

HB5631



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5631

by Rep. Justin Slaughter

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 2012. Provides that the offense of first degree murder for killing an individual without lawful justification during the attempted commission or commission of a forcible felony only applies when the death is caused by a person engaged as a principal or an accessory in the attempted commission or commission of the forcible felony.

LRB101 16515 RLC 65897 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Section 9-1 as follows:

6 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

7 Sec. 9-1. First degree murder; death penalties;
8 exceptions; separate hearings; proof; findings; appellate
9 procedures; reversals.

10 (a) A person who kills an individual without lawful
11 justification commits first degree murder if, in performing the
12 acts which cause the death:

13 (1) he or she either intends to kill or do great bodily
14 harm to that individual or another, or knows that such acts
15 will cause death to that individual or another; or

16 (2) he or she knows that such acts create a strong
17 probability of death or great bodily harm to that
18 individual or another; or

19 (3) he or she is attempting or committing a forcible
20 felony other than second degree murder, and the death is
21 caused by a person engaged as a principal or an accessory
22 in the attempted commission or commission of that felony.

23 (b) Aggravating Factors. A defendant who at the time of the

1 commission of the offense has attained the age of 18 or more
2 and who has been found guilty of first degree murder may be
3 sentenced to death if:

4 (1) the murdered individual was a peace officer or
5 fireman killed in the course of performing his official
6 duties, to prevent the performance of his or her official
7 duties, or in retaliation for performing his or her
8 official duties, and the defendant knew or should have
9 known that the murdered individual was a peace officer or
10 fireman; or

11 (2) the murdered individual was an employee of an
12 institution or facility of the Department of Corrections,
13 or any similar local correctional agency, killed in the
14 course of performing his or her official duties, to prevent
15 the performance of his or her official duties, or in
16 retaliation for performing his or her official duties, or
17 the murdered individual was an inmate at such institution
18 or facility and was killed on the grounds thereof, or the
19 murdered individual was otherwise present in such
20 institution or facility with the knowledge and approval of
21 the chief administrative officer thereof; or

22 (3) the defendant has been convicted of murdering two
23 or more individuals under subsection (a) of this Section or
24 under any law of the United States or of any state which is
25 substantially similar to subsection (a) of this Section
26 regardless of whether the deaths occurred as the result of

1 the same act or of several related or unrelated acts so
2 long as the deaths were the result of either an intent to
3 kill more than one person or of separate acts which the
4 defendant knew would cause death or create a strong
5 probability of death or great bodily harm to the murdered
6 individual or another; or

7 (4) the murdered individual was killed as a result of
8 the hijacking of an airplane, train, ship, bus, or other
9 public conveyance; or

10 (5) the defendant committed the murder pursuant to a
11 contract, agreement, or understanding by which he or she
12 was to receive money or anything of value in return for
13 committing the murder or procured another to commit the
14 murder for money or anything of value; or

15 (6) the murdered individual was killed in the course of
16 another felony if:

17 (a) the murdered individual:

18 (i) was actually killed by the defendant, or

19 (ii) received physical injuries personally
20 inflicted by the defendant substantially
21 contemporaneously with physical injuries caused by
22 one or more persons for whose conduct the defendant
23 is legally accountable under Section 5-2 of this
24 Code, and the physical injuries inflicted by
25 either the defendant or the other person or persons
26 for whose conduct he is legally accountable caused

1 the death of the murdered individual; and

2 (b) in performing the acts which caused the death
3 of the murdered individual or which resulted in
4 physical injuries personally inflicted by the
5 defendant on the murdered individual under the
6 circumstances of subdivision (ii) of subparagraph (a)
7 of paragraph (6) of subsection (b) of this Section, the
8 defendant acted with the intent to kill the murdered
9 individual or with the knowledge that his acts created
10 a strong probability of death or great bodily harm to
11 the murdered individual or another; and

12 (c) the other felony was an inherently violent
13 crime or the attempt to commit an inherently violent
14 crime. In this subparagraph (c), "inherently violent
15 crime" includes, but is not limited to, armed robbery,
16 robbery, predatory criminal sexual assault of a child,
17 aggravated criminal sexual assault, aggravated
18 kidnapping, aggravated vehicular hijacking, aggravated
19 arson, aggravated stalking, residential burglary, and
20 home invasion; or

21 (7) the murdered individual was under 12 years of age
22 and the death resulted from exceptionally brutal or heinous
23 behavior indicative of wanton cruelty; or

24 (8) the defendant committed the murder with intent to
25 prevent the murdered individual from testifying or
26 participating in any criminal investigation or prosecution

1 or giving material assistance to the State in any
2 investigation or prosecution, either against the defendant
3 or another; or the defendant committed the murder because
4 the murdered individual was a witness in any prosecution or
5 gave material assistance to the State in any investigation
6 or prosecution, either against the defendant or another;
7 for purposes of this paragraph (8), "participating in any
8 criminal investigation or prosecution" is intended to
9 include those appearing in the proceedings in any capacity
10 such as trial judges, prosecutors, defense attorneys,
11 investigators, witnesses, or jurors; or

12 (9) the defendant, while committing an offense
13 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
14 407 or 407.1 or subsection (b) of Section 404 of the
15 Illinois Controlled Substances Act, or while engaged in a
16 conspiracy or solicitation to commit such offense,
17 intentionally killed an individual or counseled,
18 commanded, induced, procured or caused the intentional
19 killing of the murdered individual; or

20 (10) the defendant was incarcerated in an institution
21 or facility of the Department of Corrections at the time of
22 the murder, and while committing an offense punishable as a
23 felony under Illinois law, or while engaged in a conspiracy
24 or solicitation to commit such offense, intentionally
25 killed an individual or counseled, commanded, induced,
26 procured or caused the intentional killing of the murdered

1 individual; or

2 (11) the murder was committed in a cold, calculated and
3 premeditated manner pursuant to a preconceived plan,
4 scheme or design to take a human life by unlawful means,
5 and the conduct of the defendant created a reasonable
6 expectation that the death of a human being would result
7 therefrom; or

8 (12) the murdered individual was an emergency medical
9 technician - ambulance, emergency medical technician -
10 intermediate, emergency medical technician - paramedic,
11 ambulance driver, or other medical assistance or first aid
12 personnel, employed by a municipality or other
13 governmental unit, killed in the course of performing his
14 official duties, to prevent the performance of his official
15 duties, or in retaliation for performing his official
16 duties, and the defendant knew or should have known that
17 the murdered individual was an emergency medical
18 technician - ambulance, emergency medical technician -
19 intermediate, emergency medical technician - paramedic,
20 ambulance driver, or other medical assistance or first aid
21 personnel; or

22 (13) the defendant was a principal administrator,
23 organizer, or leader of a calculated criminal drug
24 conspiracy consisting of a hierarchical position of
25 authority superior to that of all other members of the
26 conspiracy, and the defendant counseled, commanded,

1 induced, procured, or caused the intentional killing of the
2 murdered person; or

3 (14) the murder was intentional and involved the
4 infliction of torture. For the purpose of this Section
5 torture means the infliction of or subjection to extreme
6 physical pain, motivated by an intent to increase or
7 prolong the pain, suffering or agony of the victim; or

8 (15) the murder was committed as a result of the
9 intentional discharge of a firearm by the defendant from a
10 motor vehicle and the victim was not present within the
11 motor vehicle; or

12 (16) the murdered individual was 60 years of age or
13 older and the death resulted from exceptionally brutal or
14 heinous behavior indicative of wanton cruelty; or

15 (17) the murdered individual was a person with a
16 disability and the defendant knew or should have known that
17 the murdered individual was a person with a disability. For
18 purposes of this paragraph (17), "person with a disability"
19 means a person who suffers from a permanent physical or
20 mental impairment resulting from disease, an injury, a
21 functional disorder, or a congenital condition that
22 renders the person incapable of adequately providing for
23 his or her own health or personal care; or

24 (18) the murder was committed by reason of any person's
25 activity as a community policing volunteer or to prevent
26 any person from engaging in activity as a community

1 policing volunteer; or

2 (19) the murdered individual was subject to an order of
3 protection and the murder was committed by a person against
4 whom the same order of protection was issued under the
5 Illinois Domestic Violence Act of 1986; or

6 (20) the murdered individual was known by the defendant
7 to be a teacher or other person employed in any school and
8 the teacher or other employee is upon the grounds of a
9 school or grounds adjacent to a school, or is in any part
10 of a building used for school purposes; or

11 (21) the murder was committed by the defendant in
12 connection with or as a result of the offense of terrorism
13 as defined in Section 29D-14.9 of this Code; or

14 (22) the murdered individual was a member of a
15 congregation engaged in prayer or other religious
16 activities at a church, synagogue, mosque, or other
17 building, structure, or place used for religious worship.

18 (b-5) Aggravating Factor; Natural Life Imprisonment. A
19 defendant who has been found guilty of first degree murder and
20 who at the time of the commission of the offense had attained
21 the age of 18 years or more may be sentenced to natural life
22 imprisonment if (i) the murdered individual was a physician,
23 physician assistant, psychologist, nurse, or advanced practice
24 registered nurse, (ii) the defendant knew or should have known
25 that the murdered individual was a physician, physician
26 assistant, psychologist, nurse, or advanced practice

1 registered nurse, and (iii) the murdered individual was killed
2 in the course of acting in his or her capacity as a physician,
3 physician assistant, psychologist, nurse, or advanced practice
4 registered nurse, or to prevent him or her from acting in that
5 capacity, or in retaliation for his or her acting in that
6 capacity.

7 (c) Consideration of factors in Aggravation and
8 Mitigation.

9 The court shall consider, or shall instruct the jury to
10 consider any aggravating and any mitigating factors which are
11 relevant to the imposition of the death penalty. Aggravating
12 factors may include but need not be limited to those factors
13 set forth in subsection (b). Mitigating factors may include but
14 need not be limited to the following:

15 (1) the defendant has no significant history of prior
16 criminal activity;

17 (2) the murder was committed while the defendant was
18 under the influence of extreme mental or emotional
19 disturbance, although not such as to constitute a defense
20 to prosecution;

21 (3) the murdered individual was a participant in the
22 defendant's homicidal conduct or consented to the
23 homicidal act;

24 (4) the defendant acted under the compulsion of threat
25 or menace of the imminent infliction of death or great
26 bodily harm;

1 (5) the defendant was not personally present during
2 commission of the act or acts causing death;

3 (6) the defendant's background includes a history of
4 extreme emotional or physical abuse;

5 (7) the defendant suffers from a reduced mental
6 capacity.

7 Provided, however, that an action that does not otherwise
8 mitigate first degree murder cannot qualify as a mitigating
9 factor for first degree murder because of the discovery,
10 knowledge, or disclosure of the victim's sexual orientation as
11 defined in Section 1-103 of the Illinois Human Rights Act.

12 (d) Separate sentencing hearing.

13 Where requested by the State, the court shall conduct a
14 separate sentencing proceeding to determine the existence of
15 factors set forth in subsection (b) and to consider any
16 aggravating or mitigating factors as indicated in subsection
17 (c). The proceeding shall be conducted:

18 (1) before the jury that determined the defendant's
19 guilt; or

20 (2) before a jury impanelled for the purpose of the
21 proceeding if:

22 A. the defendant was convicted upon a plea of
23 guilty; or

24 B. the defendant was convicted after a trial before
25 the court sitting without a jury; or

26 C. the court for good cause shown discharges the

1 jury that determined the defendant's guilt; or
2 (3) before the court alone if the defendant waives a
3 jury for the separate proceeding.

4 (e) Evidence and Argument.

5 During the proceeding any information relevant to any of
6 the factors set forth in subsection (b) may be presented by
7 either the State or the defendant under the rules governing the
8 admission of evidence at criminal trials. Any information
9 relevant to any additional aggravating factors or any
10 mitigating factors indicated in subsection (c) may be presented
11 by the State or defendant regardless of its admissibility under
12 the rules governing the admission of evidence at criminal
13 trials. The State and the defendant shall be given fair
14 opportunity to rebut any information received at the hearing.

15 (f) Proof.

16 The burden of proof of establishing the existence of any of
17 the factors set forth in subsection (b) is on the State and
18 shall not be satisfied unless established beyond a reasonable
19 doubt.

20 (g) Procedure - Jury.

21 If at the separate sentencing proceeding the jury finds
22 that none of the factors set forth in subsection (b) exists,
23 the court shall sentence the defendant to a term of
24 imprisonment under Chapter V of the Unified Code of
25 Corrections. If there is a unanimous finding by the jury that
26 one or more of the factors set forth in subsection (b) exist,

1 the jury shall consider aggravating and mitigating factors as
2 instructed by the court and shall determine whether the
3 sentence of death shall be imposed. If the jury determines
4 unanimously, after weighing the factors in aggravation and
5 mitigation, that death is the appropriate sentence, the court
6 shall sentence the defendant to death. If the court does not
7 concur with the jury determination that death is the
8 appropriate sentence, the court shall set forth reasons in
9 writing including what facts or circumstances the court relied
10 upon, along with any relevant documents, that compelled the
11 court to non-concur with the sentence. This document and any
12 attachments shall be part of the record for appellate review.
13 The court shall be bound by the jury's sentencing
14 determination.

15 If after weighing the factors in aggravation and
16 mitigation, one or more jurors determines that death is not the
17 appropriate sentence, the court shall sentence the defendant to
18 a term of imprisonment under Chapter V of the Unified Code of
19 Corrections.

20 (h) Procedure - No Jury.

21 In a proceeding before the court alone, if the court finds
22 that none of the factors found in subsection (b) exists, the
23 court shall sentence the defendant to a term of imprisonment
24 under Chapter V of the Unified Code of Corrections.

25 If the Court determines that one or more of the factors set
26 forth in subsection (b) exists, the Court shall consider any

1 aggravating and mitigating factors as indicated in subsection
2 (c). If the Court determines, after weighing the factors in
3 aggravation and mitigation, that death is the appropriate
4 sentence, the Court shall sentence the defendant to death.

5 If the court finds that death is not the appropriate
6 sentence, the court shall sentence the defendant to a term of
7 imprisonment under Chapter V of the Unified Code of
8 Corrections.

9 (h-5) Decertification as a capital case.

10 In a case in which the defendant has been found guilty of
11 first degree murder by a judge or jury, or a case on remand for
12 resentencing, and the State seeks the death penalty as an
13 appropriate sentence, on the court's own motion or the written
14 motion of the defendant, the court may decertify the case as a
15 death penalty case if the court finds that the only evidence
16 supporting the defendant's conviction is the uncorroborated
17 testimony of an informant witness, as defined in Section 115-21
18 of the Code of Criminal Procedure of 1963, concerning the
19 confession or admission of the defendant or that the sole
20 evidence against the defendant is a single eyewitness or single
21 accomplice without any other corroborating evidence. If the
22 court decertifies the case as a capital case under either of
23 the grounds set forth above, the court shall issue a written
24 finding. The State may pursue its right to appeal the
25 decertification pursuant to Supreme Court Rule 604(a)(1). If
26 the court does not decertify the case as a capital case, the

1 matter shall proceed to the eligibility phase of the sentencing
2 hearing.

3 (i) Appellate Procedure.

4 The conviction and sentence of death shall be subject to
5 automatic review by the Supreme Court. Such review shall be in
6 accordance with rules promulgated by the Supreme Court. The
7 Illinois Supreme Court may overturn the death sentence, and
8 order the imposition of imprisonment under Chapter V of the
9 Unified Code of Corrections if the court finds that the death
10 sentence is fundamentally unjust as applied to the particular
11 case. If the Illinois Supreme Court finds that the death
12 sentence is fundamentally unjust as applied to the particular
13 case, independent of any procedural grounds for relief, the
14 Illinois Supreme Court shall issue a written opinion explaining
15 this finding.

16 (j) Disposition of reversed death sentence.

17 In the event that the death penalty in this Act is held to
18 be unconstitutional by the Supreme Court of the United States
19 or of the State of Illinois, any person convicted of first
20 degree murder shall be sentenced by the court to a term of
21 imprisonment under Chapter V of the Unified Code of
22 Corrections.

23 In the event that any death sentence pursuant to the
24 sentencing provisions of this Section is declared
25 unconstitutional by the Supreme Court of the United States or
26 of the State of Illinois, the court having jurisdiction over a

1 person previously sentenced to death shall cause the defendant
2 to be brought before the court, and the court shall sentence
3 the defendant to a term of imprisonment under Chapter V of the
4 Unified Code of Corrections.

5 (k) Guidelines for seeking the death penalty.

6 The Attorney General and State's Attorneys Association
7 shall consult on voluntary guidelines for procedures governing
8 whether or not to seek the death penalty. The guidelines do not
9 have the force of law and are only advisory in nature.

10 (Source: P.A. 100-460, eff. 1-1-18; 100-513, eff. 1-1-18;
11 100-863, eff. 8-14-18; 101-223, eff. 1-1-20.)