



Sen. Daniel Biss

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1 AMENDMENT TO SENATE BILL 1761

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1761 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by  
5 changing 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

1 of death or great bodily harm to that individual or  
2 another; or

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

5 (b) Aggravating Factors. A defendant who at the time of the  
6 commission of the offense has attained the age of 18 or more  
7 and who has been found guilty of first degree murder may be  
8 sentenced to death if:

9 (1) the murdered individual was a peace officer or  
10 fireman killed in the course of performing his official  
11 duties, to prevent the performance of his official duties,  
12 or in retaliation for performing his official duties, and  
13 the defendant knew or should have known that the murdered  
14 individual was a peace officer or fireman; or

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

26 (3) the defendant has been convicted of murdering two

1 or more individuals under subsection (a) of this Section or  
2 under any law of the United States or of any state which is  
3 substantially similar to subsection (a) of this Section  
4 regardless of whether the deaths occurred as the result of  
5 the same act or of several related or unrelated acts so  
6 long as the deaths were the result of either an intent to  
7 kill more than one person or of separate acts which the  
8 defendant knew would cause death or create a strong  
9 probability of death or great bodily harm to the murdered  
10 individual or another; or

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

14 (5) the defendant committed the murder pursuant to a  
15 contract, agreement or understanding by which he was to  
16 receive money or anything of value in return for committing  
17 the murder or procured another to commit the murder for  
18 money or anything of value; or

19 (6) the murdered individual was killed in the course of  
20 another felony if:

21 (a) the murdered individual:

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

23 (ii) received physical injuries personally  
24 inflicted by the defendant substantially  
25 contemporaneously with physical injuries caused by  
26 one or more persons for whose conduct the defendant

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

6 (b) in performing the acts which caused the death  
7 of the murdered individual or which resulted in  
8 physical injuries personally inflicted by the  
9 defendant on the murdered individual under the  
10 circumstances of subdivision (ii) of subparagraph (a)  
11 of paragraph (6) of subsection (b) of this Section, the  
12 defendant acted with the intent to kill the murdered  
13 individual or with the knowledge that his acts created  
14 a strong probability of death or great bodily harm to  
15 the murdered individual or another; and

16 (c) the other felony was an inherently violent  
17 crime or the attempt to commit an inherently violent  
18 crime. In this subparagraph (c), "inherently violent  
19 crime" includes, but is not limited to, armed robbery,  
20 robbery, predatory criminal sexual assault of a child,  
21 aggravated criminal sexual assault, aggravated  
22 kidnapping, aggravated vehicular hijacking, aggravated  
23 arson, aggravated stalking, residential burglary, and  
24 home invasion; or

25 (7) the murdered individual was under 12 years of age  
26 and the death resulted from exceptionally brutal or heinous

1 behavior indicative of wanton cruelty; or

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

16 (9) the defendant, while committing an offense  
17 punishable under Sections 401, 401.1, 401.2, 405, 405.2,  
18 407 or 407.1 or subsection (b) of Section 404 of the  
19 Illinois Controlled Substances Act, or while engaged in a  
20 conspiracy or solicitation to commit such offense,  
21 intentionally killed an individual or counseled,  
22 commanded, induced, procured or caused the intentional  
23 killing of the murdered individual; or

24 (10) the defendant was incarcerated in an institution  
25 or facility of the Department of Corrections at the time of  
26 the murder, and while committing an offense punishable as a

1 felony under Illinois law, or while engaged in a conspiracy  
2 or solicitation to commit such offense, intentionally  
3 killed an individual or counseled, commanded, induced,  
4 procured or caused the intentional killing of the murdered  
5 individual; or

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

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

26 (13) the defendant was a principal administrator,

1 organizer, or leader of a calculated criminal drug  
2 conspiracy consisting of a hierarchical position of  
3 authority superior to that of all other members of the  
4 conspiracy, and the defendant counseled, commanded,  
5 induced, procured, or caused the intentional killing of the  
6 murdered person; or

7 (14) the murder was intentional and involved the  
8 infliction of torture. For the purpose of this Section  
9 torture means the infliction of or subjection to extreme  
10 physical pain, motivated by an intent to increase or  
11 prolong the pain, suffering or agony of the victim; or

12 (15) the murder was committed as a result of the  
13 intentional discharge of a firearm by the defendant from a  
14 motor vehicle and the victim was not present within the  
15 motor vehicle; or

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

19 (17) the murdered individual was a person with a  
20 disability and the defendant knew or should have known that  
21 the murdered individual was a person with a disability. For  
22 purposes of this paragraph (17), "person with a disability"  
23 means a person who suffers from a permanent physical or  
24 mental impairment resulting from disease, an injury, a  
25 functional disorder, or a congenital condition that  
26 renders the person incapable of adequately providing for

1 his or her own health or personal care; or

2 (18) the murder was committed by reason of any person's  
3 activity as a community policing volunteer or to prevent  
4 any person from engaging in activity as a community  
5 policing volunteer; or

6 (19) the murdered individual was subject to an order of  
7 protection and the murder was committed by a person against  
8 whom the same order of protection was issued under the  
9 Illinois Domestic Violence Act of 1986; or

10 (20) the murdered individual was known by the defendant  
11 to be a teacher or other person employed in any school and  
12 the teacher or other employee is upon the grounds of a  
13 school or grounds adjacent to a school, or is in any part  
14 of a building used for school purposes; or

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

18 (b-5) Aggravating Factor; Natural Life Imprisonment. A  
19 defendant who has been found guilty of first degree murder and  
20 who at the time of the commission of the offense had attained  
21 the age of 18 years or more may be sentenced to natural life  
22 imprisonment if (i) the murdered individual was a physician,  
23 physician assistant, psychologist, nurse, or advanced practice  
24 nurse, (ii) the defendant knew or should have known that the  
25 murdered individual was a physician, physician assistant,  
26 psychologist, nurse, or advanced practice nurse, and (iii) the



1 murdered individual was killed in the course of acting in his  
2 or her capacity as a physician, physician assistant,  
3 psychologist, nurse, or advanced practice nurse, or to prevent  
4 him or her from acting in that capacity, or in retaliation for  
5 his or her acting in that capacity.

6 (c) Consideration of factors in Aggravation and  
7 Mitigation.

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

14 (1) the defendant has no significant history of prior  
15 criminal activity;

16 (2) the murder was committed while the defendant was  
17 under the influence of extreme mental or emotional  
18 disturbance, although not such as to constitute a defense  
19 to prosecution;

20 (3) the murdered individual was a participant in the  
21 defendant's homicidal conduct or consented to the  
22 homicidal act;

23 (4) the defendant acted under the compulsion of threat  
24 or menace of the imminent infliction of death or great  
25 bodily harm;

26 (5) the defendant was not personally present during

1 commission of the act or acts causing death;

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

4 (7) the defendant suffers from a reduced mental  
5 capacity.

6 Provided, however, that the discovery, knowledge, or  
7 perception of a person's sex or sexual orientation as defined  
8 in Section 1-103 of the Illinois Human Rights Act, including  
9 under circumstances in which the defendant and victim dated or  
10 had a romantic or sexual relationship, does not mitigate first  
11 degree murder.

12 (d) Separate sentencing hearing.

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

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

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

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

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

26 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,

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

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

20 (h) Procedure - No Jury.

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

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

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

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

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

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

1 matter shall proceed to the eligibility phase of the sentencing  
2 hearing.

3 (i) Appellate Procedure.

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

16 (j) Disposition of reversed death sentence.

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

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

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

5 (k) Guidelines for seeking the death penalty.

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

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

11 (720 ILCS 5/9-2) (from Ch. 38, par. 9-2)

12 Sec. 9-2. Second degree murder.

13 (a) A person commits the offense of second degree murder  
14 when he or she commits the offense of first degree murder as  
15 defined in paragraph (1) or (2) of subsection (a) of Section  
16 9-1 of this Code and either of the following mitigating factors  
17 are present:

18 (1) at the time of the killing he or she is acting  
19 under a sudden and intense passion resulting from serious  
20 provocation by the individual killed or another whom the  
21 offender endeavors to kill, but he or she negligently or  
22 accidentally causes the death of the individual killed; or

23 (2) at the time of the killing he or she believes the  
24 circumstances to be such that, if they existed, would  
25 justify or exonerate the killing under the principles

1           stated in Article 7 of this Code, but his or her belief is  
2           unreasonable.

3           (b) Serious provocation is conduct sufficient to excite an  
4           intense passion in a reasonable person, provided, however, that  
5           the discovery, knowledge, or perception of a person's sex or  
6           sexual orientation as defined in Section 1-103 of the Illinois  
7           Human Rights Act, including under circumstances in which the  
8           defendant and victim dated or had a romantic or sexual  
9           relationship, does not constitute serious provocation.

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

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