

HOUSE RESEARCH

Bill Summary

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Overview

Article 1 proposes a constitutional amendment authorizing the death penalty for murder in the first degree. Articles 2 to 6, which implement the death penalty will not go into effect unless and until the voters approve the constitutional amendment.

Article 2 governs death penalty procedures, including notification by the prosecution that the death penalty will be sought, specification of the aggravating circumstances justifying the sentence of death, establishment of evidentiary standards for precluding the death penalty, and the method of execution. This article also contains all of the administrative details necessary for implementation of the death penalty.

Article 3 allows for the Board of Pardons to commute death penalty sentences in certain circumstances.

Article 4 requires development of a best practices policy model to be used in creating and guiding a capital punishment system in Minnesota. Based on the sentencing guidelines commission model, a capital punishment policy commission is created to establish the best practices capital punishment system. The bill directs the commission to establish collaborative task forces to help develop best practices recommendations for the prosecution, defense, and judicial functions. After a process of refining the recommendations, the commission must adopt and implement a best practices system. The commission is also required to adopt death penalty guidelines designed to structure prosecutorial discretion in selection of death-eligible persons convicted of murder one.

Article 5 includes blank appropriations to the agencies responsible for implementing the capital punishment system.

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Article 6 makes technical changes to corrections law and the criminal code to integrate the new capital punishment system.

Article 1

Death Penalty Procedures

- 1 Constitutional amendment proposed; death penalty authorized.** Proposes a constitutional amendment authorizing the death penalty. The amendment would read:

"The crime of murder in the first degree is punishable by death. The legislature shall provide by law for the circumstances and procedures under which the death penalty for first degree murder may be imposed."

- 2 Submission to voters.** Requires the constitutional amendment proposed in section 1 to be submitted to voters in the 2004 general election.

Article 2

Death Penalty Procedures

- 1 Requiring notice by state in death penalty cases.** Requires the prosecuting attorney to notify the court and defendant when the state intends to seek a death sentence upon conviction.
- 2 Appointment of attorneys in capital cases.** Requires appointment of two defense attorneys in death penalty cases, unless the defendant has independently retained competent private counsel.
- 3 Sentence of death for murder in certain cases; sentencing proceedings.**

Subd. 1. Definitions. Defines first-degree murder just as the term is defined in section 609.185.

Subd. 2. Excluding death sentence. Provides six grounds for the court to impose a sentence other than death for a first-degree murder conviction. The six grounds are:

- no aggravating factors were established at trial;
- substantial mitigating factors were established at trial;
- the defendant, with approval from the prosecutor, accepted a lesser penalty than death;
- the defendant was under 18 years of age at the time of crime;
- the defendant's physical or mental condition calls for leniency; or

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- the evidence does not foreclose all doubt about the defendant's guilt.

Subd. 3. Preclusion of death penalty; evidentiary standards. Establishes a "beyond a reasonable doubt" standard for imposition of the death penalty. Prohibits imposition of the death penalty when the conviction is:

- not based on DNA evidence;
- the conviction was based on a single eyewitness account without corroboration;
- the conviction was based on the uncorroborated testimony of a single accomplice;
or
- the conviction was based on the uncorroborated testimony of an in-custody informant.

Subd. 4. Separate sentencing proceedings to determine if death penalty warranted. If a defendant is convicted of first-degree murder and is not otherwise sentenced under subdivision 2, the court must conduct a separate sentencing proceeding before a jury to determine if the death penalty should be imposed.

Subd. 5. Aggravating circumstances. Lists four aggravating factors that may be used as a basis for a prosecutor to seek a death sentence in murder in the first-degree cases.

Subd. 6. Mitigating circumstances. Lists six mitigating factors that may form the basis for a person who is otherwise subject to the death penalty to avoid that sanction.

4 **Mental retardation; exclusion from death penalty.** Establishes procedures to address the issue of applying the death penalty to mentally disabled defendants. This section is modeled after a proposal contained in a piece of legislation introduced in California. The procedures are intended to ensure that mentally retarded defendants are not executed. The United States Supreme Court has held application of the death penalty to this class of defendants is cruel and unusual punishment prohibited by the Eighth Amendment. *See, Atkins v. Virginia* (2002).

5 **Imposition of death sentence; mode of execution.**

Subd. 1. Decision. Provides that only the jury sitting as the trier of fact may return a death sentence. The jury must unanimously find that at least one of the aggravating factors listed in section 3, subdivision 5, are present to sentence a person to death. The jury must also unanimously find that there are no mitigating circumstances as listed in section 3, subdivision 6, that warrant leniency. Requires the court to concur with a death sentence. The prosecutor must establish aggravating circumstances beyond a reasonable doubt. Mitigating circumstances must be established by a preponderance of the evidence by the defendant. The court must instruct the jury on the requirements of

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this subdivision.

Subd. 2. Imposition of death. Requires the court to sentence the defendant to death when the jury unanimously (1) finds an aggravating circumstance exists, (2) finds that there are no mitigating circumstances that warrant leniency, and (3) recommends the sentence of death be imposed.

Subd. 3. Imposition of life without possibility of release. Specifies circumstances under which sentences of imposition of life without the possibility of release or life imprisonment must be imposed as alternatives to death.

Subd. 4. Sentence of death precluded. Precludes imposition of the death sentence on a person who was under the age of 18 at the time of the crime; on a person who is unable to comprehend the sanction and the reasons for it; on a person who is pregnant; or on a person who is mentally retarded.

Subd. 5. Execution by lethal injection. Mandates execution by lethal injection.

6 Sentencing court; administrative requirements.

Subd. 1. Date of execution. Requires the execution to be scheduled between 60 and 90 days from the date of pronouncement.

Subd. 2. Copies of order of execution. Requires the court administrator to distribute certified copies of the judgment to the parties involved in the case as well as other key figures in the criminal justice system.

Subd. 3. Delivery of defendant to maximum-security facility. Requires a defendant sentenced to death to serve the time prior to the execution in the maximum-security facility where the execution will occur.

7 Review of death sentences by supreme court.

Subd. 1. Automatic review. Requires the Supreme Court to review automatically all death sentences within 60 days.

Subd. 2. Transcript. Requires the court administrator to transmit the entire record and transcript to the Supreme Court.

Subd. 3. Review guidelines. Mandates that the Supreme Court review death sentences to determine if the punishment is excessive.

Subd. 4. Briefs. Permits the state and the defendant to submit briefs to the Supreme Court.

Subd. 5. Decision. Authorizes the Supreme Court to either affirm the decision or set the decision aside and remand the case for resentencing.

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Subd. 6. Notice to Governor. Requires the Supreme Court to notify the governor of its decision.

8 Unified review procedure. Requires the Supreme Court to establish a unified review procedure to handle death penalty challenges and appeals. Requires the Supreme Court to develop checklists for use by the trial court, the prosecutor, and defense counsel before, during, and after a death penalty trial. The checklists are intended to be a comprehensive listing of issues each party to the case should consider during the various stages of a death penalty case.

9 Stay of execution of death.

Subd. 1. Governor or appeal. Provides that a death sentence may only be stayed by the governor or incident to an appeal.

Subd. 2. Proceedings when inmate under sentence of death appears to be mentally ill or pregnant. Requires the governor to stay execution of a death sentence if the governor learns that the defendant may be mentally ill or pregnant. If the governor stays the execution under this subdivision, the governor must require the defendant to undergo physical and mental exams, as appropriate.

Subd. 3. Examination and hearing. Provides procedures for administering exams under this section and the court reviewing the results of the exams and related submissions.

Subd. 4. Mental illness. Provides direction to the governor based on the results of mental health exams ordered under subdivision 2 and judicial findings made after reviewing the exam results.

Subd. 5. Pregnancy. Provides direction to the governor based on the results of physical health exams ordered under subdivision 2 and judicial findings made after reviewing the exam results.

Subd. 6. Fee. Requires the state to pay a reasonable fee to physicians appointed to perform exams under this section.

10 Governor's duties; issuance of death warrant. Requires the governor to issue a death warrant when the Supreme Court affirms a death sentence.

11 Commissioner of corrections; duties; designation of place of execution.

Subd. 1. Maximum security facilities. Requires the commissioner to designate one or more maximum-security prisons as execution sites. Requires death row inmates to have their own unit. Authorizes the commissioner to establish a capital punishment unit to administer the commissioner's functions related to death sentences.

Subd. 2. Place of execution. Provides instruction to the commissioner for the place of execution and the hiring of the executioner.

Subd. 3. Executioner's identity; private data. Requires the identity of the

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executioner to remain private data.

Subd. 4. Regulation of execution. Requires the warden or assistant warden of the facility to be present at all executions.

Subd. 5. Witness to execution. Requires the warden to select 12 citizens and six members of the media to witness executions. Permits counsel for the inmate and clergy selected by the inmate to be present. No other persons may be present at the execution, other than necessary jail staff.

Subd. 6. Reading death warrant. Mandates that the death warrant be read to the inmate immediately before the lethal injection.

Subd. 7. Return of warrant of execution issued by governor. Directs the warden to return the death warrant to the governor and the court administrator with confirmation that the execution occurred.

Subd. 8. Sentence to death unexecuted for unjustifiable reasons. Requires the Supreme Court, at the request of the attorney general, to issue a death warrant where the governor unjustifiably fails to do so.

Subd. 9. Return of warrant of execution issued by supreme court. Directs the warden to return the death warrant to the Supreme Court with confirmation that the execution occurred in cases where the Supreme Court issues the death warrant. Copies of the signed death warrant must be sent to the court administrator and governor.

12 **Costs of execution; reimbursement; attorney general assistance.**

Subd. 1. Costs. Provides for state reimbursement of county expenses incurred as a result of death penalty cases.

Subd. 2. Attorney general assistance. Requires the attorney general to assist in death penalty cases, if the county attorney requests.

13 **Effective date.** January 1, 2007.

Article 3

Commutation of Death Penalty Sentences

1 Board of pardons; commutation of death penalty sentences

Subd. 1. Petitions. Permits a person sentenced to death to submit a petition for commutation of the sentence to the board of pardons. The board may not consider legal issues that were previously considered by a court of law or should have been brought before the courts during litigation of defendant's case. The board may not consider issues based on new information if the issues are subject to judicial review. The board must find a "substantial issue" before hearing a petition.

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Subd. 2. Procedures. Provides procedures governing the petition process and guidelines for petition content.

Subd. 3. Board action. Describes the authority of the board while a petition is pending before the board and guidelines for conducting the required hearings.

Subd. 4. Rules. Requires the board to adopt rules to implement this article.

Subd. 5. Decision. Authorizes the board to either uphold the death sentence or commute the sentence to life imprisonment without the possibility of release.

2 **Effective date.** January 1, 2007.

Article 4

Best Practices Capital Punishment Model and Prosecutorial Charge Guidelines

1 **Definitions.** Defines "best practices capital punishment policy" as a coordinated set of procedures, policies, and punishment philosophies implementing the death penalty as the linchpin of the Minnesota sentencing system. Also provides definitions for commission, death penalty prosecutorial charge guidelines, defense function, judicial function, and prosecution function.

2 **Capital punishment policy commission; best practices capital punishment policy model.**

Subd. 1. Commission; establishment. Establishes the 31-member capital punishment policy commission.

Subd. 2. Members. Lists the 31 members of the commission.

Subd. 3. Appointment terms. Establishes terms of service for commission members.

Subd. 4. Reimbursement. Provides for reimbursement of certain member expenses.

Subd. 5. Best practices capital punishment model policy; death penalty guidelines for prosecutorial charge decision. Directs the commission to design, develop, and maintain a best practices capital punishment model policy governing the institutional architecture and operation of capital punishment in Minnesota. Directs the commission to adopt death penalty guidelines for the prosecutorial charge decision (see section 3).

Subd. 6. Task forces; development of best practices recommendations. Directs the commission to coordinate and work with task forces to develop the model recommendations for the prosecution, public defense, and judicial functions.

Subd. 7. Clearinghouse for capital punishment policy. Directs the commission to serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on capital punishment sentencing practices from other jurisdictions.

Subd. 8. Research Director. Authorizes the commission to hire a research director to serve at the commission's pleasure.

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- 3 Subd. 9. Administrative services.** Directs the commissioner of corrections to provide office space and administrative services to the commission.
- 3 Commission adoption of guidelines for prosecutorial charge decision.**
- Subd. 1. Guidelines.** Directs the commission to adopt death penalty guidelines for the prosecutorial charge decision designed to identify the "worst of the worst" murderers for whom the death penalty should apply.
- Subd. 2. Prosecutorial decision.** Requires prosecutors who are considering seeking the death penalty to apply the death penalty guidelines and make written findings concerning their application to the case in question. If the guidelines do not support seeking the death penalty, a prosecutor may submit the case to the attorney general death penalty charge review panel. The panel may authorize the death penalty notwithstanding the guidelines.
- Subd. 3. Death penalty guideline principles.** Requires the guidelines to embody principles of fairness, punishment philosophy, and fiscal prudence.
- 4 Review panel for prosecutorial death penalty charge decision.**
- Subd. 1. Capital charge review panel.** Establishes a capital charge review panel to review capital punishment decisions. The panel consists of the managing assistant attorney general of capital prosecution and trial support, three county attorneys, and a retired judge.
- Subd. 2. Charge approval.** Requires the panel to review county attorney requests to seek the death penalty.
- Subd. 3. Capital charge database.** Provides for creation of a capital charge database to facilitate uniform, rational death penalty charge decisions.
- Subd. 4. Charge guideline departures.** Authorizes the panel to approve or disapprove of a prosecutor's recommendation regarding the death penalty when the prosecutor's recommendation is a departure from the death penalty guidelines.
- 5 Defense function.**
- Subd. 1. Capital defense and trial services unit; task force.** Creates a manager of capital defense and trial services in the state public defender's office. Directs the manager to establish a task force to develop and make recommendations relating to the defense function in the capital punishment system. Directs the task force to develop best practices capital punishment defense function recommendations, including how to adequately compensate counsel and standards for qualified defense counsel.
- Subd. 2. Recommendations; submittal to commission.** Requires submittal of the task force's recommendations to the commission.
- Subd. 3. Operations.** Establishes the task force as an ongoing entity.

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6 Prosecution function.

Subd. 1. Capital prosecution and trial support division. Creates a capital prosecution and trial support division in the Office of the Attorney General.

Subd. 2. Task force. The manager of the division must create a task force to develop and make recommendations relating to the prosecution function in the capital punishment system.

Subd. 3. Recommendations; submittal to commission. Requires submittal of the task force's recommendations to the commission.

Subd. 4. Operations. Establishes the task force as an ongoing entity.

7 Death penalty best practices recommendations; judicial function.

Subd. 1. Task force. Directs the State Court Administrator, in consultation with the chief appellate judge and the chief trial court judges, to appoint a task force to develop and make recommendations relating to the judicial function in the capital punishment system.

Subd. 2. Membership. Lists the members of the task force.

Subd. 3. Supreme court. The Supreme Court is requested to develop best practices recommendations relating to jurors and jury instructions.

Subd. 4. Recommendation. Requires submittal of the task force's and the Supreme Court's recommendations to the capital punishment commission.

Subd. 5. Operations. Establishes the task force as an ongoing entity.

8 Homicide DNA analysis; bureau of criminal apprehension; collaboration with commissioner. Directs the BCA to establish uniform procedures and protocols for collection and preservation of evidence in murder cases. Requires the BCA to work with the commission to create a capital cases DNA database.

9 Task force; capital punishment continuing education and standards of professional competence.

Subd. 1. Task force. Creates a task force to assist in developing continuing education programs and minimum standards of professional competence in death penalty litigation covering the prosecution, defense, and judicial functions.

Subd. 2. Assessment. Directs the task force to assess what skills and knowledge are necessary for all criminal justice participants in death penalty cases.

Subd. 3. Education and training requirements. Directs the task force to look to other jurisdictions in formulating recommendations for death penalty education and

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training.

Subd. 4. Recommendation. Requires submittal of the task force's recommendations to the capital punishment commission.

Subd. 5. Operations. Establishes the task force as an ongoing entity.

10 Capital punishment; task force to calculate system costs.

Subd. 1. Task force; cost analysis. Directs the commission to create a task force to assist in calculating the costs of a capital punishment sanction system. Task force members include representatives from the corrections, prosecution, defense, and judicial functions.

Subd. 2. Calculating capital case costs. Requires the task force to develop a capital punishment cost analysis model.

Subd. 3. Submit report. Requires the task force to submit a report to the commission.

11 Schedule for implementation of death penalty. Provides a schedule for developing best practices capital punishment model policy recommendations.

12 Effective date. Sections 1 to 11 are effective the day following final enactment.

Article 5

Appropriations for Capital Punishment

1 Capital punishment. Appropriates an unspecified amount of money from the general fund to commissioner of corrections, the commissioner of public safety, the board of public defense, the Attorney General, the commissioner of finance (to reimburse counties for their capital punishment costs), the Supreme Court, and the district courts to implement this act and the death penalty system.

2 Effective date. The day following passage of the constitutional amendment.

Article 6

Technical Amendments

1 Conditional release. Clarifies that a person sentenced to death is not eligible for conditional release.

2 Sentences available. Establishes death as a sentence option for the court to impose in criminal cases.

3 Capital punishment; alternative; life without possibility of release. Establishes the sanction of life without possibility of release for certain defendants who qualify for the death penalty.

4 Discharge. Clarifies that a person sentenced to death is not eligible for supervised release or discharge.

5 Terms and conditions. Prohibits a court from issuing a stay of imposition or execution of a death sentence other than as provided for in chapter 244A.

6 Murder in the first degree. Adds a cross-reference to the death penalty in the murder in the first-degree statute.

7 Effective date. January 1, 2007.