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Place On Calendar

HOUSE FILE 2573
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2286)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating the penalty of death for the commission of murder
2 in the first degree, kidnapping, and sexual abuse against the
3 same minor, using DNA or fingerprint evidence to identify the
4 perpetrator, providing a penalty, and providing an effective
5 date.

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

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HF 2573

1 Section 1. Section 13B.4, Code Supplement 2005, is amended
2 by adding the following new subsection:

3 NEW SUBSECTION. 6A. The state public defender shall
4 perform all of the following duties with respect to the
5 appointment of counsel for indigent persons in cases in which
6 a sentence of 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 murder in the first degree,
10 kidnapping, and sexual abuse under section 902.15, and the
11 state has given notice of intent to seek the death penalty or
12 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. 602.10111A QUALIFICATIONS OF
16 COUNSEL 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
20 in which a sentence of death may be or is to be imposed.

21 Sec. 3. NEW SECTION. 812A.1 PROCEDURE TO DETERMINE
22 SANITY OF CONDEMNED INMATE.

23 1. At any time prior to execution of an inmate under
24 section 902.1, if the director of the department of
25 corrections or the counsel for a person who is under a
26 sentence of execution has cause to believe that the inmate is
27 suffering from such a diseased or deranged condition of the
28 mind as to prevent the defendant from knowing the nature and
29 quality of the act the defendant has been convicted of, or
30 from understanding that trial on the offense has taken place
31 and that execution proceedings are about to take place, or to
32 otherwise cause the defendant to lack the capacity to
33 understand the sentence which has been imposed and to
34 participate in any legal proceedings relating to the sentence,
35 the director or counsel may file a request with the court that

1 issued the warrant for execution for a determination of the
2 inmate's sanity. If the district court determines that there
3 is not sufficient reason to believe that the inmate is insane,
4 the court shall enter an order denying the request and shall
5 state the grounds for denying the request. If the court
6 believes that there is sufficient reason to believe that the
7 inmate is insane, the court shall suspend the execution and
8 conduct a hearing to determine the sanity of 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
16 report any findings in writing to the court within ten days
17 after the order of examination is issued. The inmate shall
18 have the right to present evidence and cross-examine any
19 witnesses at the hearing. Any statement made by the inmate
20 during the course of any examination provided for in this
21 section, whether or not the inmate consents to the
22 examination, shall not be admitted into evidence against the
23 inmate in any criminal proceeding for purposes other than a
24 determination of the 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
33 this section, the court determines that the inmate is insane,
34 the court shall suspend the execution until further order. At
35 any time after issuance of the order, if the court has

1 sufficient reason to believe that the inmate has become sane,
2 the court shall again determine the sanity of the inmate as
3 provided by this section. Proceedings pursuant to this
4 section may continue to be held at such times as the court
5 orders until it is either determined that the inmate is sane
6 or incurably 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.
11 The case shall not be transferred to the court of appeals.

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

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

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

25 b. Whether the special verdicts returned under section
26 901.11 are supported by the evidence.

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

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

35 5. If the supreme court affirms the judgment and sentence

1 of death, the clerk of the supreme court shall certify the
2 judgment of the supreme court under the seal of the court to
3 the clerk of the trial court.

4 Sec. 5. Section 815.10, Code Supplement 2005, is amended
5 by adding the following new subsection:

6 NEW SUBSECTION. 1A. If two attorneys have not already
7 been appointed pursuant to section 13B.4 or 13B.9, the court
8 shall appoint, for each indigent person who is charged with
9 murder, kidnapping, and sexual abuse under section 902.15, and
10 in which a notice of intent to seek the death penalty has been
11 filed, two attorneys who are qualified under section
12 602.10111A to represent the person in the proceedings and in
13 all state legal proceedings which take place from the time the
14 person is indicted or arraigned until the person is sentenced
15 on the charge. In addition, if at any point in federal
16 postconviction proceedings an indigent person is not afforded
17 court-appointed counsel, the state shall provide counsel to
18 the person to present any claims determined meritorious by the
19 federal court if the person is not otherwise represented by
20 legal counsel. Only private attorneys and public defenders
21 who are qualified to provide representation in cases in which
22 the death penalty may be imposed are eligible for appointment
23 or assignment to a case in which the death penalty may be
24 imposed.

25 Sec. 6. NEW SECTION. 901.11 MURDER PROCEEDINGS --
26 REQUEST FOR DEATH PENALTY -- PENALTY PROCEEDINGS.

27 1. If a notice of intent to seek the death penalty has
28 been filed, objections to the imposition of the death penalty
29 based upon allegations that a defendant was mentally retarded
30 or mentally ill at the time of the commission of the offense
31 shall be raised within the time provided for the filing of
32 pretrial motions under rule of criminal procedure 2.11, Iowa
33 court rules. The court may, for good cause shown, allow late
34 filing of the motion. Hearing on the motion shall be held
35 prior to trial and the burden of proof shall be on the

1 defendant to prove mental retardation or mental illness by a
2 preponderance of the evidence. However, a rebuttable
3 presumption of mental retardation arises if a defendant has an
4 intelligence quotient of seventy or below. If the court finds
5 that the defendant is mentally retarded, the defendant, if
6 convicted of murder, kidnapping, and sexual abuse under
7 section 902.15, shall not be sentenced to death but shall be
8 sentenced to life imprisonment in the manner provided in
9 section 902.1, subsection 1. A finding by the court that the
10 evidence presented by the defendant at the hearing does not
11 preclude the imposition of the death penalty under this
12 section and section 902.15 shall not preclude the introduction
13 of evidence of mental retardation or mental illness during the
14 penalty proceeding. If the court finds that evidence of
15 mental retardation or mental illness does not preclude
16 imposition of the death penalty, evidence of mental
17 retardation or mental illness may be reviewed by the jury in
18 the penalty proceeding and the jury shall not be informed of
19 the finding in the initial proceeding at any time during the
20 penalty proceeding.

21 2. If at the trial on a charge of murder, kidnapping, and
22 sexual abuse under section 902.15, the state intends to
23 request that the death penalty be imposed under section 902.1,
24 subsection 2, the prosecutor shall file a notice of intent to
25 seek the death penalty, at the time of and as part of the
26 information or indictment filed in the case.

27 3. If a notice of intent to seek the death penalty has
28 been filed, the trial shall be conducted in bifurcated
29 proceedings before the same trier of fact. During the initial
30 proceeding, the jury, or the court, if the defendant waives
31 the right to a jury trial, shall decide only whether the
32 defendant is guilty or not guilty of murder, kidnapping, and
33 sexual abuse under section 902.15.

34 a. If, in the initial proceeding, the court or jury finds
35 the defendant guilty of, or the defendant pleads guilty to, an

1 offense other than murder, kidnapping, and sexual abuse under
2 section 902.15, the court shall sentence the defendant in
3 accordance with the sentencing procedures set forth in rule of
4 criminal procedure 2.23, Iowa court rules, and chapters 901
5 through 909, which are applicable to the offense.

6 b. If the court or jury finds the defendant guilty of, or
7 the defendant pleads guilty to, murder, kidnapping, and sexual
8 abuse under section 902.15, but the prosecuting attorney
9 waives the death penalty, the court shall sentence the
10 defendant to life imprisonment 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
13 are otherwise applicable to convictions of murder in the first
14 degree, kidnapping, and sexual abuse.

15 c. If the court or jury finds the defendant guilty of
16 murder, kidnapping, and sexual abuse under section 902.15, or
17 a defendant enters a plea of guilty in the initial proceeding,
18 and the prosecuting attorney does not waive imposition of the
19 death penalty, a penalty proceeding shall be held in the
20 manner provided in subsections 4 through 12.

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

35 a. The state or the defendant may present evidence

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

11 b. The defendant may present evidence that the defendant
12 was mentally retarded at the time of the commission of the
13 offense. The burden of proof shall be on the defendant to
14 prove mental retardation by a preponderance of the evidence.
15 However, a rebuttable presumption of mental retardation arises
16 if a defendant has an intelligence quotient of seventy or
17 below.

18 c. The state or the defendant may present evidence
19 relevant to any mitigating circumstances which may exist.
20 Mitigating circumstances may include the following
21 circumstances:

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

25 (2) The age of the defendant at the time of the murder.

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

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

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

1 (6) The defendant did not directly commit the murder,
2 kidnapping, and sexual abuse and the defendant did not intend
3 to kill or anticipate that lethal force would be used.

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

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

14 5. At the conclusion of presentation of evidence in the
15 penalty proceeding, the state and the defendant or the
16 defendant's counsel shall be permitted to make closing
17 arguments, including any rebuttal arguments, in the same
18 manner as in the initial proceeding and the following issues
19 shall be determined by the jury or the court, if there is no
20 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 6. 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 or
28 of any victim. After submission of the issues, but prior to
29 the return of a finding in the penalty proceeding, if the
30 matter is tried before a jury, the court shall instruct the
31 jury that in considering whether a sentence of death is
32 justified, it shall not consider race, color, religious
33 beliefs, national origin, or sex of the defendant or of any
34 victim. The court shall further instruct the jury that it
35 shall not return a sentence of death unless it concludes that

1 such a sentence would be recommended no matter what the race,
2 color, religious beliefs, national origin, or sex of the
3 defendant or of any victim may be.

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

13 8. Concurrently with the return of the findings on the
14 issues submitted under subsection 5, the jury, or the court if
15 there is no jury, shall return special verdicts as follows:

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

19 b. Which mitigating circumstances were established and
20 were considered in reaching the verdict returned on the issue
21 specified in subsection 5, paragraph "a".

22 9. If the jury, or the court if there is no jury, returns
23 a unanimous affirmative finding on each of the issues
24 submitted under subsection 5, paragraphs "a" and "b", the
25 court shall enter a judgment of conviction and shall sentence
26 the defendant to death as provided in section 902.1,
27 subsection 2.

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

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

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

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

33 13. This section shall not apply to a defendant who was
34 under the age of eighteen at the time the offense was
35 committed.

1 Sec. 7. Section 902.1, Code 2005, is amended to read as
2 follows:

3 902.1 CLASS "A" FELONY.

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

17 2. Upon return of a plea or verdict of guilty to the
18 offense of murder in the first degree, kidnapping, and sexual
19 abuse under section 902.15, and a return of a verdict in favor
20 of a sentence of death in a penalty proceeding conducted as
21 provided in section 901.11, the court shall enter a judgment
22 of conviction and shall commit the defendant into the custody
23 of the director of the Iowa department of corrections. The
24 sentence shall be carried out by the administration of a
25 lethal injection pursuant to rules adopted by the board of
26 corrections. If a defendant, for whom a warrant of execution
27 is issued, is pregnant, the execution shall not take place
28 until after the defendant is no longer pregnant. If a
29 defendant, for whom a warrant of execution is issued, is
30 suffering from such a diseased or deranged condition of the
31 mind as to prevent the defendant from knowing the nature and
32 quality of the act the defendant has been convicted of, or
33 from understanding that trial on the offense has taken place
34 and that execution proceedings are about to take place, or
35 otherwise causes the defendant to lack the capacity to

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

15 Sec. 8. NEW SECTION. 902.15 FIRST DEGREE MURDER,
16 KIDNAPPING, AND SEXUAL ABUSE.

17 A person who commits murder in the first degree,
18 kidnapping, and sexual abuse with respect to the same victim,
19 who is not mentally retarded or mentally ill, and who is age
20 eighteen or older at the time the offense is committed, shall
21 be eligible for a sentence of death under section 902.1,
22 subsection 2, if the victim was a minor, and if
23 deoxyribonucleic acid or fingerprint evidence is persuasively
24 used to identify the defendant as part of the state's case in
25 chief.

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

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

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

5 Sec. 9. NEW SECTION. 902.16 DATA COLLECTION FOR DEATH
6 PENALTY.

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

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

19 Sec. 10. NEW SECTION. 903C.1 EXECUTIONS -- REFUSAL TO
20 PERFORM.

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

32 Sec. 11. Section 904.105, Code 2005, is amended by adding
33 the following new subsection:

34 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
35 pertaining to executions of persons convicted of murder,

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

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

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

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

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

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

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

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

20 Sec. 12. Rules of criminal procedure, Iowa court rules,
21 are amended by adding the following four sections of this Act.

22 Sec. 13. NEW RULE. 2. ___ DEATH PENALTY -- PROCEDURE.

23 2. ___(1) If a notice of intent to seek the death penalty
24 has been filed, objections to the imposition of the death
25 penalty based upon allegations that a defendant was mentally
26 retarded at the time of the commission of the offense shall be
27 raised within the time provided for the filing of pretrial
28 motions under R.Cr.P. 2.11, Iowa court rules. The court may,
29 for good cause shown, allow late filing of the motion.

30 Hearing on the motion shall be held prior to trial and the
31 burden of proof shall be on the defendant to prove mental
32 retardation by a preponderance of the evidence. However, a
33 rebuttable presumption of mental retardation arises if a
34 defendant has an intelligence quotient of seventy or below. A
35 finding of the court that the evidence presented by the

1 defendant at the hearing does not preclude the imposition of
2 the death penalty under this rule and Iowa Code section 902.15
3 shall not preclude the introduction of evidence of mental
4 retardation during the penalty proceeding. If the court finds
5 that the evidence presented by the defendant does not preclude
6 the imposition of the death penalty, evidence of mental
7 retardation may be reviewed by the jury during the penalty
8 proceeding and the jury shall not be informed of the finding
9 in the initial proceeding at any time during the penalty
10 proceeding.

11 2.__(2) Upon a finding or plea that a defendant is guilty
12 of murder, kidnapping, and sexual abuse under Iowa Code
13 section 902.15, in an initial proceeding, if a notice of
14 intent to seek the death penalty has been filed and has not
15 been waived, the court shall conduct a separate penalty
16 proceeding to determine whether the defendant shall be
17 sentenced to death or to life imprisonment. The penalty
18 proceeding shall be conducted in the trial court before the
19 trial jury, or the court, if there is no jury, no sooner than
20 twenty-four hours after the return of the verdict or plea in
21 the initial proceeding. In the penalty proceeding, additional
22 evidence may be presented as to the conviction for murder,
23 kidnapping, and sexual abuse under section 902.15, or any
24 aggravating or mitigating circumstance which may exist.
25 Presentation of evidence which is relevant to the existence of
26 an aggravating or mitigating circumstance shall not be bound
27 by the rules of evidence. This subsection does not authorize
28 the introduction of any evidence secured in violation of the
29 Constitution of the United States or of the Constitution of
30 the State of Iowa. The state and the defendant or the
31 defendant's counsel shall be permitted to cross-examine
32 witnesses and to present arguments for or against a sentence
33 of death.

34 2.__(3) On conclusion of the presentation of the evidence
35 in the penalty proceeding, the state and the defendant or the

1 defendant's counsel shall be permitted to make closing
2 arguments, including any rebuttal arguments, in the same
3 manner as in the initial proceeding and the court shall submit
4 each of the following issues to the jury:

5 a. Whether one or more aggravating circumstances outweigh
6 any one or more mitigating circumstances.

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

8 If the case is not tried to a jury, the court shall
9 determine the issues.

10 2.__(4) The state must prove the issue in rule 2.

11 ____(3)(a) beyond a reasonable doubt, and the jury, or the
12 court if there is no jury, shall return a special verdict of
13 "yes" or "no" on each issue.

14 2.__(5) If the case is tried to a jury, the court shall
15 charge the jury that:

16 a. It shall answer any issue "yes" if it agrees
17 unanimously.

18 b. It shall answer any issue "no" if the jurors
19 unanimously agree that the answer is "no" or if the jurors do
20 not unanimously agree that the answer is "yes".

21 2.__(6) Concurrently with the return of the special
22 verdicts under rule 2.__(3), the jury, or the court if there
23 is no jury, shall also return special verdicts as follows:

24 a. Which aggravating circumstances were established beyond
25 a reasonable doubt and were considered in reaching the verdict
26 returned on the issue specified in rule 2.__(3)(a).

27 b. Which mitigating circumstances were established and
28 were considered in reaching the verdict returned on the issue
29 specified in rule 2.__(3)(a).

30 2.__(7) If the jury, or the court if there is no jury,
31 returns an affirmative finding on all applicable issues, the
32 court shall sentence the defendant to death. If the jury or
33 the court returns a negative finding on any applicable issue,
34 the court shall sentence the defendant to the custody of the
35 director of the department of corrections for confinement for

1 the rest of the defendant's life.

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

20 2.__(9) Provisions relating to deferred judgment,
21 deferred sentence, suspended sentence, reconsideration of
22 sentence, probation, parole, or work release contained in Iowa
23 Code chapters 901 through 909 do not apply to a conviction of
24 murder, kidnapping, and sexual abuse under Iowa Code section
25 902.15 if the defendant is sentenced to death.

26 Sec. 14. NEW RULE. 2.____ AUTOMATIC REVIEW -- STAY OF
27 EXECUTION OF JUDGMENT.

28 2.__(1) A judgment of conviction and sentence of death
29 shall be reviewed automatically in the manner provided in Iowa
30 Code section 814.28, and the Iowa supreme court has exclusive
31 jurisdiction of the review.

32 2.__(2) Upon entry of judgment and sentence of death, the
33 trial court shall prepare a complete record and transcript of
34 the action in the manner provided in the rules of criminal
35 procedure and shall docket the record and transcript with the

1 clerk of the supreme court.

2 2.__(3) The execution of judgment of the trial court is
3 stayed as a matter of law from the time of its entry until the
4 judgment of the supreme court is certified to and entered by
5 the trial court. Upon entry of a judgment of the supreme
6 court which affirms the conviction and sentence, the stay of
7 execution of judgment terminates as a matter of law.

8 2.__(4) All court costs required due to the automatic
9 preparation of the record and transcript, docketing with the
10 supreme court, and stay of execution of judgment shall be
11 assessed to the state.

12 Sec. 15. NEW RULE. 2.____ ISSUANCE OF WARRANT.

13 2.__(1) Upon entry by the trial court of the judgment of
14 the supreme court affirming a judgment and sentence of death,
15 a district judge shall within five days of the entry issue a
16 warrant under the seal of the court for the execution of the
17 sentence of death. The warrant shall specifically set forth
18 the offense and the fact of conviction, shall state the
19 judgment and sentence of the court, shall state that the
20 judgment and sentence were affirmed by the supreme court and
21 the date of entry of judgment of the supreme court in the
22 trial court, and shall, subject to the requirements of Iowa
23 Code section 902.1, subsection 2, specify a range of five days
24 for execution of the defendant which shall be not less than
25 fifty nor more than sixty days after the date of entry in the
26 trial court of the judgment of the supreme court affirming the
27 judgment and sentence of death. The warrant shall be directed
28 to the director of the department of corrections commanding
29 the director to cause the warrant to be executed within the
30 dates specified. The trial court shall deliver the warrant to
31 the sheriff of the county in which judgment of conviction was
32 entered and the sheriff shall deliver the warrant to the
33 director of the department of corrections. The director of
34 the department of corrections shall acknowledge receipt of the
35 warrant and the defendant, and the sheriff shall return the

1 acknowledgment to the office of the clerk of the trial court
2 from which the warrant was issued.

3 2.__(2) Immediately after issuance of a warrant ordering
4 a sentence of death, the clerk of the trial court issuing the
5 warrant shall transmit by certified mail to the governor a
6 copy of the indictment, the plea, the verdict and special
7 findings, the affirmation of judgment and sentence by the
8 supreme court, and the complete transcript of the trial court.

9 2.__(3) Notwithstanding rule 2.__(1), if a defendant,
10 for whom a warrant of execution is issued, is pregnant, the
11 execution shall not take place until after the defendant is no
12 longer pregnant. Notwithstanding rule 2.__(1), if a
13 defendant, for whom a warrant of execution is issued, is
14 suffering from such a diseased or deranged condition of the
15 mind as to prevent the defendant from knowing the nature and
16 quality of the act the defendant has been convicted of, or
17 from understanding that trial on the offense has taken place
18 and that execution proceedings are about to take place, or to
19 otherwise cause the defendant to lack the capacity to
20 understand the sentence which has been imposed and to
21 participate in any legal proceedings relating to the sentence,
22 the execution shall not take place until after the defendant
23 is no longer suffering from the condition.

24 Sec. 16. NEW RULE. 2.____ EVIDENCE AT PENALTY PROCEEDING
25 WHERE DEATH SENTENCE REQUESTED.

26 2.__(1) At a reasonable time before the commencement of
27 initial proceedings in a murder, kidnapping, and sexual abuse
28 trial in which a sentence of death has been requested, each
29 party shall file and serve upon the other party the following:

30 a. A list of all aggravating or mitigating circumstances
31 which the party intends to prove during the sentencing
32 proceedings.

33 b. The names of all persons whom the party intends to call
34 as witnesses during the sentencing proceedings.

35 c. Notwithstanding rule 2.14, copies, or for inspection

1 purposes, the location, of all documents, including books,
2 papers, writings, drawings, graphs, charts, photographs,
3 telephone records, and other data compilations from which
4 information can be obtained, or other objects which the party
5 intends to offer into evidence during the sentencing
6 proceedings. If copies are not supplied to opposing counsel,
7 the party shall make the items available for inspection and
8 copying without order of the court.

9 2.__(2) In proceedings to determine whether the sentence
10 shall be death or life imprisonment, evidence may be presented
11 as to any matter which the trial court deems relevant to the
12 sentence, including but not limited to the nature,
13 circumstances, and manner of completion of the murder,
14 kidnapping, and sexual abuse, and the defendant's character,
15 background, history, and mental and physical condition. The
16 trial court shall admit any relevant admissible evidence
17 respecting any aggravating or mitigating circumstances, if the
18 party has included the circumstance on a list provided
19 pursuant to this rule, or good cause is shown for the failure
20 to do so.

21 Sec. 17. EFFECTIVE DATE -- SEVERABILITY.

22 1. This Act takes effect January 1, 2007, and applies to
23 offenses committed on or after that date.

24 2. If any provision of this Act or the application thereof
25 to any person is invalid, the invalidity shall not affect the
26 provisions or application of this Act which can be given
27 effect without the invalid provisions or application and to
28 this end, the provisions of this Act are severable.

29 EXPLANATION

30 This bill amends the Iowa criminal code to provide for
31 punishment by death for murder, kidnapping, and sexual abuse
32 committed with respect to the same victim who is a minor if
33 DNA or fingerprint evidence is persuasively used to identify
34 the defendant, and if the trial jury, or the judge if there is
35 no jury, makes specific findings and whether the jury believes

1 the defendant should be put to death in a separate penalty
2 proceeding held after the close of the initial trial
3 proceeding. Under the bill, a death sentence could be imposed
4 if the murder would constitute murder in the first degree and
5 the state pleads and proves the defendant also kidnapped and
6 committed sexual abuse against the murder victim who was a
7 minor by persuasively using, in part, DNA or fingerprint
8 evidence to identify the defendant.

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

17 If such a case proceeds to trial and a notice of intent to
18 seek the death penalty has been filed, in addition to any
19 other defenses which may be presented to the charge, the
20 defendant may raise the issue of mental retardation during the
21 time of filing pretrial motions, and the defendant is entitled
22 to a rebuttable presumption of mental retardation if the
23 defendant establishes that the defendant has an intelligence
24 quotient of 70 or below.

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

34 The sentence of death is imposed only when the trier of
35 fact (the jury or the court if the defendant has waived the

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

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

28 The death penalty sentence would be reviewed automatically
29 by the supreme court. The supreme court shall review the
30 trial and judgment separately from the sentencing proceeding.
31 If the supreme court finds error in the sentencing proceeding,
32 the supreme court may remand the case back to district court
33 for a new sentencing hearing. The bill requires the supreme
34 court to examine whether the sentence is excessive or
35 disproportionate to penalties in similar cases. If affirmed

1 by the supreme court, the penalty would be accomplished by
2 lethal injection. The bill requires the board of corrections
3 to adopt rules pertaining to executions, including rules
4 pertaining to the witnessing of executions. The criminal and
5 juvenile justice planning advisory council is required to
6 review the effects of the reinstatement of the death penalty,
7 make findings and develop recommendations, and report the
8 findings annually commencing January 1, 2007.

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

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

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

23 The bill contains severability provisions and takes effect
24 January 1, 2007, and applies only to offenses committed on or
25 after that date.

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Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 2573 – Death Penalty (LSB 6219 HV)

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Fiscal Note Version – New

Description

House File 2573 imposes the death penalty for capital murder, which applies to offenders who have kidnapped, sexually assaulted, and then murdered a minor. The offender must be at least 18 years old at the time of the offense, and must be identified by forensic evidence (either DNA or fingerprints). The sentencing proceeding is conducted separately from the trial. The death penalty sentence is automatically reviewed by the Supreme Court. If affirmed by the Supreme Court, the penalty is accomplished by lethal injection. The death penalty may be imposed only for offenses which occur on or after January 1, 2007.

Background

1. Offenders are rarely convicted of all three crimes; approximately one offender every eight to 10 years is convicted of all three crimes (kidnapping, rape, and murder).
2. Death row offenders will be housed in the most secure area of the Clinical Care Unit at Fort Madison. Average daily costs are estimated to be \$120 per offender.
3. The executioner would be under contract, on a per diem basis.
4. The State's cost for one Class A felony conviction ranges from \$418,000 to \$760,000, depending upon prosecution and defense costs, and where the offender is housed in the State prison system. This figure includes court costs, prosecution and defense costs, housing costs at the county jail pending trial and sentencing, and the cost of housing the offender in the State prison system.
5. According to the U.S. Department of Justice, offenders' average length of stay on death row is 10 years, 11 months, before being executed.
6. Under current law for Class A felons, the length of stay in county jail for offenders is 331 days from the date of the incident occurring, to the date of commitment to prison. The average cost per day for county confinement is \$50.

Assumptions

1. There would be additional costs on the court system for more hearings and reviews.
2. There would be additional costs for the county to house the defendant during the pre-trial and trial phase, and for investigation and prosecution.
3. The defendant would not be eligible for pre-trial release. The defendant would remain in jail from the time of arrest until conviction. The average capital trial lasts approximately 30 days.
4. The county would incur additional costs for prosecuting the defendant.
5. There would be additional costs for the Attorney General's Office for prosecution. The State would handle the appeal, and would assist the county attorney during the prosecution phase.
6. There would be additional costs for indigent defense, as generally most capital defendants are indigent.

7. The estimated costs for the prosecution would be similar to the estimated costs for the defense.
8. The Department of Corrections (DOC) would incur additional costs for creating a death house, purchasing equipment, hiring an executioner, and housing the offender.
9. Offenders eligible for the death penalty under HF 2573 would have received a sentence of life in prison (Class A felony) under current law.

Correctional Impact

The correctional impact is not significant because the offender would have been serving a life sentence in the State prison system. Additionally, offenders are rarely convicted for all three crimes (kidnapping, rape, and murder), approximately one every eight to ten years.

Fiscal Impact

Department of Corrections Costs:

- Creation of a death house, including a waiting room, viewing room, and death chamber is estimated to be \$300,000 (one-time cost) at Fort Madison.
- Purchase of lethal injection equipment is estimated to range from \$40,000 to \$55,000 (one-time cost).
- Executioner's compensation is estimated to be \$250 per night.
- Ongoing operating costs are estimated to be \$120 per day per offender, or \$44,000 annually.

The cost estimate for the DOC is estimated to range from \$818,000 to \$833,000. This amount includes one-time costs of building a death house, purchasing equipment, contracting for an executioner, and the costs of housing the offender until the death sentence is implemented (\$120 per day x 3,985 days). This figure assumes the executioner will be paid for one night only. Since many executions are delayed by last minute stays for appeal, an executioner may be called more than once to complete the task.

The DOC's cost for housing one offender sentenced to life in prison ranges from \$339,000 to \$591,000, depending on where the offender is housed in the prison system. The net fiscal impact to the DOC for the death penalty ranges from \$242,000 to \$479,000.

Judicial Branch Costs:

The Judicial Branch has provided a cost estimate of approximately \$200,000 for one death penalty case. This estimate includes jury compensation and mileage, salary costs of the District Court judge and staff, providing a complete record and transcript of the trial court proceeding, and costs associated with the Supreme Court review. It also includes costs of trial, one appeal, one post conviction relief proceeding and appeal, plus automatic Supreme Court review. It does not include the costs of any interlocutory appeals.

The Judicial Branch's cost for holding a Class A felony trial is approximately \$2,300. The net fiscal impact to the Judicial Branch for hearing a death penalty case is approximately \$197,700.

County Jail Costs:

The county would hold the defendant in jail from the time of arrest until sentenced to prison. The average time served in jail is estimated to be 361 days (331 days pending trial + 30 days for the trial). County costs of confinement are estimated to be \$18,000 (361 days x \$50). County jail costs for housing one offender pending trial for a Class A felony are estimated to be \$17,000. The net fiscal impact to the county jail is estimated to be \$1,000.

Prosecution and Defense Costs:

Legal costs for the county and the Attorney General's Office are estimated to be \$250,000 each for the trial and penalty phase. One appeal would cost the Attorney General's Office \$100,000. One post conviction relief proceeding and appeal would cost another \$400,000. The county's cost for prosecution is estimated to be \$250,000 while the cost for the Attorney General's Office is estimated to be \$750,000. These costs include salaries of lawyers, support staff, investigators, and expert witnesses. The State Public Defender's Office would incur similar costs (\$1.0 million) for indigent defense. Prosecution and defense costs for one Class A felony trial are estimated to range from \$30,000 to \$75,000. The net fiscal impact for prosecution and defense ranges from \$925,000 to \$970,000 each for a death penalty case.

These estimates for prosecution and defense attorney and witness fees do not include costs associated with interlocutory appeals, and further appeals to the U.S. District, Appellate, and Supreme Courts. These estimates only include one post conviction relief proceeding and appeal; it is likely more than one proceeding will occur. These estimates only include one appeal from the trial court to the Supreme Court; it is likely more than one appeal will occur.

The net fiscal impact for implementing the death penalty in Iowa is approximately \$2.3 million to \$2.6 million for the first offender, as indicated in the Table below. These figures assume the offender would have received a sentence of life in prison under current law. These costs will be incurred over multiple fiscal years (approximately 10 years, 11 months) as the trial is held, the sentence is served, and the death penalty is imposed.

Fiscal Impact

| Department | Death Penalty | Life in Prison | Net Increase |
|---|-------------------------------------|-------------------------------|-----------------------------------|
| Corrections | \$818,000 to \$833,000 * | \$339,000 to \$591,000 | \$242,000 to \$479,000 |
| Judicial Branch | 200,000 | 2,300 | 197,700 |
| Public Defender | 1,000,000 | 30,000 to 75,000 | 925,000 to 970,000 |
| County Attorney and Attorney General's Office | 1,000,000 | 30,000 to 75,000 | 925,000 to 970,000 |
| County Jails | 18,000 | 17,000 | 1,000 |
| Total | \$3,036,000 to \$3,051,000 * | \$418,300 to \$760,300 | \$2,290,700 to \$2,617,700 |

*Includes one-time costs.

Sources

Iowa Department of Corrections

Iowa Judicial Branch

Iowa Department of Human Rights, Criminal and Juvenile Justice Planning Division

Office of the Attorney General

Office of the State Public Defender

U.S. Department of Justice

March 7, 2006

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.
