

# SB1034



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1034

Introduced 1/24/2013, by Sen. John J. Cullerton

### SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 2012. Makes a technical change in a Section concerning first degree murder.

LRB098 05257 RLC 35289 b

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 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 ~~the~~ 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

1 sentenced to death if:

2 (1) the murdered individual was a peace officer or  
3 fireman killed in the course of performing his official  
4 duties, to prevent the performance of his official duties,  
5 or in retaliation for performing his official duties, and  
6 the defendant knew or should have known that the murdered  
7 individual was a peace officer or fireman; or

8 (2) the murdered individual was an employee of an  
9 institution or facility of the Department of Corrections,  
10 or any similar local correctional agency, killed in the  
11 course of performing his official duties, to prevent the  
12 performance of his official duties, or in retaliation for  
13 performing his official duties, or the murdered individual  
14 was an inmate at such institution or facility and was  
15 killed on the grounds thereof, or the murdered individual  
16 was otherwise present in such institution or facility with  
17 the knowledge and approval of the chief administrative  
18 officer thereof; or

19 (3) the defendant has been convicted of murdering two  
20 or more individuals under subsection (a) of this Section or  
21 under any law of the United States or of any state which is  
22 substantially similar to subsection (a) of this Section  
23 regardless of whether the deaths occurred as the result of  
24 the same act or of several related or unrelated acts so  
25 long as the deaths were the result of either an intent to  
26 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

1 physical injuries personally inflicted by the  
2 defendant on the murdered individual under the  
3 circumstances of subdivision (ii) of subparagraph (a)  
4 of paragraph (6) of subsection (b) of this Section, the  
5 defendant acted with the intent to kill the murdered  
6 individual or with the knowledge that his acts created  
7 a strong probability of death or great bodily harm to  
8 the murdered individual or another; and

9 (c) the other felony was an inherently violent  
10 crime or the attempt to commit an inherently violent  
11 crime. In this subparagraph (c), "inherently violent  
12 crime" includes, but is not limited to, armed robbery,  
13 robbery, predatory criminal sexual assault of a child,  
14 aggravated criminal sexual assault, aggravated  
15 kidnapping, aggravated vehicular hijacking, aggravated  
16 arson, aggravated stalking, residential burglary, and  
17 home invasion; or

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

21 (8) the defendant committed the murder with intent to  
22 prevent the murdered individual from testifying or  
23 participating in any criminal investigation or prosecution  
24 or giving material assistance to the State in any  
25 investigation or prosecution, either against the defendant  
26 or another; or the defendant committed the murder because

1 the murdered individual was a witness in any prosecution or  
2 gave material assistance to the State in any investigation  
3 or prosecution, either against the defendant or another;  
4 for purposes of this paragraph (8), "participating in any  
5 criminal investigation or prosecution" is intended to  
6 include those appearing in the proceedings in any capacity  
7 such as trial judges, prosecutors, defense attorneys,  
8 investigators, witnesses, or jurors; or

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

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

25 (11) the murder was committed in a cold, calculated and  
26 premeditated manner pursuant to a preconceived plan,

1 scheme or design to take a human life by unlawful means,  
2 and the conduct of the defendant created a reasonable  
3 expectation that the death of a human being would result  
4 therefrom; or

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

19 (13) the defendant was a principal administrator,  
20 organizer, or leader of a calculated criminal drug  
21 conspiracy consisting of a hierarchical position of  
22 authority superior to that of all other members of the  
23 conspiracy, and the defendant counseled, commanded,  
24 induced, procured, or caused the intentional killing of the  
25 murdered person; or

26 (14) the murder was intentional and involved the

1           infliction of torture. For the purpose of this Section  
2           torture means the infliction of or subjection to extreme  
3           physical pain, motivated by an intent to increase or  
4           prolong the pain, suffering or agony of the victim; or

5           (15) the murder was committed as a result of the  
6           intentional discharge of a firearm by the defendant from a  
7           motor vehicle and the victim was not present within the  
8           motor vehicle; or

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

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

20          (18) the murder was committed by reason of any person's  
21          activity as a community policing volunteer or to prevent  
22          any person from engaging in activity as a community  
23          policing volunteer; or

24          (19) the murdered individual was subject to an order of  
25          protection and the murder was committed by a person against  
26          whom the same order of protection was issued under the



1 Illinois Domestic Violence Act of 1986; or

2 (20) the murdered individual was known by the defendant  
3 to be a teacher or other person employed in any school and  
4 the teacher or other employee is upon the grounds of a  
5 school or grounds adjacent to a school, or is in any part  
6 of a building used for school purposes; or

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

10 (b-5) Aggravating Factor; Natural Life Imprisonment. A  
11 defendant who has been found guilty of first degree murder and  
12 who at the time of the commission of the offense had attained  
13 the age of 18 years or more may be sentenced to natural life  
14 imprisonment if (i) the murdered individual was a physician,  
15 physician assistant, psychologist, nurse, or advanced practice  
16 nurse, (ii) the defendant knew or should have known that the  
17 murdered individual was a physician, physician assistant,  
18 psychologist, nurse, or advanced practice nurse, and (iii) the  
19 murdered individual was killed in the course of acting in his  
20 or her capacity as a physician, physician assistant,  
21 psychologist, nurse, or advanced practice nurse, or to prevent  
22 him or her from acting in that capacity, or in retaliation for  
23 his or her acting in that capacity.

24 (c) Consideration of factors in Aggravation and  
25 Mitigation.

26 The court shall consider, or shall instruct the jury to

1 consider any aggravating and any mitigating factors which are  
2 relevant to the imposition of the death penalty. Aggravating  
3 factors may include but need not be limited to those factors  
4 set forth in subsection (b). Mitigating factors may include but  
5 need not be limited to the following:

6 (1) the defendant has no significant history of prior  
7 criminal activity;

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

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

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

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

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

22 (7) the defendant suffers from a reduced mental  
23 capacity.

24 (d) Separate sentencing hearing.

25 Where requested by the State, the court shall conduct a  
26 separate sentencing proceeding to determine the existence of

1 factors set forth in subsection (b) and to consider any  
2 aggravating or mitigating factors as indicated in subsection  
3 (c). The proceeding shall be conducted:

4 (1) before the jury that determined the defendant's  
5 guilt; or

6 (2) before a jury impanelled for the purpose of the  
7 proceeding if:

8 A. the defendant was convicted upon a plea of  
9 guilty; or

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

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

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

16 (e) Evidence and Argument.

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

1 (f) Proof.

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

6 (g) Procedure - Jury.

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

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

6           (h) Procedure - No Jury.

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

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

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

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

22           In a case in which the defendant has been found guilty of  
23 first degree murder by a judge or jury, or a case on remand for  
24 resentencing, and the State seeks the death penalty as an  
25 appropriate sentence, on the court's own motion or the written  
26 motion of the defendant, the court may decertify the case as a

1 death penalty case if the court finds that the only evidence  
2 supporting the defendant's conviction is the uncorroborated  
3 testimony of an informant witness, as defined in Section 115-21  
4 of the Code of Criminal Procedure of 1963, concerning the  
5 confession or admission of the defendant or that the sole  
6 evidence against the defendant is a single eyewitness or single  
7 accomplice without any other corroborating evidence. If the  
8 court decertifies the case as a capital case under either of  
9 the grounds set forth above, the court shall issue a written  
10 finding. The State may pursue its right to appeal the  
11 decertification pursuant to Supreme Court Rule 604(a)(1). If  
12 the court does not decertify the case as a capital case, the  
13 matter shall proceed to the eligibility phase of the sentencing  
14 hearing.

15 (i) Appellate Procedure.

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

1 this finding.

2 (j) Disposition of reversed death sentence.

3 In the event that the death penalty in this Act is held to  
4 be unconstitutional by the Supreme Court of the United States  
5 or of the State of Illinois, any person convicted of first  
6 degree murder shall be sentenced by the court to a term of  
7 imprisonment under Chapter V of the Unified Code of  
8 Corrections.

9 In the event that any death sentence pursuant to the  
10 sentencing provisions of this Section is declared  
11 unconstitutional by the Supreme Court of the United States or  
12 of the State of Illinois, the court having jurisdiction over a  
13 person previously sentenced to death shall cause the defendant  
14 to be brought before the court, and the court shall sentence  
15 the defendant to a term of imprisonment under Chapter V of the  
16 Unified Code of Corrections.

17 (k) Guidelines for seeking the death penalty.

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

22 (Source: P.A. 96-710, eff. 1-1-10; 96-1475, eff. 1-1-11.)