

Senate File 335 - Introduced

SENATE FILE 335

BY BEHN, ZAUN, CHAPMAN,
GARRETT, CHELGREN, and GUTH

A BILL FOR

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

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

1 Section 1. Section 13B.4, Code 2017, 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 the multiple offense of murder
10 in the first degree, kidnapping, and sexual abuse under section
11 902.15, and the state has given notice of intent to seek the
12 death penalty or in cases in which a sentence of death is to be
13 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
25 902.1B, 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 court
3 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 901D.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 2017, 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 the multiple offense of murder, kidnapping, and sexual abuse
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. 901D.1 **Murder proceedings — request**
26 **for death penalty — penalty proceedings.**

27 1. As used in this section:

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

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

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

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

26 3. If at the trial on a charge of the multiple offense of
27 murder, kidnapping, and sexual abuse under section 902.15, the
28 state intends to request that the death penalty be imposed
29 under section 902.1B, the prosecutor shall file a notice of
30 intent to seek the death penalty, at the time of and as part of
31 the information or indictment filed in the case.

32 4. If a notice of intent to seek the death penalty has been
33 filed, the trial shall be conducted in bifurcated proceedings
34 before the same trier of fact. During the initial proceeding,
35 the jury, or the court if the defendant waives the right to a

1 jury trial, shall decide only whether the defendant is guilty
2 or not guilty of the multiple offense of murder, kidnapping,
3 and sexual abuse under section 902.15.

4 *a.* If, in the initial proceeding, the court or jury finds
5 the defendant guilty of, or the defendant pleads guilty to, an
6 offense other than the multiple offense of murder, kidnapping,
7 and sexual abuse under section 902.15, the court shall sentence
8 the defendant in accordance with the sentencing procedures set
9 forth in rule of criminal procedure 2.23, Iowa court rules, and
10 chapters 901 through 909, which are applicable to the offense.

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

20 *c.* If the court or jury finds the defendant guilty of the
21 multiple offense of murder, kidnapping, and sexual abuse under
22 section 902.15, or a defendant enters a plea of guilty in the
23 initial proceeding, and the prosecuting attorney does not waive
24 imposition of the death penalty, a penalty proceeding shall be
25 held in the manner provided in subsections 5 through 13.

26 5. No sooner than twenty-four hours after a verdict of
27 guilty or a plea of guilty to the multiple offense of murder,
28 kidnapping, and sexual abuse under section 902.15 is returned
29 in the initial proceeding, a penalty proceeding shall be held
30 to determine whether the defendant shall be sentenced to death
31 or to life imprisonment. The proceeding shall be conducted
32 in the trial court before the trial jury, or the court if the
33 defendant has waived the right to a jury trial or has waived
34 the right for the proceeding to be before the trial jury. Both
35 the state and the defendant shall have the right to present

1 opening statements at the commencement of the proceeding. In
2 the proceeding, evidence relevant to the existence of any
3 aggravating or mitigating circumstances may be presented as
4 follows:

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

16 *b.* The defendant may present evidence that the defendant
17 was intellectually disabled or mentally ill at the time of the
18 commission of the offense. The burden of proof shall be on the
19 defendant to prove intellectual disability or mental illness
20 by a preponderance of the evidence. However, a rebuttable
21 presumption of intellectual disability arises if a defendant
22 has an intelligence quotient of seventy-five or below.

23 *c.* The state or the defendant may present evidence relevant
24 to any mitigating circumstances which may exist. Mitigating
25 circumstances may include the following circumstances:

26 (1) The defendant was under the influence of an extreme
27 mental or emotional disturbance insufficient to constitute a
28 defense.

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

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

35 (4) The defendant has no significant history of prior adult

1 criminal activity.

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

4 (6) The defendant did not directly commit the multiple
5 offense of murder, kidnapping, and sexual abuse and the
6 defendant did not intend to kill or anticipate that lethal
7 force would be used.

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

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

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

24 *a.* Whether the aggravating circumstance or circumstances
25 have been established beyond a reasonable doubt and outweigh
26 any one or more mitigating circumstances.

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

28 7. A recommendation for a sentence of death shall not be
29 permitted if the recommendation is based on the race, color,
30 religious beliefs, national origin, or sex of the defendant
31 or of any victim, or based on any other protected class under
32 chapter 216. After submission of the issues, but prior to the
33 return of a finding in the penalty proceeding, if the matter
34 is tried before a jury, the court shall instruct the jury
35 that in considering whether a sentence of death is justified,

1 the jury shall not consider race, color, religious beliefs,
2 national origin, or sex of the defendant or of any victim, or
3 consider any other protected class under chapter 216. The
4 court shall further instruct the jury that the jury shall not
5 return a sentence of death unless the jury concludes that such
6 a sentence would be recommended no matter what the race, color,
7 religious beliefs, national origin, sex, or other protected
8 class of the defendant or of any victim may be.

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

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

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

23 b. Which mitigating circumstances were established and
24 were considered in reaching the verdict returned on the issue
25 specified in subsection 6, paragraph "a".

26 10. If the jury, or the court if there is no jury, returns
27 a unanimous affirmative finding on each of the issues submitted
28 under subsection 6, paragraphs "a" and "b", the court shall
29 enter a judgment of conviction and shall sentence the defendant
30 to death as provided in section 902.1B.

31 11. However, if evidence that the defendant was not a
32 major participant in the commission of the multiple offense
33 of murder, kidnapping, and sexual abuse under section 902.15,
34 and that the defendant's conduct did not manifest a reckless
35 indifference to human life is presented to the jury, or the

1 court if there is no jury, the jury or the court shall also
2 return a special verdict on the issue. If the jury unanimously
3 determines, or the court if there is no jury, finds that a
4 preponderance of evidence exists that shows that the defendant
5 was not a major participant in the commission of the multiple
6 offense of murder, kidnapping, and sexual abuse under section
7 902.15, and that the defendant's conduct did not manifest a
8 reckless indifference to human life, the court shall enter a
9 judgment of conviction and shall sentence the defendant to life
10 imprisonment as provided in section 902.1, even if the jury or
11 the court returns unanimous affirmative findings on each of the
12 issues submitted under subsection 6.

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

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

35 Sec. 7. Section 902.1, subsection 1, Code 2017, is amended

1 to read as follows:

2 ~~1.—Upon~~ Except as provided in section 902.1A or 902.1B, a
3 plea of guilty, a verdict of guilty, or a special verdict upon
4 which a judgment of conviction of a class "A" felony may be
5 rendered, the court shall enter a judgment of conviction and
6 shall commit the defendant into the custody of the director
7 of the Iowa department of corrections for the rest of the
8 defendant's life. Nothing in the Iowa corrections code
9 pertaining to deferred judgment, deferred sentence, suspended
10 sentence, or reconsideration of sentence applies to a class "A"
11 felony, and a person convicted of a class "A" felony shall not
12 be released on parole unless the governor commutes the sentence
13 to a term of years.

14 Sec. 8. Section 902.1, subsections 2, 3, and 4, Code 2017,
15 are amended by striking the subsections.

16 Sec. 9. NEW SECTION. **902.1A Class "A" felony sentencing —**
17 **juveniles.**

18 1. *a.* Notwithstanding section 902.1, a defendant convicted
19 of murder in the first degree in violation of section 707.2,
20 and who was under the age of eighteen at the time the offense
21 was committed shall receive one of the following sentences:

22 (1) Commitment to the custody of the director of the
23 department of corrections for the rest of the defendant's life
24 with no possibility of parole unless the governor commutes the
25 sentence to a term of years.

26 (2) Commitment to the custody of the director of the
27 department of corrections for the rest of the defendant's life
28 with the possibility of parole after serving a minimum term of
29 confinement as determined by the court.

30 (3) Commitment to the custody of the director of the
31 department of corrections for the rest of the defendant's life
32 with the possibility of parole.

33 *b.* (1) The prosecuting attorney shall provide reasonable
34 notice to the defendant, after conviction and prior to
35 sentencing, of the state's intention to seek a life sentence

1 with no possibility of parole under paragraph "a", subparagraph
2 (1).

3 (2) In determining which sentence to impose, the court shall
4 consider all circumstances including but not limited to the
5 following:

6 (a) The impact of the offense on each victim, as defined in
7 section 915.10, through the use of a victim impact statement,
8 as defined in section 915.10, under any format permitted by
9 section 915.13. The victim impact statement may include
10 comment on the sentence of the defendant.

11 (b) The impact of the offense on the community.

12 (c) The threat to the safety of the public or any individual
13 posed by the defendant.

14 (d) The degree of participation in the murder by the
15 defendant.

16 (e) The nature of the offense.

17 (f) The defendant's remorse.

18 (g) The defendant's acceptance of responsibility.

19 (h) The severity of the offense, including any of the
20 following:

21 (i) The commission of the murder while participating in
22 another felony.

23 (ii) The number of victims.

24 (iii) The heinous, brutal, cruel manner of the murder,
25 including whether the murder was the result of torture.

26 (i) The capacity of the defendant to appreciate the
27 criminality of the conduct.

28 (j) Whether the ability to conform the defendant's conduct
29 with the requirements of the law was substantially impaired.

30 (k) The level of maturity of the defendant.

31 (l) The intellectual and mental capacity of the defendant.

32 (m) The nature and extent of any prior juvenile delinquency
33 or criminal history of the defendant, including the success or
34 failure of previous attempts at rehabilitation.

35 (n) The mental health history of the defendant.

1 (o) The level of compulsion, duress, or influence exerted
2 upon the defendant, but not to such an extent as to constitute
3 a defense.

4 (p) The likelihood of the commission of further offenses by
5 the defendant.

6 (q) The chronological age of the defendant and the features
7 of youth, including immaturity, impetuosity, and failure to
8 appreciate risks and consequences.

9 (r) The family and home environment that surrounded the
10 defendant.

11 (s) The circumstances of the murder including the extent
12 of the defendant's participation in the conduct and the way
13 familial and peer pressure may have affected the defendant.

14 (t) The competencies associated with youth, including but
15 not limited to the defendant's inability to deal with peace
16 officers or the prosecution or the defendant's incapacity to
17 assist the defendant's attorney in the defendant's defense.

18 (u) The possibility of rehabilitation.

19 (v) Any other information considered relevant by the
20 sentencing court.

21 2. a. Notwithstanding subsection 1 and section 902.1, a
22 defendant convicted of a class "A" felony, other than murder
23 in the first degree in violation of section 707.2, and who was
24 under the age of eighteen at the time the offense was committed
25 shall receive one of the following sentences:

26 (1) Commitment to the custody of the director of the
27 department of corrections for the rest of the defendant's life
28 with the possibility of parole after serving a minimum term of
29 confinement as determined by the court.

30 (2) Commitment to the custody of the director of the
31 department of corrections for the rest of the defendant's life
32 with the possibility of parole.

33 b. In determining which sentence to impose, the court shall
34 consider all circumstances including but not limited to the
35 following:

- 1 (1) The impact of the offense on each victim, as defined in
2 section 915.10, through the use of a victim impact statement,
3 as defined in section 915.10, under any format permitted by
4 section 915.13. The victim impact statement may include
5 comment on the sentence of the defendant.
- 6 (2) The impact of the offense on the community.
- 7 (3) The threat to the safety of the public or any individual
8 posed by the defendant.
- 9 (4) The degree of participation in the offense by the
10 defendant.
- 11 (5) The nature of the offense.
- 12 (6) The defendant's remorse.
- 13 (7) The defendant's acceptance of responsibility.
- 14 (8) The severity of the offense, including any of the
15 following:
 - 16 (a) The commission of the offense while participating in
17 another felony.
 - 18 (b) The number of victims.
 - 19 (c) The heinous, brutal, cruel manner of the offense,
20 including whether the offense involved torture.
- 21 (9) The capacity of the defendant to appreciate the
22 criminality of the conduct.
- 23 (10) Whether the ability to conform the defendant's conduct
24 with the requirements of the law was substantially impaired.
- 25 (11) The level of maturity of the defendant.
- 26 (12) The intellectual and mental capacity of the defendant.
- 27 (13) The nature and extent of any prior juvenile delinquency
28 or criminal history of the defendant, including the success or
29 failure of previous attempts at rehabilitation.
- 30 (14) The mental health history of the defendant.
- 31 (15) The level of compulsion, duress, or influence exerted
32 upon the defendant, but not to such an extent as to constitute
33 a defense.
- 34 (16) The likelihood of the commission of further offenses
35 by the defendant.

1 (17) The chronological age of the defendant and the features
2 of youth, including immaturity, impetuosity, and failure to
3 appreciate risks and consequences.

4 (18) The family and home environment that surrounded the
5 defendant.

6 (19) The circumstances of the offense including the extent
7 of the defendant's participation in the conduct and the way the
8 familial and peer pressure may have affected the defendant.

9 (20) The competencies associated with youth, including but
10 not limited to the defendant's inability to deal with peace
11 officers or the prosecution or the defendant's incapacity to
12 assist the defendant's attorney in the defendant's defense.

13 (21) The possibility of rehabilitation.

14 (22) Any other information considered relevant by the
15 sentencing court.

16 3. If a defendant is paroled pursuant to subsection 1 or 2,
17 the defendant shall be subject to the same set of procedures
18 set out in chapters 901B, 905, 906, and 908, and rules adopted
19 under those chapters for persons on parole.

20 Sec. 10. NEW SECTION. 902.1B Class "A" felony — death
21 penalty.

22 Notwithstanding section 902.1, upon return of a plea or
23 verdict of guilty to the multiple offense of murder in the
24 first degree, kidnapping, and sexual abuse under section
25 902.15, and a return of a verdict in favor of a sentence of
26 death in a penalty proceeding conducted as provided in section
27 901D.1, the court shall enter a judgment of conviction and
28 shall commit the defendant into the custody of the director
29 of the Iowa department of corrections. The sentence shall
30 be carried out by the administration of a lethal injection
31 pursuant to rules adopted by the board of corrections. If
32 a defendant, for whom a warrant of execution is issued, is
33 pregnant, the execution shall not take place until after the
34 defendant is no longer pregnant. If a defendant, for whom
35 a warrant of execution is issued, is suffering from such a

1 diseased or deranged condition of the mind as to prevent the
2 defendant from knowing the nature and quality of the act
3 the defendant has been convicted of, or from understanding
4 that trial on the offense has taken place and that execution
5 proceedings are about to take place, or otherwise causes the
6 defendant to lack the capacity to understand the sentence which
7 has been imposed and to participate in any legal proceedings
8 relating to the sentence, the execution shall not take place
9 until after the defendant's capacity is restored. If the
10 director of the department of corrections or the defendant's
11 counsel files a request with the court which issued the warrant
12 of execution, alleging that the defendant suffers from such a
13 diseased or deranged condition, a hearing on the matter shall
14 be held in the manner provided in section 812A.1. For the
15 purposes of this section, "*lethal injection*" means a continuous
16 intravenous injection of a lethal substance sufficient to cause
17 death.

18 Sec. 11. NEW SECTION. 902.15 **Commission of the multiple**
19 **offense of first degree murder, kidnapping, and sexual abuse.**

20 A person who commits the multiple offense of murder in the
21 first degree, kidnapping, and sexual abuse with respect to the
22 same victim, who is not intellectually disabled or mentally
23 ill, and who is age eighteen or older at the time the offense
24 is committed, shall be eligible for a sentence of death under
25 section 902.1B, if the victim was a minor.

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

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

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

5 Sec. 12. NEW SECTION. 902.16 Data collection for death
6 penalty.

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

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

18 Sec. 13. NEW SECTION. 903C.1 Executions — refusal to
19 perform.

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

31 Sec. 14. Section 904.105, Code 2017, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
34 pertaining to executions of persons convicted of the multiple
35 offense of murder, kidnapping, and sexual abuse under section

1 902.15. Rules adopted shall include but are not limited to
2 rules permitting the witnessing of executions by members of
3 the public and the victim's family. Invitations to witness
4 an execution shall at least be extended to the following
5 representatives of the news media:

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

7 b. A representative from a broadcasting network serving
8 Iowa.

9 c. A representative from a television station located in
10 Iowa.

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

12 e. A representative from a daily newspaper published in
13 Iowa.

14 f. A representative from a weekly newspaper published in
15 Iowa.

16 g. A representative from the news media from the community
17 in which the condemned person resided, if that community is
18 located in Iowa.

19 Sec. 15. IMPLEMENTATION OF ACT. Section 25B.2, subsection
20 3, shall not apply to this Act.

21 Sec. 16. SEVERABILITY. If any provision of this Act or the
22 application thereof to any person is invalid, the invalidity
23 shall not affect the provisions or application of this Act
24 which can be given effect without the invalid provisions or
25 application and to this end, the provisions of this Act are
26 severable.

27 Sec. 17. EFFECTIVE DATE. This Act takes effect January 1,
28 2018.

29 Sec. 18. APPLICABILITY. This Act applies to offenses
30 committed on or after the effective date of this Act.

31 EXPLANATION

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

34 This bill amends the Iowa criminal code to provide for
35 punishment by death for the multiple offense of murder in the

1 first degree, kidnapping, and sexual abuse committed by a
2 person age 18 or older with respect to the same victim who is a
3 minor if the trial jury, or the judge if there is no jury, makes
4 specific findings and whether the jury believes the defendant
5 should be put to death in a separate penalty proceeding held
6 after the close of the initial trial proceeding. Under the
7 bill, a death sentence could be imposed if the murder would
8 constitute murder in the first degree and the state pleads and
9 proves the defendant also kidnapped and committed sexual abuse
10 against the murder victim who was a minor.

11 The bill provides that in order to receive a sentence of
12 death, the defendant must be at least 18 years of age at the
13 time the offense is committed, must not be mentally ill or
14 intellectually disabled, and must have been a major participant
15 in the commission of the crime or must have shown a manifest
16 indifference to human life.

17 If a person is indigent and is charged with capital murder,
18 payment of costs for two attorneys is authorized. The supreme
19 court is required to establish standards for the competency of
20 counsel in death penalty cases. The state public defender is
21 charged with establishing teams of qualified lead and cocounsel
22 for death penalty cases, as well as conducting or sponsoring
23 specialized training programs for attorneys representing
24 persons who may be executed.

25 If such a case proceeds to trial and a notice of intent
26 to seek the death penalty has been filed, in addition to
27 any other defenses which may be presented to the charge, the
28 defendant may raise the issue of intellectual disability or
29 mental illness during the time of filing pretrial motions,
30 and the defendant is entitled to a rebuttable presumption of
31 intellectual disability if the defendant establishes that the
32 defendant has an intelligence quotient of 75 or below.

33 Once the evidence is submitted to the jury, the court
34 will instruct the jury, at the defendant's request, that in
35 considering whether a sentence of death is justified, the

1 race, color, religious beliefs, national origin, sex, or other
2 protected classes under Code chapter 216 of the defendant or
3 of any victim is not to be considered. The supreme court
4 shall collect evidence relating to whether the death sentences
5 imposed are excessive, disproportionate, or imposed under the
6 influence of prejudice at trial which will be available to
7 litigants.

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

26 For the sentencing proceeding, the trier of fact (the jury
27 or the court if the defendant has waived the right to have
28 the jury hear the proceedings) is to weigh any aggravating
29 circumstances established beyond a reasonable doubt by the
30 state against any of the enumerated mitigating circumstances
31 which may be presented by the defendant. Evidence of certain
32 juvenile delinquency adjudications is not admissible in any
33 proceeding to determine the sentence. If the jury fails to
34 agree unanimously on the required affirmative findings, the
35 penalty imposed would be life imprisonment.

1 The death penalty sentence would be reviewed automatically
2 by the supreme court. The supreme court shall review the trial
3 and judgment separately from the sentencing proceeding. If the
4 supreme court finds error in the sentencing proceeding, the
5 supreme court may remand the case back to district court for a
6 new sentencing hearing. The bill requires the supreme court to
7 examine whether the sentence is excessive or disproportionate
8 to penalties in similar cases. If affirmed by the supreme
9 court, the penalty would be accomplished by lethal injection.
10 The bill requires the board of corrections to adopt rules
11 pertaining to executions, including rules pertaining to the
12 witnessing of executions.

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

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

21 The bill strikes provisions in Code section 902.1(2), (3),
22 and (4) relating to juvenile class "A" felons and reinserts the
23 provisions unchanged in newly created Code section 902.1B in
24 the bill. Juvenile felons are not subject to imposition of a
25 sentence of death.

26 The bill may include a state mandate as defined in Code
27 section 25B.3. The bill makes inapplicable Code section 25B.2,
28 subsection 3, which would relieve a political subdivision from
29 complying with a state mandate if funding for the cost of
30 the state mandate is not provided or specified. Therefore,
31 political subdivisions are required to comply with any state
32 mandate included in the bill.

33 The bill contains severability provisions and takes effect
34 January 1, 2018, and applies only to applicable offenses
35 committed on or after that date.