

SB1309



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1309

Introduced 2/10/2009, by Sen. John J. Cullerton

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.

LRB096 09457 RLC 19614 b

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 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

1 sentenced to death if:

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

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

19 (3) the defendant has been convicted of murdering two
20 or more individuals under subsection (a) of this Section or
21 under any law of the United States or of any state which is
22 substantially similar to subsection (a) of this Section
23 regardless of whether the deaths occurred as the result of
24 the same act or of several related or unrelated acts so
25 long as the deaths were the result of either an intent to
26 kill more than one person or of separate acts which the

1 defendant knew would cause death or create a strong
2 probability of death or great bodily harm to the murdered
3 individual or another; or

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

7 (5) the defendant committed the murder pursuant to a
8 contract, agreement or understanding by which he was to
9 receive money or anything of value in return for committing
10 the murder or procured another to commit the murder for
11 money or anything of value; or

12 (6) the murdered individual was killed in the course of
13 another felony if:

14 (a) the murdered individual:

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

16 (ii) received physical injuries personally
17 inflicted by the defendant substantially
18 contemporaneously with physical injuries caused by
19 one or more persons for whose conduct the defendant
20 is legally accountable under Section 5-2 of this
21 Code, and the physical injuries inflicted by
22 either the defendant or the other person or persons
23 for whose conduct he is legally accountable caused
24 the death of the murdered individual; and

25 (b) in performing the acts which caused the death
26 of the murdered individual or which resulted in

1 physical injuries personally inflicted by the
2 defendant on the murdered individual under the
3 circumstances of subdivision (ii) of subparagraph (a)
4 of paragraph (6) of subsection (b) of this Section, the
5 defendant acted with the intent to kill the murdered
6 individual or with the knowledge that his acts created
7 a strong probability of death or great bodily harm to
8 the murdered individual or another; and

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

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

21 (8) the defendant committed the murder with intent to
22 prevent the murdered individual from testifying or
23 participating in any criminal investigation or prosecution
24 or giving material assistance to the State in any
25 investigation or prosecution, either against the defendant
26 or another; or the defendant committed the murder because

1 the murdered individual was a witness in any prosecution or
2 gave material assistance to the State in any investigation
3 or prosecution, either against the defendant or another;
4 for purposes of this paragraph (8), "participating in any
5 criminal investigation or prosecution" is intended to
6 include those appearing in the proceedings in any capacity
7 such as trial judges, prosecutors, defense attorneys,
8 investigators, witnesses, or jurors; or

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

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

25 (11) the murder was committed in a cold, calculated and
26 premeditated manner pursuant to a preconceived plan,

1 scheme or design to take a human life by unlawful means,
2 and the conduct of the defendant created a reasonable
3 expectation that the death of a human being would result
4 therefrom; or

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

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

26 (14) the murder was intentional and involved the

1 infliction of torture. For the purpose of this Section
2 torture means the infliction of or subjection to extreme
3 physical pain, motivated by an intent to increase or
4 prolong the pain, suffering or agony of the victim; or

5 (15) the murder was committed as a result of the
6 intentional discharge of a firearm by the defendant from a
7 motor vehicle and the victim was not present within the
8 motor vehicle; or

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

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

20 (18) the murder was committed by reason of any person's
21 activity as a community policing volunteer or to prevent
22 any person from engaging in activity as a community
23 policing volunteer; or

24 (19) the murdered individual was subject to an order of
25 protection and the murder was committed by a person against
26 whom the same order of protection was issued under the

1 Illinois Domestic Violence Act of 1986; or

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

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

10 (c) Consideration of factors in Aggravation and
11 Mitigation.

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

18 (1) the defendant has no significant history of prior
19 criminal activity;

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

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

1 (4) the defendant acted under the compulsion of threat
2 or menace of the imminent infliction of death or great
3 bodily harm;

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

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

8 (7) the defendant suffers from a reduced mental
9 capacity.

10 (d) Separate sentencing hearing.

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

16 (1) before the jury that determined the defendant's
17 guilt; or

18 (2) before a jury impanelled for the purpose of the
19 proceeding if:

20 A. the defendant was convicted upon a plea of
21 guilty; or

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

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

26 (3) before the court alone if the defendant waives a

1 jury for the separate proceeding.

2 (e) Evidence and Argument.

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

13 (f) Proof.

14 The burden of proof of establishing the existence of any of
15 the factors set forth in subsection (b) is on the State and
16 shall not be satisfied unless established beyond a reasonable
17 doubt.

18 (g) Procedure - Jury.

19 If at the separate sentencing proceeding the jury finds
20 that none of the factors set forth in subsection (b) exists,
21 the court shall sentence the defendant to a term of
22 imprisonment under Chapter V of the Unified Code of
23 Corrections. If there is a unanimous finding by the jury that
24 one or more of the factors set forth in subsection (b) exist,
25 the jury shall consider aggravating and mitigating factors as
26 instructed by the court and shall determine whether the

1 sentence of death shall be imposed. If the jury determines
2 unanimously, after weighing the factors in aggravation and
3 mitigation, that death is the appropriate sentence, the court
4 shall sentence the defendant to death. If the court does not
5 concur with the jury determination that death is the
6 appropriate sentence, the court shall set forth reasons in
7 writing including what facts or circumstances the court relied
8 upon, along with any relevant documents, that compelled the
9 court to non-concur with the sentence. This document and any
10 attachments shall be part of the record for appellate review.
11 The court shall be bound by the jury's sentencing
12 determination.

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

18 (h) Procedure - No Jury.

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

23 If the Court determines that one or more of the factors set
24 forth in subsection (b) exists, the Court shall consider any
25 aggravating and mitigating factors as indicated in subsection
26 (c). If the Court determines, after weighing the factors in

1 aggravation and mitigation, that death is the appropriate
2 sentence, the Court shall sentence the defendant to death.

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

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

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

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

3 (k) Guidelines for seeking the death penalty.

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

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