

1 AN ACT concerning factors in aggravation and mitigation
2 in capital cases.

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 (c) Consideration of factors in Aggravation and
26 Mitigation.

27 The court shall consider, or shall instruct the jury to
28 consider any aggravating and any mitigating factors which are
29 relevant to the imposition of the death penalty. Aggravating
30 factors may include but need not be limited to those factors
31 set forth in subsection (b). Mitigating factors may include
32 but need not be limited to the following:

33 (1) the defendant has no significant history of
34 prior criminal activity;

1 (2) the murder was committed while the defendant
2 was 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
6 the defendant's homicidal conduct or consented to the
7 homicidal act;

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

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

13 (d) Separate sentencing hearing.

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

19 (1) before the jury that determined the defendant's
20 guilt; or

21 (2) before a jury impanelled for the purpose of the
22 proceeding if:

23 A. the defendant was convicted upon a plea of
24 guilty; or

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

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

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

31 (e) Evidence and Argument.

32 During the proceeding any information relevant to any of
33 the factors set forth in subsection (b) may be presented by
34 either the State or the defendant under the rules governing

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

9 (f) Proof.

10 The burden of proof of establishing the existence of any
 11 of the factors set forth in subsection (b) is on the State
 12 and shall not be satisfied unless established beyond a
 13 reasonable 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
 20 that one or more of the factors set forth in subsection (b)
 21 exist, the jury shall consider aggravating and mitigating
 22 factors as instructed by the court and shall determine
 23 whether the sentence of death shall be imposed. If the jury
 24 determines unanimously, after weighing the factors in
 25 aggravation and mitigation, that death is the appropriate
 26 sentence ~~that there are no mitigating factors sufficient to~~
 27 ~~preclude the imposition of the death sentence,~~ the court
 28 shall sentence the defendant to death.

29 Unless the jury unanimously finds, after weighing the
 30 factors in aggravation and mitigation, that death is the
 31 appropriate sentence, ~~that there are no mitigating factors~~
 32 ~~sufficient to preclude the imposition of the death sentence~~
 33 the court shall sentence the defendant to a term of
 34 imprisonment under Chapter V of the Unified Code of

1 Corrections.

2 (h) Procedure - No Jury.

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

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

16 Unless the court finds, after weighing the factors in
17 aggravation and mitigation that death is the appropriate
18 sentence ~~that there are no mitigating factors sufficient to~~
19 ~~preclude the imposition of the sentence of death,~~ the court
20 shall sentence the defendant to a term of imprisonment under
21 Chapter V of the Unified Code of Corrections.

22 (i) Appellate Procedure.

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

26 (j) Disposition of reversed death sentence.

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

33 In the event that any death sentence pursuant to the
34 sentencing provisions of this Section is declared

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

7 (Source: P.A. 90-213, eff. 1-1-98; 90-651, eff. 1-1-99;
8 90-668, eff. 1-1-99; 91-357, eff. 7-29-99; 91-434, eff.
9 1-1-00.)

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