



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**HB3759**

Introduced 2/25/2005, by Rep. Robert F. Flider

**SYNOPSIS AS INTRODUCED:**

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 1961. Defines first degree murder to include the death of an infant or young child that resulted from shaken baby syndrome. Defines "shaken baby syndrome".

LRB094 10360 RLC 41887 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 5. The Criminal Code of 1961 is amended by changing  
5 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; ~~or~~

21 (4) he or she causes the death of an infant or young  
22 child from shaken baby syndrome. For purposes of this  
23 paragraph (4), "shaken baby syndrome" means the vigorous  
24 shaking of an infant or a young child that may: (i) result  
25 in bleeding inside the head; and (ii) cause one of the  
26 following conditions: irreversible brain damage,  
27 blindness, retinal hemorrhage or eye damage, cerebral  
28 palsy, hearing loss, spinal cord injury including  
29 paralysis, seizures, learning disabilities, death, or  
30 central nervous system injury as evidenced by central  
31 nervous system hemorrhaging.

32 (b) Aggravating Factors. A defendant who at the time of the

1 commission of the offense has attained the age of 18 or more  
2 and who has been found guilty of first degree murder may be  
3 sentenced to death if:

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

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

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

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

35 (5) the defendant committed the murder pursuant to a  
36 contract, agreement or understanding by which he was to

1 receive money or anything of value in return for committing  
2 the murder or procured another to commit the murder for  
3 money or anything of value; or

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

6 (a) the murdered individual:

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

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

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

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

36 (7) the murdered individual was under 12 years of age

1 and the death resulted from exceptionally brutal or heinous  
2 behavior indicative of wanton cruelty; or

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

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

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

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

1 expectation that the death of a human being would result  
2 therefrom; or

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

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

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

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

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

36 (17) the murdered individual was a disabled person and

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

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

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

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

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

24 (c) Consideration of factors in Aggravation and  
25 Mitigation.

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

32 (1) the defendant has no significant history of prior  
33 criminal activity;

34 (2) the murder was committed while the defendant was  
35 under the influence of extreme mental or emotional  
36 disturbance, although not such as to constitute a defense

1 to prosecution;

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

5 (4) the defendant acted under the compulsion of threat  
6 or menace of the imminent infliction of death or great  
7 bodily harm;

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

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

12 (7) the defendant suffers from a reduced mental  
13 capacity.

14 (d) Separate sentencing hearing.

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

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

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

24 A. the defendant was convicted upon a plea of  
25 guilty; or

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

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

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

32 (e) Evidence and Argument.

33 During the proceeding any information relevant to any of  
34 the factors set forth in subsection (b) may be presented by  
35 either the State or the defendant under the rules governing the  
36 admission of evidence at criminal trials. Any information



1 relevant to any additional aggravating factors or any  
2 mitigating factors indicated in subsection (c) may be presented  
3 by the State or defendant regardless of its admissibility under  
4 the rules governing the admission of evidence at criminal  
5 trials. The State and the defendant shall be given fair  
6 opportunity to rebut any information received at the hearing.

7 (f) Proof.

8 The burden of proof of establishing the existence of any of  
9 the factors set forth in subsection (b) is on the State and  
10 shall not be satisfied unless established beyond a reasonable  
11 doubt.

12 (g) Procedure - Jury.

13 If at the separate sentencing proceeding the jury finds  
14 that none of the factors set forth in subsection (b) exists,  
15 the court shall sentence the defendant to a term of  
16 imprisonment under Chapter V of the Unified Code of  
17 Corrections. If there is a unanimous finding by the jury that  
18 one or more of the factors set forth in subsection (b) exist,  
19 the jury shall consider aggravating and mitigating factors as  
20 instructed by the court and shall determine whether the  
21 sentence of death shall be imposed. If the jury determines  
22 unanimously, after weighing the factors in aggravation and  
23 mitigation, that death is the appropriate sentence, the court  
24 shall sentence the defendant to death. If the court does not  
25 concur with the jury determination that death is the  
26 appropriate sentence, the court shall set forth reasons in  
27 writing including what facts or circumstances the court relied  
28 upon, along with any relevant documents, that compelled the  
29 court to non-concur with the sentence. This document and any  
30 attachments shall be part of the record for appellate review.  
31 The court shall be bound by the jury's sentencing  
32 determination.

33 If after weighing the factors in aggravation and  
34 mitigation, one or more jurors determines that death is not the  
35 appropriate sentence, the court shall sentence the defendant to  
36 a term of imprisonment under Chapter V of the Unified Code of

1 Corrections.

2 (h) Procedure - No Jury.

3 In a proceeding before the court alone, if the court finds  
4 that none of the factors found in subsection (b) exists, 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 one or more of the factors set  
8 forth in subsection (b) exists, the Court shall consider any  
9 aggravating and mitigating factors as indicated in subsection  
10 (c). If the Court determines, after weighing the factors in  
11 aggravation and mitigation, that death is the appropriate  
12 sentence, the Court shall sentence the defendant to death.

13 If the court finds that death is not the appropriate  
14 sentence, the court shall sentence the defendant to a term of  
15 imprisonment under Chapter V of the Unified Code of  
16 Corrections.

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

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

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 in  
4 accordance with rules promulgated by the Supreme Court. The  
5 Illinois Supreme Court may overturn the death sentence, and  
6 order the imposition of imprisonment under Chapter V of the  
7 Unified Code of Corrections if the court finds that the death  
8 sentence is fundamentally unjust as applied to the particular  
9 case. If the Illinois Supreme Court finds that the death  
10 sentence is fundamentally unjust as applied to the particular  
11 case, independent of any procedural grounds for relief, the  
12 Illinois Supreme Court shall issue a written opinion explaining  
13 this finding.

14 (j) Disposition of reversed death sentence.

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

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

29 (k) Guidelines for seeking the death penalty.

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

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