

CHAPTER ELEVEN: HOMICIDE

OVERVIEW OF HOMICIDE LAWS IN ILLINOIS

Homicide is the unlawful killing of another human being. There are several types of homicide: murder, manslaughter, and reckless homicide. All forms of homicide are felonies.

Murder is the unlawful killing of another with intent to kill. Murder is divided into subcategories by degree of seriousness. First degree murder is killing someone with intent to kill or to cause great bodily harm, or knowing that one's actions will cause death or create a strong probability of death or great bodily harm. First degree murder also includes unlawful killing during the commission of a forcible felony. Second degree murder is similar to first degree murder, except at the time of the killing the offender has the unreasonable belief that the killing is justified, or the offender is acting under an intense and sudden passion resulting from being provoked.

Manslaughter and reckless homicide differ from murder because these crimes do not require proof of intent. Under Illinois law, involuntary manslaughter is unintentionally killing another person while engaged in an action that is likely to cause death or great bodily harm if the action is done recklessly. However, if the cause of death is by a person recklessly driving a motor vehicle, the crime is called reckless homicide.

Suicide is taking one's own life. Suicide and attempted suicide no longer are crimes in Illinois. However, it is a crime to induce another to commit suicide.

Illinois is one of 34 states to have fetal homicide laws. That is, Illinois has a homicide law that focuses on fetuses killed as a result of violent acts against pregnant women. In other words, Illinois' homicide laws recognize unborn children as victims throughout the period of pre-natal development

The punishment for homicide in Illinois ranges anywhere from a fine of \$25,000 to a sentence of death.

ILLINOIS STATE STATUTE FOR HOMICIDE (720 ILCS 5/) Criminal Code of 1961 Article 9. Homicide

(720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

Sec. 9-1. First degree Murder - Death penalties - Exceptions - Separate Hearings - Proof - Findings - Appellate procedures - Reversals.

(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

- (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
- (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
- (3) he is attempting or committing a forcible felony other than second degree murder.

(b) Aggravating Factors. A defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of first

degree murder may be sentenced to death if:

(1) the murdered individual was a peace officer or fireman killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, and the defendant knew or should have known that the murdered individual was a peace officer or fireman; or

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

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

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

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

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

(a) the murdered individual:

(i) was actually killed by the defendant, or

(ii) received physical injuries personally

inflicted by the defendant substantially contemporaneously with physical injuries caused by one or more persons for whose conduct the defendant is legally accountable under Section 5-2 of this Code, and the physical injuries inflicted by either the defendant or the other person or persons for whose conduct he is legally accountable caused the death of the murdered individual; and

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

(c) the other felony was an inherently violent crime or the attempt to commit an inherently violent crime. In this subparagraph (c), "inherently violent crime" includes, but is not limited to, armed robbery, robbery, predatory criminal sexual assault of a child, aggravated criminal sexual assault, aggravated kidnapping, aggravated vehicular hijacking,

aggravated arson, aggravated stalking, residential burglary, and home invasion;
or

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

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

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

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

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

(12) the murdered individual was an emergency medical
technician - ambulance, emergency medical technician - intermediate, emergency
medical technician - paramedic, ambulance driver, or other medical assistance or
first aid personnel, employed by a municipality or other governmental unit, killed
in the course of performing his official duties, to prevent the performance of his
official duties, or in retaliation for performing his official duties, and the
defendant knew or should have known that the murdered individual was an
emergency medical technician - ambulance, emergency medical technician -
intermediate, emergency medical technician - paramedic, ambulance driver, or
other medical assistance or first aid personnel; or

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

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

(15) 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; or

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

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

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

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

(20) the murdered individual was known by the 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) the murder was committed by the defendant in connection with or as a result of the offense of terrorism as defined in Section 29D-30 of this Code.

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

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

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

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

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

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

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

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

(d) Separate sentencing hearing.

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

proceeding shall be conducted:

- (1) before the jury that determined the defendant's guilt; or
- (2) before a jury impanelled for the purpose of the proceeding if:
 - A. the defendant was convicted upon a plea of guilty; or
 - B. the defendant was convicted after a trial before the court sitting without a jury; or
 - C. the court for good cause shown discharges the jury that determined the defendant's guilt; or
- (3) before the court alone if the defendant waives a jury for the separate proceeding.

(e) Evidence and Argument.

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

(f) Proof.

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

(g) Procedure - Jury.

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

If after weighing the factors in aggravation and mitigation, one or more jurors determines that death is not the appropriate sentence, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections.

(h) Procedure - No Jury.

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

If the Court determines that one or more of the factors set forth in subsection (b) exists, the Court shall consider any aggravating and mitigating factors as indicated in

subsection (c). If the Court determines, after weighing the factors in aggravation and mitigation, that death is the appropriate sentence, the Court shall sentence the defendant to death.

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

(h-5) Decertification as a capital case.

In a case in which the defendant has been found guilty of first degree murder by a judge or jury, or a case on remand for resentencing, and the State seeks the death penalty as an appropriate sentence, on the court's own motion or the written motion of the defendant, the court may decertify the case as a death penalty case if the court finds that the only evidence supporting the defendant's conviction is the uncorroborated testimony of an informant witness, as defined in Section 115-21 of the Code of Criminal Procedure of 1963, concerning the confession or admission of the defendant or that the sole evidence against the defendant is a single eyewitness or single accomplice without any other corroborating evidence. If the court decertifies the case as a capital case under either of the grounds set forth above, the court shall issue a written finding. The State may pursue its right to appeal the decertification pursuant to Supreme Court Rule 604(a)(1). If the court does not decertify the case as a capital case, the matter shall proceed to the eligibility phase of the sentencing hearing.

(i) Appellate Procedure.

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

(j) Disposition of reversed death sentence.

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

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

(k) Guidelines for seeking the death penalty.

The Attorney General and State's Attorneys Association shall consult on voluntary guidelines for procedures governing whether or not to seek the death penalty. The guidelines do not have the force of law and are only advisory in nature. (Source: P.A. 92-854, eff. 12-5-02; 93-605, eff. 11-19-03.)

(720 ILCS 5/9-1.2) (from Ch. 38, par. 9-1.2)

Sec. 9-1.2. Intentional Homicide of an Unborn Child.

(a) A person commits the offense of intentional homicide of an unborn child if, in

performing acts which cause the death of an unborn child, he without lawful justification:

(1) either intended to cause the death of or do great bodily harm to the pregnant woman or her unborn child or knew that such acts would cause death or great bodily harm to the pregnant woman or her unborn child; or

(2) he knew that his acts created a strong probability of death or great bodily harm to the pregnant woman or her unborn child; and

(3) he knew that the woman was pregnant.

(b) For purposes of this Section, (1) "unborn child" shall mean any individual of the human species from fertilization until birth, and (2) "person" shall not include the pregnant woman whose unborn child is killed.

(c) This Section shall not apply to acts which cause the death of an unborn child if those acts were committed during any abortion, as defined in Section 2 of the Illinois Abortion Law of 1975, as amended, to which the pregnant woman has consented. This Section shall not apply to acts which were committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

(d) Penalty. The sentence for intentional homicide of an unborn child shall be the same as for first degree murder, except that:

(1) the death penalty may not be imposed;

(2) if the person committed the offense while armed with a firearm, 15 years shall be added to the term of imprisonment imposed by the court;

(3) if, during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment imposed by the court;

(4) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

(e) The provisions of this Act shall not be construed to prohibit the prosecution of any person under any other provision of law.

(Source: P.A. 91-404, eff. 1-1-00.)

(720 ILCS 5/9-2) (from Ch. 38, par. 9-2)

Sec. 9-2. Second Degree Murder. (a) A person commits the offense of second degree murder when he commits the offense of first degree murder as defined in paragraphs (1) or (2) of subsection (a) of Section 9-1 of this Code and either of the following mitigating factors are present:

(1) At the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by the individual killed or another whom the offender endeavors to kill, but he negligently or accidentally causes the death of the individual killed; or

(2) At the time of the killing he believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code, but his belief is unreasonable.

(b) Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

(c) When a defendant is on trial for first degree murder and evidence of either of the mitigating factors defined in subsection (a) of this Section has been presented, the burden of proof is on the defendant to prove either mitigating factor by a preponderance of the evidence before the defendant can be found guilty of second degree murder. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of first degree murder and, when appropriately raised, the absence of circumstances at the time of the killing that would justify or exonerate the killing under the principles stated in Article 7 of this Code. In a jury trial for first degree murder in which evidence of either of the mitigating factors defined in subsection (a) of this Section has been presented and the defendant has requested that the jury be given the option of finding the defendant guilty of second degree murder, the jury must be instructed that it may not consider whether the defendant has met his burden of proof with regard to second degree murder until and unless it has first determined that the State has proven beyond a reasonable doubt each of the elements of first degree murder.

(d) Sentence.

Second Degree Murder is a Class 1 felony.

(Source: P.A. 84-1450.)

(720 ILCS 5/9-2.1) (from Ch. 38, par. 9-2.1)

Sec. 9-2.1. Voluntary Manslaughter of an Unborn Child. (a) A person who kills an unborn child without lawful justification commits voluntary manslaughter of an unborn child if at the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by another whom the offender endeavors to kill, but he negligently or accidentally causes the death of the unborn child.

Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

(b) A person who intentionally or knowingly kills an unborn child commits voluntary manslaughter of an unborn child if at the time of the killing he believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code, but his belief is unreasonable.

(c) Sentence. Voluntary Manslaughter of an unborn child is a Class 1 felony.

(d) For purposes of this Section, (1) "unborn child" shall mean any individual of the human species from fertilization until birth, and (2) "person" shall not include the pregnant woman whose unborn child is killed.

(e) This Section shall not apply to acts which cause the death of an unborn child if those acts were committed during any abortion, as defined in Section 2 of the Illinois Abortion Law of 1975, as amended, to which the pregnant woman has consented. This Section shall not apply to acts which were committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

(Source: P.A. 84-1414.)

(720 ILCS 5/9-3) (from Ch. 38, par. 9-3)

Sec. 9-3. Involuntary Manslaughter and Reckless Homicide.

(a) A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly, except in cases in which the cause of the death consists of the driving of a motor vehicle or operating a snowmobile, all-terrain vehicle, or watercraft, in which case the person commits reckless

homicide. A person commits reckless homicide if he or she unintentionally kills an individual while driving a vehicle and using an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.

(b) (Blank).

(c) (Blank).

(d) Sentence.

(1) Involuntary manslaughter is a Class 3 felony.

(2) Reckless homicide is a Class 3 felony.

(e) (Blank).

(e-5) (Blank).

(e-7) Except as otherwise provided in subsection (e-8), in cases involving reckless homicide in which the defendant was driving in a construction or maintenance zone, as defined in Section 11-605 of the Illinois Vehicle Code, the penalty is a Class 2 felony, for which a person, if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 3 years and not more than 14 years.

(e-8) In cases involving reckless homicide in which the defendant was driving in a construction or maintenance zone, as defined in Section 11-605 of the Illinois Vehicle Code, and caused the deaths of 2 or more persons as part of a single course of conduct, the penalty is a Class 2 felony, for which a person, if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 6 years and not more than 28 years.

(e-9) In cases involving reckless homicide in which the defendant drove a vehicle and used an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne, and caused the deaths of 2 or more persons as part of a single course of conduct, the penalty is a Class 2 felony.

(f) In cases involving involuntary manslaughter in which the victim was a family or household member as defined in paragraph (3) of Section 112A-3 of the Code of Criminal Procedure of 1963, the penalty shall be a Class 2 felony, for which a person if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 3 years and not more than 14 years.

(Source: P.A. 92-16, eff. 6-28-01; 93-178, eff. 6-1-04; 93-213, eff. 7-18-03; 93-682, eff. 1-1-05.)

(720 ILCS 5/9-3.1) (from Ch. 38, par. 9-3.1)

Sec. 9-3.1. Concealment of homicidal death. (a) A person commits the offense of concealment of homicidal death when he conceals the death of any other person with knowledge that such other person has died by homicidal means.

(b) Nothing in this Section prevents the defendant from also being charged with and tried for the first degree murder, second degree murder or involuntary manslaughter of the person whose death is concealed. If a person convicted under this Section is also convicted of first degree murder, second degree murder or involuntary manslaughter, the penalty under this Section shall be imposed separately and in addition to the penalty for first degree murder, second degree murder or involuntary manslaughter.

(c) Sentence.

Concealment of homicidal death is a Class 3 felony.

(Source: P.A. 84-1308; 84-1450.)

(720 ILCS 5/9-3.2) (from Ch. 38, par. 9-3.2)

Sec. 9-3.2. Involuntary Manslaughter and Reckless Homicide of an Unborn Child.

(a) A person who unintentionally kills an unborn child without lawful justification

commits involuntary manslaughter of an unborn child if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly, except in cases in which the cause of death consists of the driving of a motor vehicle, in which case the person commits reckless homicide of an unborn child.

(b) Sentence.

(1) Involuntary manslaughter of an unborn child is a Class 3 felony.

(2) Reckless homicide of an unborn child is a Class 3 felony.

(c) For purposes of this Section, (1) "unborn child" shall mean any individual of the human species from fertilization until birth, and (2) "person" shall not include the pregnant woman whose unborn child is killed.

(d) This Section shall not apply to acts which cause the death of an unborn child if those acts were committed during any abortion, as defined in Section 2 of the Illinois Abortion Law of 1975, as amended, to which the pregnant woman has consented. This Section shall not apply to acts which were committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

(e) The provisions of this Section shall not be construed to prohibit the prosecution of any person under any other provision of law, nor shall it be construed to preclude any civil cause of action.

(Source: P.A. 84-1414.)

(720 ILCS 5/9-3.3) (from Ch. 38, par. 9-3.3)

(Text of Section from P.A. 94-556)

Sec. 9-3.3. Drug-induced homicide.

(a) A person who violates Section 401 of the Illinois Controlled Substances Act or Section 55 of the Methamphetamine Control and Community Protection Act by unlawfully delivering a controlled substance to another, and any person dies as a result of the injection, inhalation or ingestion of any amount of that controlled substance, commits the offense of drug-induced homicide.

(b) Sentence. Drug-induced homicide is a Class X felony.

(c) A person who commits drug-induced homicide by violating subsection (a) or subsection (c) of Section 401 of the Illinois Controlled Substances Act or Section 55 of the Methamphetamine Control and Community Protection Act commits a Class X felony for which the defendant shall in addition to a sentence authorized by law, be sentenced to a term of imprisonment of not less than 15 years and not more than 30 years or an extended term of not less than 30 years and not more than 60 years.

(Source: P.A. 94-556, eff. 9-11-05.)

(Text of Section from P.A. 94-560)

Sec. 9-3.3. Drug-induced homicide.

(a) A person who violates Section 401 of the Illinois Controlled Substances Act by unlawfully delivering a controlled substance to another, and any person's death is caused by the injection, inhalation or ingestion of any amount of that controlled substance, commits the offense of drug-induced homicide.

(b) Sentence. Drug-induced homicide is a Class X felony.

(c) A person who commits drug-induced homicide by violating subsection (a) or subsection (c) of Section 401 of the Illinois Controlled Substances Act commits a Class X felony for which the defendant shall in addition to a sentence authorized by law, be sentenced to a term of imprisonment of not less than 15 years and not more than 30 years or an extended term of not less than 30 years and not more than 60

years.

(Source: P.A. 94-560, eff. 1-1-06.)

HOMICIDE CASES IN ILLINOIS

Attempt to apply the statute/s to the following cases:

***People of the State of Illinois v. Jacqueline Annette Williams* Docket Number 85453**

At defendant's trial, James Edwards testified that in November 1995, he was living with Debra and her three children in a two-bedroom apartment in Addison, Illinois. Samantha was 10 years old, Joshua was 7 years old, and Jordan was almost 2 years old. Debra was nine months pregnant and was scheduled to enter the hospital on Sunday, November 19, to have labor induced.

At about 5:30 p.m. on November 16, 1995, Edwards left for his job. When he returned, after leaving work at 2:30 a.m., Jordan met him in the kitchen. Jordan was alive. Edwards found Debra lying on the living room floor between a coffee table and a love seat. She was unresponsive, and Edwards observed a large wound to her stomach. Samantha was lying on the floor in the children's bedroom. Her neck had been slashed. Joshua was missing. Edwards called 911.

Edwards further testified that several items were missing from the apartment, including a Grambling State University Tigers jacket and a pair of poultry shears. In addition, on the bed that he and Debra shared, there was an Ace bandage that Edwards had never seen before.

Patrice Scott testified that, shortly after midnight on November 17, 1995, defendant, who was a friend of hers, came to the Villa Park apartment Scott shared with Dwight Pruitt and Scott's three daughters. Joshua was with defendant, and defendant had blood on her sweater. Joshua was wearing a coat and boots but no socks or pants.

According to Scott, defendant asked if Joshua could spend the night at Scott's apartment because his mother had been shot "out west" during a drug deal, and defendant was going to visit her in the hospital. Defendant also told Scott that she, defendant, had given birth and would bring the new baby with her when she came to retrieve Joshua in the morning.

After defendant left, Scott asked Joshua what his name was. He told her his name and said he needed to use the bathroom. Joshua used the bathroom, and Scott put him to bed on her living room couch. During the night, Scott heard Joshua whimpering and crying in his sleep. Around 5 a.m., Scott arose to feed her newborn, Alexis. Joshua was still whimpering and crying in his sleep. When he awakened around 6 or 7 a.m., he was crying.

Scott testified that she asked Joshua if he was worried about his mother and told him that his mother would be okay. Joshua replied, "No, no, she's not," and said that his mother and sister were dead. He explained that four burglars had come through the window and cut his mother and sister. He said that his little brother had been left in the apartment and asked Scott to get Jordan. Joshua told Scott that he had been hiding in the apartment and that, when the burglars left, he ran out after defendant, who brought him to Scott's apartment. Joshua repeated this story several times.

Scott asked Joshua if he knew who the burglars were. Joshua identified the burglars as Annette, Fedell, Vern, and "Boo-Boo." According to Scott, defendant is usually called Annette, and defendant has a relative named Bo Wilson. Scott admitted that she did not initially tell police that Joshua had named Fedell and "Boo-Boo" as two of the burglars. She testified that she was afraid of Fedell.

Joshua continued crying after he told Scott what had happened to his family. Scott's daughters entered the living room and one of them read Joshua a book. Joshua listened to her read, but his emotional state did not change significantly. When Scott's daughters left for school, Joshua told Scott to chain the door because the burglars might return.

Scott further testified that, around 9 a.m., defendant returned to the Villa Park apartment. Scott informed her that there was a discrepancy between what defendant said had happened to Joshua's mother and what Joshua said had happened. Scott also told defendant that Joshua had named her,

Vern, and Fedell as the "burglars" who had entered his apartment. Defendant became angry at Joshua, cursed at him, and accused him of lying. In response, Joshua asserted repeatedly, "No, no, that's what happened."

According to Scott, defendant then told Joshua that his mother had left him some medicine. Joshua replied, "What medicine, I don't take any medication." Defendant brought him into the kitchen and gave him something, after which he gagged and vomited. Scott again asked defendant about what Joshua had told her that morning. Defendant said that Joshua talked too much and that Caffey had told her to take him south to the "projects."

Scott testified that she then agreed to go to defendant's house so that defendant could give Scott some baby outfits for Alexis. Defendant drove Scott, Alexis, and Joshua in a gray four-door car to her Schaumburg townhouse. At the townhouse, defendant first brought Scott to a bedroom.

Caffey and a white baby boy with blond hair and tape on his stomach were on the bed in the bedroom. Defendant then asked Scott to bring Joshua to the laundry room in the townhouse.

Scott testified that Caffey and an unidentified man were already in the laundry room. Scott denied that this man was Ward or Bo Wilson and denied that Wilson had threatened to kill her. After the unidentified man left, defendant told Caffey, "[Joshua's] got a big mouth. He knows - he knows our names. He said my name, your name and Vern's name." Caffey asked defendant why she had brought Scott to the house and why she had not taken Joshua "out south" as he had instructed. Defendant told Joshua to sit on the day bed in the laundry room and picked up a rope from the floor of the laundry room. She wrapped it around Joshua's neck, and she and Caffey began strangling Joshua with the rope. Joshua and Scott screamed, Scott pushed defendant, and defendant dropped the rope.

Defendant then left the laundry room and returned holding a knife behind her back. According to Scott, Caffey did not instruct defendant to get the knife. When Scott saw the knife, she screamed and asked Caffey and defendant to take her home and to free Joshua. Defendant threw the knife on the bed. Caffey instructed defendant to take Scott home and informed Scott that, if she told anyone what had happened, he would kill her and her whole family. Scott grabbed Alexis and sat in the front seat of the gray car, which was parked in the garage of the townhouse. Defendant instructed Joshua to sit in the back seat, which he did. Scott looked into the back seat and saw Caffey stabbing Joshua as defendant appeared to be holding Joshua's arm. Scott felt Joshua kick the seat and heard him gagging.

Defendant then moved to the driver's seat of the car, and Caffey told her, "You know where to go." Joshua was whimpering in the back seat, and Scott was afraid for her life and her baby's life. They drove to Maywood, where defendant and Caffey took Joshua from the car and helped him walk to the back of a building. Defendant and Caffey returned without Joshua. Defendant left Caffey in Maywood and drove Scott to her apartment in Villa Park.

When Scott and defendant arrived at Scott's apartment, defendant asked Scott for cleaning products to remove vomit from her car. Scott gave her some cleaning supplies, and defendant drove away.

Pruitt's testimony about the events in Villa Park essentially mirrored Scott's. He added that he was watching the midday news around 11 a.m. on November 17 when he saw a television news story about the homicides in Addison. He attempted to call the police but could not find a working telephone until after defendant left Scott at the Villa Park apartment, around 12 p.m. After the police arrived, Pruitt and Scott accompanied them to Maywood, and Scott showed police the location where defendant and Caffey had left Joshua.

Pruitt admitted that, at the time of trial, he was serving a prison sentence for a weapons charge. He also testified that he was a gang member and had previous convictions for armed robbery and unlawful possession of a controlled substance.

Defendant's sister, Tina Martin, testified that, at 3:30 a.m. on November 17, 1995, she received a call from defendant. Defendant stated that she had just given birth and was at a friend's house.

Martin and her mother went to the friend's house, where they saw defendant, Caffey, and a baby with light coloring.

Members of several different police departments and the Cook and Du Page County state's attorneys' offices testified to the circumstances of defendant's arrest and her statements to them. They testified that, during the afternoon of November 17, Joshua's partially clothed body was found in an alley in Maywood. That night, police arrested defendant and Caffey at defendant's Schaumburg townhouse. At the time of their arrest, defendant was carrying Elijah in an infant carrier, and Caffey was wearing the Grambling Tigers jacket taken from the Addison apartment. Police examined Elijah, who was alive, and observed a bloody piece of gauze taped over his navel.

In her initial conversations with police and prosecutors, defendant minimized her role in the murders and kidnappings. For example, during some conversations, she stated that Elijah was her son, and she had given birth at a friend's house on November 16. Defendant also stated that Caffey was the baby's father and that the baby's name was Fedell Caffey, Jr. In other conversations, defendant told police that Caffey and Ward went to the Addison apartment to speak to Debra about the unborn baby and to teach Debra a lesson. Defendant knew there would be "trouble" when they went to the apartment. At Caffey and Ward's request, defendant met them in the apartment building parking lot at about 10 p.m. on November 16. Caffey exited the building and handed a newborn baby to defendant.

Similarly, defendant attributed much of the responsibility for Joshua's kidnapping and murder to Scott and Caffey. For example, she told police that Scott gave Joshua Visine and soda pop to drink. Defendant also said that Caffey and Scott wanted her to leave Joshua in the "projects," but she could not, so she brought him to the Schaumburg townhouse. According to defendant, Caffey was angry that she brought Joshua to the townhouse and asked her to get a knife, which she did. Caffey then instructed defendant and Scott to pull on the ends of a cord wrapped around Joshua's neck. Caffey told defendant to drive to Maywood and stabbed Joshua during the car ride. Defendant further stated that, after they left Joshua in an alley in Maywood, Scott threw a sheet in which Joshua had been wrapped out of the car window as they drove by the Baldwin piano factory.

In a written statement defendant signed on November 18, however, defendant admitted to a greater role in the murders and kidnappings of the members of the Evans family. She stated that she and Caffey had been dating for two years. Throughout their relationship, defendant and Caffey had attempted to conceive a child. Caffey wanted a baby boy with light skin so that the baby would resemble him. Defendant had become pregnant, but one pregnancy had ended in an abortion and another had ended with a miscarriage.

According to defendant's statement, Ward was upset with Debra during the four months that preceded the murders. On November 16, 1995, Ward, Caffey, and defendant drove to Debra's apartment in the gray Sable because Ward wanted to talk to Debra about their son Jordan. Debra was pregnant and planned to deliver her baby on Monday. Debra had chosen to name the baby Elijah.

Defendant further stated that she, Caffey, and Ward arrived at the Evans apartment at about 9 p.m. Debra let them into the building and apartment. Debra sat on a small couch, and she and defendant had a conversation about their children. Subsequently, while defendant was in the bathroom, she heard a loud ringing noise. She exited the bathroom and saw Debra lying on her back. Debra's eyes were blinking rapidly, and bubbles were coming from her mouth. Caffey was holding a small silver automatic gun. Ward was standing beside Debra and appeared to be stabbing her in the neck.

Caffey then made a cut "crossways" on Debra's abdomen with the poultry shears. As he cut, defendant could see the head of a baby. She and Caffey wanted the baby because it was a boy. Caffey pulled the baby from Debra and cut the umbilical cord while defendant stood next to him. Caffey did not want the baby at that point because he thought he had killed the baby, but

defendant still wanted the baby. She blew into the baby's nose and mouth, and he began breathing.

Defendant further stated that, as she dressed the baby in a sleeper, Caffey and Ward went into the children's bedroom. Joshua ran from the bedroom crying that Caffey and Ward were hurting his sister. Defendant covered Debra with a blanket, but when Joshua saw his mother, he vomited and ran to the bathroom.

Defendant began to leave the apartment with the baby. Joshua grabbed her legs and said that he did not want to stay there because Caffey and Ward were bad. Defendant and Joshua exited the apartment through the back entrance. Caffey and Ward joined them in the car and they all drove to a location on Roosevelt Road, where Ward exited the car. Defendant and Caffey then drove to Scott's, where they left Joshua. Defendant lied and told Scott that Joshua's mother had been shot at a "drug spot."

Defendant stated that she and Caffey then drove to the house of a friend, where they placed a bandage on the baby's navel. Defendant and Caffey spent the night at the Schaumburg townhouse, where they washed some of the baby's blood from the coat Caffey had stolen from the Addison apartment.

On Friday morning, defendant returned to Scott's apartment and learned that Joshua had told Scott about the murders. Defendant knew at that point that they "were in deep trouble." She took Joshua to the Schaumburg townhouse. Scott came with them because she wanted to see defendant's baby.

According to defendant's written statement, Caffey and Ward were at the townhouse. They were all afraid that Joshua would identify them. Caffey told defendant to tie a scarf around Joshua's mouth, which she did. Ward left the townhouse at that point. Defendant asked Joshua to sit on the bed and tried to poison him by having him swallow "antiseptic." Caffey asked defendant to get a knife. Defendant did so and gave Caffey the knife. Joshua was screaming and frightened. Scott was also frightened because Caffey was threatening her.

Defendant further stated that they put Joshua in the car on the floor behind the driver's seat. Defendant sat in the driver's seat, and Caffey sat in the back seat. Caffey wrapped a cord around Joshua's neck several times and ordered defendant and Scott to pull on the ends of the cord. Joshua was screaming, crying, and moaning. Defendant and Scott dropped the cord, and Caffey began stabbing Joshua. Defendant drove to Maywood, where she pulled into an alley. She removed the sheet that was wrapped around Joshua and left him in the alley. Defendant dumped the sheet at a piano company and drove Scott to her apartment. They killed Joshua because he knew who committed the murders.

People of the State of Illinois v. Jean Patton No. 1-03-1317

Following a jury trial, defendant Jean Payton was found guilty of first degree murder and sentenced to 25 years in prison. On appeal, defendant contends that: (1) the trial court improperly instructed the jury regarding first degree murder and precluded the jury from considering the offense of second degree murder; (2) the trial court provided an improper response to the jury's question regarding the elements of first degree murder; (3) her conviction for first degree murder was improper where the offense of aggravated battery was insufficient to support a felony murder conviction; (4) the trial court's jury instructions on involuntary manslaughter were improper; (5) defendant was denied her right to a fair trial where the prosecutor made improper closing remarks; and (6) her sentence is excessive. For the following reasons, we reverse and remand for a new trial.

I. Background

The evidence at trial showed that on August 31, 2000, at about 1 a.m., Kiffany Davis was standing outside a liquor store near Roosevelt and Avers Streets, in Chicago, with her twin sister Tiffany Davis, Matrice Yarbrough and defendant. Samuel Clayton was inside a restaurant adjacent to the liquor store.

Defendant went into the liquor store to purchase beer for Matrice, who was underage. While Kiffany, Tiffany and Matrice waited in front of the liquor store, Brian Alford approached 18-year-old Kiffany and asked her if she would be his girlfriend. Kiffany laughed and told Alford that she was not interested. Kiffany testified that Alford appeared to be 40 years old and drunk at the time and that she thought "it was funny" that he asked her to be his girlfriend.

Defendant then came out of the liquor store and handed Matrice a bag containing beer. Defendant heard Alford speaking to Kiffany and told him to leave her alone and that he was too old for her. Kiffany testified that defendant argued with Alford and began "cussing him out." Kiffany, Tiffany and Matrice went into the liquor store to purchase cigarettes, and when they came back, Alford and defendant were still arguing. Kiffany testified that Alford called defendant a "15-cent hoe" and defendant looked like she was going to hit him. Alford then pulled a box cutter from his pocket, but the blade was not out.

While Alford was holding the box cutter, Clayton came out of the restaurant, approached Alford and exchanged words with him. Kiffany testified that Alford pushed Clayton and then ran away, but he was no longer holding the box cutter. Matrice testified that she saw Alford put the box cutter in his pocket and back up into the middle of the street while holding his hands up "like he didn't want no problem, no trouble." Matrice then saw Alford back up around a car that was parked in the street and run down the street toward a gas station. Defendant and Clayton ran after Alford and caught up to him near the gas station, about a half block away. Clayton punched Alford in the nose and the head, and Alford fell facedown onto the pavement.

Kiffany testified that she saw Alford attempt to get up and he had his upper body lifted when defendant walked over to him and started punching him in the face. Alford fell and defendant started kicking him. Kiffany further testified that defendant repeatedly kicked Alford in the head, including after Alford was lying still and no longer trying to stand up. Kiffany went inside the restaurant and asked someone to call the police. Matrice testified that she was talking to her boyfriend and did not see defendant strike Alford but saw Clayton and defendant walk back toward the liquor store together while Alford was lying on the ground. When defendant returned to the area where Matrice was standing, Matrice saw defendant shaking her hands and heard her say that her hands were swollen. Shortly thereafter, Kiffany, Tiffany, Matrice and defendant all walked to defendant's home. Tiffany testified that while the group was walking, defendant stated that she had "kicked the ---- out of that mother-----."

Paramedic John Leen testified that when he arrived at the gas station, Alford was lying face down on the ground. Alford was bleeding from his nose and mouth, and had lacerations to his chin and above his eye. Alford was taken to the hospital where he remained in a coma until he died on September 9, 2000. Dr. Adrienne Segovia testified, as an expert in forensic pathology, that she reviewed the report of the examining physician, and her opinion was that Alford died as a result of cerebral injuries, caused by blunt head trauma.

People of the State of Illinois v. Soukpraseuth Singmouangthong No. 2-01-0751

Defendant, Soukpraseuth Singmouangthong, was convicted of eight counts of reckless homicide following a jury trial in the circuit court of Winnebago County.

On October 9, 1999, at approximately 8:30 a.m., defendant was driving his car on 11th Street in Rockford when he struck a van. The van's four occupants died as a result of the crash. It was a foggy morning and visibility was approximately 50 feet. Defendant was returning home from a Denny's restaurant after having breakfast there. Defendant testified that he had spent the prior night at a birthday party at a friend's house. He acknowledged having consumed four or five beers over the course of the night. Defendant did not feel that he was under the influence of alcohol. Two individuals who attended the party testified that they did not believe defendant was intoxicated. Additionally, a paramedic who treated defendant following the accident stated that he did not detect any alcohol on defendant. A police officer testified that he made no notation in his report that defendant appeared to be under the influence of alcohol. A blood test, the accuracy of

which was vigorously disputed by defendant, showed defendant had a serum blood alcohol level of 198 milliliters per deciliter of whole blood. A forensic pathologist testified that such a reading would indicate that defendant's blood-alcohol content was between .158 and .174.

Defendant stated that he was traveling at approximately 40 miles per hour at the time of the accident. Accident reconstruction evidence indicated that defendant's speed could have been from as low as 46 miles per hour to as high as 84 miles per hour. Two eyewitnesses, who observed defendant shortly before the crash, estimated his speed at 65 to 70 miles per hour. Additional evidence will be discussed as it pertains to the issues defendant raises.

QUESTIONS FOR REVIEW

1. Which of the following is not a type of homicide?

- A. Murder
- B. Manslaughter
- C. Reckless homicide
- D. Suicide

Answer: D

2. Manslaughter and reckless homicide differ from murder because these crimes do not require proof of _____.

- A. Intent
- B. Action
- C. Motive
- D. Harm

Answer: A

3. True or False? Suicide is a crime in Illinois.

Answer: False

4. True or False? Illinois is one of 34 states to have fetal homicide laws.

Answer: True

5. Which of the following is a punishment for homicide?

- A. A fine
- B. Death penalty
- C. Both A and B
- D. None of the above

Answer: C

WEB RESOURCES

- <http://www.ncsl.org/programs/health/fethom.htm> National Conference of State Legislatures
- <http://www.weblocator.com/attorney/il/law/felonmisdem.html> Guide to Illinois Law
- <http://www.state.il.us/court/Opinions/AppellateCourt/2005/1stDistrict/March/Html/1031317.htm> *People of the State of Illinois v. Jean Patton*

- <http://www.state.il.us/court/Opinions/SupremeCourt/2000/October/Opinions/Html/85453.htm> *People of the state of Illinois v. Jacqueline Williams*
- <http://www.state.il.us/court/Opinions/AppellateCourt/2002/2ndDistrict/October/Html/2010751.htm> *People of the State of Illinois v. Soukpraseuth Singmouangthong*