant has an intelligence quotient of seventy or below.
33 A 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 902.15

1 shall not preclude the introduction of evidence of intellectual
2 disability 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 intellectual
5 disability 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, and either kidnapping or sexual abuse, or both,
11 under Iowa Code section 902.15, in an initial proceeding, if
12 a notice of intent to seek the death penalty has been filed
13 and has not been waived, the court shall conduct a separate
14 penalty proceeding to determine whether the defendant shall
15 be sentenced to death or to life imprisonment. The penalty
16 proceeding shall be conducted in the trial court before the
17 trial jury, or the court, if there is no jury, no sooner than
18 twenty-four hours after the return of the verdict or plea in
19 the initial proceeding. In the penalty proceeding, additional
20 evidence may be presented as to the conviction for murder,
21 and either kidnapping or sexual abuse, or both, under section
22 902.15, or any aggravating or mitigating circumstance which
23 may exist. Presentation of evidence which is relevant to the
24 existence of an aggravating or mitigating circumstance shall
25 not be bound by the rules of evidence. This subsection does
26 not authorize the introduction of any evidence secured in
27 violation of the Constitution of the United States or of the
28 Constitution of the State of Iowa. The state and the defendant
29 or the defendant's counsel shall be permitted to cross-examine
30 witnesses and to present arguments for or against a sentence of
31 death.

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

1 as in the initial proceeding and the court shall submit each of
2 the following issues to the jury:

3 *a.* Whether one or more aggravating circumstances outweigh
4 any one or more mitigating circumstances.

5 *b.* Whether the defendant shall be sentenced to death.

6 If the case is not tried to a jury, the court shall determine
7 the issues.

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

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

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

15 *b.* It shall answer any issue "no" if the jurors unanimously
16 agree that the answer is "no" or if the jurors do not
17 unanimously agree that the answer is "yes".

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

21 *a.* Which aggravating circumstances were established beyond
22 a reasonable doubt and were considered in reaching the verdict
23 returned on the issue specified in rule 2.__(3)(a).

24 *b.* Which mitigating circumstances were established and
25 were considered in reaching the verdict returned on the issue
26 specified in rule 2.__(3)(a).

27 2.__(7) If the jury, or the court if there is no jury,
28 returns an affirmative finding on all applicable issues, the
29 court shall sentence the defendant to death. If the jury or
30 the court returns a negative finding on any applicable issue,
31 the court shall sentence the defendant to the custody of the
32 director of the department of corrections for confinement for
33 the rest of the defendant's life.

34 2.__(8) After a verdict has been rendered it shall be
35 recorded on the jury verdict form and shall be read and

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

17 **2.__(9)** Provisions relating to deferred judgment, deferred
18 sentence, suspended sentence, reconsideration of sentence,
19 probation, parole, or work release contained in Iowa Code
20 chapters 901 through 909 do not apply to a conviction of
21 murder, and either kidnapping or sexual abuse, or both, under
22 Iowa Code section 902.15 if the defendant is sentenced to
23 death.

24 **Sec. 15. Rule 2.__(9) Automatic review — stay of execution**
25 **of judgment.**

26 **2.__(1)** A judgment of conviction and sentence of death
27 shall be reviewed automatically in the manner provided in Iowa
28 Code section 814.28, and the Iowa supreme court has exclusive
29 jurisdiction of the review.

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

35 **2.__(3)** The execution of judgment of the trial court is

1 stayed as a matter of law from the time of its entry until
2 the judgment of the supreme court is certified to and entered
3 by the trial court. Upon entry of a judgment of the supreme
4 court which affirms the conviction and sentence, the stay of
5 execution of judgment terminates as a matter of law.

6 2.__(3) All court costs required due to the automatic
7 preparation of the record and transcript, docketing with the
8 supreme court, and stay of execution of judgment shall be
9 assessed to the state.

10 Sec. 16. Rule 2.__(Issuance of warrant.

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

1 **2.__(2)** Immediately after issuance of a warrant ordering
2 a sentence of death, the clerk of the trial court issuing the
3 warrant shall transmit by certified mail to the governor a copy
4 of the indictment, the plea, the verdict and special findings,
5 the affirmation of judgment and sentence by the supreme court,
6 and the complete transcript of the trial court.

7 **2.__(3)** Notwithstanding rule 2.__(1), if a defendant,
8 for whom a warrant of execution is issued, is pregnant, the
9 execution shall not take place until after the defendant
10 is no longer pregnant. Notwithstanding rule 2.__(1), if
11 a defendant, for whom a warrant of execution is issued, is
12 suffering from such a diseased or deranged condition of the
13 mind as to prevent the defendant from knowing the nature
14 and quality of the act the defendant has been convicted of,
15 or from understanding that trial on the offense has taken
16 place and that execution proceedings are about to take place,
17 or to otherwise cause the defendant to lack the capacity
18 to understand the sentence which has been imposed and to
19 participate in any legal proceedings relating to the sentence,
20 the execution shall not take place until after the defendant is
21 no longer suffering from the condition.

22 **Sec. 17. Rule 2.___ Evidence at penalty proceeding where**
23 **death sentence requested.**

24 **2.__(1)** At a reasonable time before the commencement
25 of initial trial proceedings involving a murder, and either
26 kidnapping or sexual abuse, or both, in which a sentence of
27 death has been requested, each party shall file and serve upon
28 the other party the following:

29 *a.* A list of all aggravating or mitigating circumstances
30 which the party intends to prove during the sentencing
31 proceedings.

32 *b.* The names of all persons whom the party intends to call
33 as witnesses during the sentencing proceedings.

34 *c.* Notwithstanding rule 2.14, copies, or for inspection
35 purposes, the location, of all documents, including books,

1 is no jury, makes specific findings and whether the jury
2 believes the defendant should be put to death in a separate
3 penalty proceeding held after the close of the initial trial
4 proceeding. Under the bill, a death sentence could be imposed
5 if the murder would constitute murder in the first degree and
6 the state pleads and proves the defendant committed either
7 kidnaping in the first degree or sexual abuse in the first
8 degree, or both, against the murder victim who was a minor.

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

17 If such a case proceeds to trial and a notice of intent to
18 seek the death penalty has been filed, in addition to any other
19 defenses which may be presented to the charge, the defendant
20 may raise the issue of intellectual disability during the time
21 of filing pretrial motions, and the defendant is entitled to
22 a rebuttable presumption of intellectual disability if the
23 defendant establishes that the defendant has an intelligence
24 quotient of 70 or below.

25 Once the evidence is submitted to the jury, the court
26 will instruct the jury, at the defendant's request, that in
27 considering whether a sentence of death is justified, the
28 race, color, religious beliefs, national origin, or sex of
29 the defendant or of any victim is not to be considered. The
30 supreme court shall collect evidence relating to whether the
31 death sentences imposed are excessive, disproportionate, or
32 imposed under the influence of prejudice at trial which will be
33 available to litigants.

34 The sentence of death is imposed only when the trier of fact
35 (the jury or the court if the defendant has waived the right to

1 a jury trial) unanimously answers two questions affirmatively:
2 (1) whether aggravating circumstances established beyond a
3 reasonable doubt outweigh any mitigating circumstances that
4 may exist; and (2) whether the defendant should be sentenced
5 to death. Mitigating factors the trier of fact may consider
6 include the following: the defendant was under the influence
7 of an extreme mental or emotional disturbance; the age of
8 the defendant; the defendant's ability to appreciate the
9 wrongfulness of the conduct due to mental disease but not
10 to a degree to constitute a defense; the defendant has no
11 significant prior criminal history; the defendant was under
12 extreme duress; the defendant did not directly commit the
13 murder, and either the kidnapping or sexual abuse, or both; and
14 the defendant's character or record or the circumstances of the
15 offense. The sentencing proceeding is conducted separately
16 from the finding of guilt or innocence by the same trier of
17 fact.

18 For the sentencing proceeding, the trier of fact (the jury
19 or the court if the defendant has waived the right to have
20 the jury hear the proceedings) is to weigh any aggravating
21 circumstances established beyond a reasonable doubt by the
22 state against any of the enumerated mitigating circumstances
23 which may be presented by the defendant. Evidence of certain
24 juvenile delinquency adjudications is not admissible in any
25 proceeding to determine the sentence. If the jury fails to
26 agree unanimously on the required affirmative findings, the
27 penalty would be life imprisonment.

28 The death penalty sentence would be reviewed automatically
29 by the supreme court. The supreme court shall review the trial
30 and judgment separately from the sentencing proceeding. If the
31 supreme court finds error in the sentencing proceeding, the
32 supreme court may remand the case back to district court for a
33 new sentencing hearing. The bill requires the supreme court to
34 examine whether the sentence is excessive or disproportionate
35 to penalties in similar cases. If affirmed by the supreme

1 court, the penalty would be accomplished by lethal injection.
2 The bill requires the board of corrections to adopt rules
3 pertaining to executions, including rules pertaining to the
4 witnessing of executions.

5 The bill further provides that in order to receive a sentence
6 of death, the defendant must be at least 18 years of age at
7 the time the offense is committed, must not be mentally ill or
8 intellectually disabled, and must have been a major participant
9 in the commission of the crime or must have shown a manifest
10 indifference to human life.

11 A person who is sentenced to death, but who is pregnant when
12 the warrant of execution is issued, is not to be executed until
13 the person is no longer pregnant. A procedure is also provided
14 to stay execution of a condemned inmate who becomes insane
15 after conviction but before execution.

16 An employee of the state shall not be required to perform or
17 assist in any execution and shall not be discriminated against
18 for refusing to participate.

19 The bill may include a state mandate as defined in Code
20 section 25B.3. The bill makes inapplicable Code section 25B.2,
21 subsection 3, which would relieve a political subdivision from
22 complying with a state mandate if funding for the cost of
23 the state mandate is not provided or specified. Therefore,
24 political subdivisions are required to comply with any state
25 mandate included in the bill.

26 The bill contains severability provisions and takes effect
27 January 1, 2014, and applies only to offenses committed on or
28 after that date.