

House File 62 - Introduced

HOUSE FILE 62

BY WHEELER

A BILL FOR

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

1 Section 1. Section 13.2, subsection 1, Code 2019, 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 2019, 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 cocounsel 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 2019, 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, returns
24 a unanimous affirmative finding on each of the issues submitted
25 under subsection 6, paragraphs "a" and "b", the court shall
26 enter a judgment of conviction and shall sentence the defendant
27 to death as 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, paragraph "a" or "b", the court shall enter a
12 judgment of conviction and shall sentence the defendant to life
13 imprisonment as 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 2019, is amended
32 to read as follows:

33 ~~1.~~ 1. 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. (1) "*Capital murder*" means any murder that makes a
10 person eligible for the death penalty.

11 (2) A person is eligible for the death penalty when a person
12 is convicted of murder in the first degree in violation of
13 section 707.2.

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

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

26 2. A person who commits capital murder, who is not
27 intellectually disabled or mentally ill, and who is age
28 eighteen or older at the time of the murder in the first
29 degree, shall be eligible for a sentence of death under section
30 902.1A.

31 Sec. 11. NEW SECTION. 902.16 **Data collection for capital
32 murder — death penalty.**

33 1. The supreme court shall collect data on all capital
34 murder charges in which the death penalty is or was not waived,
35 which are filed and processed in the courts in this state.

1 This data may be used by the supreme court to determine whether
2 death sentences imposed are excessive or disproportionate, or
3 under the influence of prejudice under section 814.28. The
4 court shall make this data available to litigants in death
5 penalty cases.

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

9 Sec. 12. NEW SECTION. 903C.1 Executions — refusal to
10 perform.

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

22 Sec. 13. Section 904.105, Code 2019, is amended by adding
23 the following new subsection:

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

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

32 b. A representative from a broadcasting network serving
33 Iowa.

34 c. A representative from a television station located in
35 Iowa.

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

2 e. A representative from a daily newspaper published in
3 Iowa.

4 f. A representative from a weekly newspaper published in
5 Iowa.

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

9 Sec. 14. IMPLEMENTATION OF ACT. Section 25B.2, subsection
10 3, shall not apply to this Act.

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

17 Sec. 16. EFFECTIVE DATE. This Act takes effect January 1,
18 2020.

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

21 EXPLANATION

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

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

32 The bill provides that in order to receive a sentence of
33 death, the defendant must be at least 18 years of age at the
34 time the murder in the first degree was committed, must not be
35 mentally ill or intellectually disabled, and must have been a

1 major participant in the commission of the crime or must have
2 shown a manifest indifference to human life.

3 The bill specifies that the attorney general may prosecute
4 all actions and proceedings involving capital murder, when
5 in the attorney general's judgment the interest of the state
6 requires the attorney general to intervene on behalf of the
7 county attorney, or upon request by the county attorney.

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

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

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

31 The sentence of death is imposed only when the trier of fact
32 (the jury or the court if the defendant has waived the right to
33 a jury trial) unanimously answers two questions affirmatively:
34 (1) whether aggravating circumstances established beyond
35 a reasonable doubt outweigh any mitigating circumstances

1 that may exist; and (2) whether the defendant should be
2 sentenced to death. Mitigating factors the trier of fact may
3 consider include the following: the defendant was under the
4 influence of an extreme mental or emotional disturbance; the
5 age of the defendant; the defendant's ability to appreciate
6 the wrongfulness of the conduct due to mental disease but
7 not to a degree to constitute a defense; the defendant has
8 no significant prior criminal history; the defendant was
9 under extreme duress; the defendant did not directly commit
10 the murder; and the defendant's character or record or the
11 circumstances of the offense. The sentencing proceeding is
12 conducted separately from the finding of guilt or innocence by
13 the same trier of fact.

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

24 The death penalty sentence would be reviewed automatically
25 by the supreme court. The supreme court shall review the trial
26 and judgment separately from the sentencing proceeding. If the
27 supreme court finds error in the sentencing proceeding, the
28 supreme court may remand the case back to district court for a
29 new sentencing hearing. The bill requires the supreme court to
30 examine whether the sentence is excessive or disproportionate
31 to penalties in similar cases. If affirmed by the supreme
32 court, the penalty would be accomplished by lethal injection.
33 The bill requires the board of corrections to adopt rules
34 pertaining to executions, including rules pertaining to the
35 witnessing of executions.

1 A person who is sentenced to death, but who is pregnant when
2 the warrant of execution is issued, is not to be executed until
3 the person is no longer pregnant. A procedure is also provided
4 to stay execution of a condemned inmate who becomes insane
5 after conviction but before execution.

6 An employee of the state shall not be required to perform or
7 assist in any execution and shall not be discriminated against
8 for refusing to participate.

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

16 The bill contains severability provisions and takes effect
17 January 1, 2020, and applies only to offenses committed on or
18 after that date.