

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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(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 (c-5) (1) A person who has the disability of mental
16 retardation may not be sentenced to death.

17 (2) In this subsection (c-5), "mental retardation"
18 means a disability characterized by significant
19 limitations both in intellectual functioning and in
20 adaptive behavior as expressed in conceptual, social, and
21 practical adaptive skills, that originate before 18 years
22 of age.

23 (3) If the defendant is convicted of first degree
24 murder, the State and the defendant are entitled to
25 present evidence to the jury on the issue whether the
26 defendant has the disability of mental retardation. At
27 the separate sentencing hearing under subsection (d) ,
28 the jury, if the separate sentencing hearing is conducted
29 before a jury, shall be asked to render a special verdict
30 on the issue of the defendant's mental retardation. The
31 special verdict form shall ask the jury to answer the
32 question:

33 "Do you unanimously find, beyond a reasonable doubt, that
34 the defendant does not have the disability of mental

1 retardation". If the jury answers yes, the jury shall
 2 consider the aggravating and mitigating factors relating to
 3 the imposition of the death penalty. If the jury answers the
 4 question "no", the court may not sentence the defendant to
 5 death and shall sentence the defendant to a term of
 6 imprisonment under Chapter V of the Unified Code of
 7 Corrections. If the separate sentencing hearing is conducted
 8 before the court alone, the court shall consider evidence as
 9 to the defendant's mental retardation. If the court
 10 determines that the defendant has the disability of mental
 11 retardation, the court may not sentence the defendant to
 12 death and shall sentence the defendant to a term of
 13 imprisonment under Chapter V of the Unified Code of
 14 Corrections.

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 jury
26 determines unanimously that there are no mitigating factors
27 sufficient to preclude the imposition of the death sentence,
28 the court shall sentence the defendant to death.

29 Unless the jury unanimously finds that there are no
30 mitigating factors sufficient to preclude the imposition of
31 the death sentence the court shall sentence the defendant to
32 a term of imprisonment under Chapter V of the Unified Code of
33 Corrections.

34 (h) Procedure - No Jury.

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

6 If the Court determines that one or more of the factors
7 set forth in subsection (b) exists, the Court shall consider
8 any aggravating and mitigating factors as indicated in
9 subsection (c). If the Court determines that there are no
10 mitigating factors sufficient to preclude the imposition of
11 the death sentence, the Court shall sentence the defendant to
12 death.

13 Unless the court finds that there are no mitigating
14 factors sufficient to preclude the imposition of the sentence
15 of death, the court shall sentence the defendant to a term of
16 imprisonment under Chapter V of the Unified Code of
17 Corrections.

18 (i) Appellate Procedure.

19 The conviction and sentence of death shall be subject to
20 automatic review by the Supreme Court. Such review shall be
21 in accordance with rules promulgated by the Supreme Court.

22 (j) Disposition of reversed death sentence.

23 In the event that the death penalty in this Act is held
24 to be unconstitutional by the Supreme Court of the United
25 States or of the State of Illinois, any person convicted of
26 first degree murder shall be sentenced by the court to a term
27 of imprisonment under Chapter V of the Unified Code of
28 Corrections.

29 In the event that any death sentence pursuant to the
30 sentencing provisions of this Section is declared
31 unconstitutional by the Supreme Court of the United States or
32 of the State of Illinois, the court having jurisdiction over
33 a person previously sentenced to death shall cause the
34 defendant to be brought before the court, and the court shall

1 sentence the defendant to a term of imprisonment under
2 Chapter V of the Unified Code of Corrections.

3 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
4 92-854, eff. 12-5-02.)

5 Section 10. The Code of Criminal Procedure of 1963 is
6 amended by adding Section 114-15 as follows:

7 (725 ILCS 5/114-15 new)

8 Sec. 114-15. Mental retardation.

9 (a) The issue of the defendant's mental retardation may
10 be raised by the defense, the State, or the court at any
11 appropriate time before a plea is entered, before trial, or
12 after trial.

13 (b) If defense counsel has a good faith belief that the
14 defendant in a capital case has the disability of mental
15 retardation, counsel shall file a motion with the court,
16 requesting a finding that the defendant is not eligible for
17 the death penalty because of mental retardation. The motion
18 shall be filed within a reasonable time after the State files
19 notice of intent to seek the death penalty, unless the
20 information in support of the motion came to counsel's
21 attention at a later date.

22 (c) Upon receipt of the motion, the court shall conduct a
23 hearing for the presentation of evidence regarding the
24 defendant's possible mental retardation. Both the defense and
25 the State shall have the opportunity to present evidence,
26 including expert testimony. If the court finds, by a
27 preponderance of the evidence, that the defendant has the
28 disability of mental retardation, the court shall enter an
29 order that the defendant is not eligible for the death
30 penalty and the trial may proceed as a non-capital trial. If
31 convicted, the defendant may be sentenced to any penalty
32 available under State law, other than death.

1 (d) If the court finds that the defendant does not have
2 the disability of mental retardation, the case may proceed as
3 a capital trial. The jury may not be informed of the prior
4 proceedings or the judge's findings concerning the
5 defendant's claim of mental retardation.

6 Section 15. The Unified Code of Corrections is amended by
7 changing Section 3-3-13 and adding Section 5-2-7 as follows:

8 (730 ILCS 5/3-3-13) (from Ch. 38, par. 1003-3-13)
9 Sec. 3-3-13. Procedure for Executive Clemency.

10 (a) Petitions seeking pardon, commutation, or reprieve
11 shall be addressed to the Governor and filed with the
12 Prisoner Review Board. The petition shall be in writing and
13 signed by the person under conviction or by a person on his
14 behalf. It shall contain a brief history of the case, the
15 reasons for seeking executive clemency, and other relevant
16 information the Board may require.

17 (a-5) After a petition has been denied by the Governor,
18 the Board may not accept a repeat petition for executive
19 clemency for the same person until one full year has elapsed
20 from the date of the denial. The Chairman of the Board may
21 waive the one-year requirement if the petitioner offers in
22 writing new information that was unavailable to the
23 petitioner at the time of the filing of the prior petition
24 and which the Chairman determines to be significant. The
25 Chairman also may waive the one-year waiting period if the
26 petitioner can show that a change in circumstances of a
27 compelling humanitarian nature has arisen since the denial of
28 the prior petition.

29 (b) Notice of the proposed application shall be given by
30 the Board to the committing court and the state's attorney of
31 the county where the conviction was had.

32 (c) The Board shall, if requested and upon due notice,

1 give a hearing to each application, allowing representation
2 by counsel, if desired, after which it shall confidentially
3 advise the Governor by a written report of its
4 recommendations which shall be determined by majority vote.
5 The Board shall meet to consider such petitions no less than
6 4 times each year.

7 Application for executive clemency under this Section may
8 not be commenced on behalf of a person who has been sentenced
9 to death without the written consent of the defendant, unless
10 the defendant, because of a mental or physical condition, is
11 incapable of asserting his or her own claim.

12 (d) The Governor shall decide each application and
13 communicate his decision to the Board which shall notify the
14 petitioner.

15 In the event a petitioner who has been convicted of a
16 Class X felony is granted a release, after the Governor has
17 communicated such decision to the Board, the Board shall give
18 written notice to the Sheriff of the county from which the
19 offender was sentenced if such sheriff has requested that
20 such notice be given on a continuing basis. In cases where
21 arrest of the offender or the commission of the offense took
22 place in any municipality with a population of more than
23 10,000 persons, the Board shall also give written notice to
24 the proper law enforcement agency for said municipality which
25 has requested notice on a continuing basis.

26 (e) Nothing in this Section shall be construed to limit
27 the power of the Governor under the constitution to grant a
28 reprieve, commutation of sentence, or pardon.

29 (f) Notwithstanding any other provision of law, the
30 Governor has full authority to grant clemency and commute a
31 capital sentence to a non-capital sentence for any person
32 convicted of first degree murder who has been sentenced to
33 death whom the Governor determines to have the disability of
34 mental retardation.

1 (Source: P.A. 89-112, eff. 7-7-95; 89-684, eff. 6-1-97.)

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

3 Sec. 5-2-7. Mental retardation.

4 (a) In cases in which the defendant has been convicted of
5 first degree murder, sentenced to death, and is in custody
6 pending execution of the sentence of death, the following
7 procedures apply:

8 (1) Notwithstanding any other provision of law or
9 rule of court, a defendant may seek relief from the death
10 sentence upon the ground that the defendant was an
11 individual with the disability of mental retardation at
12 the time of the commission of the capital offense.

13 (2) A motion seeking appropriate relief from a death
14 sentence on the ground that the defendant was an
15 individual with the disability of mental retardation
16 shall be filed (A) within 180 days of the effective date
17 of this amendatory Act of the 93rd General Assembly; or
18 (B) within 180 days after the imposition of the sentence,
19 whichever is later.

20 (b) The petition seeking relief from a sentence of death
21 under this Section shall be in substantial compliance with
22 Article 122 of the Code of Criminal Procedure of 1963.

23 (c) The State shall respond to a petition filed under
24 this Section within 10 days after the petition is filed.
25 Following oral and written arguments from the State and
26 defense counsel, the court shall conduct a hearing on the
27 petition. Both the State and the defense shall be allowed to
28 present evidence, including expert testimony.

29 (d) Findings by the trial court that a defendant either
30 is or is not entitled to relief under this Section may be
31 directly appealed to the Illinois Supreme Court.

32 Section 99. Effective date. This Act takes effect upon

1 becoming law.