

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 no doubt, as applied to a potential death sentence that
20 could be imposed upon a person convicted of first degree murder
21 and subject to a potential sentence of death, can be applied to
22 any other sentencing process carried out under the laws of the
23 State of Illinois. The General Assembly finds and declares that
24 the test of no doubt, as applied to a potential death sentence
25 that could be imposed upon a person convicted of first degree
26 murder and subject to a potential sentence of death, must be
27 applied to the procedure of death penalty sentencing only, and
28 this test must not be applied to any other sentencing process
29 carried out under the laws of the State of Illinois.

30 Section 5. The Criminal Code of 1961 is amended by changing
31 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 (a-5) Separate sentencing proceeding.

17 When a defendant has been convicted of first degree murder,
18 then whenever requested by the State, the court shall conduct a
19 separate sentencing proceeding to determine the existence of
20 factors set forth in subsection (b), to consider a no doubt
21 determination of guilt as set forth in subsections (b-5) and
22 (b-10), and to consider any aggravating or mitigating factors
23 as indicated in subsection (c). The proceeding shall be
24 conducted:

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

27 (2) before a jury impanelled for the purpose of the
28 proceeding if:

29 (A) the defendant was convicted upon a plea of
30 guilty; or

31 (B) the defendant was convicted after a trial
32 before the court sitting without a jury; or

33 (C) the court for good cause shown discharges the
34 jury that determined the defendant's guilt; or

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

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

5 (1) the murdered individual was a peace officer or
6 fireman killed in the course of performing his official
7 duties, to prevent the performance of his official duties,
8 or in retaliation for performing his official duties, and
9 the defendant knew or should have known that the murdered
10 individual was a peace officer or fireman; or

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

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

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

36 (5) the defendant committed the murder pursuant to a

1 contract, agreement or understanding by which he was to
2 receive money or anything of value in return for committing
3 the murder or procured another to commit the murder for
4 money or anything of value; or

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

7 (a) the murdered individual:

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

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

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

28 (c) the other felony was an inherently violent
29 crime or the attempt to commit an inherently violent
30 crime. In this subparagraph (c), "inherently violent
31 crime" includes, but is not limited to, armed robbery,
32 robbery, predatory criminal sexual assault of a child,
33 aggravated criminal sexual assault, aggravated
34 kidnapping, aggravated vehicular hijacking, aggravated
35 arson, aggravated stalking, residential burglary, and
36 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) 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) the defendant was incarcerated in an institution
27 or facility of the Department of Corrections at the time of
28 the murder, and while committing an offense punishable as a
29 felony under Illinois law, or while engaged in a conspiracy
30 or solicitation to commit such offense, intentionally
31 killed an individual or counseled, commanded, induced,
32 procured or caused the intentional killing of the murdered
33 individual; or

34 (11) the murder was committed in a cold, calculated and
35 premeditated manner pursuant to a preconceived plan,
36 scheme or design to take a human life by unlawful means,

1 and the conduct of the defendant created a reasonable
2 expectation that the death of a human being would result
3 therefrom; or

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

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

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

30 (15) the murder was committed as a result of the
31 intentional discharge of a firearm by the defendant from a
32 motor vehicle and the victim was not present within the
33 motor vehicle; or

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

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

9 (18) the murder was committed by reason of any person's
10 activity as a community policing volunteer or to prevent
11 any person from engaging in activity as a community
12 policing volunteer; or

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

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

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

25 (b-5) No doubt-jury determination.

26 If a separate sentencing proceeding is conducted before a
27 jury as provided in subsection (a-5), the court shall instruct
28 the jury that if the jury unanimously determines that the
29 evidence leaves no doubt respecting the defendant's guilt, the
30 jury shall determine that death may be the appropriate
31 sentence, and the separate sentencing proceeding shall
32 continue to a consideration of the factors in aggravation and
33 mitigation.

34 (b-10) No doubt-court determination.

35 If a separate sentencing proceeding is conducted before the
36 court alone as provided in subsection (a-5), and if the court

1 determines that the evidence leaves no doubt respecting the
2 defendant's guilt, the court shall determine that death may be
3 the appropriate sentence, and the separate sentencing
4 proceeding shall continue to a consideration of the factors in
5 aggravation and mitigation.

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

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

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

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

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

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

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

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

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

32 (d) (Blank). ~~Separate sentencing hearing.~~

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

1 ~~(c). The proceeding shall be conducted:~~

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

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

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

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

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

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

14 (e) Evidence and Argument.

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

25 (f) Proof.

26 The burden of proof of establishing the existence of any of
27 the factors set forth in subsection (b) is on the State and
28 shall not be satisfied unless established beyond a reasonable
29 doubt. The burden of proof for determining that death may be an
30 appropriate sentence is as set forth in subsections (b-5) and
31 (b-10), as applicable.

32 (g) Procedure - Jury.

33 If at the separate sentencing proceeding the jury finds
34 that none of the factors set forth in subsection (b) exists,
35 the court shall sentence the defendant to a term of
36 imprisonment under Chapter V of the Unified Code of

1 Corrections. If there is a unanimous finding by the jury that
2 one or more of the factors set forth in subsection (b) exist,
3 and if the jury unanimously determines that the evidence leaves
4 no doubt respecting the defendant's guilt, the jury shall
5 consider aggravating and mitigating factors as instructed by
6 the court and shall determine whether the sentence of death
7 shall be imposed. If the jury determines unanimously, after
8 weighing the factors in aggravation and mitigation, that death
9 is the appropriate sentence, the court shall sentence the
10 defendant to death. If the court does not concur with the jury
11 determination that death is the appropriate sentence, the court
12 shall set forth reasons in writing including what facts or
13 circumstances the court relied upon, along with any relevant
14 documents, that compelled the court to non-concur with the
15 sentence. This document and any attachments shall be part of
16 the record for appellate review. The court shall be bound by
17 the jury's sentencing determination.

18 If after weighing the factors in aggravation and
19 mitigation, one or more jurors determines that death is not the
20 appropriate sentence, the court shall sentence the defendant to
21 a term of imprisonment under Chapter V of the Unified Code of
22 Corrections.

23 (h) Procedure - No Jury.

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

28 If the Court determines that one or more of the factors set
29 forth in subsection (b) exists, and if the court determines
30 that the evidence leaves no doubt respecting the defendant's
31 guilt, the Court shall consider any aggravating and mitigating
32 factors as indicated in subsection (c). If the Court
33 determines, after weighing the factors in aggravation and
34 mitigation, that death is the appropriate sentence, the Court
35 shall sentence the defendant to death.

36 If the court finds that death is not the appropriate

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

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

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

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 in
27 accordance with rules promulgated by the Supreme Court. The
28 Illinois Supreme Court may overturn the death sentence, and
29 order the imposition of imprisonment under Chapter V of the
30 Unified Code of Corrections if the court finds that the death
31 sentence is fundamentally unjust as applied to the particular
32 case. If the Illinois Supreme Court finds that the death
33 sentence is fundamentally unjust as applied to the particular
34 case, independent of any procedural grounds for relief, the
35 Illinois Supreme Court shall issue a written opinion explaining
36 this finding.

1 (j) Disposition of reversed death sentence.

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

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

16 (k) Guidelines for seeking the death penalty.

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

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