



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1761

Introduced 2/9/2017, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1
720 ILCS 5/9-2

from Ch. 38, par. 9-1
from Ch. 38, par. 9-2

Amends the Criminal Code of 2012. Provides that a non-violent sexual advance, nor the discovery, knowledge, or perception of a person's sex or sexual orientation, including under circumstances in which the defendant and victim dated or had a romantic or sexual relationship, cannot be mitigating factors relevant to the imposition of the death penalty for first degree murder (no effect unless the death penalty is reinstated for the offense). Also provides that the same conduct does not constitute serious provocation for second degree murder.

LRB100 08614 SLF 18748 b

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 Sections 9-1 and 9-2 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

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

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

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

1 whom the same order of protection was issued under the
2 Illinois Domestic Violence Act of 1986; or

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

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

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

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

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

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

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

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

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

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

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

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

25 Provided, however, that neither a non-violent sexual
26 advance, nor the discovery, knowledge, or perception of a

1 person's sex or sexual orientation as defined in Section 1-103
2 of the Illinois Human Rights Act, including under circumstances
3 in which the defendant and victim dated or had a romantic or
4 sexual relationship, can mitigate first-degree murder.

5 (d) Separate sentencing hearing.

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

11 (1) before the jury that determined the defendant's
12 guilt; or

13 (2) before a jury impanelled for the purpose of the
14 proceeding if:

15 A. the defendant was convicted upon a plea of
16 guilty; or

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

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

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

23 (e) Evidence and Argument.

24 During the proceeding any information relevant to any of
25 the factors set forth in subsection (b) may be presented by
26 either the State or the defendant under the rules governing the

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

8 (f) Proof.

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

13 (g) Procedure - Jury.

14 If at the separate sentencing proceeding the jury finds
15 that none of the factors set forth in subsection (b) exists,
16 the court shall sentence the defendant to a term of
17 imprisonment under Chapter V of the Unified Code of
18 Corrections. If there is a unanimous finding by the jury that
19 one or more of the factors set forth in subsection (b) exist,
20 the jury shall consider aggravating and mitigating factors as
21 instructed by the court and shall determine whether the
22 sentence of death shall be imposed. If the jury determines
23 unanimously, after weighing the factors in aggravation and
24 mitigation, that death is the appropriate sentence, the court
25 shall sentence the defendant to death. If the court does not
26 concur with the jury determination that death is the

1 appropriate sentence, the court shall set forth reasons in
2 writing including what facts or circumstances the court relied
3 upon, along with any relevant documents, that compelled the
4 court to non-concur with the sentence. This document and any
5 attachments shall be part of the record for appellate review.
6 The court shall be bound by the jury's sentencing
7 determination.

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

13 (h) Procedure - No Jury.

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

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

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

1 Corrections.

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

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

22 (i) Appellate Procedure.

23 The conviction and sentence of death shall be subject to
24 automatic review by the Supreme Court. Such review shall be in
25 accordance with rules promulgated by the Supreme Court. The
26 Illinois Supreme Court may overturn the death sentence, and

1 order the imposition of imprisonment under Chapter V of the
2 Unified Code of Corrections if the court finds that the death
3 sentence is fundamentally unjust as applied to the particular
4 case. If the Illinois Supreme Court finds that the death
5 sentence is fundamentally unjust as applied to the particular
6 case, independent of any procedural grounds for relief, the
7 Illinois Supreme Court shall issue a written opinion explaining
8 this finding.

9 (j) Disposition of reversed death sentence.

10 In the event that the death penalty in this Act is held to
11 be unconstitutional by the Supreme Court of the United States
12 or of the State of Illinois, any person convicted of first
13 degree murder shall be sentenced by the court to a term of
14 imprisonment under Chapter V of the Unified Code of
15 Corrections.

16 In the event that any death sentence pursuant to the
17 sentencing provisions of this Section is declared
18 unconstitutional by the Supreme Court of the United States or
19 of the State of Illinois, the court having jurisdiction over a
20 person previously sentenced to death shall cause the defendant
21 to be brought before the court, and the court shall sentence
22 the defendant to a term of imprisonment under Chapter V of the
23 Unified Code of Corrections.

24 (k) Guidelines for seeking the death penalty.

25 The Attorney General and State's Attorneys Association
26 shall consult on voluntary guidelines for procedures governing

1 whether or not to seek the death penalty. The guidelines do not
2 have the force of law and are only advisory in nature.

3 (Source: P.A. 99-143, eff. 7-27-15.)

4 (720 ILCS 5/9-2) (from Ch. 38, par. 9-2)

5 Sec. 9-2. Second degree murder.

6 (a) A person commits the offense of second degree murder
7 when he or she commits the offense of first degree murder as
8 defined in paragraph (1) or (2) of subsection (a) of Section
9 9-1 of this Code and either of the following mitigating factors
10 are present:

11 (1) at the time of the killing he or she is acting
12 under a sudden and intense passion resulting from serious
13 provocation by the individual killed or another whom the
14 offender endeavors to kill, but he or she negligently or
15 accidentally causes the death of the individual killed; or

16 (2) at the time of the killing he or she believes the
17 circumstances to be such that, if they existed, would
18 justify or exonerate the killing under the principles
19 stated in Article 7 of this Code, but his or her belief is
20 unreasonable.

21 (b) Serious provocation is conduct sufficient to excite an
22 intense passion in a reasonable person, provided, however, that
23 neither a non-violent sexual advance, nor the discovery,
24 knowledge, or perception of a person's sex or sexual
25 orientation as defined in Section 1-103 of the Illinois Human

1 Rights Act, including under circumstances in which the
2 defendant and victim dated or had a romantic or sexual
3 relationship, constitutes serious provocation.

4 (c) When evidence of either of the mitigating factors
5 defined in subsection (a) of this Section has been presented,
6 the burden of proof is on the defendant to prove either
7 mitigating factor by a preponderance of the evidence before the
8 defendant can be found guilty of second degree murder. The
9 burden of proof, however, remains on the State to prove beyond
10 a reasonable doubt each of the elements of first degree murder
11 and, when appropriately raised, the absence of circumstances at
12 the time of the killing that would justify or exonerate the
13 killing under the principles stated in Article 7 of this Code.

14 (d) Sentence. Second degree murder is a Class 1 felony.
15 (Source: P.A. 96-710, eff. 1-1-10.)