



Filed: 03/04/04

09300HB4677ham001

LRB093 19410 RLC 48528 a

1 AMENDMENT TO HOUSE BILL 4677

2 AMENDMENT NO. _____. Amend House Bill 4677 by replacing
3 everything after the enacting clause with the following:

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 the
12 acts which cause the death:

13 (1) he either intends to kill or do great bodily harm
14 to that individual or another, or knows that such acts will
15 cause death to that individual or another; or

16 (2) he knows that such acts create a strong probability
17 of death or great bodily harm to that individual or
18 another; or

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

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

1 (1) the murdered individual was a peace officer or
2 fireman killed in the course of performing his official
3 duties, to prevent the performance of his official duties,
4 or in retaliation for performing his official duties, and
5 the defendant knew or should have known that the murdered
6 individual was a peace officer or fireman; 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 individual
13 was an inmate at such institution or facility and was
14 killed on the grounds thereof, or the murdered individual
15 was otherwise present in such institution or facility with
16 the knowledge and approval of the chief administrative
17 officer thereof; or

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

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

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

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

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

5 (a) the murdered individual:

6 (i) was actually killed by the defendant, or

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

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

26 (c) the other felony was an inherently violent
27 crime or the attempt to commit an inherently violent
28 crime. In this subparagraph (c), "inherently violent
29 crime" includes, but is not limited to, armed robbery,
30 robbery, predatory criminal sexual assault of a child,
31 aggravated criminal sexual assault, aggravated
32 kidnapping, aggravated vehicular hijacking, aggravated
33 arson, aggravated stalking, residential burglary, and
34 home invasion ; or

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

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

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

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

34 (11) the murder was committed in a cold, calculated and

1 premeditated manner pursuant to a preconceived plan,
2 scheme or design to take a human life by unlawful means,
3 and the conduct of the defendant created a reasonable
4 expectation that the death of a human being would result
5 therefrom; or

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

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

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

32 (15) (blank) ~~the murder was committed as a result of~~
33 ~~the intentional discharge of a firearm by the defendant~~
34 ~~from a motor vehicle and the victim was not present within~~

1 ~~the motor vehicle; or~~

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

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

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

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

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

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

29 (c) Consideration of factors in Aggravation and
30 Mitigation.

31 The court shall consider, or shall instruct the jury to
32 consider any aggravating and any mitigating factors which are
33 relevant to the imposition of the death penalty. Aggravating
34 factors may include but need not be limited to those factors

1 set forth in subsection (b). Mitigating factors may include but
2 need not be limited to the following:

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

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

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

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

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

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

19 (7) the defendant suffers from a reduced mental
20 capacity.

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 before
34 the court sitting without a jury; or

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

3 (3) before the court alone if the defendant waives a
4 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 the
9 admission of evidence at criminal trials. Any information
10 relevant to any additional aggravating factors or any
11 mitigating factors indicated in subsection (c) may be presented
12 by the State or defendant regardless of its admissibility under
13 the rules governing the admission of evidence at criminal
14 trials. The State and the defendant shall be given fair
15 opportunity to rebut any information received at the hearing.

16 (f) Proof.

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

21 (g) Procedure - Jury.

22 If at the separate sentencing proceeding the jury finds
23 that none of the factors set forth in subsection (b) exists,
24 the court shall sentence the defendant to a term of
25 imprisonment under Chapter V of the Unified Code of
26 Corrections. If there is a unanimous finding by the jury that
27 one or more of the factors set forth in subsection (b) exist,
28 the jury shall consider aggravating and mitigating factors as
29 instructed by the court and shall determine whether the
30 sentence of death shall be imposed. If the jury determines
31 unanimously, after weighing the factors in aggravation and
32 mitigation, that death is the appropriate sentence , the court
33 shall sentence the defendant to death. If the court does not
34 concur with the jury determination that death is the

1 appropriate sentence, the court shall set forth reasons in
2 writing including what facts or circumstances the court relied
3 upon, along with any relevant documents, that compelled the
4 court to non-concur with the sentence. This document and any
5 attachments shall be part of the record for appellate review.
6 The court shall be bound by the jury's sentencing
7 determination.

8 If after weighing the factors in aggravation and
9 mitigation, one or more jurors determines that death is not the
10 appropriate sentence, the court shall sentence the defendant to
11 a term of imprisonment under Chapter V of the Unified Code of
12 Corrections.

13 (h) Procedure - No Jury.

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

18 If the Court determines that one or more of the factors set
19 forth in subsection (b) exists, the Court shall consider any
20 aggravating and mitigating factors as indicated in subsection
21 (c). If the Court determines, after weighing the factors in
22 aggravation and mitigation, that death is the appropriate
23 sentence, the Court shall sentence the defendant to death.

24 If the court finds that death is not the appropriate
25 sentence, the court shall sentence the defendant to a term of
26 imprisonment under Chapter V of the Unified Code of
27 Corrections.

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

29 In a case in which the defendant has been found guilty of
30 first degree murder by a judge or jury, or a case on remand for
31 resentencing, and the State seeks the death penalty as an
32 appropriate sentence, on the court's own motion or the written
33 motion of the defendant, the court may decertify the case as a
34 death penalty case if the court finds that the only evidence

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

14 (i) Appellate Procedure.

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

27 (j) Disposition of reversed death sentence.

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

34 In the event that any death sentence pursuant to the

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

8 (k) Guidelines for seeking the death penalty.

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

13 (Source: P.A. 92-854, eff. 12-5-02; 93-605, eff. 11-19-03.)".