

# HB5847



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

**HB5847**

by Rep. David McSweeney

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends the Criminal Code of 2012. Provides that it is an aggravating factor in sentencing for first degree murder that the murder was committed as a result of the intentional discharge of a firearm (rather than the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle). Effective January 1, 2019.

LRB100 21165 RLC 37204 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 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) 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          registered nurse, (ii) the defendant knew or should have known  
18          that the murdered individual was a physician, physician  
19          assistant, psychologist, nurse, or advanced practice  
20          registered nurse, and (iii) the murdered individual was killed  
21          in the course of acting in his or her capacity as a physician,  
22          physician assistant, psychologist, nurse, or advanced practice  
23          registered nurse, or to prevent him or her from acting in that  
24          capacity, or in retaliation for his or her acting in that  
25          capacity.

26          (c) Consideration of factors in Aggravation and

1 Mitigation.

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

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

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

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

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

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

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

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

26 Provided, however, that an action that does not otherwise

1 mitigate first degree murder cannot qualify as a mitigating  
2 factor for first degree murder because of the discovery,  
3 knowledge, or disclosure of the victim's sexual orientation as  
4 defined in Section 1-103 of the Illinois Human Rights Act.

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; 100-460, eff. 1-1-18;  
4 100-513, eff. 1-1-18; revised 10-5-17.)

5 Section 99. Effective date. This Act takes effect January  
6 1, 2019.