



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5891

by Rep. Jerry Costello, II

SYNOPSIS AS INTRODUCED:

See Index

Amends the Criminal Code of 2012. Reinstates the death penalty if at the time of the commission of the offense the person was 18 years of age or older and the person purposely caused the death of 2 or more human beings without lawful justification or the victim was a peace officer or firefighter killed in the course of performing his or her official duties, either to prevent the performance of the person's duties or in retaliation for the performance of the person's duties, and the person knew that the victim was a peace officer or firefighter. Provides a person is legally accountable for the conduct of another in the commission of death penalty murder only when: (1) having the purpose to cause the death of another human being without lawful justification, the person commands, induces, procures, or causes another to perform the conduct; or (2) the person agrees with one or more other persons to engage in conduct for the common purpose of causing the death of another human being without lawful justification, in which case all parties to the agreement shall be criminally liable for acts of other parties to the agreement committed during and in furtherance of the agreement. Amends the Code of Criminal Procedure of 1963 and Unified Code of Corrections to make conforming changes. Effective immediately.

LRB100 22092 SLF 40801 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 5-1 and by adding Sections 4-4.5, 5-2.5, and 9-1.5 as
6 follows:

7 (720 ILCS 5/4-4.5 new)

8 Sec. 4-4.5. Purposely or purpose. In Section 5-2.5 and
9 9-1.5 of this Code, a person acts purposely or with the purpose
10 when his or her conscious objective is to cause the death of
11 another human being.

12 (720 ILCS 5/5-1) (from Ch. 38, par. 5-1)

13 Sec. 5-1. Accountability for conduct of another. Except as
14 provided in Section 5-2.5 of the Code a ~~A~~ person is responsible
15 for conduct which is an element of an offense if the conduct is
16 either that of the person himself, or that of another and he is
17 legally accountable for such conduct as provided in Section 5-2
18 of this Code, or both.

19 (Source: Laws 1961, p. 1983.)

20 (720 ILCS 5/5-2.5 new)

21 Sec. 5-2.5. Death penalty murder; accountability for acts

1 of others. A person is legally accountable for the conduct of
2 another in the commission of death penalty murder only when:

3 (1) having the purpose to cause the death of another
4 human being without lawful justification, the person
5 commands, induces, procures, or causes another to perform
6 the conduct; or

7 (2) the person agrees with one or more other persons to
8 engage in conduct for the common purpose of causing the
9 death of another human being without lawful justification,
10 in which case all parties to the agreement shall be
11 criminally liable for acts of other parties to the
12 agreement committed during and in furtherance of the
13 agreement.

14 (720 ILCS 5/9-1.5 new)

15 Sec. 9-1.5. Death penalty murder.

16 (a) In this Section, "human being" means a person who has
17 been born and is alive.

18 (b) A person commits death penalty murder when at the time
19 of the commission of the offense he or she has attained the age
20 of 18 or more and he or she purposely causes the death of
21 another human being without lawful justification if:

22 (1) at the time of the offense, the person caused the
23 death of 2 or more other human beings without lawful
24 justification; or

25 (2) the victim was a peace officer, as defined by

1 Section 2-13 of this Code or firefighter, killed in the
2 course of performing his or her official duties, either to
3 prevent the performance of the person's duties or in
4 retaliation for the performance of the person's duties, and
5 the person knew that the victim was a peace officer or
6 firefighter.

7 (c) The trier of fact regarding the charge of death penalty
8 murder shall resolve any doubt regarding identification or any
9 element of the offense in favor of the defendant. A defendant
10 shall not be found guilty of the offense of death penalty
11 murder unless each and every element of the offense is
12 established beyond any doubt. If the trial is by jury, before
13 the trial commences and again before jury deliberations
14 commence, the jury shall be instructed that the penalty for
15 death penalty murder is death.

16 (d) A defendant, who has been found guilty of death penalty
17 murder, may, at a separate sentencing hearing, present evidence
18 of mitigating circumstances not rising to the level of legal
19 justification, including but not limited to evidence of
20 intellectual disability as provided in Section 114-15 of the
21 Code of Criminal Procedure of 1963. The prosecution may present
22 rebuttal evidence. The hearing shall be before the trial judge.
23 The judge shall sentence the defendant to death, unless he or
24 she finds that the defendant has, by a preponderance of the
25 evidence, presented sufficiently substantial evidence to prove
26 intellectual disability or that imposition of the death penalty

1 would result in a manifest miscarriage of justice, in which
2 case the judge shall sentence the defendant to life
3 imprisonment without the possibility of parole.

4 (e) On appeal from a conviction of death penalty murder,
5 review of the facts shall be de novo. In conducting its de novo
6 review of the trial evidence, the appellate court shall resolve
7 all doubt regarding identification and guilt in favor of the
8 defendant. The appellate court shall conduct an independent
9 review of the evidence without giving deference to the judgment
10 of the trier of fact at trial.

11 (f) Sentence. The sentence for death penalty murder is
12 death.

13 Section 10. The Code of Criminal Procedure of 1963 is
14 amended by changing Sections 114-15, 119-1, and 122-2.2 as
15 follows:

16 (725 ILCS 5/114-15)

17 Sec. 114-15. Intellectual disability.

18 (a) In a first degree murder case in which the State seeks
19 the death penalty as an appropriate sentence or in a death
20 penalty murder case, any party may raise the issue of the
21 defendant's intellectual disabilities by motion. A defendant
22 wishing to raise the issue of his or her intellectual
23 disabilities shall provide written notice to the State and the
24 court as soon as the defendant reasonably believes such issue

1 will be raised.

2 (b) The issue of the defendant's intellectual disabilities
3 shall be determined in a pretrial hearing. The court shall be
4 the fact finder on the issue of the defendant's intellectual
5 disabilities and shall determine the issue by a preponderance
6 of evidence in which the moving party has the burden of proof.
7 The court may appoint an expert in the field of intellectual
8 disabilities. The defendant and the State may offer experts
9 from the field of intellectual disabilities. The court shall
10 determine admissibility of evidence and qualification as an
11 expert.

12 (c) If after a plea of guilty to first degree murder or
13 death penalty murder, or a finding of guilty of first degree
14 murder or death penalty murder in a bench trial, or a verdict
15 of guilty for first degree murder or death penalty murder in a
16 jury trial, or on a matter remanded from the Supreme Court for
17 sentencing for first degree murder or death penalty murder, and
18 the State seeks the death penalty as an appropriate sentence,
19 the defendant may raise the issue of defendant's intellectual
20 disabilities not at eligibility but at aggravation and
21 mitigation. The defendant and the State may offer experts from
22 the field of intellectual disabilities. The court shall
23 determine admissibility of evidence and qualification as an
24 expert.

25 (d) In determining whether the defendant is a person with
26 an intellectual disability, the intellectual disability must

1 have manifested itself by the age of 18. IQ tests and
2 psychometric tests administered to the defendant must be the
3 kind and type recognized by experts in the field of
4 intellectual disabilities. In order for the defendant to be
5 considered a person with an intellectual disability, a low IQ
6 must be accompanied by significant deficits in adaptive
7 behavior in at least 2 of the following skill areas:
8 communication, self-care, social or interpersonal skills, home
9 living, self-direction, academics, health and safety, use of
10 community resources, and work. An intelligence quotient (IQ) of
11 75 or below is presumptive evidence of an intellectual
12 disability.

13 (e) Evidence of an intellectual disability that did not
14 result in disqualifying the case as a capital case, may be
15 introduced as evidence in mitigation during a capital
16 sentencing hearing. A failure of the court to determine that
17 the defendant is a person with an intellectual disability does
18 not preclude the court during trial from allowing evidence
19 relating to mental disability should the court deem it
20 appropriate.

21 (f) If the court determines at a pretrial hearing or after
22 remand that a capital defendant is a person with an
23 intellectual disability, and the State does not appeal pursuant
24 to Supreme Court Rule 604, the case shall no longer be
25 considered a capital case and the procedural guidelines
26 established for capital cases shall no longer be applicable to

1 the defendant. In that case, the defendant shall be sentenced
2 under the sentencing provisions of Chapter V of the Unified
3 Code of Corrections.

4 (Source: P.A. 99-143, eff. 7-27-15.)

5 (725 ILCS 5/119-1)

6 Sec. 119-1. Death penalty abolished.

7 (a) Except as otherwise provided in subsection (a-5) of
8 this Section, beginning ~~Beginning~~ on the effective date of this
9 amendatory Act of the 96th General Assembly, notwithstanding
10 any other law to the contrary, the death penalty is abolished
11 and a sentence to death may not be imposed.

12 (a-5) A sentence of death shall be imposed for death
13 penalty murder.

14 (b) All unobligated and unexpended moneys remaining in the
15 Capital Litigation Trust Fund on the effective date of this
16 amendatory Act of the 96th General Assembly shall be
17 transferred into the Death Penalty Abolition Fund, a special
18 fund in the State treasury, to be expended by the Illinois
19 Criminal Justice Information Authority, for services for
20 families of victims of homicide or murder and for training of
21 law enforcement personnel.

22 (Source: P.A. 96-1543, eff. 7-1-11.)

23 (725 ILCS 5/122-2.2)

24 Sec. 122-2.2. Intellectual disability and post-conviction

1 relief.

2 (a) In cases where no determination of an intellectual
3 disability was made and a defendant has been convicted of
4 first-degree murder or death penalty murder, sentenced to
5 death, and is in custody pending execution of the sentence of
6 death, the following procedures shall apply:

7 (1) Notwithstanding any other provision of law or rule
8 of court, a defendant may seek relief from the death
9 sentence through a petition for post-conviction relief
10 under this Article alleging that the defendant was a person
11 with an intellectual disability as defined in Section
12 114-15 at the time the offense was alleged to have been
13 committed.

14 (2) The petition must be filed within 180 days of the
15 effective date of this amendatory Act of the 93rd General
16 Assembly or within 180 days of the issuance of the mandate
17 by the Illinois Supreme Court setting the date of
18 execution, whichever is later.

19 (b) All other provisions of this Article governing
20 petitions for post-conviction relief shall apply to a petition
21 for post-conviction relief alleging an intellectual
22 disability.

23 (Source: P.A. 99-78, eff. 7-20-15; 99-143, eff. 7-27-15.)

24 Section 15. The Unified Code of Corrections is amended by
25 changing Section 5-4.5-10 and by adding Section 5-4.5-20.5 as

1 follows:

2 (730 ILCS 5/5-4.5-10)

3 Sec. 5-4.5-10. OFFENSE CLASSIFICATIONS.

4 (a) FELONY CLASSIFICATIONS. Felonies are classified, for
5 the purpose of sentencing, as follows:

6 (1) First degree murder (as a separate class of
7 felony).

8 (1.5) Death penalty murder (as a separate class of
9 felony).

10 (2) Class X felonies.

11 (3) Class 1 felonies.

12 (4) Class 2 felonies.

13 (5) Class 3 felonies.

14 (6) Class 4 felonies.

15 (b) MISDEMEANOR CLASSIFICATIONS. Misdemeanors are
16 classified, for the purpose of sentencing, as follows:

17 (1) Class A misdemeanors.

18 (2) Class B misdemeanors.

19 (3) Class C misdemeanors.

20 (c) PETTY AND BUSINESS OFFENSES. Petty offenses and
21 business offenses are not classified.

22 (Source: P.A. 95-1052, eff. 7-1-09.)

23 (730 ILCS 5/5-4.5-20.5 new)

24 Sec. 5-4.5-20.5. DEATH PENALTY MURDER; SENTENCE. For death

1 penalty murder, the defendant shall be sentenced to death,
2 unless the trial judge finds that the defendant has, by a
3 preponderance of the evidence, presented sufficiently
4 substantial evidence to outweigh the circumstances of the
5 offense and the evidence presented by the prosecution at the
6 sentencing hearing, in which case the judge shall sentence the
7 defendant to life imprisonment without the possibility of
8 parole.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 720 ILCS 5/4-4.5 new

4 720 ILCS 5/5-1 from Ch. 38, par. 5-1

5 720 ILCS 5/5-2.5 new

6 720 ILCS 5/9-1.5 new

7 725 ILCS 5/114-15

8 725 ILCS 5/119-1

9 725 ILCS 5/122-2.2

10 730 ILCS 5/5-4.5-10

11 730 ILCS 5/5-4.5-20.5 new