

1 AN ACT in relation to 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 1961 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) he either intends to kill or do great bodily
14 harm to that individual or another, or knows that such
15 acts will cause death to that individual or another; or

16 (2) he 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 is attempting or committing a forcible
20 felony other than second degree murder.

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

25 (1) the murdered individual was a peace officer or
26 fireman killed in the course of performing his official
27 duties, to prevent the performance of his official
28 duties, or in retaliation for performing his official
29 duties, and the defendant knew or should have known that
30 the murdered individual was a peace officer or fireman;
31 or

1 (2) the murdered individual was an employee of an
2 institution or facility of the Department of Corrections,
3 or any similar local correctional agency, killed in the
4 course of performing his official duties, to prevent the
5 performance of his official duties, or in retaliation for
6 performing his official duties, or the murdered
7 individual was an inmate at such institution or facility
8 and was killed on the grounds thereof, or the murdered
9 individual was otherwise present in such institution or
10 facility with the knowledge and approval of the chief
11 administrative officer thereof; or

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

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

26 (5) the defendant committed the murder pursuant to
27 a contract, agreement or understanding by which he was to
28 receive money or anything of value in return for
29 committing the murder or procured another to commit the
30 murder for money or anything of value; or

31 (6) the murdered individual was killed in the
32 course of another felony if:

33 (a) the murdered individual:

34 (i) was actually killed by the defendant,

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or

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

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

(c) the other felony was one of the following: armed robbery, armed violence, robbery, predatory criminal sexual assault of a child, aggravated criminal sexual assault, aggravated kidnapping, aggravated vehicular hijacking, forcible detention, arson, aggravated arson, aggravated stalking, burglary, residential burglary, home invasion, calculated criminal drug conspiracy as defined in Section 405 of the Illinois Controlled Substances Act, streetgang criminal drug conspiracy as defined in Section 405.2 of the Illinois Controlled Substances Act, or the attempt to commit any of the

1 felonies listed in this subsection (c); or

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

5 (8) the defendant committed the murder with intent
6 to prevent the murdered individual from testifying in any
7 criminal prosecution or giving material assistance to the
8 State in any investigation or prosecution, either against
9 the defendant or another; or the defendant committed the
10 murder because the murdered individual was a witness in
11 any prosecution or gave material assistance to the State
12 in any investigation or prosecution, either against the
13 defendant or another; or

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

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

30 (11) the murder was committed in a cold, calculated
31 and premeditated manner pursuant to a preconceived plan,
32 scheme or design to take a human life by unlawful means,
33 and the conduct of the defendant created a reasonable
34 expectation that the death of a human being would result

1 therefrom; or

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

16 (13) the defendant was a principal administrator,
17 organizer, or leader of a calculated criminal drug
18 conspiracy consisting of a hierarchical position of
19 authority superior to that of all other members of the
20 conspiracy, and the defendant counseled, commanded,
21 induced, procured, or caused the intentional killing of
22 the murdered person; or

23 (14) the murder was intentional and involved the
24 infliction of torture. For the purpose of this Section
25 torture means the infliction of or subjection to extreme
26 physical pain, motivated by an intent to increase or
27 prolong the pain, suffering or agony of the victim; or

28 (15) the murder was committed as a result of the
29 intentional discharge of a firearm by the defendant from
30 a motor vehicle and the victim was not present within the
31 motor vehicle; or

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

1 (17) the murdered individual was a disabled person
2 and the defendant knew or should have known that the
3 murdered individual was disabled. For purposes of this
4 paragraph (17), "disabled person" means a person who
5 suffers from a permanent physical or mental impairment
6 resulting from disease, an injury, a functional disorder,
7 or a congenital condition that renders the person
8 incapable of adequately providing for his or her own
9 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
15 order of protection and the murder was committed by a
16 person against whom the same order of protection was
17 issued under the Illinois Domestic Violence Act of 1986;
18 or

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

24 (21) the murder was committed by the defendant in
25 connection with or as a result of the offense of
26 terrorism as defined in Section 29D-30 of this Code.

27 (c) Consideration of factors in Aggravation and
28 Mitigation.

29 The court shall consider, or shall instruct the jury to
30 consider any aggravating and any mitigating factors which are
31 relevant to the imposition of the death penalty. Aggravating
32 factors may include but need not be limited to those factors
33 set forth in subsection (b). Mitigating factors may include
34 but need not be limited to the following:

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

3 (2) the murder was committed while the defendant
4 was 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
8 the defendant's homicidal conduct or consented to the
9 homicidal act;

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

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

15 (d) Separate sentencing hearing.

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

21 (1) before the jury that determined the defendant's
22 guilt; or

23 (2) before a jury impanelled for the purpose of the
24 proceeding if:

25 A. the defendant was convicted upon a plea of
26 guilty; or

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

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

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

33 (e) Evidence and Argument.

34 During the proceeding any information relevant to any of

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

11 (f) Proof.

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

16 (g) Procedure - Jury.

17 If at the separate sentencing proceeding the jury finds
18 that none of the factors set forth in subsection (b) exists,
19 the court shall sentence the defendant to a term of
20 imprisonment under Chapter V of the Unified Code of
21 Corrections. If there is a unanimous finding by the jury
22 that one or more of the factors set forth in subsection (b)
23 exist, the jury shall consider aggravating and mitigating
24 factors as instructed by the court and shall determine
25 whether the sentence of death shall be imposed. If the issue
26 is raised by the defendant, the jury shall also determine
27 whether the defendant is mentally retarded as defined by
28 Section 5-2-7 of the Unified Code of Corrections. If the
29 jury determines unanimously that there are no mitigating
30 factors sufficient to preclude the imposition of the death
31 sentence, the court shall sentence the defendant to death. If
32 the jury determines that the defendant is mentally retarded,
33 the court shall sentence the defendant to a term of
34 imprisonment under Chapter V of the Unified Code of

1 Corrections.

2 Unless the jury unanimously finds that there are no
3 mitigating factors sufficient to preclude the imposition of
4 the death sentence the court shall sentence the defendant to
5 a term of imprisonment under Chapter V of the Unified Code of
6 Corrections.

7 (h) Procedure - No Jury.

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

13 If the Court determines that one or more of the factors
14 set forth in subsection (b) exists, the Court shall consider
15 any aggravating and mitigating factors as indicated in
16 subsection (c). If the Court determines that there are no
17 mitigating factors sufficient to preclude the imposition of
18 the death sentence, the Court shall sentence the defendant to
19 death. If the court determines that the defendant is mentally
20 retarded as defined by Section 5-2-7 of the Unified Code of
21 Corrections after the issue has been raised by the defendant,
22 the court shall sentence the defendant to a term of
23 imprisonment under Chapter V of the Unified Code of
24 Corrections.

25 Unless the court finds that there are no mitigating
26 factors sufficient to preclude the imposition of the sentence
27 of death, the court shall sentence the defendant to a term of
28 imprisonment under Chapter V of the Unified Code of
29 Corrections.

30 (i) Appellate Procedure.

31 The conviction and sentence of death shall be subject to
32 automatic review by the Supreme Court. Such review shall be
33 in accordance with rules promulgated by the Supreme Court.

34 (j) Disposition of reversed death sentence.

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

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

15 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
 16 92-854, eff. 12-5-02.)

17 Section 10. The Unified Code of Corrections is amended
 18 by adding Section 5-2-7 as follows:

19 (730 ILCS 5/5-2-7 new)

20 Sec. 5-2-7. Fitness to be executed.

21 (a) A person is unfit to be executed if the person is
 22 mentally retarded. For the purposes of this Section,
 23 "mentally retarded" means:

24 (1) having significantly sub-average general
 25 intellectual functioning as evidenced by a functional
 26 intelligence quotient (I.Q.) of 70 or below; and

27 (2) having significant deficits in adaptive
 28 behavior in at least 2 of the following skill areas:
 29 communication, self-care, social or interpersonal skills,
 30 home living, self-direction, academics, health and
 31 safety, use of community resources, and work.

32 The mental retardation must have been manifested during

1 the developmental period, or by 18 years of age.

2 (b) The question of fitness to be executed may be raised
3 after pronouncement of the death sentence. The procedure for
4 raising and deciding the question shall be the same as that
5 provided for raising and deciding the question of fitness to
6 stand trial subject to the following specific provisions:

7 (1) the question shall be raised by motion filed in
8 the sentencing court;

9 (2) the question shall be decided by the court;

10 (3) the burden of proving that the offender is
11 unfit to be executed is on the offender;

12 (4) if the offender is found to be mentally
13 retarded, the court must resentence the offender to
14 natural life imprisonment under Chapter V of the Unified
15 Code of Corrections.

16 (c) If the question of mental retardation was raised at
17 the offender's sentencing hearing and the trier of fact
18 expressly found that the offender was not mentally retarded
19 as required by subsections (g) and (h) of Section 9-1 of the
20 Criminal Code of 1961, the trier of fact's determination on
21 that issue shall be presumed correct unless it is proven by
22 the offender to be against the manifest weight of the
23 evidence.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.