

HB1738



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1738

by Rep. Dennis M. Reboletti

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 1961 relating to first degree murder. Adds and eliminates aggravating factors for which the death penalty may be imposed.

LRB097 09651 RLC 49788 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 1961 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 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) Murder of a peace officer, correctional employee,
3 or fireman in the performance of his or her duties. the
4 murdered individual was a peace officer, employee of an
5 institution or facility of the Department of Corrections,
6 or any similar local correctional agency, or fireman killed
7 in the course of performing his official duties, to prevent
8 the performance of his official duties, or in retaliation
9 for performing his official duties, and the defendant knew
10 or should have known that the murdered individual was so
11 employed ~~a peace officer or fireman;~~ or

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

23 (3) Multiple murders. the defendant has been convicted
24 of murdering two or more individuals under subsection (a)
25 of this Section or under any law of the United States or of
26 any state which is substantially similar to subsection (a)

1 of this Section regardless of whether the deaths occurred
2 as the result of the same act or of several related or
3 unrelated acts so long as the deaths were the result of
4 either an intent to kill more than one person or of
5 separate acts which the defendant knew would cause death or
6 create a strong probability of death or great bodily harm
7 to the murdered individual or another; or

8 (4) (Blank). ~~the murdered individual was killed as a~~
9 ~~result of the hijacking of an airplane, train, ship, bus or~~
10 ~~other public conveyance; or~~

11 (5) Murder for hire. the defendant committed the murder
12 pursuant to a contract, agreement or understanding by which
13 he was to receive money or anything of value in return for
14 committing the murder or procured another to commit the
15 murder for money or anything of value; or

16 (6) Murder while committing a sexually violent felony.
17 the murdered individual was killed in the course of another
18 felony if:

19 (a) the murdered individual:

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

21 (ii) received physical injuries personally
22 inflicted by the defendant substantially
23 contemporaneously with physical injuries caused by
24 one or more persons for whose conduct the defendant
25 is legally accountable under Section 5-2 of this
26 Code, and the physical injuries inflicted by

1 either the defendant or the other person or persons
2 for whose conduct he is legally accountable caused
3 the death of the murdered individual; and

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

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

25 (7) Exceptionally brutal or heinous murder of a child,
26 or of an elderly or disabled person. (a) the murdered

1 individual was (1) under 12 years of age or (2) 65 years or
2 older and the death resulted from exceptionally brutal or
3 heinous behavior indicative of wanton cruelty; or

4 (b) the murdered individual was a disabled person
5 and the defendant knew or should have known that the
6 murdered individual was disabled and the death
7 resulted from exceptionally brutal or heinous behavior
8 indicative of wanton cruelty. For purposes of this
9 subparagraph (7)(b), "disabled person" means a person
10 who suffers from a permanent physical or mental
11 impairment resulting from disease, an injury, a
12 functional disorder, or a congenital condition that
13 renders the person incapable of adequately providing
14 for his or her own health or personal care; or

15 (8) Murder of a witness or participant in an
16 Investigation or Prosecution. the defendant committed the
17 murder with intent to prevent the murdered individual from
18 testifying or participating in any criminal investigation
19 or prosecution or giving material assistance to the State
20 in any investigation or prosecution, either against the
21 defendant or another; or the defendant committed the murder
22 because the murdered individual was a witness in any
23 prosecution or gave material assistance to the State in any
24 investigation or prosecution, either against the defendant
25 or another; for purposes of this paragraph (8),
26 "participating in any criminal investigation or

1 prosecution" is intended to include those appearing in the
2 proceedings in any capacity such as trial judges,
3 prosecutors, defense attorneys, investigators, witnesses,
4 or jurors; or

5 (9) (Blank). ~~the defendant, while committing an~~
6 ~~offense punishable under Sections 401, 401.1, 401.2, 405,~~
7 ~~405.2, 407 or 407.1 or subsection (b) of Section 404 of the~~
8 ~~Illinois Controlled Substances Act, or while engaged in a~~
9 ~~conspiracy or solicitation to commit such offense,~~
10 ~~intentionally killed an individual or counseled,~~
11 ~~commanded, induced, procured or caused the intentional~~
12 ~~killing of the murdered individual; or~~

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

21 (11) (Blank). ~~the murder was committed in a cold,~~
22 ~~calculated and premeditated manner pursuant to a~~
23 ~~preconceived plan, scheme or design to take a human life by~~
24 ~~unlawful means, and the conduct of the defendant created a~~
25 ~~reasonable expectation that the death of a human being~~
26 ~~would result therefrom; or~~

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

15 (13) (Blank). ~~the defendant was a principal~~
16 ~~administrator, organizer, or leader of a calculated~~
17 ~~criminal drug conspiracy consisting of a hierarchical~~
18 ~~position of authority superior to that of all other members~~
19 ~~of the conspiracy, and the defendant counseled, commanded,~~
20 ~~induced, procured, or caused the intentional killing of the~~
21 ~~murdered person; or~~

22 (14) Torture. the murder was intentional and involved
23 the infliction of torture. For the purpose of this Section
24 torture means the infliction of or subjection to extreme
25 physical pain, motivated by an intent to increase or
26 prolong the pain, suffering or agony of the victim; or

1 (15) (Blank). ~~the murder was committed as a result of~~
2 ~~the intentional discharge of a firearm by the defendant~~
3 ~~from a motor vehicle and the victim was not present within~~
4 ~~the motor vehicle; or~~

5 (16) (Blank). ~~the murdered individual was 60 years of~~
6 ~~age or older and the death resulted from exceptionally~~
7 ~~brutal or heinous behavior indicative of wanton cruelty; or~~

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

17 (18) (Blank). ~~the murder was committed by reason of any~~
18 ~~person's activity as a community policing volunteer or to~~
19 ~~prevent any person from engaging in activity as a community~~
20 ~~policing volunteer; or~~

21 (19) (Blank). ~~the murdered individual was subject to an~~
22 ~~order of protection and the murder was committed by a~~
23 ~~person against whom the same order of protection was issued~~
24 ~~under the Illinois Domestic Violence Act of 1986; or~~

25 (20) (Blank). ~~the murdered individual was known by the~~
26 ~~defendant to be a teacher or other person employed in any~~

~~school and the teacher or other employee is upon the grounds of a school or grounds adjacent to a school, or is in any part of a building used for school purposes; or~~

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

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

(c) Consideration of factors in Aggravation and Mitigation.

The court shall consider, or shall instruct the jury to consider any aggravating and any mitigating factors which are relevant to the imposition of the death penalty. Aggravating factors may include but need not be limited to those factors

1 set forth in subsection (b). Mitigating factors may include but
2 need not be limited to the following:

3 (1) the defendant has no significant history of prior
4 criminal activity;

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

9 (3) the murdered individual was a participant in the
10 defendant's homicidal conduct or consented to the
11 homicidal act;

12 (4) the defendant acted under the compulsion of threat
13 or menace of the imminent infliction of death or great
14 bodily harm;

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

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

19 (7) the defendant suffers from a reduced mental
20 capacity.

21 (d) Separate sentencing hearing.

22 Where requested by the State, the court shall conduct a
23 separate sentencing proceeding to determine the existence of
24 factors set forth in subsection (b) and to consider any
25 aggravating or mitigating factors as indicated in subsection
26 (c). The proceeding shall be conducted:

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

3 (2) before a jury impanelled for the purpose of the
4 proceeding if:

5 A. the defendant was convicted upon a plea of
6 guilty; or

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

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

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

13 (e) Evidence and Argument.

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

24 (f) Proof.

25 The burden of proof of establishing the existence of any of
26 the factors set forth in subsection (b) is on the State and

1 shall not be satisfied unless established beyond a reasonable
2 doubt.

3 (g) Procedure - Jury.

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

24 If after weighing the factors in aggravation and
25 mitigation, one or more jurors determines that death is not the
26 appropriate sentence, the court shall sentence the defendant to

1 a term of imprisonment under Chapter V of the Unified Code of
2 Corrections.

3 (h) Procedure - No Jury.

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

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

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

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

19 In a case in which the defendant has been found guilty of
20 first degree murder by a judge or jury, or a case on remand for
21 resentencing, and the State seeks the death penalty as an
22 appropriate sentence, on the court's own motion or the written
23 motion of the defendant, the court may decertify the case as a
24 death penalty case if the court finds that the only evidence
25 supporting the defendant's conviction is the uncorroborated
26 testimony of an informant witness, as defined in Section 115-21

1 of the Code of Criminal Procedure of 1963, concerning the
2 confession or admission of the defendant or that the sole
3 evidence against the defendant is a single eyewitness or single
4 accomplice without any other corroborating evidence. If the
5 court decertifies the case as a capital case under either of
6 the grounds set forth above, the court shall issue a written
7 finding. The State may pursue its right to appeal the
8 decertification pursuant to Supreme Court Rule 604(a)(1). If
9 the court does not decertify the case as a capital case, the
10 matter shall proceed to the eligibility phase of the sentencing
11 hearing.

12 (i) Appellate Procedure.

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

25 (j) Disposition of reversed death sentence.

26 In the event that the death penalty in this Act is held to

1 be unconstitutional by the Supreme Court of the United States
2 or of the State of Illinois, any person convicted of first
3 degree murder shall be sentenced by the court to a term of
4 imprisonment under Chapter V of the Unified Code of
5 Corrections.

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

14 (k) Guidelines for seeking the death penalty.

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

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