

1 AN ACT concerning criminal justice.

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:

22 (1) who at the time of the commission of the
23 offense has attained the age of 18 or more; and

24 (2) who has been found guilty of first degree
25 murder; and

26 (3) whose guilt was not, in the determination of
27 the court, based solely upon the uncorroborated testimony
28 of one eyewitness, of one accomplice, or of one
29 incarcerated informant;

30 may be sentenced to death if:

31 (1) the murdered individual was a peace officer or

1 fireman killed in the course of performing his official
2 duties, to prevent the performance of his official
3 duties, or in retaliation for performing his official
4 duties, and the defendant knew or should have known that
5 the murdered individual was a peace officer or fireman;
6 or

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

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

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

32 (5) the defendant committed the murder pursuant to
33 a contract, agreement or understanding by which he was to
34 receive money or anything of value in return for

1 committing the murder or procured another to commit the
2 murder for money or anything of value; or

3 (6) the murdered individual was killed in the
4 course of another felony if:

5 (a) the murdered individual:

6 (i) was actually killed by the defendant,

7 or

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

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

29 (c) the other felony was one of the following:
30 armed robbery, armed violence, robbery, predatory
31 criminal sexual assault of a child, aggravated
32 criminal sexual assault, aggravated kidnapping,
33 aggravated vehicular hijacking, forcible detention,
34 arson, aggravated arson, aggravated stalking,

1 burglary, residential burglary, home invasion,
2 calculated criminal drug conspiracy as defined in
3 Section 405 of the Illinois Controlled Substances
4 Act, streetgang criminal drug conspiracy as defined
5 in Section 405.2 of the Illinois Controlled
6 Substances Act, or the attempt to commit any of the
7 felonies listed in this subsection (c); or

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

11 (8) the defendant committed the murder with intent
12 to prevent the murdered individual from testifying in any
13 criminal prosecution or giving material assistance to the
14 State in any investigation or prosecution, either against
15 the defendant or another; or the defendant committed the
16 murder because the murdered individual was a witness in
17 any prosecution or gave material assistance to the State
18 in any investigation or prosecution, either against the
19 defendant or another; or

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

28 (10) the defendant was incarcerated in an
29 institution or facility of the Department of Corrections
30 at the time of the murder, and while committing an
31 offense punishable as a felony under Illinois law, or
32 while engaged in a conspiracy or solicitation to commit
33 such offense, intentionally killed an individual or
34 counseled, commanded, induced, procured or caused the

1 intentional killing of the murdered individual; or

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

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

22 (13) the defendant was a principal administrator,
23 organizer, or leader of a calculated criminal drug
24 conspiracy consisting of a hierarchical position of
25 authority superior to that of all other members of the
26 conspiracy, and the defendant counseled, commanded,
27 induced, procured, or caused the intentional killing of
28 the murdered person; or

29 (14) the murder was intentional and involved the
30 infliction of torture. For the purpose of this Section
31 torture means the infliction of or subjection to extreme
32 physical pain, motivated by an intent to increase or
33 prolong the pain, suffering or agony of the victim; or

34 (15) the murder was committed as a result of the

1 intentional discharge of a firearm by the defendant from
2 a motor vehicle and the victim was not present within the
3 motor vehicle; or

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

7 (17) the murdered individual was a disabled person
8 and the defendant knew or should have known that the
9 murdered individual was disabled. For purposes of this
10 paragraph (17), "disabled person" means a person who
11 suffers from a permanent physical or mental impairment
12 resulting from disease, an injury, a functional disorder,
13 or a congenital condition that renders the person
14 incapable of adequately providing for his or her own
15 health or personal care; or

16 (18) the murder was committed by reason of any
17 person's activity as a community policing volunteer or to
18 prevent any person from engaging in activity as a
19 community policing volunteer; or

20 (19) the murdered individual was subject to an
21 order of protection and the murder was committed by a
22 person against whom the same order of protection was
23 issued under the Illinois Domestic Violence Act of 1986;
24 or

25 (20) the murdered individual was known by the
26 defendant to be a teacher or other person employed in any
27 school and the teacher or other employee is upon the
28 grounds of a school or grounds adjacent to a school, or
29 is in any part of a building used for school purposes; or

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

33 (c) Consideration of factors in Aggravation and
34 Mitigation.

1 The court shall consider, or shall instruct the jury to
2 consider any aggravating and any mitigating factors which are
3 relevant to the imposition of the death penalty. Aggravating
4 factors may include but need not be limited to those factors
5 set forth in subsection (b). Mitigating factors may include
6 but need not be limited to the following:

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

9 (2) the murder was committed while the defendant
10 was under the influence of extreme mental or emotional
11 disturbance, although not such as to constitute a defense
12 to prosecution;

13 (3) the murdered individual was a participant in
14 the defendant's homicidal conduct or consented to the
15 homicidal act;

16 (4) the defendant acted under the compulsion of
17 threat or menace of the imminent infliction of death or
18 great bodily harm;

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

21 (d) Separate sentencing hearing.

22 Where requested by the State, the court shall conduct a
23 separate sentencing proceeding to determine the existence of
24 factors set forth in subsection (b) and to consider any
25 aggravating or mitigating factors as indicated in subsection
26 (c). The proceeding shall be conducted:

27 (1) before the jury that determined the defendant's
28 guilt; or

29 (2) before a jury impanelled for the purpose of the
30 proceeding if:

31 A. the defendant was convicted upon a plea of
32 guilty; or

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

1 C. the court for good cause shown discharges
2 the jury that determined the defendant's guilt; or
3 (3) before the court alone if the defendant waives
4 a jury for the separate proceeding.

5 (e) Evidence and Argument.

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

17 (f) Proof.

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

22 (g) Procedure - Jury.

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

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

6 (h) Procedure - No Jury.

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

12 If the Court determines that one or more of the factors
13 set forth in subsection (b) exists, the Court shall consider
14 any aggravating and mitigating factors as indicated in
15 subsection (c). If the Court determines that there are no
16 mitigating factors sufficient to preclude the imposition of
17 the death sentence, the Court shall sentence the defendant to
18 death.

19 Unless the court finds that there are no mitigating
20 factors sufficient to preclude the imposition of the sentence
21 of death, the court shall sentence the defendant to a term of
22 imprisonment under Chapter V of the Unified Code of
23 Corrections.

24 (i) Appellate Procedure.

25 The conviction and sentence of death shall be subject to
26 automatic review by the Supreme Court. Such review shall be
27 in accordance with rules promulgated by the Supreme Court.

28 (j) Disposition of reversed death sentence.

29 In the event that the death penalty in this Act is held
30 to be unconstitutional by the Supreme Court of the United
31 States or of the State of Illinois, any person convicted of
32 first degree murder shall be sentenced by the court to a term
33 of imprisonment under Chapter V of the Unified Code of
34 Corrections.

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

9 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
10 92-854, eff. 12-5-02.)