

House Study Bill 569 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL BY
CHAIRPERSON BAUDLER)

A BILL FOR

1 An Act creating a capital murder offense by establishing
2 the penalty of death for murder in the first degree, and
3 including effective date and applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13B.4, Code 2018, 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 capital murder under section
10 902.15, and the state has given notice of intent to seek the
11 death penalty or in cases in which a sentence of death is to be
12 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 capital murder 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
24 902.1A, 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 court
2 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 capital murder death**
8 **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 901E.1 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 supreme court shall set
32 aside the sentence and shall remand the case to the trial
33 court for a second sentencing proceeding to determine if the
34 imposition of 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 supreme
3 court to the clerk of the trial court.

4 Sec. 5. Section 815.10, Code 2018, is amended by adding the
5 following new subsection:

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

24 Sec. 6. NEW SECTION. 901E.1 Capital murder proceedings —
25 request for death penalty — penalty proceedings.

26 1. As used in this section:

27 a. "*Intellectually disabled*" means the same as defined in
28 section 902.15.

29 b. "*Mentally ill*" or "*mental illness*" means the same as
30 defined in section 902.15.

31 2. If a notice of intent to seek the death penalty has
32 been filed, objections to the imposition of the death penalty
33 based upon allegations that a defendant was intellectually
34 disabled or mentally ill at the time of the commission of
35 the offense shall be raised within the time provided for the

1 filing of pretrial motions under rule of criminal procedure
2 2.11, Iowa court rules. The court may, for good cause shown,
3 allow late filing of the motion. Hearing on the motion shall
4 be held prior to trial and the burden of proof shall be on the
5 defendant to prove intellectual disability or mental illness
6 by a preponderance of the evidence. If the court finds that
7 the defendant is intellectually disabled, the defendant, if
8 convicted of capital murder under section 902.15, shall not be
9 sentenced to death but shall be sentenced to life imprisonment
10 in the manner provided in section 902.1. A finding by the
11 court that the evidence presented by the defendant at the
12 hearing does not preclude the imposition of the death penalty
13 under this section and section 902.15 shall not preclude the
14 introduction of evidence of intellectual disability or mental
15 illness during the penalty proceeding. If the court finds
16 that evidence of intellectual disability or mental illness
17 does not preclude imposition of the death penalty, evidence of
18 intellectual disability or mental illness may be reviewed by
19 the jury in the penalty proceeding and the jury shall not be
20 informed of the finding in the initial proceeding at any time
21 during the penalty proceeding.

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

28 4. If a notice of intent to seek the death penalty has been
29 filed, the trial shall be conducted in bifurcated proceedings
30 before the same trier of fact. During the initial proceeding,
31 the jury, or the court if the defendant waives the right to a
32 jury trial, shall decide only whether the defendant is guilty
33 or not guilty of capital murder 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 capital murder under section 902.15,
2 the court shall sentence the defendant in accordance with the
3 sentencing procedures set forth in rule of criminal procedure
4 2.23, Iowa court rules, and chapters 901 through 909, which are
5 applicable to the offense.

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

14 *c.* If the court or jury finds the defendant guilty of
15 capital murder under section 902.15, or a defendant enters a
16 plea of guilty in the initial proceeding, and the prosecuting
17 attorney does not waive imposition of the death penalty, a
18 penalty proceeding shall be held in the manner provided in
19 subsections 5 through 13.

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

33 *a.* The state or the defendant may present evidence relevant
34 to the conviction of capital murder under section 902.15 and
35 any aggravating circumstances other than juvenile delinquency

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

8 *b.* The defendant may present evidence that the defendant
9 was intellectually disabled or mentally ill at the time of the
10 commission of the offense. The burden of proof shall be on the
11 defendant to prove intellectual disability or mental illness by
12 a preponderance of the evidence.

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

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

19 (2) The age of the defendant at the time of the offense.

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

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

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

29 (6) The defendant did not directly commit the capital murder
30 offense and the defendant did not intend to kill or anticipate
31 that lethal force would be used.

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

34 *d.* The state and the defendant or the defendant's counsel
35 shall be permitted to present and cross-examine witnesses and

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

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

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

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

17 7. A recommendation for a sentence of death shall not be
18 permitted if the recommendation is based on the race, color,
19 religious beliefs, national origin, or sex of the defendant
20 or of any victim, or based on any other protected class under
21 chapter 216. After submission of the issues, but prior to the
22 return of a finding in the penalty proceeding, if the matter
23 is tried before a jury, the court shall instruct the jury
24 that in considering whether a sentence of death is justified,
25 the jury shall not consider race, color, religious beliefs,
26 national origin, or sex of the defendant or of any victim, or
27 consider any other protected class under chapter 216. The
28 court shall further instruct the jury that the jury shall not
29 return a sentence of death unless the jury concludes that such
30 a sentence would be recommended no matter what the race, color,
31 religious beliefs, national origin, sex, or other protected
32 class of the defendant or of any victim may be.

33 8. After submission of the issues, but prior to the
34 commencement of the jury deliberations in the penalty
35 proceeding, the court shall instruct the jury that if the

1 defendant is not sentenced to death, the court is required by
2 law to impose a sentence of imprisonment until death without
3 parole. The court shall further instruct the jury that
4 the sentence of imprisonment until death without parole is
5 required by law if the jury fails to reach a unanimous verdict
6 recommending a sentence of death.

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

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

12 b. Which mitigating circumstances were established and
13 were considered in reaching the verdict returned on the issue
14 specified in subsection 6, paragraph "a".

15 10. If the jury, or the court if there is no jury, returns
16 a unanimous affirmative finding on each of the issues submitted
17 under subsection 6, paragraphs "a" and "b", the court shall
18 enter a judgment of conviction and shall sentence the defendant
19 to death as provided in section 902.1A.

20 11. However, if evidence that the defendant was not a
21 major participant in the commission of the capital murder
22 under section 902.15, and that the defendant's conduct did not
23 manifest a reckless indifference to human life is presented
24 to the jury, or to the court if there is no jury, the jury or
25 the court shall also return a special verdict on the issue.
26 If the jury unanimously determines, or the court if there is
27 no jury, determines that a preponderance of evidence exists
28 that shows that the defendant was not a major participant in
29 the commission of the capital murder under section 902.15,
30 and that the defendant's conduct did not manifest a reckless
31 indifference to human life, the court shall enter a judgment
32 of conviction and shall sentence the defendant to life
33 imprisonment as provided in section 902.1, even if the jury or
34 the court returns unanimous affirmative findings on each of the
35 issues submitted under subsection 6.

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

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

23 Sec. 7. Section 902.1, subsection 1, Code 2018, is amended
24 to read as follows:

25 ~~1. Upon~~ Except as provided in section 902.1A, a plea of
26 guilty, a verdict of guilty, or a special verdict upon which a
27 judgment of conviction of a class "A" felony may be rendered,
28 the court shall enter a judgment of conviction and shall commit
29 the defendant into the custody of the director of the Iowa
30 department of corrections for the rest of the defendant's
31 life. Nothing in the Iowa corrections code pertaining to
32 deferred judgment, deferred sentence, suspended sentence, or
33 reconsideration of sentence applies to a class "A" felony, and
34 a person convicted of a class "A" felony shall not be released
35 on parole unless the governor commutes the sentence to a term

1 of years.

2 Sec. 8. NEW SECTION. 902.1A Capital murder — death
3 penalty.

4 1. For the purposes of this section, "*lethal injection*"
5 means a continuous intravenous injection of a lethal substance
6 sufficient to cause death.

7 2. Notwithstanding section 902.1, upon return of a plea
8 or verdict of guilty to capital murder under section 902.15,
9 and a return of a verdict in favor of a sentence of death in
10 a penalty proceeding conducted as provided in section 901E.1,
11 the court shall enter a judgment of conviction and shall commit
12 the defendant into the custody of the director of the Iowa
13 department of corrections. The sentence shall be carried out
14 by the administration of a lethal injection pursuant to rules
15 adopted by the board of corrections. If a defendant, for whom
16 a warrant of execution is issued, is pregnant, the execution
17 shall not take place until after the defendant is no longer
18 pregnant. If a defendant, for whom a warrant of execution is
19 issued, is suffering from such a diseased or deranged condition
20 of the mind as to prevent the defendant from knowing the nature
21 and quality of the act the defendant has been convicted of,
22 or from understanding that trial on the offense has taken
23 place and that execution proceedings are about to take place,
24 or to otherwise cause the defendant to lack the capacity
25 to understand the sentence which has been imposed and to
26 participate in any legal proceedings relating to the sentence,
27 the execution shall not take place until after the defendant's
28 capacity is restored. If the director of the department of
29 corrections or the defendant's counsel files a request with the
30 court which issued the warrant of execution, alleging that the
31 defendant suffers from such a diseased or deranged condition, a
32 hearing on the matter shall be held in the manner provided in
33 section 812A.1.

34 Sec. 9. NEW SECTION. 902.15 Capital murder.

35 1. As used in this section:

1 *a.* (1) "*Capital murder*" means any murder that makes a
2 person eligible for the death penalty.

3 (2) A person is eligible for the death penalty when a person
4 is convicted of murder in the first degree in violation of
5 section 707.2.

6 *b.* "*Intellectually disabled*" means significant subaverage
7 general intellectual functioning accompanied by significant
8 deficits or impairments in adaptive functioning manifested in
9 the developmental period, but no later than the age of eighteen
10 years, and accompanied by deficits in adaptive behavior.

11 *c.* "*Mentally ill*" means the condition of a person who
12 is suffering from a chronic and persistent serious mental
13 disease or disorder and who, by reason of that condition, lacks
14 sufficient judgment to make responsible decisions regarding
15 treatment and is reasonably likely to injure the person's self
16 or others who may come into contact with the person if the
17 person is allowed to remain at liberty without treatment.

18 2. A person who commits capital murder, who is not
19 intellectually disabled or mentally ill, and who is age
20 eighteen or older at the time of the murder in the first
21 degree, shall be eligible for a sentence of death under section
22 902.1A.

23 Sec. 10. NEW SECTION. 902.16 **Data collection for capital**
24 **murder — death penalty.**

25 1. The supreme court shall collect data on all capital
26 murder charges in which the death penalty is or was not waived,
27 which are filed and processed in the courts in this state.
28 This data may be used by the supreme court to determine whether
29 death sentences imposed are excessive or disproportionate, or
30 under the influence of prejudice under section 814.28. The
31 court shall make this data available to litigants in death
32 penalty cases.

33 2. Data collected by public officials concerning factors
34 relevant to the imposition of the death sentence shall be made
35 publicly available.

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

3 An employee of the state who may lawfully perform, assist, or
4 participate in the execution of a person pursuant to section
5 902.1A, and rules adopted by the department of corrections,
6 shall not be required to perform, assist, or participate in
7 the execution. State employees who refuse to perform, assist,
8 or participate in the execution of a person shall not be
9 discriminated against in any way, including but not limited
10 to employment, promotion, advancement, transfer, licensing,
11 education, training, or the granting of any privileges or
12 appointments because of the refusal to perform, assist, or
13 participate in the execution.

14 Sec. 12. Section 904.105, Code 2018, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
17 pertaining to executions of persons convicted of capital murder
18 under section 902.15. Rules adopted shall include but are not
19 limited to rules permitting the witnessing of executions by
20 members of the public and the victim's family. Invitations
21 to witness an execution shall at least be extended to the
22 following representatives of the news media:

23 *a.* A representative from a wire service serving Iowa.

24 *b.* A representative from a broadcasting network serving
25 Iowa.

26 *c.* A representative from a television station located in
27 Iowa.

28 *d.* A representative from a radio station located in Iowa.

29 *e.* A representative from a daily newspaper published in
30 Iowa.

31 *f.* A representative from a weekly newspaper published in
32 Iowa.

33 *g.* A representative from the news media from the community
34 in which the condemned person resided, if that community is
35 located in Iowa.

1 Sec. 13. IMPLEMENTATION OF ACT. Section 25B.2, subsection
2 3, shall not apply to this Act.

3 Sec. 14. SEVERABILITY. If any provision of this Act or the
4 application thereof to any person is invalid, the invalidity
5 shall not affect the provisions or application of this Act
6 which can be given effect without the invalid provisions or
7 application and to this end, the provisions of this Act are
8 severable.

9 Sec. 15. EFFECTIVE DATE. This Act takes effect January 1,
10 2019.

11 Sec. 16. APPLICABILITY. This Act applies to offenses
12 committed on or after the effective date of this Act.

13 EXPLANATION

14 The inclusion of this explanation does not constitute agreement with
15 the explanation's substance by the members of the general assembly.

16 This bill amends the Iowa criminal code to provide for
17 punishment by death for capital murder committed by a person
18 age 18 or older if the trial jury, or the judge if there
19 is no jury, makes specific findings and whether the jury
20 believes the defendant should be put to death in a separate
21 penalty proceeding held after the close of the initial trial
22 proceeding. Under the bill, a death sentence could be imposed
23 if the murder would constitute murder in the first degree.

24 The bill provides that in order to receive a sentence of
25 death, the defendant must be at least 18 years of age at the
26 time the murder in the first degree was committed, must not be
27 mentally ill or intellectually disabled, and must have been a
28 major participant in the commission of the crime or must have
29 shown a manifest indifference to human life.

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

1 specialized training programs for attorneys representing
2 persons who may be executed.

3 If a capital murder case proceeds to trial and a notice of
4 intent to seek the death penalty has been filed, in addition to
5 any other defenses which may be presented to the charge, the
6 defendant may raise the issue of intellectual disability or
7 mental illness during the time of filing pretrial motions.

8 Once the evidence is submitted to the jury, the court
9 will instruct the jury, at the defendant's request, that in
10 considering whether a sentence of death is justified, the
11 race, color, religious beliefs, national origin, sex, or other
12 protected classes under Code chapter 216 of the defendant or
13 of any victim is not to be considered. The supreme court
14 shall collect evidence relating to whether the death sentences
15 imposed are excessive, disproportionate, or imposed under the
16 influence of prejudice at trial which will be available to
17 litigants.

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

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

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

23 A person who is sentenced to death, but who is pregnant when
24 the warrant of execution is issued, is not to be executed until
25 the person is no longer pregnant. A procedure is also provided
26 to stay execution of a condemned inmate who becomes insane
27 after conviction but before execution.

28 An employee of the state shall not be required to perform or
29 assist in any execution and shall not be discriminated against
30 for refusing to participate.

31 The bill may include a state mandate as defined in Code
32 section 25B.3. The bill makes inapplicable Code section 25B.2,
33 subsection 3, which would relieve a political subdivision from
34 complying with a state mandate if funding for the cost of
35 the state mandate is not provided or specified. Therefore,

1 political subdivisions are required to comply with any state
2 mandate included in the bill.

3 The bill contains severability provisions and takes effect
4 January 1, 2019, and applies only to offenses committed on or
5 after that date.