

**Senate File 336 - Introduced**

SENATE FILE 336

BY BERTRAND

**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 and sexual  
3 abuse against the same person, providing penalties, and  
4 including effective date and applicability provisions.

5 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 and sexual abuse under section 902.15, and  
11 the state has given notice of intent to seek the death penalty  
12 or in cases in which a sentence of death is to be imposed.

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

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

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

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

23 1. At any time prior to execution of an inmate under section  
24 902.1B, 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 death sentence.**

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

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

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

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

24 b. Whether the special verdicts returned under section  
25 901D.1 are supported by the evidence.

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

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

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

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

3 Sec. 5. Section 815.10, Code 2017, is amended by adding the  
4 following new subsection:

5 NEW SUBSECTION. 1A. If two attorneys have not already  
6 been appointed pursuant to section 13B.4 or 13B.9, the court  
7 shall appoint, for each indigent person who is charged with  
8 the multiple offense of murder and sexual abuse under section  
9 902.15, and in which a notice of intent to seek the death  
10 penalty has been filed, two attorneys who are qualified under  
11 section 602.10112 to represent the person in the proceedings  
12 and in all state legal proceedings which take place from the  
13 time the person is indicted or arraigned until the person  
14 is sentenced on the charge. In addition, if at any point  
15 in federal postconviction proceedings an indigent person  
16 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. 901D.1 **Murder proceedings — request**  
25 **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. However, a rebuttable  
7 presumption of intellectual disability arises if a defendant  
8 has an intelligence quotient of seventy-five or below. If the  
9 court finds that the defendant is intellectually disabled,  
10 the defendant, if convicted of the multiple offense of murder  
11 and sexual abuse under section 902.15, shall not be sentenced  
12 to death but shall be sentenced to life imprisonment in the  
13 manner provided in section 902.1. A finding by the court that  
14 the evidence presented by the defendant at the hearing does  
15 not preclude the imposition of the death penalty under this  
16 section and section 902.15 shall not preclude the introduction  
17 of evidence of intellectual disability or mental illness during  
18 the penalty proceeding. If the court finds that evidence of  
19 intellectual disability or mental illness does not preclude  
20 imposition of the death penalty, evidence of intellectual  
21 disability or mental illness may be reviewed by the jury in  
22 the penalty proceeding and the jury shall not be informed of  
23 the finding in the initial proceeding at any time during the  
24 penalty proceeding.

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

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

1 or not guilty of the multiple offense of murder and sexual  
2 abuse under section 902.15.

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

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

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

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

1 the proceeding, evidence relevant to the existence of any  
2 aggravating or mitigating circumstances may be presented as  
3 follows:

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

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

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

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

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

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

34         (4) The defendant has no significant history of prior adult  
35 criminal activity.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 11. However, if evidence that the defendant was not a  
30 major participant in the commission of the multiple offense  
31 of murder and sexual abuse under section 902.15, and that the  
32 defendant's conduct did not manifest a reckless indifference  
33 to human life is presented to the jury, or the court if there  
34 is no jury, the jury or the court shall also return a special  
35 verdict on the issue. If the jury unanimously determines, or

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

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

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

33 Sec. 7. Section 902.1, subsection 1, Code 2017, is amended  
34 to read as follows:

35 ~~1. Upon~~ Except as provided in section 902.1A or 902.1B, a

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

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

14 Sec. 9. NEW SECTION. 902.1A Class "A" felony sentencing —  
15 juveniles.

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

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

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

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

31 b. (1) The prosecuting attorney shall provide reasonable  
32 notice to the defendant, after conviction and prior to  
33 sentencing, of the state's intention to seek a life sentence  
34 with no possibility of parole under paragraph "a", subparagraph  
35 (1).

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

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

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

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

12 (d) The degree of participation in the murder by the  
13 defendant.

14 (e) The nature of the offense.

15 (f) The defendant's remorse.

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

17 (h) The severity of the offense, including any of the  
18 following:

19 (i) The commission of the murder while participating in  
20 another felony.

21 (ii) The number of victims.

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

24 (i) The capacity of the defendant to appreciate the  
25 criminality of the conduct.

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

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

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

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

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

34 (o) The level of compulsion, duress, or influence exerted  
35 upon the defendant, but not to such an extent as to constitute

1 a defense.

2 (p) The likelihood of the commission of further offenses by  
3 the defendant.

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

7 (r) The family and home environment that surrounded the  
8 defendant.

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

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

16 (u) The possibility of rehabilitation.

17 (v) Any other information considered relevant by the  
18 sentencing court.

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

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

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

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

34 (1) The impact of the offense on each victim, as defined in  
35 section 915.10, through the use of a victim impact statement,

1 as defined in section 915.10, under any format permitted by  
2 section 915.13. The victim impact statement may include  
3 comment on the sentence of the defendant.

4 (2) The impact of the offense on the community.

5 (3) The threat to the safety of the public or any individual  
6 posed by the defendant.

7 (4) The degree of participation in the offense by the  
8 defendant.

9 (5) The nature of the offense.

10 (6) The defendant's remorse.

11 (7) The defendant's acceptance of responsibility.

12 (8) The severity of the offense, including any of the  
13 following:

14 (a) The commission of the offense while participating in  
15 another felony.

16 (b) The number of victims.

17 (c) The heinous, brutal, cruel manner of the offense,  
18 including whether the offense involved torture.

19 (9) The capacity of the defendant to appreciate the  
20 criminality of the conduct.

21 (10) Whether the ability to conform the defendant's conduct  
22 with the requirements of the law was substantially impaired.

23 (11) The level of maturity of the defendant.

24 (12) The intellectual and mental capacity of the defendant.

25 (13) The nature and extent of any prior juvenile delinquency  
26 or criminal history of the defendant, including the success or  
27 failure of previous attempts at rehabilitation.

28 (14) The mental health history of the defendant.

29 (15) The level of compulsion, duress, or influence exerted  
30 upon the defendant, but not to such an extent as to constitute  
31 a defense.

32 (16) The likelihood of the commission of further offenses  
33 by the defendant.

34 (17) The chronological age of the defendant and the features  
35 of youth, including immaturity, impetuosity, and failure to

1 appreciate risks and consequences.

2 (18) The family and home environment that surrounded the  
3 defendant.

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

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

11 (21) The possibility of rehabilitation.

12 (22) Any other information considered relevant by the  
13 sentencing court.

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

18 Sec. 10. NEW SECTION. **902.1B Class "A" felony — death**  
19 **penalty.**

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



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

15 Sec. 11. NEW SECTION. 902.15 **Commission of the multiple**  
16 **offense of first degree murder and sexual abuse.**

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

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

28 For purposes of this section, "*mentally ill*" means the  
29 condition of a person who is suffering from a chronic and  
30 persistent serious mental disease or disorder and who, by  
31 reason of that condition, lacks sufficient judgment to make  
32 responsible decisions regarding treatment and is reasonably  
33 likely to injure the person's self or others who may come into  
34 contact with the person if the person is allowed to remain at  
35 liberty without treatment.

1     Sec. 12. NEW SECTION. 902.16 Data collection for death  
2 penalty.

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

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

14    Sec. 13. NEW SECTION. 903C.1 Executions — refusal to  
15 perform.

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

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

29    NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A  
30 pertaining to executions of persons convicted of the multiple  
31 offense of murder and sexual abuse under section 902.15. Rules  
32 adopted shall include but are not limited to rules permitting  
33 the witnessing of executions by members of the public and the  
34 victim's family. Invitations to witness an execution shall at  
35 least be extended to the following representatives of the news

1 media:

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

3 b. A representative from a broadcasting network serving  
4 Iowa.

5 c. A representative from a television station located in  
6 Iowa.

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

8 e. A representative from a daily newspaper published in  
9 Iowa.

10 f. A representative from a weekly newspaper published in  
11 Iowa.

12 g. A representative from the news media from the community  
13 in which the condemned person resided, if that community is  
14 located in Iowa.

15 Sec. 15. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
16 3, shall not apply to this Act.

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

23 Sec. 17. EFFECTIVE DATE. This Act takes effect January 1,  
24 2018.

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

27 EXPLANATION

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

30 This bill amends the Iowa criminal code to provide for  
31 punishment by death for the multiple offense of murder in the  
32 first degree and sexual abuse committed by a person age 18 or  
33 older with respect to the same victim if the trial jury, or  
34 the judge if there is no jury, makes specific findings and  
35 whether the jury believes the defendant should be put to death

1 in a separate penalty proceeding held after the close of the  
2 initial trial proceeding. Under the bill, a death sentence  
3 could be imposed if the murder would constitute murder in the  
4 first degree and the state pleads and proves the defendant also  
5 committed sexual abuse against the murder victim.

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

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

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

28 Once the evidence is submitted to the jury, the court  
29 will instruct the jury, at the defendant's request, that in  
30 considering whether a sentence of death is justified, the  
31 race, color, religious beliefs, national origin, sex, or other  
32 protected classes under Code chapter 216 of the defendant or  
33 of any victim is not to be considered. The supreme court  
34 shall collect evidence relating to whether the death sentences  
35 imposed are excessive, disproportionate, or imposed under the

1 influence of prejudice at trial which will be available to  
2 litigants.

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

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

31 The death penalty sentence would be reviewed automatically  
32 by the supreme court. The supreme court shall review the trial  
33 and judgment separately from the sentencing proceeding. If the  
34 supreme court finds error in the sentencing proceeding, the  
35 supreme court may remand the case back to district court for a

1 new sentencing hearing. The bill requires the supreme court to  
2 examine whether the sentence is excessive or disproportionate  
3 to penalties in similar cases. If affirmed by the supreme  
4 court, the penalty would be accomplished by lethal injection.  
5 The bill requires the board of corrections to adopt rules  
6 pertaining to executions, including rules pertaining to the  
7 witnessing of executions.

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

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

16 The bill strikes provisions in Code section 902.1(2), (3),  
17 and (4) relating to juvenile class "A" felons and reinserts the  
18 provisions unchanged in newly created Code section 902.1B in  
19 the bill. Juvenile felons are not subject to imposition of a  
20 sentence of death.

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

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