



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5413

Introduced 2/5/2010, by Rep. Annazette Collins

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1
720 ILCS 5/9-2

from Ch. 38, par. 9-1
from Ch. 38, par. 9-2

Amends the Criminal Code of 1961. Provides that it is a defense to first degree murder that the person killed had a documented history or pattern of physically abusing the defendant and both the defendant and the victim were, at the time of the offense or previously, family or household members as defined in the Illinois Domestic Violence Act of 1986. Provides that such conduct is second degree murder.

LRB096 18951 RLC 34339 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

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 Sections 9-1 and 9-2 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.

21 (a-5) Defense. It is a defense to a violation of this
22 Section that the person killed had a documented history or
23 pattern of physically abusing the defendant and both the

1 defendant and the victim were, at the time of the offense or
2 previously, family or household members as defined in the
3 Illinois Domestic Violence Act of 1986.

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

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

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

25 (3) the defendant has been convicted of murdering two
26 or more individuals under subsection (a) of this Section or

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

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

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

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

20 (a) the murdered individual:

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

22 (ii) received physical injuries personally
23 inflicted by the defendant substantially
24 contemporaneously with physical injuries caused by
25 one or more persons for whose conduct the defendant
26 is legally accountable under Section 5-2 of this

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

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

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

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

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

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

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

1 or solicitation to commit such offense, intentionally
2 killed an individual or counseled, commanded, induced,
3 procured or caused the intentional killing of the murdered
4 individual; or

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

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

25 (13) the defendant was a principal administrator,
26 organizer, or leader of a calculated criminal drug

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

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

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

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

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

26 (18) the murder was committed by reason of any person's

1 activity as a community policing volunteer or to prevent
2 any person from engaging in activity as a community
3 policing volunteer; or

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

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

13 (21) the murder was committed by the defendant in
14 connection with or as a result of the offense of terrorism
15 as defined in Section 29D-14.9 of this Code.

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

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

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

26 (2) the murder was committed while the defendant was

1 under the influence of extreme mental or emotional
2 disturbance, although not such as to constitute a defense
3 to prosecution;

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

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

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

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

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

16 (d) Separate sentencing hearing.

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

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

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

26 A. the defendant was convicted upon a plea of

1 guilty; or

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

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

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

8 (e) Evidence and Argument.

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

19 (f) Proof.

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

24 (g) Procedure - Jury.

25 If at the separate sentencing proceeding the jury finds
26 that none of the factors set forth in subsection (b) exists,

1 the court shall sentence the defendant to a term of
2 imprisonment under Chapter V of the Unified Code of
3 Corrections. If there is a unanimous finding by the jury that
4 one or more of the factors set forth in subsection (b) exist,
5 the jury shall consider aggravating and mitigating factors as
6 instructed by the court and shall determine whether the
7 sentence of death shall be imposed. If the jury determines
8 unanimously, after weighing the factors in aggravation and
9 mitigation, that death is the appropriate sentence, the court
10 shall sentence the defendant to death. If the court does not
11 concur with the jury determination that death is the
12 appropriate sentence, the court shall set forth reasons in
13 writing including what facts or circumstances the court relied
14 upon, along with any relevant documents, that compelled the
15 court to non-concur with the sentence. This document and any
16 attachments shall be part of the record for appellate review.
17 The court shall be bound by the jury's sentencing
18 determination.

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

24 (h) Procedure - No Jury.

25 In a proceeding before the court alone, if the court finds
26 that none of the factors found in subsection (b) exists, the

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

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

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

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

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

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

7 (i) Appellate Procedure.

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

20 (j) Disposition of reversed death sentence.

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

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

9 (k) Guidelines for seeking the death penalty.

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

14 (Source: P.A. 96-710, eff. 1-1-10.)

15 (720 ILCS 5/9-2) (from Ch. 38, par. 9-2)

16 Sec. 9-2. Second degree murder.

17 (a) A person commits the offense of second degree murder
18 when he or she commits the offense of first degree murder as
19 defined in paragraph (1), (1.5), or (2) of subsection (a) of
20 Section 9-1 of this Code and one ~~either~~ of the following
21 mitigating factors are present:

22 (1) at the time of the killing he or she is acting
23 under a sudden and intense passion resulting from serious
24 provocation by the individual killed or another whom the
25 offender endeavors to kill, but he or she negligently or

1 accidentally causes the death of the individual killed; or
2 (1.5) at the time of the killing he or she had a
3 documented history or pattern of being physically abused by
4 the person killed and both the defendant and the victim
5 were, at the time of the offense or previously, family or
6 household members as defined in the Illinois Domestic
7 Violence Act of 1986; or

8 (2) at the time of the killing he or she believes the
9 circumstances to be such that, if they existed, would
10 justify or exonerate the killing under the principles
11 stated in Article 7 of this Code, but his or her belief is
12 unreasonable.

13 (b) Serious provocation is conduct sufficient to excite an
14 intense passion in a reasonable person.

15 (c) When evidence of either of the mitigating factors
16 defined in subsection (a) of this Section has been presented,
17 the burden of proof is on the defendant to prove either
18 mitigating factor by a preponderance of the evidence before the
19 defendant can be found guilty of second degree murder. The
20 burden of proof, however, remains on the State to prove beyond
21 a reasonable doubt each of the elements of first degree murder
22 and, when appropriately raised, the absence of circumstances at
23 the time of the killing that would justify or exonerate the
24 killing under the principles stated in Article 7 of this Code.

25 (d) Sentence. Second degree murder is a Class 1 felony.

26 (Source: P.A. 96-710, eff. 1-1-10.)