



Sen. Don Harmon

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09600HB5745sam002

LRB096 18041 RLC 40652 a

1 AMENDMENT TO HOUSE BILL 5745

2 AMENDMENT NO. _____. Amend House Bill 5745, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

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

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

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

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

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

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

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

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

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

22 (a) the murdered individual:

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

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

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

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

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

26 (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

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

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

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

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

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

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

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

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

1 providing for his or her own health or personal care; or

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

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

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

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

18 (b-5) Aggravating Factor; Natural Life Imprisonment. A
19 defendant who has been found guilty of first degree murder and
20 who at the time of the commission of the offense had attained
21 the age of 18 years or more may be sentenced to natural life
22 imprisonment if (i) the murdered individual was a physician,
23 physician assistant, psychologist, nurse, or advanced practice
24 nurse, (ii) the defendant knew or should have known that the
25 murdered individual was a physician, physician assistant,
26 psychologist, nurse, or advanced practice nurse, and (iii) the

1 murdered individual was killed in the course of acting in his
2 or her capacity as a physician, physician assistant,
3 psychologist, nurse, or advanced practice nurse, or to prevent
4 him or her from acting in that capacity, or in retaliation for
5 his or her acting in that capacity.

6 (c) Consideration of factors in Aggravation and
7 Mitigation.

8 The court shall consider, or shall instruct the jury to
9 consider any aggravating and any mitigating factors which are
10 relevant to the imposition of the death penalty. Aggravating
11 factors may include but need not be limited to those factors
12 set forth in subsection (b). Mitigating factors may include but
13 need not be limited to the following:

14 (1) the defendant has no significant history of prior
15 criminal activity;

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

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

23 (4) the defendant acted under the compulsion of threat
24 or menace of the imminent infliction of death or great
25 bodily harm;

26 (5) the defendant was not personally present during

1 commission of the act or acts causing death;

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

4 (7) the defendant suffers from a reduced mental
5 capacity.

6 (d) Separate sentencing hearing.

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

12 (1) before the jury that determined the defendant's
13 guilt; or

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

16 A. the defendant was convicted upon a plea of
17 guilty; or

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

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

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

24 (e) Evidence and Argument.

25 During the proceeding any information relevant to any of
26 the factors set forth in subsection (b) may be presented by

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

9 (f) Proof.

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

14 (g) Procedure - Jury.

15 If at the separate sentencing proceeding the jury finds
16 that none of the factors set forth in subsection (b) exists,
17 the court shall sentence the defendant to a term of
18 imprisonment under Chapter V of the Unified Code of
19 Corrections. If there is a unanimous finding by the jury that
20 one or more of the factors set forth in subsection (b) exist,
21 the jury shall consider aggravating and mitigating factors as
22 instructed by the court and shall determine whether the
23 sentence of death shall be imposed. If the jury determines
24 unanimously, after weighing the factors in aggravation and
25 mitigation, that death is the appropriate sentence, the court
26 shall sentence the defendant to death. If the court does not

1 concur with the jury determination that death is the
2 appropriate sentence, the court shall set forth reasons in
3 writing including what facts or circumstances the court relied
4 upon, along with any relevant documents, that compelled the
5 court to non-concur with the sentence. This document and any
6 attachments shall be part of the record for appellate review.
7 The court shall be bound by the jury's sentencing
8 determination.

9 If after weighing the factors in aggravation and
10 mitigation, one or more jurors determines that death is not the
11 appropriate sentence, the court shall sentence the defendant to
12 a term of imprisonment under Chapter V of the Unified Code of
13 Corrections.

14 (h) Procedure - No Jury.

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

19 If the Court determines that one or more of the factors set
20 forth in subsection (b) exists, the Court shall consider any
21 aggravating and mitigating factors as indicated in subsection
22 (c). If the Court determines, after weighing the factors in
23 aggravation and mitigation, that death is the appropriate
24 sentence, the Court shall sentence the defendant to death.

25 If the court finds that death is not the appropriate
26 sentence, the court shall sentence the defendant to a term of

1 imprisonment under Chapter V of the Unified Code of
2 Corrections.

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

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

23 (i) Appellate Procedure.

24 The conviction and sentence of death shall be subject to
25 automatic review by the Supreme Court. Such review shall be in
26 accordance with rules promulgated by the Supreme Court. The

1 Illinois Supreme Court may overturn the death sentence, and
2 order the imposition of imprisonment under Chapter V of the
3 Unified Code of Corrections if the court finds that the death
4 sentence is fundamentally unjust as applied to the particular
5 case. If the Illinois Supreme Court finds that the death
6 sentence is fundamentally unjust as applied to the particular
7 case, independent of any procedural grounds for relief, the
8 Illinois Supreme Court shall issue a written opinion explaining
9 this finding.

10 (j) Disposition of reversed death sentence.

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

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

25 (k) Guidelines for seeking the death penalty.

26 The Attorney General and State's Attorneys Association

1 shall consult on voluntary guidelines for procedures governing
2 whether or not to seek the death penalty. The guidelines do not
3 have the force of law and are only advisory in nature.

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

5 Section 10. The Unified Code of Corrections is amended by
6 changing Section 5-8-1 as follows:

7 (730 ILCS 5/5-8-1) (from Ch. 38, par. 1005-8-1)

8 Sec. 5-8-1. Natural life imprisonment; mandatory
9 supervised release.

10 (a) Except as otherwise provided in the statute defining
11 the offense or in Article 4.5 of Chapter V, a sentence of
12 imprisonment for a felony shall be a determinate sentence set
13 by the court under this Section, according to the following
14 limitations:

15 (1) for first degree murder,

16 (a) (blank),

17 (b) if a trier of fact finds beyond a reasonable
18 doubt that the murder was accompanied by exceptionally
19 brutal or heinous behavior indicative of wanton
20 cruelty or, except as set forth in subsection (a) (1) (c)
21 of this Section, that any of the aggravating factors
22 listed in subsection (b) or (b-5) of Section 9-1 of the
23 Criminal Code of 1961 are present, the court may
24 sentence the defendant to a term of natural life

1 imprisonment, or

2 (c) the court shall sentence the defendant to a
3 term of natural life imprisonment when the death
4 penalty is not imposed if the defendant,

5 (i) has previously been convicted of first
6 degree murder under any state or federal law, or

7 (ii) is a person who, at the time of the
8 commission of the murder, had attained the age of
9 17 or more and is found guilty of murdering an
10 individual under 12 years of age; or, irrespective
11 of the defendant's age at the time of the
12 commission of the offense, is found guilty of
13 murdering more than one victim, or

14 (iii) is found guilty of murdering a peace
15 officer, fireman, or emergency management worker
16 when the peace officer, fireman, or emergency
17 management worker was killed in the course of
18 performing his official duties, or to prevent the
19 peace officer or fireman from performing his
20 official duties, or in retaliation for the peace
21 officer, fireman, or emergency management worker
22 from performing his official duties, and the
23 defendant knew or should have known that the
24 murdered individual was a peace officer, fireman,
25 or emergency management worker, or

26 (iv) is found guilty of murdering an employee

1 of an institution or facility of the Department of
2 Corrections, or any similar local correctional
3 agency, when the employee was killed in the course
4 of performing his official duties, or to prevent
5 the employee from performing his official duties,
6 or in retaliation for the employee performing his
7 official duties, or

8 (v) is found guilty of murdering an emergency
9 medical technician - ambulance, emergency medical
10 technician - intermediate, emergency medical
11 technician - paramedic, ambulance driver or other
12 medical assistance or first aid person while
13 employed by a municipality or other governmental
14 unit when the person was killed in the course of
15 performing official duties or to prevent the
16 person from performing official duties or in
17 retaliation for performing official duties and the
18 defendant knew or should have known that the
19 murdered individual was an emergency medical
20 technician - ambulance, emergency medical
21 technician - intermediate, emergency medical
22 technician - paramedic, ambulance driver, or other
23 medical assistant or first aid personnel, or

24 (vi) is a person who, at the time of the
25 commission of the murder, had not attained the age
26 of 17, and is found guilty of murdering a person

1 under 12 years of age and the murder is committed
2 during the course of aggravated criminal sexual
3 assault, criminal sexual assault, or aggravated
4 kidnaping, or

5 (vii) is found guilty of first degree murder
6 and the murder was committed by reason of any
7 person's activity as a community policing
8 volunteer or to prevent any person from engaging in
9 activity as a community policing volunteer. For
10 the purpose of this Section, "community policing
11 volunteer" has the meaning ascribed to it in
12 Section 2-3.5 of the Criminal Code of 1961.

13 For purposes of clause (v), "emergency medical
14 technician - ambulance", "emergency medical technician
15 - intermediate", "emergency medical technician -
16 paramedic", have the meanings ascribed to them in the
17 Emergency Medical Services (EMS) Systems Act.

18 (d) (i) if the person committed the offense while
19 armed with a firearm, 15 years shall be added to
20 the term of imprisonment imposed by the court;

21 (ii) if, during the commission of the offense,
22 the person personally discharged a firearm, 20
23 years shall be added to the term of imprisonment
24 imposed by the court;

25 (iii) if, during the commission of the
26 offense, the person personally discharged a

1 firearm that proximately caused great bodily harm,
2 permanent disability, permanent disfigurement, or
3 death to another person, 25 years or up to a term
4 of natural life shall be added to the term of
5 imprisonment imposed by the court.

6 (2) (blank);

7 (2.5) for a person convicted under the circumstances
8 described in paragraph (3) of subsection (b) of Section
9 12-13, paragraph (2) of subsection (d) of Section 12-14,
10 paragraph (1.2) of subsection (b) of Section 12-14.1, or
11 paragraph (2) of subsection (b) of Section 12-14.1 of the
12 Criminal Code of 1961, the sentence shall be a term of
13 natural life imprisonment.

14 (b) (Blank~~-~~).

15 (c) (Blank~~-~~).

16 (d) Subject to earlier termination under Section 3-3-8, the
17 parole or mandatory supervised release term shall be as
18 follows:

19 (1) for first degree murder or a Class X felony except
20 for the offenses of predatory criminal sexual assault of a
21 child, aggravated criminal sexual assault, and criminal
22 sexual assault if committed on or after the effective date
23 of this amendatory Act of the 94th General Assembly and
24 except for the offense of aggravated child pornography
25 under Section 11-20.3 of the Criminal Code of 1961, if
26 committed on or after January 1, 2009, 3 years;

1 (2) for a Class 1 felony or a Class 2 felony except for
2 the offense of criminal sexual assault if committed on or
3 after the effective date of this amendatory Act of the 94th
4 General Assembly and except for the offenses of manufacture
5 and dissemination of child pornography under clauses
6 (a) (1) and (a) (2) of Section 11-20.1 of the Criminal Code
7 of 1961, if committed on or after January 1, 2009, 2 years;

8 (3) for a Class 3 felony or a Class 4 felony, 1 year;

9 (4) for defendants who commit the offense of predatory
10 criminal sexual assault of a child, aggravated criminal
11 sexual assault, or criminal sexual assault, on or after the
12 effective date of this amendatory Act of the 94th General
13 Assembly, or who commit the offense of aggravated child
14 pornography, manufacture of child pornography, or
15 dissemination of child pornography after January 1, 2009,
16 the term of mandatory supervised release shall range from a
17 minimum of 3 years to a maximum of the natural life of the
18 defendant;

19 (5) if the victim is under 18 years of age, for a
20 second or subsequent offense of aggravated criminal sexual
21 abuse or felony criminal sexual abuse, 4 years, at least
22 the first 2 years of which the defendant shall serve in an
23 electronic home detention program under Article 8A of
24 Chapter V of this Code;

25 (6) for a felony domestic battery, aggravated domestic
26 battery, stalking, aggravated stalking, and a felony

1 violation of an order of protection, 4 years.

2 (e) (Blank~~→~~).

3 (f) (Blank~~→~~).

4 (Source: P.A. 95-983, eff. 6-1-09; 95-1052, eff. 7-1-09;
5 96-282, eff. 1-1-10; revised 9-4-09.)".