

**Senate Study Bill 3042 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON ZAUN)

**A BILL FOR**

1 An Act creating a capital murder offense by establishing the  
2 penalty of death for murder in the first degree of a peace  
3 officer, and including effective date and applicability  
4 provisions.

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

1 Section 1. Section 13.2, subsection 1, Code 2018, is amended  
2 by adding the following new paragraph:

3 NEW PARAGRAPH. *0c.* Prosecute and defend all actions and  
4 proceedings involving capital murder as defined in section  
5 902.15, when in the attorney general's judgment, the interest  
6 of the state requires the attorney general to intervene on  
7 behalf of the county attorney, or upon request by the county  
8 attorney.

9 Sec. 2. Section 13B.4, Code 2018, is amended by adding the  
10 following new subsection:

11 NEW SUBSECTION. 6A. The state public defender shall perform  
12 all of the following duties with respect to the appointment of  
13 counsel for indigent persons in cases in which a sentence of  
14 death may be or is to be imposed:

15 *a.* Provide or contract with attorneys for appointment as  
16 lead counsel and co-counsel to provide legal services in cases  
17 where a person is charged with capital murder under section  
18 902.15, and the state has given notice of intent to seek the  
19 death penalty or in cases in which a sentence of death is to be  
20 imposed.

21 *b.* Conduct or sponsor specialized training programs for  
22 attorneys representing persons who may be executed.

23 Sec. 3. NEW SECTION. **602.10112 Qualifications of counsel**  
24 **in capital murder cases.**

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

29 Sec. 4. NEW SECTION. **812A.1 Procedure to determine sanity**  
30 **of condemned inmate.**

31 1. At any time prior to execution of an inmate under section  
32 902.1A, if the director of the department of corrections or  
33 the counsel for a person who is under a sentence of execution  
34 has cause to believe that the inmate is suffering from such  
35 a diseased or deranged condition of the mind as to prevent

1 the defendant from knowing the nature and quality of the act  
2 the defendant has been convicted of, or from understanding  
3 that trial on the offense has taken place and that execution  
4 proceedings are about to take place, or to otherwise cause the  
5 defendant to lack the capacity to understand the sentence which  
6 has been imposed and to participate in any legal proceedings  
7 relating to the sentence, the director or counsel may file a  
8 request with the court that issued the warrant for execution  
9 for a determination of the inmate's sanity. If the court  
10 determines that there is not sufficient reason to believe  
11 that the inmate is insane, the court shall enter an order  
12 denying the request and shall state the grounds for denying the  
13 request. If the court believes that there is sufficient reason  
14 to believe that the inmate is insane, the court shall suspend  
15 the execution and conduct a hearing to determine the sanity of  
16 the inmate.

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

33 3. If, at the conclusion of a hearing held pursuant to  
34 this section, the court determines that the inmate is sane,  
35 the court shall enter an order setting a date for the inmate's

1 execution, which shall be carried into effect in the same  
2 manner as provided in the original sentence. A copy of the  
3 order shall be sent to the director of the department of  
4 corrections and the governor.

5 4. If, at the conclusion of a hearing held pursuant to this  
6 section, the court determines that the inmate is insane, the  
7 court shall suspend the execution until further order. At any  
8 time after issuance of the order, if the court has sufficient  
9 reason to believe that the inmate has become sane, the court  
10 shall again determine the sanity of the inmate as provided  
11 by this section. Proceedings pursuant to this section may  
12 continue to be held at such times as the court orders until  
13 it is either determined that the inmate is sane or incurably  
14 insane.

15 Sec. 5. NEW SECTION. 814.28 **Review of capital murder death**  
16 **sentence.**

17 1. In a case in which a sentence of death is imposed, the  
18 supreme court shall automatically review the judgment and  
19 sentence. The court's review of the case shall be de novo. The  
20 case shall not be transferred to the court of appeals.

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

24 3. The supreme court shall review the trial and judgment,  
25 and shall separately review the sentencing proceeding. Upon  
26 determining that errors did not occur at the trial requiring  
27 reversal or modification of the judgment, the supreme court  
28 shall proceed to determine if the sentence of death is lawfully  
29 imposed. In its review of the sentencing proceeding, the  
30 supreme court shall determine all of the following:

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

33 b. Whether the special verdicts returned under section  
34 901E.1 are supported by the evidence.

35 c. Whether the sentence of death is excessive or

1 disproportionate to the penalty imposed in similar cases,  
2 considering both the crime and the defendant.

3 4. If the supreme court determines that the sentence of  
4 death was not lawfully imposed, the supreme court shall set  
5 aside the sentence and shall remand the case to the trial  
6 court for a second sentencing proceeding to determine if the  
7 imposition of death is warranted.

8 5. If the supreme court affirms the judgment and sentence  
9 of death, the clerk of the supreme court shall certify the  
10 judgment of the supreme court under the seal of the supreme  
11 court to the clerk of the trial court.

12 Sec. 6. Section 815.10, Code 2018, is amended by adding the  
13 following new subsection:

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

32 Sec. 7. NEW SECTION. 901E.1 Capital murder proceedings —  
33 request for death penalty — penalty proceedings.

34 1. As used in this section:

35 a. "*Intellectually disabled*" means the same as defined in

1 section 902.15.

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

4     2. If a notice of intent to seek the death penalty has  
5 been filed, objections to the imposition of the death penalty  
6 based upon allegations that a defendant was intellectually  
7 disabled or mentally ill at the time of the commission of  
8 the offense shall be raised within the time provided for the  
9 filing of pretrial motions under rule of criminal procedure  
10 2.11, Iowa court rules. The court may, for good cause shown,  
11 allow late filing of the motion. Hearing on the motion shall  
12 be held prior to trial and the burden of proof shall be on the  
13 defendant to prove intellectual disability or mental illness  
14 by a preponderance of the evidence. If the court finds that  
15 the defendant is intellectually disabled, the defendant, if  
16 convicted of capital murder under section 902.15, shall not be  
17 sentenced to death but shall be sentenced to life imprisonment  
18 in the manner provided in section 902.1. A finding by the  
19 court that the evidence presented by the defendant at the  
20 hearing does not preclude the imposition of the death penalty  
21 under this section and section 902.15 shall not preclude the  
22 introduction of evidence of intellectual disability or mental  
23 illness during the penalty proceeding. If the court finds  
24 that evidence of intellectual disability or mental illness  
25 does not preclude imposition of the death penalty, evidence of  
26 intellectual disability or mental illness may be reviewed by  
27 the jury in the penalty proceeding and the jury shall not be  
28 informed of the finding in the initial proceeding at any time  
29 during the penalty proceeding.

30     3. If at the trial on a charge of capital murder under  
31 section 902.15, the state intends to request that the death  
32 penalty be imposed under section 902.1A, the prosecutor shall  
33 file a notice of intent to seek the death penalty, at the time  
34 of and as part of the information or indictment filed in the  
35 case.

1 4. If a notice of intent to seek the death penalty has been  
2 filed, the trial shall be conducted in bifurcated proceedings  
3 before the same trier of fact. During the initial proceeding,  
4 the jury, or the court if the defendant waives the right to a  
5 jury trial, shall decide only whether the defendant is guilty  
6 or not guilty of capital murder under section 902.15.

7 a. If, in the initial proceeding, the court or jury finds  
8 the defendant guilty of, or the defendant pleads guilty to,  
9 an offense other than capital murder under section 902.15,  
10 the court shall sentence the defendant in accordance with the  
11 sentencing procedures set forth in rule of criminal procedure  
12 2.23, Iowa court rules, and chapters 901 through 909, which are  
13 applicable to the offense.

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

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

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

1 proceeding to be before the trial jury. Both the state and the  
2 defendant shall have the right to present opening statements  
3 at the commencement of the proceeding. In the proceeding,  
4 evidence relevant to the existence of any aggravating or  
5 mitigating circumstances may be presented as follows:

6     *a.* The state or the defendant may present evidence relevant  
7 to the conviction of capital murder under section 902.15 and  
8 any aggravating circumstances other than juvenile delinquency  
9 adjudications for offenses which carry penalties equivalent to  
10 the penalties imposed for simple or serious misdemeanors. The  
11 state may introduce evidence of the actual harm caused by the  
12 commission of the capital murder offense 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 by  
20 a preponderance of the evidence.

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

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

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

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

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

35         (5) The defendant acted under extreme duress or under the



1 substantial domination of another person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Sec. 8. Section 902.1, subsection 1, Code 2018, is amended  
32 to read as follows:

33 1. ~~Upon~~ Except as provided in section 902.1A, a plea of  
34 guilty, a verdict of guilty, or a special verdict upon which a  
35 judgment of conviction of a class "A" felony may be rendered,

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

10 Sec. 9. NEW SECTION. 902.1A Capital murder — death  
11 penalty.

12 1. For the purposes of this section, "*lethal injection*"  
13 means a continuous intravenous injection of a lethal substance  
14 sufficient to cause death.

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

1 capacity is restored. If the director of the department of  
2 corrections or the defendant's counsel files a request with the  
3 court which issued the warrant of execution, alleging that the  
4 defendant suffers from such a diseased or deranged condition, a  
5 hearing on the matter shall be held in the manner provided in  
6 section 812A.1.

7 Sec. 10. NEW SECTION. 902.15 **Capital murder.**

8 1. As used in this section:

9 a. "*Capital murder*" means any murder that makes a person  
10 eligible for the death penalty.

11 b. "*Eligible for the death penalty*" means when a person is  
12 convicted of murder in the first degree in violation of section  
13 707.2, and the victim was a peace officer as defined in section  
14 801.4 acting in the performance of the peace officer's official  
15 duties.

16 c. "*Intellectually disabled*" means significant subaverage  
17 general intellectual functioning accompanied by significant  
18 deficits or impairments in adaptive functioning manifested in  
19 the developmental period, but no later than the age of eighteen  
20 years, and accompanied by deficits in adaptive behavior.

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

28 2. A person who commits capital murder, who is eligible  
29 for the death penalty, who is not intellectually disabled or  
30 mentally ill, and who is age eighteen or older at the time of  
31 the capital murder, shall be subject to a sentence of death  
32 under section 902.1A.

33 Sec. 11. NEW SECTION. 902.16 **Data collection for capital**  
34 **murder — death penalty.**

35 1. The supreme court shall collect data on all capital

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

8 2. Data collected by public officials concerning factors  
9 relevant to the imposition of the death sentence shall be made  
10 publicly available.

11 **Sec. 12. NEW SECTION. 903C.1 Executions — refusal to**  
12 **perform.**

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

24 **Sec. 13. Section 904.105, Code 2018, is amended by adding**  
25 **the following new subsection:**

26 **NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A**  
27 **pertaining to executions of persons convicted of capital murder**  
28 **under section 902.15. Rules adopted shall include but are not**  
29 **limited to rules permitting the witnessing of executions by**  
30 **members of the public and the victim's family. Invitations**  
31 **to witness an execution shall at least be extended to the**  
32 **following representatives of the news media:**

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

34 **b. A representative from a broadcasting network serving**  
35 **Iowa.**

1 c. A representative from a television station located in  
2 Iowa.

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

4 e. A representative from a daily newspaper published in  
5 Iowa.

6 f. A representative from a weekly newspaper published in  
7 Iowa.

8 g. A representative from the news media from the community  
9 in which the condemned person resided, if that community is  
10 located in Iowa.

11 Sec. 14. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
12 3, shall not apply to this Act.

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

19 Sec. 16. EFFECTIVE DATE. This Act takes effect January 1,  
20 2019.

21 Sec. 17. APPLICABILITY. This Act applies to offenses  
22 committed on or after the effective date of this Act.

23 EXPLANATION

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

26 This bill amends the Iowa criminal code to provide for  
27 punishment by death for capital murder committed by a person  
28 age 18 or older if the trial jury, or the judge if there  
29 is no jury, makes specific findings and whether the jury  
30 believes the defendant should be put to death in a separate  
31 penalty proceeding held after the close of the initial trial  
32 proceeding.

33 Under the bill, a death penalty sentence could be imposed if  
34 the murder would constitute murder in the first degree and the  
35 victim was a peace officer as defined in Code section 801.4,

1 acting in the performance of the peace officer's official  
2 duties.

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

9 The bill specifies that the attorney general may prosecute  
10 all actions and proceedings involving capital murder, when  
11 in the attorney general's judgment the interest of the state  
12 requires the attorney general to intervene on behalf of the  
13 county attorney, or upon request by the county attorney.

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

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

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



1 litigants.

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

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

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

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

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

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

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

22 The bill contains severability provisions and takes effect  
23 January 1, 2019, and applies only to offenses committed on or  
24 after that date.