

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 (a-5) Defendant's statement. In a prosecution for first
22 degree murder tried by a jury, if a statement of the
23 defendant has been admitted into evidence and the statement
24 has not been recorded, the court shall instruct the jury
25 prior to its deliberation on the charge as follows: "You have
26 before you evidence that the defendant made a statement
27 relating to the offense or offenses charged in the
28 indictment. It is for you to determine whether the defendant
29 made the statement and, if so, what weight should be given to
30 the statement. In determining the weight to be given to a
31 statement, you should consider all of the circumstances under

1 which it was made. You should pay particular attention to
2 whether or not the statement is recorded, and if it is, what
3 method was used to record it. Generally, an electronic
4 recording that contains the defendant's actual voice or a
5 statement written by the defendant is more reliable than a
6 non-recorded summary."

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

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

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

29 (3) the defendant has been convicted of murdering
30 two or more individuals under subsection (a) of this
31 Section or under any law of the United States or of any
32 state which is substantially similar to subsection (a) of
33 this Section regardless of whether the deaths occurred
34 as the result of the same act or of several related or

1 unrelated acts so long as the deaths were the result of
2 either an intent to kill more than one person or of
3 separate acts which the defendant knew would cause death
4 or create a strong probability of death or great bodily
5 harm to the murdered individual or another; or

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

9 (5) the defendant committed the murder pursuant to
10 a contract, agreement or understanding by which he was to
11 receive money or anything of value in return for
12 committing the murder or procured another to commit the
13 murder for money or anything of value; or

14 (6) the murdered individual was killed in the
15 course of another felony if:

16 (a) the murdered individual:

17 (i) was actually killed by the defendant,

18 or

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

29 (b) in performing the acts which caused the
30 death of the murdered individual or which resulted
31 in physical injuries personally inflicted by the
32 defendant on the murdered individual under the
33 circumstances of subdivision (ii) of subparagraph
34 (a) of paragraph (6) of subsection (b) of this

1 Section, the defendant acted with the intent to kill
2 the murdered individual or with the knowledge that
3 his acts created a strong probability of death or
4 great bodily harm to the murdered individual or
5 another; and

6 (c) the other felony was one of the following:
7 armed robbery, armed violence, robbery, predatory
8 criminal sexual assault of a child, aggravated
9 criminal sexual assault, aggravated kidnapping,
10 aggravated vehicular hijacking, forcible detention,
11 arson, aggravated arson, aggravated stalking,
12 burglary, residential burglary, home invasion,
13 calculated criminal drug conspiracy as defined in
14 Section 405 of the Illinois Controlled Substances
15 Act, streetgang criminal drug conspiracy as defined
16 in Section 405.2 of the Illinois Controlled
17 Substances Act, or the attempt to commit any of the
18 felonies listed in this subsection (c); or

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

22 (8) the defendant committed the murder with intent
23 to prevent the murdered individual from testifying in any
24 criminal prosecution or giving material assistance to the
25 State in any investigation or prosecution, either against
26 the defendant or another; or the defendant committed the
27 murder because the murdered individual was a witness in
28 any prosecution or gave material assistance to the State
29 in any investigation or prosecution, either against the
30 defendant or another; or

31 (9) the defendant, while committing an offense
32 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
33 407 or 407.1 or subsection (b) of Section 404 of the
34 Illinois Controlled Substances Act, or while engaged in a

1 conspiracy or solicitation to commit such offense,
2 intentionally killed an individual or counseled,
3 commanded, induced, procured or caused the intentional
4 killing of the murdered individual; or

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

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

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

33 (13) the defendant was a principal administrator,
34 organizer, or leader of a calculated criminal drug

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

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

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

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

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

27 (18) the murder was committed by reason of any
28 person's activity as a community policing volunteer or to
29 prevent any person from engaging in activity as a
30 community policing volunteer; or

31 (19) the murdered individual was subject to an
32 order of protection and the murder was committed by a
33 person against whom the same order of protection was
34 issued under the Illinois Domestic Violence Act of 1986;

1 or

2 (20) the murdered individual was known by the
3 defendant to be a teacher or other person employed in any
4 school and the teacher or other employee is upon the
5 grounds of a school or grounds adjacent to a school, or
6 is in any part of a building used for school purposes; or

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

10 (c) Consideration of factors in Aggravation and
11 Mitigation.

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

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

20 (2) the murder was committed while the defendant
21 was under the influence of extreme mental or emotional
22 disturbance, although not such as to constitute a defense
23 to prosecution;

24 (3) the murdered individual was a participant in
25 the defendant's homicidal conduct or consented to the
26 homicidal act;

27 (4) the defendant acted under the compulsion of
28 threat or menace of the imminent infliction of death or
29 great bodily harm;

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

32 (d) Separate sentencing hearing.

33 Where requested by the State, the court shall conduct a
34 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
13 the jury that determined the defendant's guilt; or

14 (3) before the court alone if the defendant waives
15 a 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
21 information relevant to any additional aggravating factors or
22 any 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
26 shall be given fair opportunity to rebut any information
27 received at the hearing.

28 (f) Proof.

29 The burden of proof of establishing the existence of any
30 of the factors set forth in subsection (b) is on the State
31 and shall not be satisfied unless established beyond a
32 reasonable doubt.

33 (g) Procedure - Jury.

34 If at the separate sentencing proceeding the jury finds

1 that none of the factors set forth in subsection (b) exists,
2 the court shall sentence the defendant to a term of
3 imprisonment under Chapter V of the Unified Code of
4 Corrections. If there is a unanimous finding by the jury
5 that one or more of the factors set forth in subsection (b)
6 exist, the jury shall consider aggravating and mitigating
7 factors as instructed by the court and shall determine
8 whether the sentence of death shall be imposed. If the jury
9 determines unanimously that there are no mitigating factors
10 sufficient to preclude the imposition of the death sentence,
11 the court shall sentence the defendant to death.

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

17 (h) Procedure - No Jury.

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

23 If the Court determines that one or more of the factors
24 set forth in subsection (b) exists, the Court shall consider
25 any aggravating and mitigating factors as indicated in
26 subsection (c). If the Court determines that there are no
27 mitigating factors sufficient to preclude the imposition of
28 the death sentence, the Court shall sentence the defendant to
29 death.

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

1 (i) Appellate Procedure.

2 The conviction and sentence of death shall be subject to
3 automatic review by the Supreme Court. Such review shall be
4 in accordance with rules promulgated by the Supreme Court.

5 (j) Disposition of reversed death sentence.

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

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

20 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
21 92-854, eff. 12-5-02.)