

Senate Study Bill 1004 - 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 offenses
3 involving kidnapping and sexual abuse offenses against the
4 same victim who is a minor, and including effective date and
5 applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13B.4, Code 2021, is amended by adding
2 the following new subsection:

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

7 a. Provide or contract with attorneys for appointment as
8 lead counsel and co-counsel to provide legal services in cases
9 where a person is charged with capital murder under section
10 902.15, and the state has given notice of intent to seek the
11 death penalty or in cases in which a sentence of death is to be
12 imposed.

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

15 Sec. 2. NEW SECTION. 602.10112 **Qualifications of counsel**
16 **in capital murder cases.**

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

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

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

1 of the inmate's sanity. If the court determines that there is
2 not sufficient reason to believe that the inmate is insane, the
3 court shall enter an order denying the request and shall state
4 the grounds for denying the request. If the court believes
5 that there is sufficient reason to believe that the inmate is
6 insane, the court shall suspend the execution and conduct a
7 hearing to determine the sanity of the inmate.

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

24 3. If, at the conclusion of a hearing held pursuant to
25 this section, the court determines that the inmate is sane,
26 the court shall enter an order setting a date for the inmate's
27 execution, which shall be carried into effect in the same
28 manner as provided in the original sentence. A copy of the
29 order shall be sent to the director of the department of
30 corrections and the governor.

31 4. If, at the conclusion of a hearing held pursuant to this
32 section, the court determines that the inmate is insane, the
33 court shall suspend the execution until further order. At any
34 time after issuance of the order, if the court has sufficient
35 reason to believe that the inmate has become sane, the court

1 shall again determine the sanity of the inmate as provided
2 by this section. Proceedings pursuant to this section may
3 continue to be held at such times as the court orders until
4 it is either determined that the inmate is sane or incurably
5 insane.

6 Sec. 4. NEW SECTION. 814.30 **Review of capital murder death**
7 **sentence.**

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

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

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

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

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

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

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

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

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

3 Sec. 5. Section 815.10, Code 2021, is amended by adding the
4 following new subsection:

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

23 Sec. 6. NEW SECTION. 901E.1 Capital murder proceedings —
24 request for death penalty — penalty proceedings.

25 1. As used in this section:

26 a. "*Intellectually disabled*" means the same as defined in
27 section 902.15.

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

30 2. If a notice of intent to seek the death penalty has
31 been filed, objections to the imposition of the death penalty
32 based upon allegations that a defendant was intellectually
33 disabled or mentally ill at the time of the commission of
34 the offense shall be raised within the time provided for the
35 filing of pretrial motions under rule of criminal procedure

1 2.11, Iowa court rules. The court may, for good cause shown,
2 allow late filing of the motion. Hearing on the motion shall
3 be held prior to trial and the burden of proof shall be on the
4 defendant to prove intellectual disability or mental illness
5 by a preponderance of the evidence. If the court finds that
6 the defendant is intellectually disabled, the defendant, if
7 convicted of capital murder under section 902.15, shall not be
8 sentenced to death but shall be sentenced to life imprisonment
9 in the manner provided in section 902.1. A finding by the
10 court that the evidence presented by the defendant at the
11 hearing does not preclude the imposition of the death penalty
12 under this section and section 902.15 shall not preclude the
13 introduction of evidence of intellectual disability or mental
14 illness during the penalty proceeding. If the court finds
15 that evidence of intellectual disability or mental illness
16 does not preclude imposition of the death penalty, evidence of
17 intellectual disability or mental illness may be reviewed by
18 the jury in the penalty proceeding and the jury shall not be
19 informed of the finding in the initial proceeding at any time
20 during the penalty proceeding.

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

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

33 a. If, in the initial proceeding, the court or jury finds
34 the defendant guilty of, or the defendant pleads guilty to,
35 an offense other than capital murder under section 902.15,

1 the court shall sentence the defendant in accordance with the
2 sentencing procedures set forth in rule of criminal procedure
3 2.23, Iowa court rules, and chapters 901 through 909, which are
4 applicable to the offense.

5 *b.* If the court or jury finds the defendant guilty of, or
6 the defendant pleads guilty to, capital murder under section
7 902.15, but the prosecuting attorney waives the death penalty,
8 the court shall sentence the defendant to life imprisonment in
9 accordance with the sentencing procedures set forth in rule of
10 criminal procedure 2.23, Iowa court rules, and chapters 901
11 through 909, which are otherwise applicable to convictions of
12 murder in the first degree.

13 *c.* If the court or jury finds the defendant guilty of
14 capital murder under section 902.15, or a defendant enters a
15 plea of guilty in the initial proceeding, and the prosecuting
16 attorney does not waive imposition of the death penalty, a
17 penalty proceeding shall be held in the manner provided in
18 subsections 5 through 13.

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

32 *a.* The state or the defendant may present evidence relevant
33 to the conviction of capital murder under section 902.15 and
34 any aggravating circumstances other than juvenile delinquency
35 adjudications for offenses which carry penalties equivalent to

1 the penalties imposed for simple or serious misdemeanors. The
2 state may introduce evidence of the actual harm caused by the
3 commission of the capital murder offense under section 902.15,
4 including but not limited to evidence relating to the life of
5 the victim and the impact of the loss of the victim to the
6 victim's family and society.

7 *b.* The defendant may present evidence that the defendant
8 was intellectually disabled or mentally ill at the time of the
9 commission of the offense. The burden of proof shall be on the
10 defendant to prove intellectual disability or mental illness by
11 a preponderance of the evidence.

12 *c.* The state or the defendant may present evidence relevant
13 to any mitigating circumstances which may exist. Mitigating
14 circumstances may include the following circumstances:

15 (1) The defendant was under the influence of a mental
16 illness insufficient to constitute a defense.

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

18 (3) The defendant's capacity to appreciate the wrongfulness
19 of the defendant's conduct and to conform that conduct to the
20 requirements of law was significantly impaired as a result of a
21 mental illness or intellectual disability, but not to a degree
22 sufficient to constitute a defense.

23 (4) The defendant has no significant history of prior adult
24 criminal activity.

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

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

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

32 *d.* The state and the defendant or the defendant's counsel
33 shall be permitted to present and cross-examine witnesses and
34 present arguments for or against a sentence of death. Evidence
35 regarding aggravating and mitigating circumstances shall not

1 be governed by the rules governing admissibility of evidence,
2 except that introduction of evidence secured in violation of
3 the Constitution of the United States or of the Constitution of
4 the State of Iowa shall not be permitted.

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

11 a. Whether the aggravating circumstance or circumstances
12 have been established beyond a reasonable doubt and outweigh
13 any one or more mitigating circumstances.

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

15 7. A recommendation for a sentence of death shall not be
16 permitted if the recommendation is based on the race, color,
17 religious beliefs, national origin, or sex of the defendant
18 or of any victim, or based on any other protected class under
19 chapter 216. After submission of the issues, but prior to the
20 return of a finding in the penalty proceeding, if the matter
21 is tried before a jury, the court shall instruct the jury
22 that in considering whether a sentence of death is justified,
23 the jury shall not consider race, color, religious beliefs,
24 national origin, or sex of the defendant or of any victim, or
25 consider any other protected class under chapter 216. The
26 court shall further instruct the jury that the jury shall not
27 return a sentence of death unless the jury concludes that such
28 a sentence would be recommended no matter what the race, color,
29 religious beliefs, national origin, sex, or other protected
30 class of the defendant or of any victim may be.

31 8. After submission of the issues, but prior to the
32 commencement of the jury deliberations in the penalty
33 proceeding, the court shall instruct the jury that if the
34 defendant is not sentenced to death, the court is required by
35 law to impose a sentence of imprisonment until death without

1 parole. The court shall further instruct the jury that
2 the sentence of imprisonment until death without parole is
3 required by law if the jury fails to reach a unanimous verdict
4 recommending a sentence of death.

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

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

10 b. Which mitigating circumstances were established and
11 were considered in reaching the verdict returned on the issue
12 specified in subsection 6, paragraph "a".

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

18 11. However, if evidence that the defendant was not a
19 major participant in the commission of the capital murder
20 under section 902.15, and that the defendant's conduct did not
21 manifest a reckless indifference to human life is presented
22 to the jury, or to the court if there is no jury, the jury or
23 the court shall also return a special verdict on the issue.
24 If the jury unanimously determines, or the court if there is
25 no jury, determines that a preponderance of evidence exists
26 that shows that the defendant was not a major participant in
27 the commission of the capital murder under section 902.15,
28 and that the defendant's conduct did not manifest a reckless
29 indifference to human life, the court shall enter a judgment
30 of conviction and shall sentence the defendant to life
31 imprisonment as provided in section 902.1, even if the jury or
32 the court returns unanimous affirmative findings on each of the
33 issues submitted under subsection 6.

34 12. If the jury, or the court if there is no jury, returns
35 a negative finding on any of the issues submitted under

1 subsection 6, the court shall enter a judgment of conviction
2 and shall sentence the defendant to life imprisonment as
3 provided in section 902.1.

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

21 Sec. 7. Section 902.1, subsection 1, Code 2021, is amended
22 to read as follows:

23 1. ~~Upon~~ Except as provided in section 902.1A, a plea of
24 guilty, a verdict of guilty, or a special verdict upon which a
25 judgment of conviction of a class "A" felony may be rendered,
26 the court shall enter a judgment of conviction and shall commit
27 the defendant into the custody of the director of the Iowa
28 department of corrections for the rest of the defendant's
29 life. Nothing in the Iowa corrections code pertaining to
30 deferred judgment, deferred sentence, suspended sentence, or
31 reconsideration of sentence applies to a class "A" felony, and
32 a person convicted of a class "A" felony shall not be released
33 on parole unless the governor commutes the sentence to a term
34 of years.

35 Sec. 8. NEW SECTION. 902.1A Capital murder — death

1 **penalty.**

2 1. For the purposes of this section, "*lethal injection*"
3 means a continuous intravenous injection of a lethal substance
4 sufficient to cause death.

5 2. Notwithstanding section 902.1, upon return of a plea
6 or verdict of guilty to capital murder under section 902.15,
7 and a return of a verdict in favor of a sentence of death in
8 a penalty proceeding conducted as provided in section 901E.1,
9 the court shall enter a judgment of conviction and shall commit
10 the defendant into the custody of the director of the Iowa
11 department of corrections. The sentence shall be carried out
12 by the administration of a lethal injection pursuant to rules
13 adopted by the board of corrections. If a defendant, for whom
14 a warrant of execution is issued, is pregnant, the execution
15 shall not take place until after the defendant is no longer
16 pregnant. If a defendant, for whom a warrant of execution
17 is issued, is suffering from a mental illness as to prevent
18 the defendant from knowing the nature and quality of the act
19 the defendant has been convicted of, or from understanding
20 that trial on the offense has taken place and that execution
21 proceedings are about to take place, or to otherwise cause the
22 defendant to lack the capacity to understand the sentence which
23 has been imposed and to participate in any legal proceedings
24 relating to the sentence, the execution shall not take place
25 until after the defendant's capacity is restored. If the
26 director of the department of corrections or the defendant's
27 counsel files a request with the court which issued the warrant
28 of execution alleging that the defendant suffers from a mental
29 illness, a hearing on the matter shall be held in the manner
30 provided in section 812A.1.

31 **Sec. 9. NEW SECTION. 902.15 Capital murder.**

32 1. As used in this section:

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

35 b. "*Eligible for the death penalty*" means when a person

1 is convicted of the multiple offenses of murder in the first
2 degree in violation of section 707.2, kidnapping in violation
3 of section 710.2, 710.3, or 710.4, and sexual abuse in
4 violation of section 709.2, 709.3, or 709.4 with respect to the
5 same victim, and the victim is a minor.

6 *c. "Intellectually disabled"* means significant subaverage
7 general intellectual functioning accompanied by significant
8 deficits or impairments in adaptive functioning manifested in
9 the developmental period, but no later than the age of eighteen
10 years, and accompanied by deficits in adaptive behavior.

11 *d. "Mentally ill" or "mental illness"* means the condition
12 of a person who is suffering from a chronic and persistent
13 serious mental disease or disorder and who, by reason of that
14 condition, lacks sufficient judgment to make responsible
15 decisions regarding treatment and is reasonably likely to
16 injure the person's self or others who may come into contact
17 with the person if the person is allowed to remain at liberty
18 without treatment.

19 *e. "Minor"* means a person under eighteen years of age.

20 2. A person who commits capital murder, who is eligible
21 for the death penalty, who is not intellectually disabled or
22 mentally ill, and who is age eighteen or older at the time of
23 the capital murder, shall be subject to a sentence of death
24 under section 902.1A.

25 Sec. 10. NEW SECTION. 902.16 **Data collection for capital**
26 **murder — death penalty.**

27 1. The supreme court shall collect data on all capital
28 murder charges in which the death penalty is or was not waived
29 which are filed and processed in the courts in this state.
30 This data may be used by the supreme court to determine whether
31 death sentences imposed are excessive or disproportionate, or
32 under the influence of prejudice under section 814.28. The
33 court shall make this data available to litigants in death
34 penalty cases.

35 2. Data collected by public officials concerning factors

1 relevant to the imposition of the death sentence shall be made
2 publicly available.

3 Sec. 11. NEW SECTION. 903C.1 Executions — refusal to
4 perform.

5 An employee of the state who may lawfully perform, assist, or
6 participate in the execution of a person pursuant to section
7 902.1A, and rules adopted by the department of corrections,
8 shall not be required to perform, assist, or participate in
9 the execution. State employees who refuse to perform, assist,
10 or participate in the execution of a person shall not be
11 discriminated against in any way, including but not limited
12 to employment, promotion, advancement, transfer, licensing,
13 education, training, or the granting of any privileges or
14 appointments because of the refusal to perform, assist, or
15 participate in the execution.

16 Sec. 12. Section 904.105, Code 2021, is amended by adding
17 the following new subsection:

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

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

26 *b.* A representative from a broadcasting network serving
27 Iowa.

28 *c.* A representative from a television station located in
29 Iowa.

30 *d.* A representative from a radio station located in Iowa.

31 *e.* A representative from a daily newspaper published in
32 Iowa.

33 *f.* A representative from a weekly newspaper published in
34 Iowa.

35 *g.* A representative from the news media from the community

1 in which the condemned person resided, if that community is
2 located in Iowa.

3 Sec. 13. IMPLEMENTATION OF ACT. Section 25B.2, subsection
4 3, shall not apply to this Act.

5 Sec. 14. SEVERABILITY. If any provision of this Act or the
6 application thereof to any person is invalid, the invalidity
7 shall not affect the provisions or application of this Act
8 which can be given effect without the invalid provisions or
9 application and to this end, the provisions of this Act are
10 severable.

11 Sec. 15. EFFECTIVE DATE. This Act takes effect January 1,
12 2022.

13 Sec. 16. APPLICABILITY. This Act applies to offenses
14 committed on or after the effective date of this Act.

15 EXPLANATION

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

18 This bill amends the Iowa criminal code to provide for
19 punishment by death for capital murder committed by a person
20 age 18 or older if the trial jury, or the judge if there
21 is no jury, makes specific findings and whether the jury
22 believes the defendant should be put to death in a separate
23 penalty proceeding held after the close of the initial trial
24 proceeding.

25 Under the bill, a death penalty sentence could be imposed
26 if the person is convicted of the multiple offenses of murder
27 in the first degree, kidnapping in the first, second, or third
28 degree, and sexual abuse in the first, second, or third degree
29 with respect to the same victim, and the victim is a minor.

30 The bill provides that in order to receive a sentence of
31 death, the defendant must be at least 18 years of age at the
32 time the murder in the first degree was committed, must not be
33 mentally ill or intellectually disabled, and must have been a
34 major participant in the commission of the crime or must have
35 shown a manifest indifference to human life.

1 If a person is indigent and is charged with capital murder,
2 payment of costs for two attorneys is authorized. The supreme
3 court is required to establish standards for the competency
4 of counsel in death penalty cases. The state public defender
5 is charged with establishing teams of qualified lead and
6 co-counsel for death penalty cases, as well as conducting
7 or sponsoring specialized training programs for attorneys
8 representing persons who may be executed.

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

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

24 The sentence of death is imposed only when the trier of fact
25 (the jury or the court if the defendant has waived the right to
26 a jury trial) unanimously answers two questions affirmatively:
27 (1) whether aggravating circumstances established beyond a
28 reasonable doubt outweigh any mitigating circumstances that
29 may exist; and (2) whether the defendant should be sentenced
30 to death. Mitigating factors the trier of fact may consider
31 include the following: whether the defendant was under the
32 influence of a mental illness; the age of the defendant;
33 the defendant's ability to appreciate the wrongfulness of
34 the conduct due to a mental illness but not to a degree to
35 constitute a defense; the defendant has no significant prior

1 criminal history; the defendant was under extreme duress;
2 the defendant did not directly commit the murder; and the
3 defendant's character or record or the circumstances of the
4 offense. The sentencing proceeding is conducted separately
5 from the finding of guilt or innocence by the same trier of
6 fact.

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

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

29 A person who is sentenced to death, but who is pregnant when
30 the warrant of execution is issued, is not to be executed until
31 the person is no longer pregnant. A procedure is also provided
32 to stay execution of a condemned inmate who becomes insane
33 after conviction but before execution.

34 An employee of the state shall not be required to perform or
35 assist in any execution and shall not be discriminated against

1 for refusing to participate.

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

9 The bill contains severability provisions and takes effect
10 January 1, 2022, and applies only to offenses committed on or
11 after that date.