



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2704

Introduced 2/22/2005, by Rep. Tom Cross - Jay C. Hoffman - Angelo Saviano - John J. Millner - Chapin Rose, et al.

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 1961. Provides that if the trier of fact determines that the evidence was sufficient beyond a reasonable doubt to sustain the verdict of guilty for first degree murder but does not foreclose all doubt respecting the defendant's guilt, the trier of fact may not determine that death is the appropriate sentence and the court shall sentence the defendant to a term of natural life imprisonment.

LRB094 11155 RLC 41792 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Legislative findings. The General Assembly
5 hereby finds and declares that a fundamental difference exists
6 between the death penalty and any other penalty that may be
7 imposed upon a defendant. The death penalty contains an element
8 of finality that cannot be attributed to any other penalty that
9 may be constitutionally imposed upon a defendant. The General
10 Assembly finds and declares that this difference, based upon
11 this element of finality, reaches down into the procedures used
12 to sentence a convicted defendant. The court may provide, by
13 itself or through a jury, a standard of scrutiny to the
14 disposition of a defendant convicted of first degree murder and
15 subject to a potential sentence of death that reflects the
16 finality of the penalty. The General Assembly finds and
17 declares that nothing in the Criminal Code of 1961 or in this
18 Act amending the Criminal Code of 1961 shall provide that the
19 test of residual doubt, as applied to a potential death
20 sentence that could be imposed upon a person convicted of first
21 degree murder and subject to a potential sentence of death, can
22 be applied to any other sentencing process carried out under
23 the laws of the State of Illinois. The General Assembly finds
24 and declares that the test of residual doubt, as applied to a
25 potential death sentence that could be imposed upon a person
26 convicted of first degree murder and subject to a potential
27 sentence of death, must be applied to the procedure of death
28 penalty sentencing only, and this test must not be applied to
29 any other sentencing process carried out under the laws of the
30 State of Illinois.

31 Section 5. The Criminal Code of 1961 is amended by changing
32 Section 9-1 as follows:

1 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

2 Sec. 9-1. First degree Murder - Death penalties -
3 Exceptions - Separate Hearings - Proof - Findings - Appellate
4 procedures - Reversals.

5 (a) A person who kills an individual without lawful
6 justification commits first degree murder if, in performing the
7 acts which cause the death:

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

11 (2) he knows that such acts create a strong probability
12 of death or great bodily harm to that individual or
13 another; or

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

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

20 (1) the murdered individual was a peace officer or
21 fireman killed in the course of performing his official
22 duties, to prevent the performance of his official duties,
23 or in retaliation for performing his official duties, and
24 the defendant knew or should have known that the murdered
25 individual was a peace officer or fireman; or

26 (2) the murdered individual was an employee of an
27 institution or facility of the Department of Corrections,
28 or any similar local correctional agency, killed in the
29 course of performing his official duties, to prevent the
30 performance of his official duties, or in retaliation for
31 performing his official duties, or the murdered individual
32 was an inmate at such institution or facility and was
33 killed on the grounds thereof, or the murdered individual
34 was otherwise present in such institution or facility with
35 the knowledge and approval of the chief administrative

1 officer thereof; or

2 (3) the defendant has been convicted of murdering two
3 or more individuals under subsection (a) of this Section or
4 under any law of the United States or of any state which is
5 substantially similar to subsection (a) of this Section
6 regardless of whether the deaths occurred as the result of
7 the same act or of several related or unrelated acts so
8 long as the deaths were the result of either an intent to
9 kill more than one person or of separate acts which the
10 defendant knew would cause death or create a strong
11 probability of death or great bodily harm to the murdered
12 individual or another; or

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

16 (5) the defendant committed the murder pursuant to a
17 contract, agreement or understanding by which he was to
18 receive money or anything of value in return for committing
19 the murder or procured another to commit the murder for
20 money or anything of value; or

21 (6) the murdered individual was killed in the course of
22 another felony if:

23 (a) the murdered individual:

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

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

34 (b) in performing the acts which caused the death
35 of the murdered individual or which resulted in
36 physical injuries personally inflicted by the

1 defendant on the murdered individual under the
2 circumstances of subdivision (ii) of subparagraph (a)
3 of paragraph (6) of subsection (b) of this Section, the
4 defendant acted with the intent to kill the murdered
5 individual or with the knowledge that his acts created
6 a strong probability of death or great bodily harm to
7 the murdered individual or another; and

8 (c) the other felony was an inherently violent
9 crime or the attempt to commit an inherently violent
10 crime. In this subparagraph (c), "inherently violent
11 crime" includes, but is not limited to, armed robbery,
12 robbery, predatory criminal sexual assault of a child,
13 aggravated criminal sexual assault, aggravated
14 kidnapping, aggravated vehicular hijacking, aggravated
15 arson, aggravated stalking, residential burglary, and
16 home invasion ; or

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

20 (8) the defendant committed the murder with intent to
21 prevent the murdered individual from testifying or
22 participating in any criminal investigation or prosecution
23 or giving material assistance to the State in any
24 investigation or prosecution, either against the defendant
25 or another; or the defendant committed the murder because
26 the murdered individual was a witness in any prosecution or
27 gave material assistance to the State in any investigation
28 or prosecution, either against the defendant or another;
29 for purposes of this paragraph (8), "participating in any
30 criminal investigation or prosecution" is intended to
31 include those appearing in the proceedings in any capacity
32 such as trial judges, prosecutors, defense attorneys,
33 investigators, witnesses, or jurors; or

34 (9) the defendant, while committing an offense
35 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
36 407 or 407.1 or subsection (b) of Section 404 of the

1 Illinois Controlled Substances Act, or while engaged in a
2 conspiracy or solicitation to commit such offense,
3 intentionally killed an individual or counseled,
4 commanded, induced, procured or caused the intentional
5 killing of the murdered individual; or

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

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

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

34 (13) the defendant was a principal administrator,
35 organizer, or leader of a calculated criminal drug
36 conspiracy consisting of a hierarchical position of

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

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

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

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

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

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

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

33 (20) the murdered individual was known by the defendant
34 to be a teacher or other person employed in any school and
35 the teacher or other employee is upon the grounds of a
36 school or grounds adjacent to a school, or is in any part

1 of a building used for school purposes; or

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

5 (c) Consideration of factors in Aggravation and
6 Mitigation.

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

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

15 (2) the murder was committed while the defendant was
16 under the influence of extreme mental or emotional
17 disturbance, although not such as to constitute a defense
18 to prosecution;

19 (3) the murdered individual was a participant in the
20 defendant's homicidal conduct or consented to the
21 homicidal act;

22 (4) the defendant acted under the compulsion of threat
23 or menace of the imminent infliction of death or great
24 bodily harm;

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

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

29 (7) the defendant suffers from a reduced mental
30 capacity.

31 (d) Separate sentencing hearing.

32 Where requested by the State, the court shall conduct a
33 separate sentencing proceeding to determine the existence of
34 factors set forth in subsection (b) and to consider any
35 aggravating or mitigating factors as indicated in subsection
36 (c). The proceeding shall be conducted:

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

3 (2) before a jury impanelled for the purpose of the
4 proceeding if:

5 A. the defendant was convicted upon a plea of
6 guilty; or

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

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

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

13 (e) Evidence and Argument.

14 During the proceeding any information relevant to any of
15 the factors set forth in subsection (b) may be presented by
16 either the State or the defendant under the rules governing the
17 admission of evidence at criminal trials. Any information
18 relevant to any additional aggravating factors or any
19 mitigating factors indicated in subsection (c) may be presented
20 by the State or defendant regardless of its admissibility under
21 the rules governing the admission of evidence at criminal
22 trials. The State and the defendant shall be given fair
23 opportunity to rebut any information received at the hearing.

24 (f) Proof.

25 The burden of proof of establishing the existence of any of
26 the factors set forth in subsection (b) is on the State and
27 shall not be satisfied unless established beyond a reasonable
28 doubt.

29 (g) Procedure - Jury.

30 If at the separate sentencing proceeding the jury finds
31 that none of the factors set forth in subsection (b) exists,
32 the court shall sentence the defendant to a term of
33 imprisonment under Chapter V of the Unified Code of
34 Corrections. If there is a unanimous finding by the jury that
35 one or more of the factors set forth in subsection (b) exist,
36 the jury shall consider aggravating and mitigating factors as

1 instructed by the court and shall determine whether the
2 sentence of death shall be imposed. If the jury determines
3 unanimously, after weighing the factors in aggravation and
4 mitigation, that death is the appropriate sentence, the court
5 shall sentence the defendant to death. If the court does not
6 concur with the jury determination that death is the
7 appropriate sentence, the court shall set forth reasons in
8 writing including what facts or circumstances the court relied
9 upon, along with any relevant documents, that compelled the
10 court to non-concur with the sentence. This document and any
11 attachments shall be part of the record for appellate review.
12 The court shall be bound by the jury's sentencing
13 determination.

14 Except as otherwise provided in subsection (g-5), if ~~if~~
15 after weighing the factors in aggravation and mitigation, one
16 or more jurors determines that death is not the appropriate
17 sentence, the court shall sentence the defendant to a term of
18 imprisonment under Chapter V of the Unified Code of
19 Corrections.

20 (g-5) Residual doubt-jury determination.

21 The court shall instruct the jury that if the jury
22 determines that the evidence was sufficient beyond a reasonable
23 doubt to sustain the verdict of guilty for first degree murder
24 but does not foreclose all doubt respecting the defendant's
25 guilt, the jury may not determine that death is the appropriate
26 sentence and the court shall sentence the defendant to a term
27 of natural life imprisonment.

28 (h) Procedure - No Jury.

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

33 If the Court determines that one or more of the factors set
34 forth in subsection (b) exists, the Court shall consider any
35 aggravating and mitigating factors as indicated in subsection
36 (c). If the Court determines, after weighing the factors in

1 aggravation and mitigation, that death is the appropriate
2 sentence, the Court shall sentence the defendant to death.

3 Except as otherwise provided in subsection (h-1), if ~~if~~ the
4 court finds that death is not the appropriate sentence, the
5 court shall sentence the defendant to a term of imprisonment
6 under Chapter V of the Unified Code of Corrections.

7 If the court determines that the evidence was sufficient
8 beyond a reasonable doubt to sustain the verdict of guilty for
9 first degree murder but does not foreclose all doubt respecting
10 the defendant's guilt, the court may not determine that death
11 is the appropriate sentence and the court shall sentence the
12 defendant to a term of natural life imprisonment.

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

14 In a case in which the defendant has been found guilty of
15 first degree murder by a judge or jury, or a case on remand for
16 resentencing, and the State seeks the death penalty as an
17 appropriate sentence, on the court's own motion or the written
18 motion of the defendant, the court may decertify the case as a
19 death penalty case if the court finds that the only evidence
20 supporting the defendant's conviction is the uncorroborated
21 testimony of an informant witness, as defined in Section 115-21
22 of the Code of Criminal Procedure of 1963, concerning the
23 confession or admission of the defendant or that the sole
24 evidence against the defendant is a single eyewitness or single
25 accomplice without any other corroborating evidence. If the
26 court decertifies the case as a capital case under either of
27 the grounds set forth above, the court shall issue a written
28 finding. The State may pursue its right to appeal the
29 decertification pursuant to Supreme Court Rule 604(a)(1). If
30 the court does not decertify the case as a capital case, the
31 matter shall proceed to the eligibility phase of the sentencing
32 hearing.

33 (i) Appellate Procedure.

34 The conviction and sentence of death shall be subject to
35 automatic review by the Supreme Court. Such review shall be in
36 accordance with rules promulgated by the Supreme Court. The

1 Illinois Supreme Court may overturn the death sentence, and
2 order the imposition of imprisonment under Chapter V of the
3 Unified Code of Corrections if the court finds that the death
4 sentence is fundamentally unjust as applied to the particular
5 case. If the Illinois Supreme Court finds that the death
6 sentence is fundamentally unjust as applied to the particular
7 case, independent of any procedural grounds for relief, the
8 Illinois Supreme Court shall issue a written opinion explaining
9 this finding.

10 (j) Disposition of reversed death sentence.

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

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

25 (k) Guidelines for seeking the death penalty.

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

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