

1 AN ACT in relation to 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
5 changing 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
12 the acts which cause the death:

13 (1) he either intends to kill or do great bodily
14 harm to that individual or another, or knows that such
15 acts will cause death to that individual or another; or

16 (2) he knows that such acts create a strong
17 probability of death or great bodily harm to that
18 individual or another; or

19 (3) he is attempting or committing a forcible
20 felony other than second degree murder; or-

21 (4) he is manufacturing or attempting to
22 manufacture a controlled substance in violation of the
23 Illinois Controlled Substances Act.

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

28 (1) the murdered individual was a peace officer or
29 fireman killed in the course of performing his official
30 duties, to prevent the performance of his official
31 duties, or in retaliation for performing his official

1 duties, and the defendant knew or should have known that
2 the murdered individual was a peace officer or fireman;
3 or

4 (2) the murdered individual was an employee of an
5 institution or facility of the Department of Corrections,
6 or any similar local correctional agency, killed in the
7 course of performing his official duties, to prevent the
8 performance of his official duties, or in retaliation for
9 performing his official duties, or the murdered
10 individual was an inmate at such institution or facility
11 and was killed on the grounds thereof, or the murdered
12 individual was otherwise present in such institution or
13 facility with the knowledge and approval of the chief
14 administrative officer thereof; or

15 (3) the defendant has been convicted of murdering
16 two or more individuals under subsection (a) of this
17 Section or under any law of the United States or of any
18 state which is substantially similar to subsection (a) of
19 this Section regardless of whether the deaths occurred
20 as the result of the same act or of several related or
21 unrelated acts so long as the deaths were the result of
22 either an intent to kill more than one person or of
23 separate acts which the defendant knew would cause death
24 or create a strong probability of death or great bodily
25 harm to the murdered individual or another; or

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

29 (5) the defendant committed the murder pursuant to
30 a contract, agreement or understanding by which he was to
31 receive money or anything of value in return for
32 committing the murder or procured another to commit the
33 murder for money or anything of value; or

34 (6) the murdered individual was killed in the

1 course of another felony if:

2 (a) the murdered individual:

3 (i) was actually killed by the defendant,

4 or

5 (ii) received physical injuries
6 personally inflicted by the defendant
7 substantially contemporaneously with physical
8 injuries caused by one or more persons for
9 whose conduct the defendant is legally
10 accountable under Section 5-2 of this Code, and
11 the physical injuries inflicted by either the
12 defendant or the other person or persons for
13 whose conduct he is legally accountable caused
14 the death of the murdered individual; and

15 (b) in performing the acts which caused the
16 death of the murdered individual or which resulted
17 in physical injuries personally inflicted by the
18 defendant on the murdered individual under the
19 circumstances of subdivision (ii) of subparagraph
20 (a) of paragraph (6) of subsection (b) of this
21 Section, the defendant acted with the intent to kill
22 the murdered individual or with the knowledge that
23 his acts created a strong probability of death or
24 great bodily harm to the murdered individual or
25 another; and

26 (c) the other felony was one of the following:
27 armed robbery, armed violence, robbery, predatory
28 criminal sexual assault of a child, aggravated
29 criminal sexual assault, aggravated kidnapping,
30 aggravated vehicular hijacking, forcible detention,
31 arson, aggravated arson, aggravated stalking,
32 burglary, residential burglary, home invasion,
33 calculated criminal drug conspiracy as defined in
34 Section 405 of the Illinois Controlled Substances

1 Act, streetgang criminal drug conspiracy as defined
2 in Section 405.2 of the Illinois Controlled
3 Substances Act, or the attempt to commit any of the
4 felonies listed in this subsection (c); or

5 (7) the murdered individual was under 12 years of
6 age and the death resulted from exceptionally brutal or
7 heinous behavior indicative of wanton cruelty; or

8 (8) the defendant committed the murder with intent
9 to prevent the murdered individual from testifying in any
10 criminal prosecution or giving material assistance to the
11 State in any investigation or prosecution, either against
12 the defendant or another; or the defendant committed the
13 murder because the murdered individual was a witness in
14 any prosecution or gave material assistance to the State
15 in any investigation or prosecution, either against the
16 defendant or another; or

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

25 (10) the defendant was incarcerated in an
26 institution or facility of the Department of Corrections
27 at the time of the murder, and while committing an
28 offense punishable as a felony under Illinois law, or
29 while engaged in a conspiracy or solicitation to commit
30 such offense, intentionally killed an individual or
31 counseled, commanded, induced, procured or caused the
32 intentional killing of the murdered individual; or

33 (11) the murder was committed in a cold, calculated
34 and 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
6 medical technician - ambulance, emergency medical
7 technician - intermediate, emergency medical technician -
8 paramedic, ambulance driver, or other medical assistance
9 or first aid personnel, employed by a municipality or
10 other governmental unit, killed in the course of
11 performing his official duties, to prevent the
12 performance of his official duties, or in retaliation for
13 performing his official duties, and the defendant knew or
14 should have known that the murdered individual was an
15 emergency medical technician - ambulance, emergency
16 medical technician - intermediate, emergency medical
17 technician - paramedic, ambulance driver, or other
18 medical assistance or first aid 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
25 the murdered person; or

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

31 (15) the murder was committed as a result of the
32 intentional discharge of a firearm by the defendant from
33 a motor vehicle and the victim was not present within the
34 motor vehicle; or

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

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

13 (18) the murder was committed by reason of any
14 person's activity as a community policing volunteer or to
15 prevent any person from engaging in activity as a
16 community policing volunteer; or

17 (19) the murdered individual was subject to an
18 order of protection and the murder was committed by a
19 person against whom the same order of protection was
20 issued under the Illinois Domestic Violence Act of 1986;
21 or

22 (20) the murdered individual was known by the
23 defendant to be a teacher or other person employed in any
24 school and the teacher or other employee is upon the
25 grounds of a school or grounds adjacent to a school, or
26 is in any part of a building used for school purposes; or

27 (21) the murder was committed by the defendant in
28 connection with or as a result of the offense of
29 terrorism as defined in Section 29D-30 of this Code.

30 (c) Consideration of factors in Aggravation and
31 Mitigation.

32 The court shall consider, or shall instruct the jury to
33 consider any aggravating and any mitigating factors which are
34 relevant to the imposition of the death penalty. Aggravating

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

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

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

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

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

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

18 (d) Separate sentencing hearing.

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

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

26 (2) before a jury impanelled for the purpose of the
27 proceeding if:

28 A. the defendant was convicted upon a plea of
29 guilty; or

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

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

34 (3) before the court alone if the defendant waives

1 a jury for the separate proceeding.

2 (e) Evidence and Argument.

3 During the proceeding any information relevant to any of
4 the factors set forth in subsection (b) may be presented by
5 either the State or the defendant under the rules governing
6 the admission of evidence at criminal trials. Any
7 information relevant to any additional aggravating factors or
8 any mitigating factors indicated in subsection (c) may be
9 presented by the State or defendant regardless of its
10 admissibility under the rules governing the admission of
11 evidence at criminal trials. The State and the defendant
12 shall be given fair opportunity to rebut any information
13 received at the hearing.

14 (f) Proof.

15 The burden of proof of establishing the existence of any
16 of the factors set forth in subsection (b) is on the State
17 and shall not be satisfied unless established beyond a
18 reasonable doubt.

19 (g) Procedure - Jury.

20 If at the separate sentencing proceeding the jury finds
21 that none of the factors set forth in subsection (b) exists,
22 the court shall sentence the defendant to a term of
23 imprisonment under Chapter V of the Unified Code of
24 Corrections. If there is a unanimous finding by the jury
25 that one or more of the factors set forth in subsection (b)
26 exist, the jury shall consider aggravating and mitigating
27 factors as instructed by the court and shall determine
28 whether the sentence of death shall be imposed. If the jury
29 determines unanimously that there are no mitigating factors
30 sufficient to preclude the imposition of the death sentence,
31 the court shall sentence the defendant to death.

32 Unless the jury unanimously finds that there are no
33 mitigating factors sufficient to preclude the imposition of
34 the death 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
5 finds that none of the factors found in subsection (b)
6 exists, the court shall sentence the defendant to a term of
7 imprisonment under Chapter V of the Unified Code of
8 Corrections.

9 If the Court determines that one or more of the factors
10 set forth in subsection (b) exists, the Court shall consider
11 any aggravating and mitigating factors as indicated in
12 subsection (c). If the Court determines that there are no
13 mitigating factors sufficient to preclude the imposition of
14 the death sentence, the Court shall sentence the defendant to
15 death.

16 Unless the court finds that there are no mitigating
17 factors sufficient to preclude the imposition of the sentence
18 of death, the court shall sentence the defendant to a term of
19 imprisonment under Chapter V of the Unified Code of
20 Corrections.

21 (i) Appellate Procedure.

22 The conviction and sentence of death shall be subject to
23 automatic review by the Supreme Court. Such review shall be
24 in accordance with rules promulgated by the Supreme Court.

25 (j) Disposition of reversed death sentence.

26 In the event that the death penalty in this Act is held
27 to be unconstitutional by the Supreme Court of the United
28 States or of the State of Illinois, any person convicted of
29 first degree murder shall be sentenced by the court to a term
30 of imprisonment under Chapter V of the Unified Code of
31 Corrections.

32 In the event that any death sentence pursuant to the
33 sentencing provisions of this Section is declared
34 unconstitutional by the Supreme Court of the United States or

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

6 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
7 92-854, eff. 12-5-02.)