



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB1615

by Rep. Justin Slaughter

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 2012 concerning first degree murder. Provides that a person who kills an individual without lawful justification commits first degree murder if he or she acting alone, commits or attempts to commit a forcible felony other than second degree murder and, in the course of and in furtherance of the crime, he or she personally causes the death of an individual. Provides that a person who kills an individual without lawful justification commits first degree murder if he or she, when acting with one or more participants, commits or attempts to commit a forcible felony other than second degree murder, and in the course of and in furtherance of the offense, another participant in the offense causes the death of an individual, and he or she knew that the other participant would engage in conduct that would result in death or great bodily harm. Makes technical changes.

LRB101 07790 SLF 52841 b

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 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 ~~acts which cause the death:~~

13 (1) in performing the acts which cause the death, he or
14 she either intends to kill or do great bodily harm to that
15 individual or another, or knows that such acts will cause
16 death to that individual or another; ~~or~~

17 (2) in performing the acts which cause the death, he or
18 she knows that such acts create a strong probability of
19 death or great bodily harm to that individual or another;
20 ~~or~~

21 (3) he or she, acting alone, commits or attempts to
22 commit ~~is attempting or committing~~ a forcible felony other
23 than second degree murder and, in the course of and in

1 furtherance of the crime, he or she personally causes the
2 death of an individual; or -

3 (4) he or she, when acting with one or more
4 participants, commits or attempts to commit a forcible
5 felony other than second degree murder, and in the course
6 of and in furtherance of the offense, another participant
7 in the offense causes the death of an individual, and he or
8 she knew that the other participant would engage in conduct
9 that would result in death or great bodily harm.

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

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

20 (2) the murdered individual was an employee of an
21 institution or facility of the Department of Corrections,
22 or any similar local correctional agency, killed in the
23 course of performing his official duties, to prevent the
24 performance of his official duties, or in retaliation for
25 performing his official duties, or the murdered individual
26 was an inmate at such institution or facility and was

1 killed on the grounds thereof, or the murdered individual
2 was otherwise present in such institution or facility with
3 the knowledge and approval of the chief administrative
4 officer thereof; or

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

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

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

24 (6) the murdered individual was killed in the course of
25 another felony if:

26 (a) the murdered individual:

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

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

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

21 (c) the other felony was an inherently violent
22 crime or the attempt to commit an inherently violent
23 crime. In this subparagraph (c), "inherently violent
24 crime" includes, but is not limited to, armed robbery,
25 robbery, predatory criminal sexual assault of a child,
26 aggravated criminal sexual assault, aggravated

1 kidnapping, aggravated vehicular hijacking, aggravated
2 arson, aggravated stalking, residential burglary, and
3 home invasion; or

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

7 (8) the defendant committed the murder with intent to
8 prevent the murdered individual from testifying or
9 participating in any criminal investigation or prosecution
10 or giving material assistance to the State in any
11 investigation or prosecution, either against the defendant
12 or another; or the defendant committed the murder because
13 the murdered individual was a witness in any prosecution or
14 gave material assistance to the State in any investigation
15 or prosecution, either against the defendant or another;
16 for purposes of this paragraph (8), "participating in any
17 criminal investigation or prosecution" is intended to
18 include those appearing in the proceedings in any capacity
19 such as trial judges, prosecutors, defense attorneys,
20 investigators, witnesses, or jurors; or

21 (9) the defendant, while committing an offense
22 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
23 407 or 407.1 or subsection (b) of Section 404 of the
24 Illinois Controlled Substances Act, or while engaged in a
25 conspiracy or solicitation to commit such offense,
26 intentionally killed an individual or counseled,

1 commanded, induced, procured or caused the intentional
2 killing of the murdered individual; or

3 (10) the defendant was incarcerated in an institution
4 or facility of the Department of Corrections at the time of
5 the murder, and while committing an offense punishable as a
6 felony under Illinois law, or while engaged in a conspiracy
7 or solicitation to commit such offense, intentionally
8 killed an individual or counseled, commanded, induced,
9 procured or caused the intentional killing of the murdered
10 individual; or

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

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

1 technician - ambulance, emergency medical technician -
2 intermediate, emergency medical technician - paramedic,
3 ambulance driver, or other medical assistance or first aid
4 personnel; or

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

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

17 (15) the murder was committed as a result of the
18 intentional discharge of a firearm by the defendant from a
19 motor vehicle and the victim was not present within the
20 motor vehicle; or

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

24 (17) the murdered individual was a person with a
25 disability and the defendant knew or should have known that
26 the murdered individual was a person with a disability. For

1 purposes of this paragraph (17), "person with a disability"
2 means a person who suffers from a permanent physical or
3 mental impairment resulting from disease, an injury, a
4 functional disorder, or a congenital condition that
5 renders the person incapable of adequately providing for
6 his or her own health or personal care; or

7 (18) the murder was committed by reason of any person's
8 activity as a community policing volunteer or to prevent
9 any person from engaging in activity as a community
10 policing volunteer; or

11 (19) the murdered individual was subject to an order of
12 protection and the murder was committed by a person against
13 whom the same order of protection was issued under the
14 Illinois Domestic Violence Act of 1986; or

15 (20) the murdered individual was known by the defendant
16 to be a teacher or other person employed in any school and
17 the teacher or other employee is upon the grounds of a
18 school or grounds adjacent to a school, or is in any part
19 of a building used for school purposes; or

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

23 (b-5) Aggravating Factor; Natural Life Imprisonment. A
24 defendant who has been found guilty of first degree murder and
25 who at the time of the commission of the offense had attained
26 the age of 18 years or more may be sentenced to natural life

1 imprisonment if (i) the murdered individual was a physician,
2 physician assistant, psychologist, nurse, or advanced practice
3 registered nurse, (ii) the defendant knew or should have known
4 that the murdered individual was a physician, physician
5 assistant, psychologist, nurse, or advanced practice
6 registered nurse, and (iii) the murdered individual was killed
7 in the course of acting in his or her capacity as a physician,
8 physician assistant, psychologist, nurse, or advanced practice
9 registered nurse, or to prevent him or her from acting in that
10 capacity, or in retaliation for his or her acting in that
11 capacity.

12 (c) Consideration of factors in Aggravation and
13 Mitigation.

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

20 (1) the defendant has no significant history of prior
21 criminal activity;

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

26 (3) the murdered individual was a participant in the

1 defendant's homicidal conduct or consented to the
2 homicidal act;

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

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

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

10 (7) the defendant suffers from a reduced mental
11 capacity.

12 Provided, however, that an action that does not otherwise
13 mitigate first degree murder cannot qualify as a mitigating
14 factor for first degree murder because of the discovery,
15 knowledge, or disclosure of the victim's sexual orientation as
16 defined in Section 1-103 of the Illinois Human Rights Act.

17 (d) Separate sentencing hearing.

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

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

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

1 A. the defendant was convicted upon a plea of
2 guilty; or

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

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

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

9 (e) Evidence and Argument.

10 During the proceeding any information relevant to any of
11 the factors set forth in subsection (b) may be presented by
12 either the State or the defendant under the rules governing the
13 admission of evidence at criminal trials. Any information
14 relevant to any additional aggravating factors or any
15 mitigating factors indicated in subsection (c) may be presented
16 by the State or defendant regardless of its admissibility under
17 the rules governing the admission of evidence at criminal
18 trials. The State and the defendant shall be given fair
19 opportunity to rebut any information received at the hearing.

20 (f) Proof.

21 The burden of proof of establishing the existence of any of
22 the factors set forth in subsection (b) is on the State and
23 shall not be satisfied unless established beyond a reasonable
24 doubt.

25 (g) Procedure - Jury.

26 If at the separate sentencing proceeding the jury finds

1 that none of the factors set forth in subsection (b) exists,
2 the court shall sentence the defendant to a term of
3 imprisonment under Chapter V of the Unified Code of
4 Corrections. If there is a unanimous finding by the jury that
5 one or more of the factors set forth in subsection (b) exist,
6 the jury shall consider aggravating and mitigating factors as
7 instructed by the court and shall determine whether the
8 sentence of death shall be imposed. If the jury determines
9 unanimously, after weighing the factors in aggravation and
10 mitigation, that death is the appropriate sentence, the court
11 shall sentence the defendant to death. If the court does not
12 concur with the jury determination that death is the
13 appropriate sentence, the court shall set forth reasons in
14 writing including what facts or circumstances the court relied
15 upon, along with any relevant documents, that compelled the
16 court to non-concur with the sentence. This document and any
17 attachments shall be part of the record for appellate review.
18 The court shall be bound by the jury's sentencing
19 determination.

20 If after weighing the factors in aggravation and
21 mitigation, one or more jurors determines that death is not the
22 appropriate sentence, the court shall sentence the defendant to
23 a term of imprisonment under Chapter V of the Unified Code of
24 Corrections.

25 (h) Procedure - No Jury.

26 In a proceeding before the court alone, if the court finds

1 that none of the factors found in subsection (b) exists, the
2 court shall sentence the defendant to a term of imprisonment
3 under Chapter V of the Unified Code of Corrections.

4 If the Court determines that one or more of the factors set
5 forth in subsection (b) exists, the Court shall consider any
6 aggravating and mitigating factors as indicated in subsection
7 (c). If the Court determines, after weighing the factors in
8 aggravation and mitigation, that death is the appropriate
9 sentence, the Court shall sentence the defendant to death.

10 If the court finds that death is not the appropriate
11 sentence, the court shall sentence the defendant to a term of
12 imprisonment under Chapter V of the Unified Code of
13 Corrections.

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

15 In a case in which the defendant has been found guilty of
16 first degree murder by a judge or jury, or a case on remand for
17 resentencing, and the State seeks the death penalty as an
18 appropriate sentence, on the court's own motion or the written
19 motion of the defendant, the court may decertify the case as a
20 death penalty case if the court finds that the only evidence
21 supporting the defendant's conviction is the uncorroborated
22 testimony of an informant witness, as defined in Section 115-21
23 of the Code of Criminal Procedure of 1963, concerning the
24 confession or admission of the defendant or that the sole
25 evidence against the defendant is a single eyewitness or single
26 accomplice without any other corroborating evidence. If the

1 court decertifies the case as a capital case under either of
2 the grounds set forth above, the court shall issue a written
3 finding. The State may pursue its right to appeal the
4 decertification pursuant to Supreme Court Rule 604(a)(1). If
5 the court does not decertify the case as a capital case, the
6 matter shall proceed to the eligibility phase of the sentencing
7 hearing.

8 (i) Appellate Procedure.

9 The conviction and sentence of death shall be subject to
10 automatic review by the Supreme Court. Such review shall be in
11 accordance with rules promulgated by the Supreme Court. The
12 Illinois Supreme Court may overturn the death sentence, and
13 order the imposition of imprisonment under Chapter V of the
14 Unified Code of Corrections if the court finds that the death
15 sentence is fundamentally unjust as applied to the particular
16 case. If the Illinois Supreme Court finds that the death
17 sentence is fundamentally unjust as applied to the particular
18 case, independent of any procedural grounds for relief, the
19 Illinois Supreme Court shall issue a written opinion explaining
20 this finding.

21 (j) Disposition of reversed death sentence.

22 In the event that the death penalty in this Act is held to
23 be unconstitutional by the Supreme Court of the United States
24 or of the State of Illinois, any person convicted of first
25 degree murder shall be sentenced by the court to a term of
26 imprisonment under Chapter V of the Unified Code of

1 Corrections.

2 In the event that any death sentence pursuant to the
3 sentencing provisions of this Section is declared
4 unconstitutional by the Supreme Court of the United States or
5 of the State of Illinois, the court having jurisdiction over a
6 person previously sentenced to death shall cause the defendant
7 to be brought before the court, and the court shall sentence
8 the defendant to a term of imprisonment under Chapter V of the
9 Unified Code of Corrections.

10 (k) Guidelines for seeking the death penalty.

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

15 (Source: P.A. 99-143, eff. 7-27-15; 100-460, eff. 1-1-18;
16 100-513, eff. 1-1-18; 100-863, eff. 8-14-18.)