

93RD GENERAL ASSEMBLY State of Illinois 2003 and 2004 SB2532

Introduced 2/3/2004, by John J. Cullerton

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 1961. Makes technical changes in the statute concerning first degree murder.

LRB093 18600 RLC 44324 b

3

1 AN ACT in relation to the death penalty.

Be it enacted by the People of the State of Illinois, 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
- cause death to that individual or another; or
- 16 (2) he knows that such acts create a strong probability
- of death or great bodily harm to that individual or
- 18 another; or
- 19 (3) he is attempting or committing a forcible felony
- other than second degree murder.
- 21 (b) Aggravating Factors. A defendant who at the time of the
- 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
- fireman killed in the course of performing his <u>or her</u>
- official duties, to prevent the performance of his <u>or her</u>
- official duties, or in retaliation for performing his or
- her official duties, and the defendant knew or should have
- 30 known that the murdered individual was a peace officer or
- 31 fireman; or
- 32 (2) the murdered individual was an employee of an

institution or facility of the Department of Corrections, or any similar local correctional agency, killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, or the murdered individual was an inmate at such institution or facility and was killed on the grounds thereof, or the murdered individual was otherwise present in such institution or facility with the knowledge and approval of the chief administrative officer thereof; or

- or more individuals under subsection (a) of this Section or under any law of the United States or of any state which is substantially similar to subsection (a) of this Section regardless of whether the deaths occurred as the result of the same act or of several related or unrelated acts so long as the deaths were the result of either an intent to kill more than one person or of separate acts which the defendant knew would cause death or create a strong probability of death or great bodily harm to the murdered individual or another; or
- (4) the murdered individual was killed as a result of the hijacking of an airplane, train, ship, bus or other public conveyance; or
- (5) the defendant committed the murder pursuant to a contract, agreement or understanding by which he was to receive money or anything of value in return for committing the murder or procured another to commit the murder for money or anything of value; or
- (6) the murdered individual was killed in the course of another felony if:
 - (a) the murdered individual:
 - (i) was actually killed by the defendant, or
 - (ii) received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by

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

- (b) in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual under the circumstances of subdivision (ii) of subparagraph (a) of paragraph (6) of subsection (b) of this Section, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered individual or another; and
- (c) the other felony was an inherently violent crime or the attempt to commit an inherently violent crime. In this subparagraph (c), "inherently violent crime" includes, but is not limited to, armed robbery, robbery, predatory criminal sexual assault of a child, aggravated criminal sexual assault, aggravated kidnapping, aggravated vehicular hijacking, aggravated arson, aggravated stalking, residential burglary, and home invasion; or
- (7) the murdered individual was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty; or
- (8) the defendant committed the murder with intent to prevent the murdered individual from testifying or participating in any criminal investigation or prosecution or giving material assistance to the State in any investigation or prosecution, either against the defendant or another; or the defendant committed the murder because the murdered individual was a witness in any prosecution or gave material assistance to the State in any investigation

- or prosecution, either against the defendant or another; for purposes of this paragraph (8), "participating in any criminal investigation or prosecution" is intended to include those appearing in the proceedings in any capacity such as trial judges, prosecutors, defense attorneys, investigators, witnesses, or jurors; or
- (9) the defendant, while committing an offense punishable under Sections 401, 401.1, 401.2, 405, 405.2, 407 or 407.1 or subsection (b) of Section 404 of the Illinois Controlled Substances Act, or while engaged in a conspiracy or solicitation to commit such offense, intentionally killed an individual or counseled, commanded, induced, procured or caused the intentional killing of the murdered individual; or
- (10) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while committing an offense punishable as a felony under Illinois law, or while engaged in a conspiracy or solicitation to commit such offense, intentionally killed an individual or counseled, commanded, induced, procured or caused the intentional killing of the murdered individual; or
- (11) the murder was committed in a cold, calculated and premeditated manner pursuant to a preconceived plan, scheme or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom; or
- (12) the murdered individual was an emergency medical technician ambulance, emergency medical technician intermediate, emergency medical technician paramedic, ambulance driver, or other medical assistance or first aid personnel, employed by a municipality or other governmental unit, killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official

duties, and the defendant knew or should have known that the murdered individual was an emergency medical technician - ambulance, emergency medical technician - intermediate, emergency medical technician - paramedic, ambulance driver, or other medical assistance or first aid personnel; or

- (13) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant counseled, commanded, induced, procured, or caused the intentional killing of the murdered person; or
- (14) the murder was intentional and involved the infliction of torture. For the purpose of this Section torture means the infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering or agony of the victim; or
- (15) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle; or
- (16) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty; or
- (17) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled. For purposes of this paragraph (17), "disabled person" means a person who suffers from a permanent physical or mental impairment resulting from disease, an injury, a functional disorder, or a congenital condition that renders the person incapable of adequately providing for his or her own health or personal care; or
- (18) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community

policing volunteer; or

- (19) the murdered individual was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act of 1986; or
- (20) the murdered individual was known by the defendant to be a teacher or other person employed in any school and the teacher or other employee is upon the grounds of a school or grounds adjacent to a school, or is in any part of a building used for school purposes; or
- (21) the murder was committed by the defendant in connection with or as a result of the offense of terrorism as defined in Section 29D-30 of this Code.
- (c) Consideration of factors in Aggravation and Mitigation.

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

- (1) the defendant has no significant history of prior criminal activity;
- (2) the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution;
- (3) the murdered individual was a participant in the defendant's homicidal conduct or consented to the homicidal act;
- (4) the defendant acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm;
- (5) the defendant was not personally present during commission of the act or acts causing death;
 - (6) the defendant's background includes a history of

1.3

1	extreme	emotional	or	phy	zsical	abuse:
_	CALLCINC	CINOCIONAL	O_{\perp}	DII.	ystcar	$ababc_{I}$

- 2 (7) the defendant suffers from a reduced mental capacity.
 - (d) Separate sentencing hearing.

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

- (1) before the jury that determined the defendant's quilt; or
- (2) before a jury impanelled for the purpose of the proceeding if:
 - A. the defendant was convicted upon a plea of guilty; or
 - B. the defendant was convicted after a trial before the court sitting without a jury; or
 - C. the court for good cause shown discharges the jury that determined the defendant's guilt; or
- (3) before the court alone if the defendant waives a jury for the separate proceeding.
- (e) Evidence and Argument.

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

(f) Proof.

The burden of proof of establishing the existence of any of the factors set forth in subsection (b) is on the State and shall not be satisfied unless established beyond a reasonable 1 doubt.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

2 (g) Procedure - Jury.

If at the separate sentencing proceeding the jury finds that none of the factors set forth in subsection (b) exists, the court shall sentence the defendant to a term imprisonment under Chapter V of the Unified Code of Corrections. If there is a unanimous finding by the jury that one or more of the factors set forth in subsection (b) exist, the jury shall consider aggravating and mitigating factors as instructed by the court and shall determine whether the sentence of death shall be imposed. If the jury determines unanimously, after weighing the factors in aggravation and mitigation, that death is the appropriate sentence, the court shall sentence the defendant to death. If the court does not jury determination that death is the concur with the appropriate sentence, the court shall set forth reasons in writing including what facts or circumstances the court relied upon, along with any relevant documents, that compelled the court to non-concur with the sentence. This document and any attachments shall be part of the record for appellate review. The court shall be bound by the jury's sentencing determination.

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

(h) Procedure - No Jury.

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

If the Court determines that one or more of the factors set forth in subsection (b) exists, the Court shall consider any aggravating and mitigating factors as indicated in subsection (c). If the Court determines, after weighing the factors in

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

aggravation and mitigation, that death is the appropriate sentence, the Court shall sentence the defendant to death.

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

(h-5) Decertification as a capital case.

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

(i) Appellate Procedure.

The conviction and sentence of death shall be subject to automatic review by the Supreme Court. Such review shall be in accordance with rules promulgated by the Supreme Court. The Illinois Supreme Court may overturn the death sentence, and order the imposition of imprisonment under Chapter V of the Unified Code of Corrections if the court finds that the death sentence is fundamentally unjust as applied to the particular case. If the Illinois Supreme Court finds that the death sentence is fundamentally unjust as applied to the particular

- 1 case, independent of any procedural grounds for relief, the
- 2 Illinois Supreme Court shall issue a written opinion explaining
- 3 this finding.

12

13

14

15

16

17

18

19

- 4 (j) Disposition of reversed death sentence.
- In the event that the death penalty in this Act is held to be unconstitutional by the Supreme Court of the United States or of the State of Illinois, any person convicted of first degree murder shall be sentenced by the court to a term of imprisonment under Chapter V of the Unified Code of Corrections.
 - In the event that any death sentence pursuant to the sentencing provisions of this Section is declared unconstitutional by the Supreme Court of the United States or of the State of Illinois, the court having jurisdiction over a person previously sentenced to death shall cause the defendant to be brought before the court, and the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections.
 - (k) Guidelines for seeking the death penalty.
- The Attorney General and State's Attorneys Association shall consult on voluntary guidelines for procedures governing whether or not to seek the death penalty. The guidelines do not have the force of law and are only advisory in nature.
- 24 (Source: P.A. 92-854, eff. 12-5-02; 93-605, eff. 11-19-03.)