



## 93RD GENERAL ASSEMBLY

### State of Illinois

#### 2003 and 2004

Introduced 02/04/04, by Constance A. Howard

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 1961. Reduces the aggravating factors for which the death penalty may be imposed for first degree murder. Retains the death penalty for the murder of: (1) a peace officer, fireman, or correctional employee killed in the performance of his or her official duties, to prevent the performance of his or her official duties, or in retaliation for performance of his or her official duties; (2) an inmate of a correctional institution who was killed on the grounds of the institution or a person present in the correctional institution with the consent of the chief administrative officer of the institution; (3) 2 or more individuals; (4) an individual under 12 years of age if the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty; (5) a witness or potential witness in a criminal prosecution; (6) an individual that was intentional and involved the infliction of torture; and (7) an individual in connection with or as a result of terrorism.

LRB093 19410 RLC 45148 b

1 AN ACT concerning criminal justice.

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 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  
24 sentenced to death if:

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

31 (2) the murdered individual was an employee of an  
32 institution or facility of the Department of Corrections,

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

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

21 (4) (blank) ~~the murdered individual was killed as a~~  
22 ~~result of the hijacking of an airplane, train, ship, bus or~~  
23 ~~other public conveyance; or~~

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

29 (6) (blank) ~~the murdered individual was killed in the~~  
30 ~~course of another felony if:~~

31 ~~(a) the murdered individual:~~

32 ~~(i) was actually killed by the defendant, or~~

33 ~~(ii) received physical injuries personally~~  
34 ~~inflicted by the defendant substantially~~  
35 ~~contemporaneously with physical injuries caused by~~  
36 ~~one or more persons for whose conduct the defendant~~

1 ~~is legally accountable under Section 5-2 of this~~  
2 ~~Code, and the physical injuries inflicted by~~  
3 ~~either the defendant or the other person or persons~~  
4 ~~for whose conduct he is legally accountable caused~~  
5 ~~the death of the murdered individual; and~~

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

16 ~~(c) the other felony was an inherently violent~~  
17 ~~crime or the attempt to commit an inherently violent~~  
18 ~~crime. In this subparagraph (c), "inherently violent~~  
19 ~~crime" includes, but is not limited to, armed robbery,~~  
20 ~~robbery, predatory criminal sexual assault of a child,~~  
21 ~~aggravated criminal sexual assault, aggravated~~  
22 ~~kidnapping, aggravated vehicular hijacking, aggravated~~  
23 ~~arson, aggravated stalking, residential burglary, and~~  
24 ~~home invasion ; or~~

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

28 (8) the defendant committed the murder with intent to  
29 prevent the murdered individual from testifying or  
30 participating in any criminal investigation or prosecution  
31 or giving material assistance to the State in any  
32 investigation or prosecution, either against the defendant  
33 or another; or the defendant committed the murder because  
34 the murdered individual was a witness in any prosecution or  
35 gave material assistance to the State in any investigation  
36 or prosecution, either against the defendant or another;

1 for purposes of this paragraph (8), "participating in any  
2 criminal investigation or prosecution" is intended to  
3 include those appearing in the proceedings in any capacity  
4 such as trial judges, prosecutors, defense attorneys,  
5 investigators, witnesses, or jurors; or

6 (9) (blank) ~~the defendant, while committing an offense~~  
7 ~~punishable under Sections 401, 401.1, 401.2, 405, 405.2,~~  
8 ~~407 or 407.1 or subsection (b) of Section 404 of the~~  
9 ~~Illinois Controlled Substances Act, or while engaged in a~~  
10 ~~conspiracy or solicitation to commit such offense,~~  
11 ~~intentionally killed an individual or counseled,~~  
12 ~~commanded, induced, procured or caused the intentional~~  
13 ~~killing of the murdered individual; or~~

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

22 (11) (blank) ~~the murder was committed in a cold,~~  
23 ~~calculated and premeditated manner pursuant to a~~  
24 ~~preconceived plan, scheme or design to take a human life by~~  
25 ~~unlawful means, and the conduct of the defendant created a~~  
26 ~~reasonable expectation that the death of a human being~~  
27 ~~would result therefrom; or~~

28 (12) (blank) ~~the murdered individual was an emergency~~  
29 ~~medical technician ambulance, emergency medical~~  
30 ~~technician intermediate, emergency medical technician~~  
31 ~~paramedic, ambulance driver, or other medical assistance~~  
32 ~~or first aid personnel, employed by a municipality or other~~  
33 ~~governmental unit, killed in the course of performing his~~  
34 ~~official duties, to prevent the performance of his official~~  
35 ~~duties, or in retaliation for performing his official~~  
36 ~~duties, and the defendant knew or should have known that~~

1 ~~the murdered individual was an emergency medical~~  
2 ~~technician ambulance, emergency medical technician~~  
3 ~~intermediate, emergency medical technician paramedic,~~  
4 ~~ambulance driver, or other medical assistance or first aid~~  
5 ~~personnel; or~~

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

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

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

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

25 (17) (blank) ~~the murdered individual was a disabled~~  
26 ~~person and the defendant knew or should have known that the~~  
27 ~~murdered individual was disabled. For purposes of this~~  
28 ~~paragraph (17), "disabled person" means a person who~~  
29 ~~suffers from a permanent physical or mental impairment~~  
30 ~~resulting from disease, an injury, a functional disorder,~~  
31 ~~or a congenital condition that renders the person incapable~~  
32 ~~of adequately providing for his or her own health or~~  
33 ~~personal care; or~~

34 (18) (blank) ~~the murder was committed by reason of any~~  
35 ~~person's activity as a community policing volunteer or to~~  
36 ~~prevent any person from engaging in activity as a community~~

1 ~~policing volunteer; or~~

2 (19) ~~(blank) the murdered individual was subject to an~~  
3 ~~order of protection and the murder was committed by a~~  
4 ~~person against whom the same order of protection was issued~~  
5 ~~under the Illinois Domestic Violence Act of 1986; or~~

6 (20) ~~(blank) the murdered individual was known by the~~  
7 ~~defendant to be a teacher or other person employed in any~~  
8 ~~school and the teacher or other employee is upon the~~  
9 ~~grounds of a school or grounds adjacent to a school, or is~~  
10 ~~in any part of a building used for school purposes; or~~

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

14 For the purposes of this Section:

15 "Torture" means the intentional and depraved infliction of  
16 extreme physical pain for a prolonged period of time prior to  
17 the victim's death.

18 "Depraved" means the defendant relished the infliction of  
19 extreme physical pain upon the victim evidencing debasement or  
20 perversion or that the defendant evidenced a sense of pleasure  
21 in infliction of extreme physical pain.

22 "Participating in any criminal investigation or  
23 prosecution" is intended to include those appearing in the  
24 proceedings in any capacity, such as trial judges, prosecutors,  
25 defense attorneys, investigators, witnesses, or jurors.

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

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

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

36 (2) the murder was committed while the defendant was

1 under the influence of extreme mental or emotional  
2 disturbance, although not such as to constitute a defense  
3 to prosecution;

4 (3) the murdered individual was a participant in the  
5 defendant's homicidal conduct or consented to the  
6 homicidal act;

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

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

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

14 (7) the defendant suffers from a reduced mental  
15 capacity.

16 (d) Separate sentencing hearing.

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

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

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

26 A. the defendant was convicted upon a plea of  
27 guilty; or

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

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

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

34 (e) Evidence and Argument.

35 During the proceeding any information relevant to any of  
36 the factors set forth in subsection (b) may be presented by



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

9 (f) Proof.

10 The burden of proof of establishing the existence of any of  
11 the factors set forth in subsection (b) is on the State and  
12 shall not be satisfied unless established beyond a reasonable  
13 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 that  
20 one or more of the factors set forth in subsection (b) exist,  
21 the jury shall consider aggravating and mitigating factors as  
22 instructed by the court and shall determine whether the  
23 sentence of death shall be imposed. If the jury determines  
24 unanimously, after weighing the factors in aggravation and  
25 mitigation, that death is the appropriate sentence , the court  
26 shall sentence the defendant to death. If the court does not  
27 concur with the jury determination that death is the  
28 appropriate sentence, the court shall set forth reasons in  
29 writing including what facts or circumstances the court relied  
30 upon, along with any relevant documents, that compelled the  
31 court to non-concur with the sentence. This document and any  
32 attachments shall be part of the record for appellate review.  
33 The court shall be bound by the jury's sentencing  
34 determination.

35 If after weighing the factors in aggravation and  
36 mitigation, one or more jurors determines that death is not the

1 appropriate sentence, the court shall sentence the defendant to  
2 a term of imprisonment under Chapter V of the Unified Code of  
3 Corrections.

4 (h) Procedure - No Jury.

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

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

15 If the court finds that death is not the appropriate  
16 sentence, the court shall sentence the defendant to a term of  
17 imprisonment under Chapter V of the Unified Code of  
18 Corrections.

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

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

1 matter shall proceed to the eligibility phase of the sentencing  
2 hearing.

3 (i) Appellate Procedure.

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

16 (j) Disposition of reversed death sentence.

17 In the event that the death penalty in this Act is held to  
18 be unconstitutional by the Supreme Court of the United States  
19 or of the State of Illinois, any person convicted of first  
20 degree murder shall be sentenced by the court to a term of  
21 imprisonment under Chapter V of the Unified Code of  
22 Corrections.

23 In the event that any death sentence pursuant to the  
24 sentencing provisions of this Section is declared  
25 unconstitutional by the Supreme Court of the United States or  
26 of the State of Illinois, the court having jurisdiction over a  
27 person previously sentenced to death shall cause the defendant  
28 to be brought before the court, and the court shall sentence  
29 the defendant to a term of imprisonment under Chapter V of the  
30 Unified Code of Corrections.

31 (k) Guidelines for seeking the death penalty.

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

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