



Sen. Daniel Biss

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1 AMENDMENT TO SENATE BILL 1761

2 AMENDMENT NO. _____. Amend Senate Bill 1761 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by
5 changing Sections 9-1 and 9-2 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 either intends to kill or do great bodily harm
14 to that individual or another, or knows that such acts will
15 cause death to that individual or another; or

16 (2) he knows that such acts create a strong probability

1 of death or great bodily harm to that individual or
2 another; or

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

5 (b) Aggravating Factors. A defendant who at the time of the
6 commission of the offense has attained the age of 18 or more
7 and who has been found guilty of first degree murder may be
8 sentenced to death if:

9 (1) the murdered individual was a peace officer or
10 fireman killed in the course of performing his official
11 duties, to prevent the performance of his official duties,
12 or in retaliation for performing his official duties, and
13 the defendant knew or should have known that the murdered
14 individual was a peace officer or fireman; or

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

26 (3) the defendant has been convicted of murdering two

1 or more individuals under subsection (a) of this Section or
2 under any law of the United States or of any state which is
3 substantially similar to subsection (a) of this Section
4 regardless of whether the deaths occurred as the result of
5 the same act or of several related or unrelated acts so
6 long as the deaths were the result of either an intent to
7 kill more than one person or of separate acts which the
8 defendant knew would cause death or create a strong
9 probability of death or great bodily harm to the murdered
10 individual or another; or

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

14 (5) the defendant committed the murder pursuant to a
15 contract, agreement or understanding by which he was to
16 receive money or anything of value in return for committing
17 the murder or procured another to commit the murder for
18 money or anything of value; or

19 (6) the murdered individual was killed in the course of
20 another felony if:

21 (a) the murdered individual:

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

23 (ii) received physical injuries personally
24 inflicted by the defendant substantially
25 contemporaneously with physical injuries caused by
26 one or more persons for whose conduct the defendant

1 is legally accountable under Section 5-2 of this
2 Code, and the physical injuries inflicted by
3 either the defendant or the other person or persons
4 for whose conduct he is legally accountable caused
5 the death of the murdered individual; and

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

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

25 (7) the murdered individual was under 12 years of age
26 and the death resulted from exceptionally brutal or heinous

1 behavior indicative of wanton cruelty; or

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

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

24 (10) the defendant was incarcerated in an institution
25 or facility of the Department of Corrections at the time of
26 the murder, and while committing an offense punishable as a

1 felony under Illinois law, or while engaged in a conspiracy
2 or solicitation to commit such offense, intentionally
3 killed an individual or counseled, commanded, induced,
4 procured or caused the intentional killing of the murdered
5 individual; or

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

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

26 (13) the defendant was a principal administrator,

1 organizer, or leader of a calculated criminal drug
2 conspiracy consisting of a hierarchical position of
3 authority superior to that of all other members of the
4 conspiracy, and the defendant counseled, commanded,
5 induced, procured, or caused the intentional killing of the
6 murdered person; or

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

12 (15) the murder was committed as a result of the
13 intentional discharge of a firearm by the defendant from a
14 motor vehicle and the victim was not present within the
15 motor vehicle; or

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

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

1 his or her own health or personal care; or

2 (18) the murder was committed by reason of any person's
3 activity as a community policing volunteer or to prevent
4 any person from engaging in activity as a community
5 policing volunteer; or

6 (19) the murdered individual was subject to an order of
7 protection and the murder was committed by a person against
8 whom the same order of protection was issued under the
9 Illinois Domestic Violence Act of 1986; or

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

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

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 nurse, (ii) the defendant knew or should have known that the
25 murdered individual was a physician, physician assistant,
26 psychologist, nurse, or advanced practice nurse, and (iii) the

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

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

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

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

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

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

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

26 (5) the defendant was not personally present during

1 commission of the act or acts causing death;

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

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

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

11 (d) Separate sentencing hearing.

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

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

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

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

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

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

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

3 (e) Evidence and Argument.

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

14 (f) Proof.

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

19 (g) Procedure - Jury.

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

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

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

19 (h) Procedure - No Jury.

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

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

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

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

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

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

1 hearing.

2 (i) Appellate Procedure.

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

15 (j) Disposition of reversed death sentence.

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

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

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

4 (k) Guidelines for seeking the death penalty.

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

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

10 (720 ILCS 5/9-2) (from Ch. 38, par. 9-2)

11 Sec. 9-2. Second degree murder.

12 (a) A person commits the offense of second degree murder
13 when he or she commits the offense of first degree murder as
14 defined in paragraph (1) or (2) of subsection (a) of Section
15 9-1 of this Code and either of the following mitigating factors
16 are present:

17 (1) at the time of the killing he or she is acting
18 under a sudden and intense passion resulting from serious
19 provocation by the individual killed or another whom the
20 offender endeavors to kill, but he or she negligently or
21 accidentally causes the death of the individual killed; or

22 (2) at the time of the killing he or she believes the
23 circumstances to be such that, if they existed, would
24 justify or exonerate the killing under the principles
25 stated in Article 7 of this Code, but his or her belief is

1 unreasonable.

2 (b) Serious provocation is conduct sufficient to excite an
3 intense passion in a reasonable person provided, however, that
4 an action that does not otherwise constitute serious
5 provocation cannot qualify as serious provocation because of
6 the discovery, knowledge, or disclosure of the victim's sexual
7 orientation as defined in Section 1-103 of the Illinois Human
8 Rights Act.

9 (c) When evidence of either of the mitigating factors
10 defined in subsection (a) of this Section has been presented,
11 the burden of proof is on the defendant to prove either
12 mitigating factor by a preponderance of the evidence before the
13 defendant can be found guilty of second degree murder. The
14 burden of proof, however, remains on the State to prove beyond
15 a reasonable doubt each of the elements of first degree murder
16 and, when appropriately raised, the absence of circumstances at
17 the time of the killing that would justify or exonerate the
18 killing under the principles stated in Article 7 of this Code.

19 (d) Sentence. Second degree murder is a Class 1 felony.
20 (Source: P.A. 96-710, eff. 1-1-10.)".