



Sen. Michael E. Hastings

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LRB098 10575 RLC 44027 a

1 AMENDMENT TO SENATE BILL 1948

2 AMENDMENT NO. _____. Amend Senate Bill 1948 by replacing
3 the title with the following:

4 "AN ACT concerning criminal law, which may be referred to
5 as Chelsea's Law."; and

6 by replacing everything after the enacting clause with the
7 following:

8 "Section 5. The Criminal Code of 2012 is amended by
9 changing Sections 9-1 and 11-1.40 as follows:

10 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

11 Sec. 9-1. First degree Murder - Death penalties -
12 Exceptions - Separate Hearings - Proof - Findings - Appellate
13 procedures - Reversals.

14 (a) A person who kills an individual without lawful
15 justification commits first degree murder if, in performing the

1 acts which cause the death:

2 (1) he either intends to kill or do great bodily harm
3 to that individual or another, or knows that such acts will
4 cause death to that individual or another; or

5 (2) he knows that such acts create a strong probability
6 of death or great bodily harm to that individual or
7 another; or

8 (3) he is attempting or committing a forcible felony
9 other than second degree murder.

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, criminal sexual

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

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

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

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

1 intentionally killed an individual or counseled,
2 commanded, induced, procured or caused the intentional
3 killing of the murdered individual; or

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

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

18 (12) the murdered individual was an emergency medical
19 technician - ambulance, emergency medical technician -
20 intermediate, emergency medical technician - paramedic,
21 ambulance driver, or other medical assistance or first aid
22 personnel, employed by a municipality or other
23 governmental unit, killed in the course of performing his
24 official duties, to prevent the performance of his official
25 duties, or in retaliation for performing his official
26 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) the defendant was a principal administrator,
7 organizer, or leader of a calculated criminal drug
8 conspiracy consisting of a hierarchical position of
9 authority superior to that of all other members of the
10 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) the murder was committed as a result of the
19 intentional discharge of a firearm by the defendant from a
20 motor vehicle and the victim was not present within the
21 motor vehicle; or

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

25 (17) the murdered individual was a disabled person and
26 the defendant knew or should have known that the murdered

1 individual was disabled. For purposes of this paragraph
2 (17), "disabled person" means a person who suffers from a
3 permanent physical or mental impairment resulting from
4 disease, an injury, a functional disorder, or a congenital
5 condition that renders the person incapable of adequately
6 providing for 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 nurse, (ii) the defendant knew or should have known that the
4 murdered individual was a physician, physician assistant,
5 psychologist, nurse, or advanced practice nurse, and (iii) the
6 murdered individual was killed in the course of acting in his
7 or her capacity as a physician, physician assistant,
8 psychologist, nurse, or advanced practice nurse, or to prevent
9 him or her from acting in that capacity, or in retaliation for
10 his or her acting in that capacity.

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

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

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

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

25 (3) the murdered individual was a participant in the
26 defendant's homicidal conduct or consented to the

1 homicidal act;

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

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

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

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

11 (d) Separate sentencing hearing.

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

17 (1) before the jury that determined the defendant's
18 guilt; or

19 (2) before a jury impanelled for the purpose of the
20 proceeding if:

21 A. the defendant was convicted upon a plea of
22 guilty; or

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

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

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

3 (e) Evidence and Argument.

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

14 (f) Proof.

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

19 (g) Procedure - Jury.

20 If at the separate sentencing proceeding the jury finds
21 that none of the factors set forth in subsection (b) exists,
22 the court shall sentence the defendant to a term of
23 imprisonment under Chapter V of the Unified Code of
24 Corrections. If there is a unanimous finding by the jury that
25 one or more of the factors set forth in subsection (b) exist,
26 the jury shall consider aggravating and mitigating factors as

1 instructed by the court and shall determine whether the
2 sentence of death shall be imposed. If the jury determines
3 unanimously, after weighing the factors in aggravation and
4 mitigation, that death is the appropriate sentence, the court
5 shall sentence the defendant to death. If the court does not
6 concur with the jury determination that death is the
7 appropriate sentence, the court shall set forth reasons in
8 writing including what facts or circumstances the court relied
9 upon, along with any relevant documents, that compelled the
10 court to non-concur with the sentence. This document and any
11 attachments shall be part of the record for appellate review.
12 The court shall be bound by the jury's sentencing
13 determination.

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

19 (h) Procedure - No Jury.

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

24 If the Court determines that one or more of the factors set
25 forth in subsection (b) exists, the Court shall consider any
26 aggravating and mitigating factors as indicated in subsection

1 (c). If the Court determines, after weighing the factors in
2 aggravation and mitigation, that death is the appropriate
3 sentence, the Court shall sentence the defendant to death.

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

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

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

1 hearing.

2 (i) Appellate Procedure.

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

15 (j) Disposition of reversed death sentence.

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

22 In the event that any death sentence pursuant to the
23 sentencing provisions of this Section is declared
24 unconstitutional by the Supreme Court of the United States or
25 of the State of Illinois, the court having jurisdiction over a
26 person previously sentenced to death shall cause the defendant

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

4 (k) Guidelines for seeking the death penalty.

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

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

10 (720 ILCS 5/11-1.40) (was 720 ILCS 5/12-14.1)

11 Sec. 11-1.40. Predatory criminal sexual assault of a child.

12 (a) A person commits predatory criminal sexual assault of a
13 child if that person commits an act of sexual penetration, is
14 17 years of age or older, and:

15 (1) the victim is under 14 ~~13~~ years of age; or

16 (2) the victim is under 14 ~~13~~ years of age and that
17 person:

18 (A) is armed with a firearm;

19 (B) (blank); ~~personally discharges a firearm~~
20 ~~during the commission of the offense;~~

21 (C) causes great bodily harm to the victim that:

22 (i) results in permanent disability; or

23 (ii) is life threatening; or

24 (D) delivers (by injection, inhalation, ingestion,
25 transfer of possession, or any other means) any

1 controlled substance to the victim without the
2 victim's consent or by threat or deception, for other
3 than medical purposes.

4 (b) Sentence.

5 (1) A person convicted of a violation of subsection
6 (a)(1) commits a Class X felony, for which the person shall
7 be sentenced to a term of imprisonment of not less than 10
8 ~~6~~ years and not more than 60 years unless the offense is
9 committed against a child who was under 10 years of age at
10 the time of the commission of the offense in which case the
11 person shall be sentenced to a term of natural life
12 imprisonment. ~~A person convicted of a violation of~~
13 ~~subsection (a)(2)(A) commits a Class X felony for which 15~~
14 ~~years shall be added to the term of imprisonment imposed by~~
15 ~~the court. A person convicted of a violation of subsection~~
16 ~~(a)(2)(B) commits a Class X felony for which 20 years shall~~
17 ~~be added to the term of imprisonment imposed by the court.~~
18 A person convicted of a violation of subsection (a)(2)
19 ~~(a)(2)(C)~~ commits a Class X felony for which the person
20 shall be sentenced to ~~a term of imprisonment of not less~~
21 ~~than 50 years or up to~~ a term of natural life imprisonment.

22 (1.1) (Blank). ~~A person convicted of a violation of~~
23 ~~subsection (a)(2)(D) commits a Class X felony for which the~~
24 ~~person shall be sentenced to a term of imprisonment of not~~
25 ~~less than 50 years and not more than 60 years.~~

26 (1.2) A person convicted of predatory criminal sexual

1 assault of a child committed against 2 or more persons
2 regardless of whether the offenses occurred as the result
3 of the same act or of several related or unrelated acts
4 shall be sentenced to a term of natural life imprisonment.

5 (2) A person who is convicted of a second or subsequent
6 offense of predatory criminal sexual assault of a child, or
7 who is convicted of the offense of predatory criminal
8 sexual assault of a child after having previously been
9 convicted of the offense of criminal sexual assault or the
10 offense of aggravated criminal sexual assault, or who is
11 convicted of the offense of predatory criminal sexual
12 assault of a child after having previously been convicted
13 under the laws of this State or any other state of an
14 offense that is substantially equivalent to the offense of
15 predatory criminal sexual assault of a child, the offense
16 of aggravated criminal sexual assault or the offense of
17 criminal sexual assault, shall be sentenced to a term of
18 natural life imprisonment. The commission of the second or
19 subsequent offense is required to have been after the
20 initial conviction for this paragraph (2) to apply.

21 (Source: P.A. 95-640, eff. 6-1-08; 96-1551, eff. 7-1-11.)".