



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3164

by Rep. Jerry Costello, II

SYNOPSIS AS INTRODUCED:

See Index

Amends the Criminal Code of 2012. Reinstates the death penalty if at the time of the commission of the offense the person was 18 years of age or older and the person purposely caused the death of 2 or more human beings without lawful justification or the victim was a peace officer or firefighter killed in the course of performing his or her official duties, either to prevent the performance of the person's duties or in retaliation for the performance of the person's duties, and the person knew that the victim was a peace officer or firefighter. Provides a person is legally accountable for the conduct of another in the commission of death penalty murder only when: (1) having the purpose to cause the death of another human being without lawful justification, the person commands, induces, procures, or causes another to perform the conduct; or (2) the person agrees with one or more other persons to engage in conduct for the common purpose of causing the death of another human being without lawful justification, in which case all parties to the agreement shall be criminally liable for acts of other parties to the agreement committed during and in furtherance of the agreement. Amends the Code of Criminal Procedure of 1963 and Unified Code of Corrections to make conforming changes. Effective immediately.

LRB101 08104 SLF 53169 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 5-1 and by adding Sections 4-4.5, 5-2.5, and 9-1.5 as
6 follows:

7 (720 ILCS 5/4-4.5 new)

8 Sec. 4-4.5. Purposely or purpose. In Section 5-2.5 and
9 9-1.5, a person acts purposely or with the purpose when his or
10 her conscious objective is to cause the death of another human
11 being.

12 (720 ILCS 5/5-1) (from Ch. 38, par. 5-1)

13 Sec. 5-1. Accountability for conduct of another. Except as
14 provided in Section 5-2.5, a ~~A~~ person is responsible for
15 conduct which is an element of an offense if the conduct is
16 either that of the person himself, or that of another and he is
17 legally accountable for such conduct as provided in Section
18 5-2, or both.

19 (Source: Laws 1961, p. 1983.)

20 (720 ILCS 5/5-2.5 new)

21 Sec. 5-2.5. Death penalty murder; accountability for acts

1 of others. A person is legally accountable for the conduct of
2 another in the commission of death penalty murder only when:

3 (1) having the purpose to cause the death of another
4 human being without lawful justification, the person
5 commands, induces, procures, or causes another to perform
6 the conduct; or

7 (2) the person agrees with one or more other persons to
8 engage in conduct for the common purpose of causing the
9 death of another human being without lawful justification,
10 in which case all parties to the agreement shall be
11 criminally liable for acts of other parties to the
12 agreement committed during and in furtherance of the
13 agreement.

14 (720 ILCS 5/9-1.5 new)

15 Sec. 9-1.5. Death penalty murder.

16 (a) In this Section, "human being" means a person who has
17 been born and is alive.

18 (b) A person commits death penalty murder when at the time
19 of the commission of the offense he or she has attained the age
20 of 18 or more and he or she purposely causes the death of
21 another human being without lawful justification if:

22 (1) at the time of the offense, the person caused the
23 death of 2 or more other human beings without lawful
24 justification; or

25 (2) the victim was a peace officer, as defined by

1 Section 2-13 or firefighter, killed in the course of
2 performing his or her official duties, either to prevent
3 the performance of the person's duties or in retaliation
4 for the performance of the person's duties, and the person
5 knew that the victim was a peace officer or firefighter.

6 (c) The trier of fact regarding the charge of death penalty
7 murder shall resolve any doubt regarding identification or any
8 element of the offense in favor of the defendant. A defendant
9 shall not be found guilty of the offense of death penalty
10 murder unless each and every element of the offense is
11 established beyond any doubt. If the trial is by jury, before
12 the trial commences and again before jury deliberations
13 commence, the jury shall be instructed that the penalty for
14 death penalty murder is death.

15 (d) A defendant, who has been found guilty of death penalty
16 murder, may, at a separate sentencing hearing, present evidence
17 of mitigating circumstances not rising to the level of legal
18 justification, including but not limited to evidence of
19 intellectual disability as provided in Section 114-15 of the
20 Code of Criminal Procedure of 1963. The prosecution may present
21 rebuttal evidence. The hearing shall be before the trial judge.
22 The judge shall sentence the defendant to death, unless he or
23 she finds that the defendant has, by a preponderance of the
24 evidence, presented sufficiently substantial evidence to prove
25 intellectual disability or that imposition of the death penalty
26 would result in a manifest miscarriage of justice, in which

1 case the judge shall sentence the defendant to life
2 imprisonment without the possibility of parole.

3 (e) On appeal from a conviction of death penalty murder,
4 review of the facts shall be de novo. In conducting its de novo
5 review of the trial evidence, the appellate court shall resolve
6 all doubt regarding identification and guilt in favor of the
7 defendant. The appellate court shall conduct an independent
8 review of the evidence without giving deference to the judgment
9 of the trier of fact at trial.

10 (f) Sentence. The sentence for death penalty murder is
11 death.

12 Section 10. The Code of Criminal Procedure of 1963 is
13 amended by changing Sections 114-15, 119-1, and 122-2.2 as
14 follows:

15 (725 ILCS 5/114-15)

16 Sec. 114-15. Intellectual disability.

17 (a) In a first degree murder case in which the State seeks
18 the death penalty as an appropriate sentence or in a death
19 penalty murder case, any party may raise the issue of the
20 defendant's intellectual disabilities by motion. A defendant
21 wishing to raise the issue of his or her intellectual
22 disabilities shall provide written notice to the State and the
23 court as soon as the defendant reasonably believes such issue
24 will be raised.

1 (b) The issue of the defendant's intellectual disabilities
2 shall be determined in a pretrial hearing. The court shall be
3 the fact finder on the issue of the defendant's intellectual
4 disabilities and shall determine the issue by a preponderance
5 of evidence in which the moving party has the burden of proof.
6 The court may appoint an expert in the field of intellectual
7 disabilities. The defendant and the State may offer experts
8 from the field of intellectual disabilities. The court shall
9 determine admissibility of evidence and qualification as an
10 expert.

11 (c) If after a plea of guilty to first degree murder or
12 death penalty murder, or a finding of guilty of first degree
13 murder or death penalty murder in a bench trial, or a verdict
14 of guilty for first degree murder or death penalty murder in a
15 jury trial, or on a matter remanded from the Supreme Court for
16 sentencing for first degree murder or death penalty murder, and
17 the State seeks the death penalty as an appropriate sentence,
18 the defendant may raise the issue of defendant's intellectual
19 disabilities not at eligibility but at aggravation and
20 mitigation. The defendant and the State may offer experts from
21 the field of intellectual disabilities. The court shall
22 determine admissibility of evidence and qualification as an
23 expert.

24 (d) In determining whether the defendant is a person with
25 an intellectual disability, the intellectual disability must
26 have manifested itself by the age of 18. IQ tests and

1 psychometric tests administered to the defendant must be the
2 kind and type recognized by experts in the field of
3 intellectual disabilities. In order for the defendant to be
4 considered a person with an intellectual disability, a low IQ
5 must be accompanied by significant deficits in adaptive
6 behavior in at least 2 of the following skill areas:
7 communication, self-care, social or interpersonal skills, home
8 living, self-direction, academics, health and safety, use of
9 community resources, and work. An intelligence quotient (IQ) of
10 75 or below is presumptive evidence of an intellectual
11 disability.

12 (e) Evidence of an intellectual disability that did not
13 result in disqualifying the case as a capital case, may be
14 introduced as evidence in mitigation during a capital
15 sentencing hearing. A failure of the court to determine that
16 the defendant is a person with an intellectual disability does
17 not preclude the court during trial from allowing evidence
18 relating to mental disability should the court deem it
19 appropriate.

20 (f) If the court determines at a pretrial hearing or after
21 remand that a capital defendant is a person with an
22 intellectual disability, and the State does not appeal pursuant
23 to Supreme Court Rule 604, the case shall no longer be
24 considered a capital case and the procedural guidelines
25 established for capital cases shall no longer be applicable to
26 the defendant. In that case, the defendant shall be sentenced

1 under the sentencing provisions of Chapter V of the Unified
2 Code of Corrections.

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

4 (725 ILCS 5/119-1)

5 Sec. 119-1. Death penalty abolished.

6 (a) Except as otherwise provided in subsection (a-5),
7 beginning ~~Beginning~~ on the effective date of this amendatory
8 Act of the 96th General Assembly, notwithstanding any other law
9 to the contrary, the death penalty is abolished and a sentence
10 to death may not be imposed.

11 (a-5) A sentence of death shall be imposed for death
12 penalty murder.

13 (b) All unobligated and unexpended moneys remaining in the
14 Capital Litigation Trust Fund on the effective date of this
15 amendatory Act of the 96th General Assembly shall be
16 transferred into the Death Penalty Abolition Fund, a special
17 fund in the State treasury, to be expended by the Illinois
18 Criminal Justice Information Authority, for services for
19 families of victims of homicide or murder and for training of
20 law enforcement personnel.

21 (Source: P.A. 96-1543, eff. 7-1-11.)

22 (725 ILCS 5/122-2.2)

23 Sec. 122-2.2. Intellectual disability and post-conviction
24 relief.

1 (a) In cases where no determination of an intellectual
2 disability was made and a defendant has been convicted of
3 first-degree murder or death penalty murder, sentenced to
4 death, and is in custody pending execution of the sentence of
5 death, the following procedures shall apply:

6 (1) Notwithstanding any other provision of law or rule
7 of court, a defendant may seek relief from the death
8 sentence through a petition for post-conviction relief
9 under this Article alleging that the defendant was a person
10 with an intellectual disability as defined in Section
11 114-15 at the time the offense was alleged to have been
12 committed.

13 (2) The petition must be filed within 180 days of the
14 effective date of this amendatory Act of the 93rd General
15 Assembly or within 180 days of the issuance of the mandate
16 by the Illinois Supreme Court setting the date of
17 execution, whichever is later.

18 (b) All other provisions of this Article governing
19 petitions for post-conviction relief shall apply to a petition
20 for post-conviction relief alleging an intellectual
21 disability.

22 (Source: P.A. 99-78, eff. 7-20-15; 99-143, eff. 7-27-15.)

23 Section 15. The Unified Code of Corrections is amended by
24 changing Section 5-4.5-10 and by adding Section 5-4.5-20.5 as
25 follows:

1 (730 ILCS 5/5-4.5-10)

2 Sec. 5-4.5-10. OFFENSE CLASSIFICATIONS.

3 (a) FELONY CLASSIFICATIONS. Felonies are classified, for
4 the purpose of sentencing, as follows:

5 (1) First degree murder (as a separate class of
6 felony).

7 (1.5) Death penalty murder (as a separate class of
8 felony).

9 (2) Class X felonies.

10 (3) Class 1 felonies.

11 (4) Class 2 felonies.

12 (5) Class 3 felonies.

13 (6) Class 4 felonies.

14 (b) MISDEMEANOR CLASSIFICATIONS. Misdemeanors are
15 classified, for the purpose of sentencing, as follows:

16 (1) Class A misdemeanors.

17 (2) Class B misdemeanors.

18 (3) Class C misdemeanors.

19 (c) PETTY AND BUSINESS OFFENSES. Petty offenses and
20 business offenses are not classified.

21 (Source: P.A. 95-1052, eff. 7-1-09.)

22 (730 ILCS 5/5-4.5-20.5 new)

23 Sec. 5-4.5-20.5. DEATH PENALTY MURDER; SENTENCE. For death
24 penalty murder, the defendant shall be sentenced to death,

1 unless the trial judge finds that the defendant has, by a
2 preponderance of the evidence, presented sufficiently
3 substantial evidence to outweigh the circumstances of the
4 offense and the evidence presented by the prosecution at the
5 sentencing hearing, in which case the judge shall sentence the
6 defendant to life imprisonment without the possibility of
7 parole.

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 720 ILCS 5/4-4.5 new

4 720 ILCS 5/5-1 from Ch. 38, par. 5-1

5 720 ILCS 5/5-2.5 new

6 720 ILCS 5/9-1.5 new

7 725 ILCS 5/114-15

8 725 ILCS 5/119-1

9 725 ILCS 5/122-2.2

10 730 ILCS 5/5-4.5-10

11 730 ILCS 5/5-4.5-20.5 new