

1 AN ACT concerning notice of intent to seek the death  
2 penalty.

3 Be it enacted by the People of the State of Illinois,  
4 represented in the General Assembly:

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  
13 the acts which cause the death:

14 (1) he either intends to kill or do great bodily  
15 harm to that individual or another, or knows that such  
16 acts will cause death to that individual or another; or

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

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

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

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

1 or

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

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

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

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

32 (6) the murdered individual was killed in the  
33 course of another felony if:

34 (a) the murdered individual:

1 (i) was actually killed by the defendant,  
2 or

3 (ii) received physical injuries  
4 personally inflicted by the defendant  
5 substantially contemporaneously with physical  
6 injuries caused by one or more persons for  
7 whose conduct the defendant is legally  
8 accountable under Section 5-2 of this Code, and  
9 the physical injuries inflicted by either the  
10 defendant or the other person or persons for  
11 whose conduct he is legally accountable caused  
12 the death of the murdered individual; and

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

24 (c) the other felony was one of the following:  
25 armed robbery, armed violence, robbery, predatory  
26 criminal sexual assault of a child, aggravated  
27 criminal sexual assault, aggravated kidnapping,  
28 aggravated vehicular hijacking, forcible detention,  
29 arson, aggravated arson, aggravated stalking,  
30 burglary, residential burglary, home invasion,  
31 calculated criminal drug conspiracy as defined in  
32 Section 405 of the Illinois Controlled Substances  
33 Act, streetgang criminal drug conspiracy as defined  
34 in Section 405.2 of the Illinois Controlled

1           Substances Act, or the attempt to commit any of the  
2           felonies listed in this subsection (c); or

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

6           (8) the defendant committed the murder with intent  
7           to prevent the murdered individual from testifying in any  
8           criminal prosecution or giving material assistance to the  
9           State in any investigation or prosecution, either against  
10          the defendant or another; or the defendant committed the  
11          murder because the murdered individual was a witness in  
12          any prosecution or gave material assistance to the State  
13          in any investigation or prosecution, either against the  
14          defendant or another; 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  
24          institution or facility of the Department of Corrections  
25          at the time of the murder, and while committing an  
26          offense punishable as a felony under Illinois law, or  
27          while engaged in a conspiracy or solicitation to commit  
28          such offense, intentionally killed an individual or  
29          counseled, commanded, induced, procured or caused the  
30          intentional killing of the murdered individual; or

31          (11) the murder was committed in a cold, calculated  
32          and premeditated manner pursuant to a preconceived plan,  
33          scheme or design to take a human life by unlawful means,  
34          and the conduct of the defendant created a reasonable

1 expectation that the death of a human being would result  
2 therefrom; or

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

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

24 (14) the murder was intentional and involved the  
25 infliction of torture. For the purpose of this Section  
26 torture means the infliction of or subjection to extreme  
27 physical pain, motivated by an intent to increase or  
28 prolong the pain, suffering or agony of the victim; or

29 (15) the murder was committed as a result of the  
30 intentional discharge of a firearm by the defendant from  
31 a motor vehicle and the victim was not present within the  
32 motor vehicle; or

33 (16) the murdered individual was 60 years of age or  
34 older and the death resulted from exceptionally brutal or

1 heinous behavior indicative of wanton cruelty; or

2 (17) the murdered individual was a disabled person  
3 and the defendant knew or should have known that the  
4 murdered individual was disabled. For purposes of this  
5 paragraph (17), "disabled person" means a person who  
6 suffers from a permanent physical or mental impairment  
7 resulting from disease, an injury, a functional disorder,  
8 or a congenital condition that renders the person  
9 incapable of adequately providing for his or her own  
10 health or personal care; or

11 (18) the murder was committed by reason of any  
12 person's activity as a community policing volunteer or to  
13 prevent any person from engaging in activity as a  
14 community policing volunteer; or

15 (19) the murdered individual was subject to an  
16 order of protection and the murder was committed by a  
17 person against whom the same order of protection was  
18 issued under the Illinois Domestic Violence Act of 1986;  
19 or

20 (20) the murdered individual was known by the  
21 defendant to be a teacher or other person employed in any  
22 school and the teacher or other employee is upon the  
23 grounds of a school or grounds adjacent to a school, or  
24 is in any part of a building used for school purposes.

25 A sentence of death under any of the factors set forth in  
26 this subsection (b) may be sought only if the State's  
27 Attorney gives notice to the defendant, as soon as practical  
28 but no later than within 120 days after the defendant's  
29 arraignment, of the State's intent to seek the death penalty.

30 (c) Consideration of factors in Aggravation and  
31 Mitigation.

32 The court shall consider, or shall instruct the jury to  
33 consider any aggravating and any mitigating factors which are  
34 relevant to the imposition of the death penalty. Aggravating

1 factors may include but need not be limited to those factors  
2 set forth in subsection (b). Mitigating factors may include  
3 but need not be limited to the following:

4 (1) the defendant has no significant history of  
5 prior criminal activity;

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

10 (3) the murdered individual was a participant in  
11 the defendant's homicidal conduct or consented to the  
12 homicidal act;

13 (4) the defendant acted under the compulsion of  
14 threat or menace of the imminent infliction of death or  
15 great bodily harm;

16 (5) the defendant was not personally present during  
17 commission of the act or acts causing death.

18 (d) Separate sentencing hearing.

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

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

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

28 A. the defendant was convicted upon a plea of  
29 guilty; or

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

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

34 (3) before the court alone if the defendant waives

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

14 (f) Proof.

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

19 (g) Procedure - Jury.

20 If at the separate sentencing proceeding the jury finds  
21 that none of the factors set forth in subsection (b) exists,  
22 the court shall sentence the defendant to a term of  
23 imprisonment under Chapter V of the Unified Code of  
24 Corrections. If there is a unanimous finding by the jury  
25 that one or more of the factors set forth in subsection (b)  
26 exist, the jury shall consider aggravating and mitigating  
27 factors as instructed by the court and shall determine  
28 whether the sentence of death shall be imposed. If the jury  
29 determines unanimously that there are no mitigating factors  
30 sufficient to preclude the imposition of the death sentence,  
31 the court shall sentence the defendant to death.

32 Unless the jury unanimously finds that there are no  
33 mitigating factors sufficient to preclude the imposition of  
34 the death sentence the court shall sentence the defendant to



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

3 (h) Procedure - No Jury.

4 In a proceeding before the court alone, if the court  
5 finds that none of the factors found in subsection (b)  
6 exists, the court shall sentence the defendant to a term of  
7 imprisonment under Chapter V of the Unified Code of  
8 Corrections.

9 If the Court determines that one or more of the factors  
10 set forth in subsection (b) exists, the Court shall consider  
11 any aggravating and mitigating factors as indicated in  
12 subsection (c). If the Court determines that there are no  
13 mitigating factors sufficient to preclude the imposition of  
14 the death sentence, the Court shall sentence the defendant to  
15 death.

16 Unless the court finds that there are no mitigating  
17 factors sufficient to preclude the imposition of the sentence  
18 of death, the court shall sentence the defendant to a term of  
19 imprisonment under Chapter V of the Unified Code of  
20 Corrections.

21 (i) Appellate Procedure.

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

25 (j) Disposition of reversed death sentence.

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

32 In the event that any death sentence pursuant to the  
33 sentencing provisions of this Section is declared  
34 unconstitutional by the Supreme Court of the United States or

1 of the State of Illinois, the court having jurisdiction over  
2 a person previously sentenced to death shall cause the  
3 defendant to be brought before the court, and the court shall  
4 sentence the defendant to a term of imprisonment under  
5 Chapter V of the Unified Code of Corrections.

6 (Source: P.A. 90-213, eff. 1-1-98; 90-651, eff. 1-1-99;  
7 90-668, eff. 1-1-99; 91-357, eff. 7-29-99; 91-434, eff.  
8 1-1-00.)

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.