



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4784

by Rep. Thomas Morrison

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 2012. Provides that a defendant who has been found guilty of first degree murder and who at the time of the commission of the offense had attained the age of 18 years or more may be sentenced to natural life imprisonment if the murder was committed against a victim who was the parent of a child under 18 years of age at the time of the commission of the offense and the defendant is: (1) the spouse or former spouse of the victim; (2) a person who shares or formerly shared a common dwelling with the victim; or (3) a person who has or allegedly had a child in common with the victim.

LRB100 17055 RLC 32206 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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. ~~First degree Murder — Death penalties —~~
10 ~~Exceptions — Separate Hearings — Proof — Findings — Appellate~~
11 ~~procedures — Reversals.~~

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

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

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

21 (3) he is attempting or committing a forcible felony
22 other than second degree murder.

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 official duties,
7 or in retaliation for performing his official duties, and
8 the defendant knew or should have known that the murdered
9 individual was a peace officer or fireman; or

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

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

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

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

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

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

16 (a) the murdered individual:

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

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

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

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

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

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

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

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

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

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

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

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

1 murdered person; or

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

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

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

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

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

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

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

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

13 (b-5) Aggravating Factor; Natural Life Imprisonment. A
14 defendant who has been found guilty of first degree murder and
15 who at the time of the commission of the offense had attained
16 the age of 18 years or more may be sentenced to natural life
17 imprisonment if:

18 (1) ~~(i)~~ the murdered individual was a physician,
19 physician assistant, psychologist, nurse, or advanced
20 practice registered nurse when:

21 (A) ~~(ii)~~ the defendant knew or should have known
22 that the murdered individual was a physician,
23 physician assistant, psychologist, nurse, or advanced
24 practice registered nurse, and

25 (B) ~~(iii)~~ the murdered individual was killed in the
26 course of acting in his or her capacity as a physician,

1 physician assistant, psychologist, nurse, or advanced
2 practice registered nurse, or to prevent him or her
3 from acting in that capacity, or in retaliation for his
4 or her acting in that capacity; or

5 (2) the murder was committed against a victim who was
6 the parent of a child under 18 years of age at the time of
7 the commission of the offense and the defendant is:

8 (A) the spouse or former spouse of the victim;

9 (B) a person who shares or formerly shared a common
10 dwelling with the victim; or

11 (C) a person who has or allegedly had a child in
12 common with the victim.

13 (c) Consideration of factors in Aggravation and
14 Mitigation.

15 The court shall consider, or shall instruct the jury to
16 consider any aggravating and any mitigating factors which are
17 relevant to the imposition of the death penalty. Aggravating
18 factors may include but need not be limited to those factors
19 set forth in subsection (b). Mitigating factors may include but
20 need not be limited to the following:

21 (1) the defendant has no significant history of prior
22 criminal activity;

23 (2) the murder was committed while the defendant was
24 under the influence of extreme mental or emotional
25 disturbance, although not such as to constitute a defense
26 to prosecution;

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

4 (4) the defendant acted under the compulsion of threat
5 or menace of the imminent infliction of death or great
6 bodily harm;

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

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

11 (7) the defendant suffers from a reduced mental
12 capacity.

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

18 (d) Separate sentencing hearing.

19 Where requested by the State, the court shall conduct a
20 separate sentencing proceeding to determine the existence of
21 factors set forth in subsection (b) and to consider any
22 aggravating or mitigating factors as indicated in subsection
23 (c). The proceeding shall be conducted:

24 (1) before the jury that determined the defendant's
25 guilt; or

26 (2) before a jury impanelled for the purpose of the

1 proceeding if:

2 A. the defendant was convicted upon a plea of
3 guilty; or

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

6 C. the court for good cause shown discharges the
7 jury that determined the defendant's guilt; or

8 (3) before the court alone if the defendant waives a
9 jury for the separate proceeding.

10 (e) Evidence and Argument.

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

21 (f) Proof.

22 The burden of proof of establishing the existence of any of
23 the factors set forth in subsection (b) is on the State and
24 shall not be satisfied unless established beyond a reasonable
25 doubt.

26 (g) Procedure - Jury.

1 If at the separate sentencing proceeding the jury finds
2 that none of the factors set forth in subsection (b) exists,
3 the court shall sentence the defendant to a term of
4 imprisonment under Chapter V of the Unified Code of
5 Corrections. If there is a unanimous finding by the jury that
6 one or more of the factors set forth in subsection (b) exist,
7 the jury shall consider aggravating and mitigating factors as
8 instructed by the court and shall determine whether the
9 sentence of death shall be imposed. If the jury determines
10 unanimously, after weighing the factors in aggravation and
11 mitigation, that death is the appropriate sentence, the court
12 shall sentence the defendant to death. If the court does not
13 concur with the jury determination that death is the
14 appropriate sentence, the court shall set forth reasons in
15 writing including what facts or circumstances the court relied
16 upon, along with any relevant documents, that compelled the
17 court to non-concur with the sentence. This document and any
18 attachments shall be part of the record for appellate review.
19 The court shall be bound by the jury's sentencing
20 determination.

21 If after weighing the factors in aggravation and
22 mitigation, one or more jurors determines that death is not the
23 appropriate sentence, the court shall sentence the defendant to
24 a term of imprisonment under Chapter V of the Unified Code of
25 Corrections.

26 (h) Procedure - No Jury.

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

5 If the Court determines that one or more of the factors set
6 forth in subsection (b) exists, the Court shall consider any
7 aggravating and mitigating factors as indicated in subsection
8 (c). If the Court determines, after weighing the factors in
9 aggravation and mitigation, that death is the appropriate
10 sentence, the Court shall sentence the defendant to death.

11 If the court finds that death is not the appropriate
12 sentence, the court shall sentence the defendant to a term of
13 imprisonment under Chapter V of the Unified Code of
14 Corrections.

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

16 In a case in which the defendant has been found guilty of
17 first degree murder by a judge or jury, or a case on remand for
18 resentencing, and the State seeks the death penalty as an
19 appropriate sentence, on the court's own motion or the written
20 motion of the defendant, the court may decertify the case as a
21 death penalty case if the court finds that the only evidence
22 supporting the defendant's conviction is the uncorroborated
23 testimony of an informant witness, as defined in Section 115-21
24 of the Code of Criminal Procedure of 1963, concerning the
25 confession or admission of the defendant or that the sole
26 evidence against the defendant is a single eyewitness or single

1 accomplice without any other corroborating evidence. If the
2 court decertifies the case as a capital case under either of
3 the grounds set forth above, the court shall issue a written
4 finding. The State may pursue its right to appeal the
5 decertification pursuant to Supreme Court Rule 604(a)(1). If
6 the court does not decertify the case as a capital case, the
7 matter shall proceed to the eligibility phase of the sentencing
8 hearing.

9 (i) Appellate Procedure.

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

22 (j) Disposition of reversed death sentence.

23 In the event that the death penalty in this Act is held to
24 be unconstitutional by the Supreme Court of the United States
25 or of the State of Illinois, any person convicted of first
26 degree murder shall be sentenced by the court to a term of

1 imprisonment under Chapter V of the Unified Code of
2 Corrections.

3 In the event that any death sentence pursuant to the
4 sentencing provisions of this Section is declared
5 unconstitutional by the Supreme Court of the United States or
6 of the State of Illinois, the court having jurisdiction over a
7 person previously sentenced to death shall cause the defendant
8 to be brought before the court, and the court shall sentence
9 the defendant to a term of imprisonment under Chapter V of the
10 Unified Code of Corrections.

11 (k) Guidelines for seeking the death penalty.

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

16 (Source: P.A. 99-143, eff. 7-27-15; 100-460, eff. 1-1-18;
17 100-513, eff. 1-1-18; revised 10-5-17.)