



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB5886

by Rep. Jim Durkin

#### 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 killed in the course of performing his or her official duties, either to prevent the performance of the officer's duties or in retaliation for the performance of the officer's duties, and the person knew that the victim was a peace officer. 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.

LRB100 22088 MRW 40363 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 of this Code, a person acts purposely or with the purpose  
10 when his or her conscious objective is to cause the death of  
11 another human 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 of the Code a ~~A~~ person is responsible  
15 for 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 5-2  
18 of this Code, 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 of this Code, killed in the course of  
2 performing his or her official duties, either to prevent  
3 the performance of the officer's duties or in retaliation  
4 for the performance of the officer's duties, and the person  
5 knew that the victim was a peace officer.

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) of  
7 this Section, beginning ~~Beginning~~ on the effective date of this  
8 amendatory Act of the 96th General Assembly, notwithstanding  
9 any other law to the contrary, the death penalty is abolished  
10 and a sentence 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