



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB1146

Introduced 2/18/2005, by Sen. John J. Cullerton - Emil Jones, Jr.

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 1961. Makes a technical change in a Section concerning first degree murder.

LRB094 04847 RLC 34876 b

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 ~~the~~ 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:

25 (1) the murdered individual was a peace officer or
26 fireman killed in the course of performing his official
27 duties, to prevent the performance of his official duties,
28 or in retaliation for performing his official duties, and
29 the defendant knew or should have known that the murdered
30 individual was a peace officer or fireman; or

31 (2) the murdered individual was an employee of an
32 institution or facility of the Department of Corrections,

1 or any similar local correctional agency, killed in the
2 course of performing his official duties, to prevent the
3 performance of his official duties, or in retaliation for
4 performing his official duties, or the murdered individual
5 was an inmate at such institution or facility and was
6 killed on the grounds thereof, or the murdered individual
7 was otherwise present in such institution or facility with
8 the knowledge and approval of the chief administrative
9 officer thereof; or

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

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

24 (5) the defendant committed the murder pursuant to a
25 contract, agreement or understanding by which he was to
26 receive money or anything of value in return for committing
27 the murder or procured another to commit the murder for
28 money or anything of value; or

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

31 (a) the murdered individual:

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

33 (ii) received physical injuries personally
34 inflicted by the defendant substantially
35 contemporaneously with physical injuries caused by
36 one or more persons for whose conduct the defendant

1 is legally accountable under Section 5-2 of this
2 Code, and the physical injuries inflicted by
3 either the defendant or the other person or persons
4 for whose conduct he is legally accountable caused
5 the death of the murdered individual; and

6 (b) in performing the acts which caused the death
7 of the murdered individual or which resulted in
8 physical injuries personally inflicted by the
9 defendant on the murdered individual under the
10 circumstances of subdivision (ii) of subparagraph (a)
11 of paragraph (6) of subsection (b) of this Section, the
12 defendant acted with the intent to kill the murdered
13 individual or with the knowledge that his acts created
14 a strong probability of death or great bodily harm to
15 the murdered individual or another; and

16 (c) the other felony was an inherently violent
17 crime or the attempt to commit an inherently violent
18 crime. In this subparagraph (c), "inherently violent
19 crime" includes, but is not limited to, armed robbery,
20 robbery, predatory criminal sexual assault of a child,
21 aggravated criminal sexual assault, aggravated
22 kidnapping, aggravated vehicular hijacking, aggravated
23 arson, aggravated stalking, residential burglary, and
24 home invasion ; or

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

28 (8) the defendant committed the murder with intent to
29 prevent the murdered individual from testifying or
30 participating in any criminal investigation or prosecution
31 or giving material assistance to the State in any
32 investigation or prosecution, either against the defendant
33 or another; or the defendant committed the murder because
34 the murdered individual was a witness in any prosecution or
35 gave material assistance to the State in any investigation
36 or prosecution, either against the defendant or another;

1 for purposes of this paragraph (8), "participating in any
2 criminal investigation or prosecution" is intended to
3 include those appearing in the proceedings in any capacity
4 such as trial judges, prosecutors, defense attorneys,
5 investigators, witnesses, or jurors; or

6 (9) the defendant, while committing an offense
7 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
8 407 or 407.1 or subsection (b) of Section 404 of the
9 Illinois Controlled Substances Act, or while engaged in a
10 conspiracy or solicitation to commit such offense,
11 intentionally killed an individual or counseled,
12 commanded, induced, procured or caused the intentional
13 killing of the murdered individual; or

14 (10) the defendant was incarcerated in an institution
15 or facility of the Department of Corrections at the time of
16 the murder, and while committing an offense punishable as a
17 felony under Illinois law, or while engaged in a conspiracy
18 or solicitation to commit such offense, intentionally
19 killed an individual or counseled, commanded, induced,
20 procured or caused the intentional killing of the murdered
21 individual; or

22 (11) the murder was committed in a cold, calculated and
23 premeditated manner pursuant to a preconceived plan,
24 scheme or design to take a human life by unlawful means,
25 and the conduct of the defendant created a reasonable
26 expectation that the death of a human being would result
27 therefrom; or

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

1 the murdered individual was an emergency medical
2 technician - ambulance, emergency medical technician -
3 intermediate, emergency medical technician - paramedic,
4 ambulance driver, or other medical assistance or first aid
5 personnel; or

6 (13) the defendant was a principal administrator,
7 organizer, or leader of a calculated criminal drug
8 conspiracy consisting of a hierarchical position of
9 authority superior to that of all other members of the
10 conspiracy, and the defendant counseled, commanded,
11 induced, procured, or caused the intentional killing of the
12 murdered person; or

13 (14) the murder was intentional and involved the
14 infliction of torture. For the purpose of this Section
15 torture means the infliction of or subjection to extreme
16 physical pain, motivated by an intent to increase or
17 prolong the pain, suffering or agony of the victim; or

18 (15) the murder was committed as a result of the
19 intentional discharge of a firearm by the defendant from a
20 motor vehicle and the victim was not present within the
21 motor vehicle; or

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

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

33 (18) the murder was committed by reason of any person's
34 activity as a community policing volunteer or to prevent
35 any person from engaging in activity as a community
36 policing volunteer; or

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

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

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

13 (c) Consideration of factors in Aggravation and
14 Mitigation.

15 The court shall consider, or shall instruct the jury to
16 consider any aggravating and any mitigating factors which are
17 relevant to the imposition of the death penalty. Aggravating
18 factors may include but need not be limited to those factors
19 set forth in subsection (b). Mitigating factors may include but
20 need not be limited to the following:

21 (1) the defendant has no significant history of prior
22 criminal activity;

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

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

30 (4) the defendant acted under the compulsion of threat
31 or menace of the imminent infliction of death or great
32 bodily harm;

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

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

1 (7) the defendant suffers from a reduced mental
2 capacity.

3 (d) Separate sentencing hearing.

4 Where requested by the State, the court shall conduct a
5 separate sentencing proceeding to determine the existence of
6 factors set forth in subsection (b) and to consider any
7 aggravating or mitigating factors as indicated in subsection
8 (c). The proceeding shall be conducted:

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

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

13 A. the defendant was convicted upon a plea of
14 guilty; or

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

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

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

21 (e) Evidence and Argument.

22 During the proceeding any information relevant to any of
23 the factors set forth in subsection (b) may be presented by
24 either the State or the defendant under the rules governing the
25 admission of evidence at criminal trials. Any information
26 relevant to any additional aggravating factors or any
27 mitigating factors indicated in subsection (c) may be presented
28 by the State or defendant regardless of its admissibility under
29 the rules governing the admission of evidence at criminal
30 trials. The State and the defendant shall be given fair
31 opportunity to rebut any information received at the hearing.

32 (f) Proof.

33 The burden of proof of establishing the existence of any of
34 the factors set forth in subsection (b) is on the State and
35 shall not be satisfied unless established beyond a reasonable
36 doubt.

1 (g) Procedure - Jury.

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

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

27 (h) Procedure - No Jury.

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

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

1 sentence , the Court shall sentence the defendant to death.

2 If the court finds that death is not the appropriate
3 sentence, the court shall sentence the defendant to a term of
4 imprisonment under Chapter V of the Unified Code of
5 Corrections.

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

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

26 (i) Appellate Procedure.

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

1 Illinois Supreme Court shall issue a written opinion explaining
2 this finding.

3 (j) Disposition of reversed death sentence.

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

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

18 (k) Guidelines for seeking the death penalty.

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

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