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LRB094 11155 RLC 43475 a

1 AMENDMENT TO HOUSE BILL 2704

2 AMENDMENT NO. _____. Amend House Bill 2704 by replacing
3 everything after the enacting clause with the following:

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

1 murder and subject to a potential sentence of death, must be
2 applied to the procedure of death penalty sentencing only, and
3 this test must not be applied to any other sentencing process
4 carried out under the laws of the State of Illinois.

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

7 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

8 Sec. 9-1. First degree Murder - Death penalties -
9 Exceptions - Separate Hearings - Proof - Findings - Appellate
10 procedures - Reversals.

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

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

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

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

22 (a-5) Separate sentencing proceeding.

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

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

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

3 (A) the defendant was convicted upon a plea of
4 guilty; or

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

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

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

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

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

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

32 (3) the defendant has been convicted of murdering two
33 or more individuals under subsection (a) of this Section or
34 under any law of the United States or of any state which is

1 substantially similar to subsection (a) of this Section
2 regardless of whether the deaths occurred as the result of
3 the same act or of several related or unrelated acts so
4 long as the deaths were the result of either an intent to
5 kill more than one person or of separate acts which the
6 defendant knew would cause death or create a strong
7 probability of death or great bodily harm to the murdered
8 individual or another; or

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

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

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

19 (a) the murdered individual:

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

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

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

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

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

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

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

32 (9) the defendant, while committing an offense
33 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
34 407 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,

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

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

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

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

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

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

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

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

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

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

10 If a separate sentencing proceeding is conducted before a
11 jury as provided in subsection (a-5), the court shall instruct
12 the jury that if the jury unanimously determines that the
13 evidence leaves no doubt respecting the defendant's guilt, the
14 jury shall determine that death may be the appropriate
15 sentence, and the separate sentencing proceeding shall
16 continue to a consideration of the factors in aggravation and
17 mitigation.

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

19 If a separate sentencing proceeding is conducted before the
20 court alone as provided in subsection (a-5), and if the court
21 determines that the evidence leaves no doubt respecting the
22 defendant's guilt, the court shall determine that death may be
23 the appropriate sentence, and the separate sentencing
24 proceeding shall continue to a consideration of the factors in
25 aggravation and mitigation.

26 (c) Consideration of factors in Aggravation and
27 Mitigation.

28 The court shall consider, or shall instruct the jury to
29 consider any aggravating and any mitigating factors which are
30 relevant to the imposition of the death penalty. Aggravating
31 factors may include but need not be limited to those factors
32 set forth in subsection (b). Mitigating factors may include but
33 need not be limited to the following:

34 (1) the defendant has no significant history of prior

1 criminal activity;

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

6 (3) the murdered individual was a participant in the
7 defendant's homicidal conduct or consented to the
8 homicidal act;

9 (4) the defendant acted under the compulsion of threat
10 or menace of the imminent infliction of death or great
11 bodily harm;

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

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

16 (7) the defendant suffers from a reduced mental
17 capacity.

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

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

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

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

28 ~~A. the defendant was convicted upon a plea of~~
29 ~~guilty; or~~

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

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

34 ~~(3) before the court alone if the defendant waives a~~

1 ~~jury for the separate proceeding.~~

2 (e) Evidence and Argument.

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

13 (f) Proof.

14 The burden of proof of establishing the existence of any of
15 the factors set forth in subsection (b) is on the State and
16 shall not be satisfied unless established beyond a reasonable
17 doubt. The burden of proof for determining that death may be an
18 appropriate sentence is as set forth in subsections (b-5) and
19 (b-10), as applicable.

20 (g) Procedure - Jury.

21 If at the separate sentencing proceeding the jury finds
22 that none of the factors set forth in subsection (b) exists,
23 the court shall sentence the defendant to a term of
24 imprisonment under Chapter V of the Unified Code of
25 Corrections. If there is a unanimous finding by the jury that
26 one or more of the factors set forth in subsection (b) exist,
27 and if the jury unanimously determines that the evidence leaves
28 no doubt respecting the defendant's guilt, the jury shall
29 consider aggravating and mitigating factors as instructed by
30 the court and shall determine whether the sentence of death
31 shall be imposed. If the jury determines unanimously, after
32 weighing the factors in aggravation and mitigation, that death
33 is the appropriate sentence, the court shall sentence the
34 defendant to death. If the court does not concur with the jury

1 determination that death is the appropriate sentence, the court
2 shall set forth reasons in writing including what facts or
3 circumstances the court relied upon, along with any relevant
4 documents, that compelled the court to non-concur with the
5 sentence. This document and any attachments shall be part of
6 the record for appellate review. The court shall be bound by
7 the jury's sentencing 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, and if the court determines
20 that the evidence leaves no doubt respecting the defendant's
21 guilt, the Court shall consider any aggravating and mitigating
22 factors as indicated in subsection (c). If the Court
23 determines, after weighing the factors in aggravation and
24 mitigation, that death is the appropriate sentence, the Court
25 shall sentence the defendant to death.

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

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

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

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

16 (i) Appellate Procedure.

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

29 (j) Disposition of reversed death sentence.

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

1 Corrections.

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

10 (k) Guidelines for seeking the death penalty.

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

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