



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB5791

Introduced 7/11/2006, by Rep. Milton Patterson

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 1961. Provides that a person at least 18 years of age who is convicted of first degree murder may be sentenced to death if the murdered individual was an active duty member or veteran of the Armed Forces, Reserves, or Illinois National Guard who served combat duty in the most recent conflict authorized by the President and the defendant knew or should have known that the murdered individual was an active duty member or veteran of the Armed Forces, Reserves, or Illinois National Guard who served combat duty in the most recent conflict authorized by the President.

LRB094 20941 RLC 59265 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 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 (1.5) the murdered individual was an active duty member
32 of the Armed Forces of the United States or was a veteran

1 of the Armed Forces of the United States if the active duty
2 member of the Armed Forces or veteran of the Armed Forces
3 served combat duty in the most recent conflict authorized
4 by the President of the United States and the defendant
5 knew or should have known that the murdered individual was
6 an active duty member of the Armed Forces of the United
7 States or was a veteran of the Armed Forces of the United
8 States who served combat duty in the most recent conflict
9 authorized by the President of the United States. For
10 purposes of this paragraph (1.5), "Armed Forces" means the
11 Armed Forces of the United States, any reserve component of
12 the Armed Forces of the United States, including the United
13 States Army Reserve, United States Marine Corps Reserve,
14 United States Navy Reserve, United States Air Force
15 Reserve, and United States Coast Guard Reserve, or the
16 Illinois Army National Guard or Illinois Air National
17 Guard; or

18 (2) the murdered individual was an employee of an
19 institution or facility of the Department of Corrections,
20 or any similar local correctional agency, killed in the
21 course of performing his official duties, to prevent the
22 performance of his official duties, or in retaliation for
23 performing his official duties, or the murdered individual
24 was an inmate at such institution or facility and was
25 killed on the grounds thereof, or the murdered individual
26 was otherwise present in such institution or facility with
27 the knowledge and approval of the chief administrative
28 officer thereof; or

29 (3) the defendant has been convicted of murdering two
30 or more individuals under subsection (a) of this Section or
31 under any law of the United States or of any state which is
32 substantially similar to subsection (a) of this Section
33 regardless of whether the deaths occurred as the result of
34 the same act or of several related or unrelated acts so
35 long as the deaths were the result of either an intent to
36 kill more than one person or of separate acts which the

1 defendant knew would cause death or create a strong
2 probability of death or great bodily harm to the murdered
3 individual or another; or

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

7 (5) the defendant committed the murder pursuant to a
8 contract, agreement or understanding by which he was to
9 receive money or anything of value in return for committing
10 the murder or procured another to commit the murder for
11 money or anything of value; or

12 (6) the murdered individual was killed in the course of
13 another felony if:

14 (a) the murdered individual:

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

16 (ii) received physical injuries personally
17 inflicted by the defendant substantially
18 contemporaneously with physical injuries caused by
19 one or more persons for whose conduct the defendant
20 is legally accountable under Section 5-2 of this
21 Code, and the physical injuries inflicted by
22 either the defendant or the other person or persons
23 for whose conduct he is legally accountable caused
24 the death of the murdered individual; and

25 (b) in performing the acts which caused the death
26 of the murdered individual or which resulted in
27 physical injuries personally inflicted by the
28 defendant on the murdered individual under the
29 circumstances of subdivision (ii) of subparagraph (a)
30 of paragraph (6) of subsection (b) of this Section, the
31 defendant acted with the intent to kill the murdered
32 individual or with the knowledge that his acts created
33 a strong probability of death or great bodily harm to
34 the murdered individual or another; and

35 (c) the other felony was an inherently violent
36 crime or the attempt to commit an inherently violent

1 crime. In this subparagraph (c), "inherently violent
2 crime" includes, but is not limited to, armed robbery,
3 robbery, predatory criminal sexual assault of a child,
4 aggravated criminal sexual assault, aggravated
5 kidnapping, aggravated vehicular hijacking, aggravated
6 arson, aggravated stalking, residential burglary, and
7 home invasion; or

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

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

25 (9) the defendant, while committing an offense
26 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
27 407 or 407.1 or subsection (b) of Section 404 of the
28 Illinois Controlled Substances Act, or while engaged in a
29 conspiracy or solicitation to commit such offense,
30 intentionally killed an individual or counseled,
31 commanded, induced, procured or caused the intentional
32 killing of the murdered individual; or

33 (10) the defendant was incarcerated in an institution
34 or facility of the Department of Corrections at the time of
35 the murder, and while committing an offense punishable as a
36 felony under Illinois law, or while engaged in a conspiracy

1 or solicitation to commit such offense, intentionally
2 killed an individual or counseled, commanded, induced,
3 procured or caused the intentional killing of the murdered
4 individual; or

5 (11) the murder was committed in a cold, calculated and
6 premeditated manner pursuant to a preconceived plan,
7 scheme or design to take a human life by unlawful means,
8 and the conduct of the defendant created a reasonable
9 expectation that the death of a human being would result
10 therefrom; or

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

25 (13) the defendant was a principal administrator,
26 organizer, or leader of a calculated criminal drug
27 conspiracy consisting of a hierarchical position of
28 authority superior to that of all other members of the
29 conspiracy, and the defendant counseled, commanded,
30 induced, procured, or caused the intentional killing of the
31 murdered person; or

32 (14) the murder was intentional and involved the
33 infliction of torture. For the purpose of this Section
34 torture means the infliction of or subjection to extreme
35 physical pain, motivated by an intent to increase or
36 prolong the pain, suffering or agony of the victim; or

1 (15) the murder was committed as a result of the
2 intentional discharge of a firearm by the defendant from a
3 motor vehicle and the victim was not present within the
4 motor vehicle; or

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

8 (17) the murdered individual was a disabled person and
9 the defendant knew or should have known that the murdered
10 individual was disabled. For purposes of this paragraph
11 (17), "disabled person" means a person who suffers from a
12 permanent physical or mental impairment resulting from
13 disease, an injury, a functional disorder, or a congenital
14 condition that renders the person incapable of adequately
15 providing for his or her own health or personal care; or

16 (18) the murder was committed by reason of any person's
17 activity as a community policing volunteer or to prevent
18 any person from engaging in activity as a community
19 policing volunteer; or

20 (19) the murdered individual was subject to an order of
21 protection and the murder was committed by a person against
22 whom the same order of protection was issued under the
23 Illinois Domestic Violence Act of 1986; or

24 (20) the murdered individual was known by the defendant
25 to be a teacher or other person employed in any school and
26 the teacher or other employee is upon the grounds of a
27 school or grounds adjacent to a school, or is in any part
28 of a building used for school purposes; or

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

32 (c) Consideration of factors in Aggravation and
33 Mitigation.

34 The court shall consider, or shall instruct the jury to
35 consider any aggravating and any mitigating factors which are
36 relevant to the imposition of the death penalty. Aggravating

1 factors may include but need not be limited to those factors
2 set forth in subsection (b). Mitigating factors may include but
3 need not be limited to the following:

4 (1) the defendant has no significant history of prior
5 criminal activity;

6 (2) the murder was committed while the defendant was
7 under the influence of extreme mental or emotional
8 disturbance, although not such as to constitute a defense
9 to prosecution;

10 (3) the murdered individual was a participant in the
11 defendant's homicidal conduct or consented to the
12 homicidal act;

13 (4) the defendant acted under the compulsion of threat
14 or menace of the imminent infliction of death or great
15 bodily harm;

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

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

20 (7) the defendant suffers from a reduced mental
21 capacity.

22 (d) Separate sentencing hearing.

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

28 (1) before the jury that determined the defendant's
29 guilt; or

30 (2) before a jury impanelled for the purpose of the
31 proceeding if:

32 A. the defendant was convicted upon a plea of
33 guilty; or

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

36 C. the court for good cause shown discharges the

1 jury that determined the defendant's guilt; or

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

4 (e) Evidence and Argument.

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

15 (f) Proof.

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

20 (g) Procedure - Jury.

21 If at the separate sentencing proceeding the jury finds
22 that none of the factors set forth in subsection (b) exists,
23 the court shall sentence the defendant to a term of
24 imprisonment under Chapter V of the Unified Code of
25 Corrections. If there is a unanimous finding by the jury that
26 one or more of the factors set forth in subsection (b) exist,
27 the jury shall consider aggravating and mitigating factors as
28 instructed by the court and shall determine whether the
29 sentence of death shall be imposed. If the jury determines
30 unanimously, after weighing the factors in aggravation and
31 mitigation, that death is the appropriate sentence, the court
32 shall sentence the defendant to death. If the court does not
33 concur with the jury determination that death is the
34 appropriate sentence, the court shall set forth reasons in
35 writing including what facts or circumstances the court relied
36 upon, along with any relevant documents, that compelled the

1 court to non-concur with the sentence. This document and any
2 attachments shall be part of the record for appellate review.
3 The court shall be bound by the jury's sentencing
4 determination.

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

10 (h) Procedure - No Jury.

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

15 If the Court determines that one or more of the factors set
16 forth in subsection (b) exists, the Court shall consider any
17 aggravating and mitigating factors as indicated in subsection
18 (c). If the Court determines, after weighing the factors in
19 aggravation and mitigation, that death is the appropriate
20 sentence, the Court shall sentence the defendant to death.

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

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

26 In a case in which the defendant has been found guilty of
27 first degree murder by a judge or jury, or a case on remand for
28 resentencing, and the State seeks the death penalty as an
29 appropriate sentence, on the court's own motion or the written
30 motion of the defendant, the court may decertify the case as a
31 death penalty case if the court finds that the only evidence
32 supporting the defendant's conviction is the uncorroborated
33 testimony of an informant witness, as defined in Section 115-21
34 of the Code of Criminal Procedure of 1963, concerning the
35 confession or admission of the defendant or that the sole
36 evidence against the defendant is a single eyewitness or single

1 accomplice without any other corroborating evidence. If the
2 court decertifies the case as a capital case under either of
3 the grounds set forth above, the court shall issue a written
4 finding. The State may pursue its right to appeal the
5 decertification pursuant to Supreme Court Rule 604(a)(1). If
6 the court does not decertify the case as a capital case, the
7 matter shall proceed to the eligibility phase of the sentencing
8 hearing.

9 (i) Appellate Procedure.

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

22 (j) Disposition of reversed death sentence.

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

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

1 (k) Guidelines for seeking the death penalty.

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

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