



Sen. Rickey R. Hendon

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1 AMENDMENT TO SENATE BILL 328

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 328 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by  
5 changing 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

1 of death or great bodily harm to that individual or  
2 another; or

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

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

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

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

26 (3) the defendant has been convicted of murdering two

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

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

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

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

21 (a) the murdered individual:

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

23 (ii) received physical injuries personally  
24 inflicted by the defendant substantially  
25 contemporaneously with physical injuries caused by  
26 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

1 behavior indicative of wanton cruelty; or

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

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

24 (10) the defendant was incarcerated in an institution  
25 or facility of the Department of Corrections at the time of  
26 the murder, and while committing an offense punishable as a

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

6 (11) the murder was committed in a cold, calculated and  
7 premeditated manner pursuant to a preconceived plan,  
8 scheme or design to take a human life by unlawful means,  
9 and the conduct of the defendant created a reasonable  
10 expectation that the death of a human being would result  
11 therefrom; or

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

26 (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

1           (18) the murder was committed by reason of any person's  
2 activity as a community policing volunteer or to prevent  
3 any person from engaging in activity as a community  
4 policing volunteer; or

5           (19) the murdered individual was subject to an order of  
6 protection and the murder was committed by a person against  
7 whom the same order of protection was issued under the  
8 Illinois Domestic Violence Act of 1986; or

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

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

17           (c) Consideration of factors in Aggravation and  
18 Mitigation.

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

25           (1) the defendant has no significant history of prior  
26 criminal activity;



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

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

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

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

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

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

17           (d) Separate sentencing hearing.

18           Where 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) and to consider any  
21 aggravating or mitigating factors as indicated in subsection  
22 (c). The proceeding shall be conducted:

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

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

1           A. the defendant was convicted upon a plea of  
2 guilty; or

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

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

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

9           (e) Evidence and Argument.

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

20           (f) Proof.

21           The burden of proof of establishing the existence of any of  
22 the factors set forth in subsection (b) is on the State and  
23 shall not be satisfied unless established beyond a reasonable  
24 doubt.

25           (g) Procedure - Jury.

26           If at the separate sentencing proceeding the jury finds

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

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

25 (h) Procedure - No Jury.

26 In a proceeding before the court alone, if the court finds

1 that none of the factors found in subsection (b) exists, the  
2 court shall sentence the defendant to a term of imprisonment  
3 under Chapter V of the Unified Code of Corrections.

4 If the Court determines that one or more of the factors set  
5 forth in subsection (b) exists, the Court shall consider any  
6 aggravating and mitigating factors as indicated in subsection  
7 (c). If the Court determines, after weighing the factors in  
8 aggravation and mitigation, that death is the appropriate  
9 sentence, the Court shall sentence the defendant to death.

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

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

15 In a case in which the defendant has been found guilty of  
16 first degree murder by a judge or jury, or a case on remand for  
17 resentencing, and the State seeks the death penalty as an  
18 appropriate sentence, on the court's own motion or the written  
19 motion of the defendant, the court may decertify the case as a  
20 death penalty case if the court finds that the only evidence  
21 supporting the defendant's conviction is the uncorroborated  
22 testimony of an informant witness, as defined in Section 115-21  
23 of the Code of Criminal Procedure of 1963, concerning the  
24 confession or admission of the defendant or that the sole  
25 evidence against the defendant is a single eyewitness or single  
26 accomplice without any other corroborating evidence. If the

1 court decertifies the case as a capital case under either of  
2 the grounds set forth above, the court shall issue a written  
3 finding. The State may pursue its right to appeal the  
4 decertification pursuant to Supreme Court Rule 604(a)(1). If  
5 the court does not decertify the case as a capital case, the  
6 matter shall proceed to the eligibility phase of the sentencing  
7 hearing.

8 (i) Appellate Procedure.

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

21 (j) Disposition of reversed death sentence.

22 In the event that the death penalty in this Act is held to  
23 be unconstitutional by the Supreme Court of the United States  
24 or of the State of Illinois, any person convicted of first  
25 degree murder shall be sentenced by the court to a term of  
26 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.)".