



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2741

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

720 ILCS 5/8-4

from Ch. 38, par. 8-4

Amends the Criminal Code of 2012. Provides that the enhanced penalties for an attempt to commit first degree murder while armed with a firearm, during which the person personally discharged a firearm, or during which the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person apply to an attempt to commit first degree murder of a peace officer, fireman, correctional institution or facility employee, EMT, ambulance driver, or medical assistance or first aid personnel employed by a governmental unit attempted to be killed in the performance of his or her official duties, to prevent the performance of his or her official duties, or in retaliation for the performance of his or her official duties, or an attempt to commit first degree murder of an inmate of a correctional institution or facility on the grounds of the institution or facility, or of a person present in the institution or facility with the knowledge of the chief administrative officer of the institution or facility. Reenacts the provisions of the attempted murder statute held unconstitutional as violating the proportionate penalties clause of the Illinois Constitution in *People v. Morgan*, 203 Ill. 2d 994 (2003) before the Supreme Court changed its proportionality review in *People v. Sharpe*, 216 Ill. 2d 481 (2005).

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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 2012 is amended by changing
5 Section 8-4 as follows:

6 (720 ILCS 5/8-4) (from Ch. 38, par. 8-4)
7 Sec. 8-4. Attempt.

8 (a) Elements of the offense.

9 A person commits the offense of attempt when, with intent
10 to commit a specific offense, he or she does any act that
11 constitutes a substantial step toward the commission of that
12 offense.

13 (b) Impossibility.

14 It is not a defense to a charge of attempt that because of
15 a misapprehension of the circumstances it would have been
16 impossible for the accused to commit the offense attempted.

17 (c) Sentence.

18 A person convicted of attempt may be fined or imprisoned or
19 both not to exceed the maximum provided for the offense
20 attempted but, except for an attempt to commit the offense
21 defined in Section 33A-2 of this Code:

22 (1) the sentence for attempt to commit first degree
23 murder is the sentence for a Class X felony, except that

1 (A) an attempt to commit first degree murder when
2 at least one of the aggravating factors specified in
3 paragraphs (1), (2), and (12) of subsection (b) of
4 Section 9-1 is present is a Class X felony for which
5 the sentence shall be a term of imprisonment of not
6 less than 20 years and not more than 80 years;

7 (B) an attempt to commit first degree murder,
8 including an attempt to commit first degree murder when
9 at least one of the aggravating factors specified in
10 paragraphs (1), (2), and (12) of subsection (b) of
11 Section 9-1 is present, while armed with a firearm is a
12 Class X felony for which 15 years shall be added to the
13 term of imprisonment imposed by the court; ~~an attempt~~
14 ~~to commit first degree murder while armed with a~~
15 ~~firearm is a Class X felony for which 15 years shall be~~
16 ~~added to the term of imprisonment imposed by the court;~~

17 (C) an attempt to commit first degree murder,
18 including an attempt to commit first degree murder when
19 at least one of the aggravating factors specified in
20 paragraphs (1), (2), and (12) of subsection (b) of
21 Section 9-1 is present, during which the person
22 personally discharged a firearm is a Class X felony for
23 which 20 years shall be added to the term of
24 imprisonment imposed by the court; ~~an attempt to commit~~
25 ~~first degree murder during which the person personally~~
26 ~~discharged a firearm is a Class X felony for which 20~~

1 ~~years shall be added to the term of imprisonment~~
2 ~~imposed by the court;~~

3 (D) an attempt to commit first degree murder,
4 including an attempt to commit first degree murder when
5 at least one of the aggravating factors specified in
6 paragraphs (1), (2), and (12) of subsection (b) of
7 Section 9-1 is present, during which the person
8 personally discharged a firearm that proximately
9 caused great bodily harm, permanent disability,
10 permanent disfigurement, or death to another person is
11 a Class X felony for which 25 years or up to a term of
12 natural life shall be added to the term of imprisonment
13 imposed by the court; ~~an attempt to commit first degree~~
14 ~~murder during which the person personally discharged a~~
15 ~~firearm that proximately caused great bodily harm,~~
16 ~~permanent disability, permanent disfigurement, or~~
17 ~~death to another person is a Class X felony for which~~
18 ~~25 years or up to a term of natural life shall be added~~
19 ~~to the term of imprisonment imposed by the court;~~ and

20 (E) if the defendant proves by a preponderance of
21 the evidence at sentencing that, at the time of the
22 attempted murder, he or she was acting under a sudden
23 and intense passion resulting from serious provocation
24 by the individual whom the defendant endeavored to
25 kill, or another, and, had the individual the defendant
26 endeavored to kill died, the defendant would have

1 negligently or accidentally caused that death, then
2 the sentence for the attempted murder is the sentence
3 for a Class 1 felony;

4 (2) the sentence for attempt to commit a Class X felony
5 is the sentence for a Class 1 felony;

6 (3) the sentence for attempt to commit a Class 1 felony
7 is the sentence for a Class 2 felony;

8 (4) the sentence for attempt to commit a Class 2 felony
9 is the sentence for a Class 3 felony; and

10 (5) the sentence for attempt to commit any felony other
11 than those specified in items (1), (2), (3), and (4) of
12 this subsection (c) is the sentence for a Class A
13 misdemeanor.

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