



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2113

Introduced 2/26/2021, by Sen. Robert Peters

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 2012 concerning first degree murder. Provides that, in addition to other elements of the offense, a person commits first degree murder if he or she: (1) acting alone, commits or attempts to commit a forcible felony other than second degree murder and, in the course of and in furtherance of the crime, he or she personally causes the death of an individual or (2) when acting with one or more participants, commits or attempts to commit a forcible felony other than second degree murder, and in the course of and in furtherance of the offense, another participant in the offense causes the death of an individual, and he or she knew that the other participant would engage in conduct that would result in death or great bodily harm (rather than killing an individual when attempting or committing a forcible felony other than second degree murder).

LRB102 12159 KMF 17496 b

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
5 changing 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~~
12 ~~the acts which cause the death:~~

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

17 (2) in performing the acts which cause the death, he
18 or she knows that such acts create a strong probability of
19 death or great bodily harm to that individual or another;
20 ~~or~~

21 (3) he or she, acting alone, commits or attempts to
22 commit ~~is attempting or committing~~ a forcible felony other
23 than second degree murder and, in the course of and in

1 furtherance of the crime, he or she personally causes the
2 death of an individual; or-

3 (4) he or she, when acting with one or more
4 participants, commits or attempts to commit a forcible
5 felony other than second degree murder, and in the course
6 of and in furtherance of the offense, another participant
7 in the offense causes the death of an individual, and he or
8 she knew that the other participant would engage in
9 conduct that would result in death or great bodily harm.

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

14 (1) the murdered individual was a peace officer or
15 fireman killed in the course of performing his official
16 duties, to prevent the performance of his or her official
17 duties, or in retaliation for performing his or her
18 official duties, and the defendant knew or should have
19 known that the murdered individual was a peace officer or
20 fireman; or

21 (2) the murdered individual was an employee of an
22 institution or facility of the Department of Corrections,
23 or any similar local correctional agency, killed in the
24 course of performing his or her official duties, to
25 prevent the performance of his or her official duties, or
26 in retaliation for performing his or her official duties,

1 or the murdered individual was an inmate at such
2 institution or facility and was killed on the grounds
3 thereof, or the murdered individual was otherwise present
4 in such institution or facility with the knowledge and
5 approval of the chief administrative officer thereof; or

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

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

20 (5) the defendant committed the murder pursuant to a
21 contract, agreement, or understanding by which he or she
22 was to receive money or anything of value in return for
23 committing the murder or procured another to commit the
24 murder for money or anything of value; or

25 (6) the murdered individual was killed in the course
26 of another felony if:

1 (a) the murdered individual:
2 (i) was actually killed by the defendant, or
3 (ii) received physical injuries personally
4 inflicted by the defendant substantially
5 contemporaneously with physical injuries caused by
6 one or more persons for whose conduct the
7 defendant is legally accountable under Section 5-2
8 of this Code, and the physical injuries inflicted
9 by either the defendant or the other person or
10 persons for whose conduct he is legally
11 accountable caused the death of the murdered
12 individual; and

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

23 (c) the other felony was an inherently violent
24 crime or the attempt to commit an inherently violent
25 crime. In this subparagraph (c), "inherently violent
26 crime" includes, but is not limited to, armed robbery,

1 robbery, predatory criminal sexual assault of a child,
2 aggravated criminal sexual assault, aggravated
3 kidnapping, aggravated vehicular hijacking, aggravated
4 arson, aggravated stalking, residential burglary, and
5 home invasion; or

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

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

24 (9) the defendant, while committing an offense
25 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
26 407 or 407.1 or subsection (b) of Section 404 of the

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

6 (10) the defendant was incarcerated in an institution
7 or facility of the Department of Corrections at the time
8 of the murder, and while committing an offense punishable
9 as a felony under Illinois law, or while engaged in a
10 conspiracy or solicitation to commit such offense,
11 intentionally killed an individual or counseled,
12 commanded, induced, procured or caused the intentional
13 killing of the murdered individual; or

14 (11) the murder was committed in a cold, calculated
15 and premeditated manner pursuant to a preconceived plan,
16 scheme or design to take a human life by unlawful means,
17 and the conduct of the defendant created a reasonable
18 expectation that the death of a human being would result
19 therefrom; or

20 (12) the murdered individual was an emergency medical
21 technician - ambulance, emergency medical technician -
22 intermediate, emergency medical technician - paramedic,
23 ambulance driver, or other medical assistance or first aid
24 personnel, employed by a municipality or other
25 governmental unit, killed in the course of performing his
26 official duties, to prevent the performance of his

1 official duties, or in retaliation for performing his
2 official duties, and the defendant knew or should have
3 known that the murdered individual was an emergency
4 medical technician - ambulance, emergency medical
5 technician - intermediate, emergency medical technician -
6 paramedic, ambulance driver, or other medical assistance
7 or first aid personnel; or

8 (13) the defendant was a principal administrator,
9 organizer, or leader of a calculated criminal drug
10 conspiracy consisting of a hierarchical position of
11 authority superior to that of all other members of the
12 conspiracy, and the defendant counseled, commanded,
13 induced, procured, or caused the intentional killing of
14 the murdered person; or

15 (14) the murder was intentional and involved the
16 infliction of torture. For the purpose of this Section
17 torture means the infliction of or subjection to extreme
18 physical pain, motivated by an intent to increase or
19 prolong the pain, suffering or agony of the victim; or

20 (15) the murder was committed as a result of the
21 intentional discharge of a firearm by the defendant from a
22 motor vehicle and the victim was not present within the
23 motor vehicle; or

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

1 (17) the murdered individual was a person with a
2 disability and the defendant knew or should have known
3 that the murdered individual was a person with a
4 disability. For purposes of this paragraph (17), "person
5 with a disability" means a person who suffers from a
6 permanent physical or mental impairment resulting from
7 disease, an injury, a functional disorder, or a congenital
8 condition that renders the person incapable of adequately
9 providing for his or her own health or personal care; or

10 (18) the murder was committed by reason of any
11 person's activity as a community policing volunteer or to
12 prevent any person from engaging in activity as a
13 community policing volunteer; or

14 (19) the murdered individual was subject to an order
15 of protection and the murder was committed by a person
16 against whom the same order of protection was issued under
17 the Illinois Domestic Violence Act of 1986; or

18 (20) the murdered individual was known by the
19 defendant to be a teacher or other person employed in any
20 school and the teacher or other employee is upon the
21 grounds of a school or grounds adjacent to a school, or is
22 in any part of a building used for school purposes; or

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

26 (22) the murdered individual was a member of a

1 congregation engaged in prayer or other religious
2 activities at a church, synagogue, mosque, or other
3 building, structure, or place used for religious worship.

4 (b-5) Aggravating Factor; Natural Life Imprisonment. A
5 defendant who has been found guilty of first degree murder and
6 who at the time of the commission of the offense had attained
7 the age of 18 years or more may be sentenced to natural life
8 imprisonment if (i) the murdered individual was a physician,
9 physician assistant, psychologist, nurse, or advanced practice
10 registered nurse, (ii) the defendant knew or should have known
11 that the murdered individual was a physician, physician
12 assistant, psychologist, nurse, or advanced practice
13 registered nurse, and (iii) the murdered individual was killed
14 in the course of acting in his or her capacity as a physician,
15 physician assistant, psychologist, nurse, or advanced practice
16 registered nurse, or to prevent him or her from acting in that
17 capacity, or in retaliation for his or her acting in that
18 capacity.

19 (c) Consideration of factors in Aggravation and
20 Mitigation.

21 The court shall consider, or shall instruct the jury to
22 consider any aggravating and any mitigating factors which are
23 relevant to the imposition of the death penalty. Aggravating
24 factors may include but need not be limited to those factors
25 set forth in subsection (b). Mitigating factors may include
26 but need not be limited to the following:

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

3 (2) the murder was committed while the defendant was
4 under the influence of extreme mental or emotional
5 disturbance, although not such as to constitute a defense
6 to prosecution;

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

10 (4) the defendant acted under the compulsion of threat
11 or menace of the imminent infliction of death or great
12 bodily harm;

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

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

17 (7) the defendant suffers from a reduced mental
18 capacity.

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

24 (d) Separate sentencing hearing.

25 Where requested by the State, the court shall conduct a
26 separate sentencing proceeding to determine the existence of

1 factors set forth in subsection (b) and to consider any
2 aggravating or mitigating factors as indicated in subsection
3 (c). The proceeding shall be conducted:

4 (1) before the jury that determined the defendant's
5 guilt; or

6 (2) before a jury impanelled for the purpose of the
7 proceeding if:

8 A. the defendant was convicted upon a plea of
9 guilty; or

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

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

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

16 (e) Evidence and Argument.

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

1 the hearing.

2 (f) Proof.

3 The burden of proof of establishing the existence of any
4 of the factors set forth in subsection (b) is on the State and
5 shall not be satisfied unless established beyond a reasonable
6 doubt.

7 (g) Procedure - Jury.

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

1 determination.

2 If after weighing the factors in aggravation and
3 mitigation, one or more jurors determines that death is not
4 the appropriate sentence, the court shall sentence the
5 defendant to a term of imprisonment under Chapter V of the
6 Unified Code of Corrections.

7 (h) Procedure - No Jury.

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

12 If the Court determines that one or more of the factors set
13 forth in subsection (b) exists, the Court shall consider any
14 aggravating and mitigating factors as indicated in subsection
15 (c). If the Court determines, after weighing the factors in
16 aggravation and mitigation, that death is the appropriate
17 sentence, the Court shall sentence the defendant to death.

18 If the court finds that death is not the appropriate
19 sentence, the court shall sentence the defendant to a term of
20 imprisonment under Chapter V of the Unified Code of
21 Corrections.

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

23 In a case in which the defendant has been found guilty of
24 first degree murder by a judge or jury, or a case on remand for
25 resentencing, and the State seeks the death penalty as an
26 appropriate sentence, on the court's own motion or the written

1 motion of the defendant, the court may decertify the case as a
2 death penalty case if the court finds that the only evidence
3 supporting the defendant's conviction is the uncorroborated
4 testimony of an informant witness, as defined in Section
5 115-21 of the Code of Criminal Procedure of 1963, concerning
6 the confession or admission of the defendant or that the sole
7 evidence against the defendant is a single eyewitness or
8 single accomplice without any other corroborating evidence. If
9 the court decertifies the case as a capital case under either
10 of the grounds set forth above, the court shall issue a written
11 finding. The State may pursue its right to appeal the
12 decertification pursuant to Supreme Court Rule 604(a)(1). If
13 the court does not decertify the case as a capital case, the
14 matter shall proceed to the eligibility phase of the
15 sentencing hearing.

16 (i) Appellate Procedure.

17 The conviction and sentence of death shall be subject to
18 automatic review by the Supreme Court. Such review shall be in
19 accordance with rules promulgated by the Supreme Court. The
20 Illinois Supreme Court may overturn the death sentence, and
21 order the imposition of imprisonment under Chapter V of the
22 Unified Code of Corrections if the court finds that the death
23 sentence is fundamentally unjust as applied to the particular
24 case. If the Illinois Supreme Court finds that the death
25 sentence is fundamentally unjust as applied to the particular
26 case, independent of any procedural grounds for relief, the

1 Illinois Supreme Court shall issue a written opinion
2 explaining this finding.

3 (j) Disposition of reversed death sentence.

4 In the event that the death penalty in this Act is held to
5 be unconstitutional by the Supreme Court of the United States
6 or of the State of Illinois, any person convicted of first
7 degree murder shall be sentenced by the court to a term of
8 imprisonment under Chapter V of the Unified Code of
9 Corrections.

10 In the event that any death sentence pursuant to the
11 sentencing provisions of this Section is declared
12 unconstitutional by the Supreme Court of the United States or
13 of the State of Illinois, the court having jurisdiction over a
14 person previously sentenced to death shall cause the defendant
15 to be brought before the court, and the court shall sentence
16 the defendant to a term of imprisonment under Chapter V of the
17 Unified Code of Corrections.

18 (k) Guidelines for seeking the death penalty.

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

23 (Source: P.A. 100-460, eff. 1-1-18; 100-513, eff. 1-1-18;
24 100-863, eff. 8-14-18; 101-223, eff. 1-1-20.)