

SB3670



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3670

Introduced 2/11/2010, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1

from Ch. 38, par. 9-1

Amends provisions of the Criminal Code of 1961 relating to aggravating factors for which the death penalty may be imposed for first degree murder by restructuring and eliminating some of those provisions.

LRB096 20755 RLC 36502 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) (a) 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 (b) the murdered individual was an emergency medical
9 technician - ambulance, emergency medical technician -
10 intermediate, emergency medical technician - paramedic,
11 ambulance driver, or other medical assistance or first aid
12 personnel, employed by a municipality or other
13 governmental unit, killed in the course of performing his
14 official duties, to prevent the performance of his official
15 duties, or in retaliation for performing his official
16 duties, and the defendant knew or should have known that
17 the murdered individual was an emergency medical
18 technician - ambulance, emergency medical technician -
19 intermediate, emergency medical technician - paramedic,
20 ambulance driver, or other medical assistance or first aid
21 personnel; or

22 (2) the murdered individual was an employee of an
23 institution or facility of the Department of Corrections,
24 or any similar local correctional agency, killed in the
25 course of performing his official duties, to prevent the
26 performance of his official duties, or in retaliation for

1 performing his official duties, or the murdered individual
2 was an inmate at such institution or facility and was
3 killed on the grounds thereof, or the murdered individual
4 was otherwise present in such institution or facility with
5 the knowledge and approval of the chief administrative
6 officer thereof; or

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

18 (4) (blank) ~~the murdered individual was killed as a~~
19 ~~result of the hijacking of an airplane, train, ship, bus or~~
20 ~~other public conveyance; or~~

21 (5) (a) the defendant committed the murder pursuant to
22 a contract, agreement or understanding by which he was to
23 receive money or anything of value in return for committing
24 the murder or procured another to commit the murder for
25 money or anything of value; or

26 (b) the defendant was incarcerated in an institution or

1 facility of the Department of Corrections at the time of
2 the murder, and while committing an offense punishable as a
3 felony under Illinois law, or while engaged in a conspiracy
4 or solicitation to commit such offense, intentionally
5 killed an individual or counseled, commanded, induced,
6 procured or caused the intentional killing of the murdered
7 individual; or

8 (6) the murdered individual was killed in the course of
9 another felony if:

10 (a) the murdered individual:

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

12 (ii) received physical injuries personally
13 inflicted by the defendant substantially
14 contemporaneously with physical injuries caused by
15 one or more persons for whose conduct the defendant
16 is legally accountable under Section 5-2 of this
17 Code, and the physical injuries inflicted by
18 either the defendant or the other person or persons
19 for whose conduct he is legally accountable caused
20 the death of the murdered individual; and

21 (b) in performing the acts which caused the death
22 of the murdered individual or which resulted in
23 physical injuries personally inflicted by the
24 defendant on the murdered individual under the
25 circumstances of subdivision (ii) of subparagraph (a)
26 of paragraph (6) of subsection (b) of this Section, the

1 defendant acted with the intent to kill the murdered
2 individual or with the knowledge that his acts created
3 a strong probability of death or great bodily harm to
4 the murdered individual or another; and

5 (c) the other felony was an inherently violent
6 crime or the attempt to commit an inherently violent
7 crime. In this subparagraph (c), "inherently violent
8 crime" includes, but is not limited to, armed robbery,
9 robbery, predatory criminal sexual assault of a child,
10 aggravated criminal sexual assault, aggravated
11 kidnapping, aggravated vehicular hijacking, aggravated
12 arson, aggravated stalking, residential burglary, and
13 home invasion; or

14 (6.5) the murder was committed by the defendant in
15 connection with or as a result of the offense of terrorism
16 as defined in Section 29D-30 of this Code; or

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

20 (b) the murdered individual was 60 years of age or
21 older and the death resulted from exceptionally brutal
22 or heinous behavior indicative of wanton cruelty; or

23 (c) the murdered individual was a disabled person
24 and the defendant knew or should have known that the
25 murdered individual was disabled. For purposes of this
26 paragraph (7), "disabled person" means a person who

1 suffers from a permanent physical or mental impairment
2 resulting from disease, an injury, a functional
3 disorder, or a congenital condition that renders the
4 person incapable of adequately providing for his or her
5 own health or personal care; or

6 (8) the defendant committed the murder with intent to
7 prevent the murdered individual from testifying or
8 participating in any criminal investigation or prosecution
9 or giving material assistance to the State in any
10 investigation or prosecution, either against the defendant
11 or another; or the defendant committed the murder because
12 the murdered individual was a witness in any prosecution or
13 gave material assistance to the State in any investigation
14 or prosecution, either against the defendant or another;
15 for purposes of this paragraph (8), "participating in any
16 criminal investigation or prosecution" is intended to
17 include those appearing in the proceedings in any capacity
18 such as trial judges, prosecutors, defense attorneys,
19 investigators, witnesses, or jurors; or

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

1 ~~killing of the murdered individual; or~~

2 (10) (blank) ~~the defendant was incarcerated in an~~
3 ~~institution or facility of the Department of Corrections at~~
4 ~~the time of the murder, and while committing an offense~~
5 ~~punishable as a felony under Illinois law, or while engaged~~
6 ~~in a conspiracy or solicitation to commit such offense,~~
7 ~~intentionally killed an individual or counseled,~~
8 ~~commanded, induced, procured or caused the intentional~~
9 ~~killing of the murdered individual; or~~

10 (11) the murder was committed in a cold, calculated and
11 premeditated manner pursuant to a preconceived plan,
12 scheme or design to take a human life by unlawful means,
13 and the conduct of the defendant created a reasonable
14 expectation that the death of a human being would result
15 therefrom; or

16 (12) (blank) ~~the murdered individual was an emergency~~
17 ~~medical technician ambulance, emergency medical~~
18 ~~technician intermediate, emergency medical technician~~
19 ~~paramedic, ambulance driver, or other medical assistance~~
20 ~~or first aid personnel, employed by a municipality or other~~
21 ~~governmental unit, killed in the course of performing his~~
22 ~~official duties, to prevent the performance of his official~~
23 ~~duties, or in retaliation for performing his official~~
24 ~~duties, and the defendant knew or should have known that~~
25 ~~the murdered individual was an emergency medical~~
26 ~~technician ambulance, emergency medical technician~~

1 ~~intermediate, emergency medical technician, paramedic,~~
2 ~~ambulance driver, or other medical assistance or first aid~~
3 ~~personnel; or~~

4 (13) (blank) ~~the defendant was a principal~~
5 ~~administrator, organizer, or leader of a calculated~~
6 ~~criminal drug conspiracy consisting of a hierarchical~~
7 ~~position of authority superior to that of all other members~~
8 ~~of the conspiracy, and the defendant counseled, commanded,~~
9 ~~induced, procured, or caused the intentional killing of the~~
10 ~~murdered person; or~~

11 (14) the murder was intentional and involved the
12 infliction of torture. For the purpose of this Section
13 torture means the infliction of or subjection to extreme
14 physical pain, motivated by an intent to increase or
15 prolong the pain, suffering or agony of the victim; or

16 (15) (blank) ~~the murder was committed as a result of~~
17 ~~the intentional discharge of a firearm by the defendant~~
18 ~~from a motor vehicle and the victim was not present within~~
19 ~~the motor vehicle; or~~

20 (16) (blank) ~~the murdered individual was 60 years of~~
21 ~~age or older and the death resulted from exceptionally~~
22 ~~brutal or heinous behavior indicative of wanton cruelty; or~~

23 (17) (blank) ~~the murdered individual was a disabled~~
24 ~~person and the defendant knew or should have known that the~~
25 ~~murdered individual was disabled. For purposes of this~~
26 ~~paragraph (17), "disabled person" means a person who~~

1 ~~suffers from a permanent physical or mental impairment~~
2 ~~resulting from disease, an injury, a functional disorder,~~
3 ~~or a congenital condition that renders the person incapable~~
4 ~~of adequately providing for his or her own health or~~
5 ~~personal care; or~~

6 (18) (blank) ~~the murder was committed by reason of any~~
7 ~~person's activity as a community policing volunteer or to~~
8 ~~prevent any person from engaging in activity as a community~~
9 ~~policing volunteer; or~~

10 (19) the murdered individual was subject to an order of
11 protection and the murder was committed by a person against
12 whom the same order of protection was issued under the
13 Illinois Domestic Violence Act of 1986; or

14 (20) (blank) ~~the murdered individual was known by the~~
15 ~~defendant to be a teacher or other person employed in any~~
16 ~~school and the teacher or other employee is upon the~~
17 ~~grounds of a school or grounds adjacent to a school, or is~~
18 ~~in any part of a building used for school purposes; or~~

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

22 (c) Consideration of factors in Aggravation and
23 Mitigation.

24 The court shall consider, or shall instruct the jury to
25 consider any aggravating and any mitigating factors which are
26 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 but
3 need not be limited to the following:

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

6 (2) the murder was committed while the defendant was
7 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 the
11 defendant's homicidal conduct or consented to the
12 homicidal act;

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

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

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

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

22 (d) Separate sentencing hearing.

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

1 (c). The proceeding shall be conducted:

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

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

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

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

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

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

14 (e) Evidence and Argument.

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

25 (f) Proof.

26 The burden of proof of establishing the existence of any of

1 the factors set forth in subsection (b) is on the State and
2 shall not be satisfied unless established beyond a reasonable
3 doubt.

4 (g) Procedure - Jury.

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

25 If after weighing the factors in aggravation and
26 mitigation, one or more jurors determines that death is not the

1 appropriate sentence, the court shall sentence the defendant to
2 a term of imprisonment under Chapter V of the Unified Code of
3 Corrections.

4 (h) Procedure - No Jury.

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

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

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

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

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

1 testimony of an informant witness, as defined in Section 115-21
2 of the Code of Criminal Procedure of 1963, concerning the
3 confession or admission of the defendant or that the sole
4 evidence against the defendant is a single eyewitness or single
5 accomplice without any other corroborating evidence. If the
6 court decertifies the case as a capital case under either of
7 the grounds set forth above, the court shall issue a written
8 finding. The State may pursue its right to appeal the
9 decertification pursuant to Supreme Court Rule 604(a)(1). If
10 the court does not decertify the case as a capital case, the
11 matter shall proceed to the eligibility phase of the sentencing
12 hearing.

13 (i) Appellate Procedure.

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

26 (j) Disposition of reversed death sentence.

1 In the event that the death penalty in this Act is held to
2 be unconstitutional by the Supreme Court of the United States
3 or of the State of Illinois, any person convicted of first
4 degree murder shall be sentenced by the court to a term of
5 imprisonment under Chapter V of the Unified Code of
6 Corrections.

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

15 (k) Guidelines for seeking the death penalty.

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

20 (Source: P.A. 96-710, eff. 1-1-10.)