



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2406

by Rep. Avery Bourne

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.2

Amends the Unified Code of Corrections concerning factors in aggravation. Provides that if the defendant verbally indicated or demonstrated by his or her actions to the victim that he or she was presently armed with a firearm or other dangerous weapon, including, but not limited to, a knife, club, ax, or bludgeon even if the defendant did not possess a firearm or dangerous weapon when he or she committed the offense, including the possession of an air rifle, shall be accorded weight in favor of imposing a term of imprisonment or may be considered by the court as reasons to impose a more serve sentence. Makes technical changes.

LRB101 06832 SLF 51861 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 Unified Code of Corrections is amended by
5 changing Section 5-5-3.2 as follows:

6 (730 ILCS 5/5-5-3.2)

7 Sec. 5-5-3.2. Factors in aggravation and extended-term
8 sentencing.

9 (a) The following factors shall be accorded weight in favor
10 of imposing a term of imprisonment or may be considered by the
11 court as reasons to impose a more severe sentence under Section
12 5-8-1 or Article 4.5 of Chapter V:

13 (1) the defendant's conduct caused or threatened
14 serious harm;

15 (2) the defendant received compensation for committing
16 the offense;

17 (3) the defendant has a history of prior delinquency or
18 criminal activity;

19 (4) the defendant, by the duties of his office or by
20 his position, was obliged to prevent the particular offense
21 committed or to bring the offenders committing it to
22 justice;

23 (5) the defendant held public office at the time of the

1 offense, and the offense related to the conduct of that
2 office;

3 (6) the defendant utilized his professional reputation
4 or position in the community to commit the offense, or to
5 afford him an easier means of committing it;

6 (7) the sentence is necessary to deter others from
7 committing the same crime;

8 (8) the defendant committed the offense against a
9 person 60 years of age or older or such person's property;

10 (9) the defendant committed the offense against a
11 person who has a physical disability or such person's
12 property;

13 (10) by reason of another individual's actual or
14 perceived race, color, creed, religion, ancestry, gender,
15 sexual orientation, physical or mental disability, or
16 national origin, the defendant committed the offense
17 against (i) the person or property of that individual; (ii)
18 the person or property of a person who has an association
19 with, is married to, or has a friendship with the other
20 individual; or (iii) the person or property of a relative
21 (by blood or marriage) of a person described in clause (i)
22 or (ii). For the purposes of this Section, "sexual
23 orientation" has the meaning ascribed to it in paragraph
24 (b-1) of Section 1-103 of the Illinois Human Rights Act;

25 (11) the offense took place in a place of worship or on
26 the grounds of a place of worship, immediately prior to,

1 during or immediately following worship services. For
2 purposes of this subparagraph, "place of worship" shall
3 mean any church, synagogue or other building, structure or
4 place used primarily for religious worship;

5 (12) the defendant was convicted of a felony committed
6 while he or she was released on bail or his or her own
7 recognizance pending trial for a prior felony and was
8 convicted of such prior felony, or the defendant was
9 convicted of a felony committed while he was serving a
10 period of probation, conditional discharge, or mandatory
11 supervised release under subsection (d) of Section 5-8-1
12 for a prior felony;

13 (13) the defendant committed or attempted to commit a
14 felony while he or she was wearing a bulletproof vest. For
15 the purposes of this paragraph (13), a bulletproof vest is
16 any device which is designed for the purpose of protecting
17 the wearer from bullets, shot or other lethal projectiles;

18 (14) the defendant held a position of trust or
19 supervision such as, but not limited to, family member as
20 defined in Section 11-0.1 of the Criminal Code of 2012,
21 teacher, scout leader, baby sitter, or day care worker, in
22 relation to a victim under 18 years of age, and the
23 defendant committed an offense in violation of Section
24 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-11,
25 11-14.4 except for an offense that involves keeping a place
26 of juvenile prostitution, 11-15.1, 11-19.1, 11-19.2,

1 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14, 12-14.1, 12-15
2 or 12-16 of the Criminal Code of 1961 or the Criminal Code
3 of 2012 against that victim;

4 (15) the defendant committed an offense related to the
5 activities of an organized gang. For the purposes of this
6 factor, "organized gang" has the meaning ascribed to it in
7 Section 10 of the Streetgang Terrorism Omnibus Prevention
8 Act;

9 (16) the defendant committed an offense in violation of
10 one of the following Sections while in a school, regardless
11 of the time of day or time of year; on any conveyance
12 owned, leased, or contracted by a school to transport
13 students to or from school or a school related activity; on
14 the real property of a school; or on a public way within
15 1,000 feet of the real property comprising any school:
16 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,
17 11-1.50, 11-1.60, 11-14.4, 11-15.1, 11-17.1, 11-18.1,
18 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
19 12-6, 12-6.1, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,
20 18-2, or 33A-2, or Section 12-3.05 except for subdivision
21 (a)(4) or (g)(1), of the Criminal Code of 1961 or the
22 Criminal Code of 2012;

23 (16.5) the defendant committed an offense in violation
24 of one of the following Sections while in a day care
25 center, regardless of the time of day or time of year; on
26 the real property of a day care center, regardless of the

1 time of day or time of year; or on a public way within
2 1,000 feet of the real property comprising any day care
3 center, regardless of the time of day or time of year:
4 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,
5 11-1.50, 11-1.60, 11-14.4, 11-15.1, 11-17.1, 11-18.1,
6 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
7 12-6, 12-6.1, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,
8 18-2, or 33A-2, or Section 12-3.05 except for subdivision
9 (a)(4) or (g)(1), of the Criminal Code of 1961 or the
10 Criminal Code of 2012;

11 (17) the defendant committed the offense by reason of
12 any person's activity as a community policing volunteer or
13 to prevent any person from engaging in activity as a
14 community policing volunteer. For the purpose of this
15 Section, "community policing volunteer" has the meaning
16 ascribed to it in Section 2-3.5 of the Criminal Code of
17 2012;

18 (18) the defendant committed the offense in a nursing
19 home or on the real property comprising a nursing home. For
20 the purposes of this paragraph (18), "nursing home" means a
21 skilled nursing or intermediate long term care facility
22 that is subject to license by the Illinois Department of
23 Public Health under the Nursing Home Care Act, the
24 Specialized Mental Health Rehabilitation Act of 2013, the
25 ID/DD Community Care Act, or the MC/DD Act;

26 (19) the defendant was a federally licensed firearm

1 dealer and was previously convicted of a violation of
2 subsection (a) of Section 3 of the Firearm Owners
3 Identification Card Act and has now committed either a
4 felony violation of the Firearm Owners Identification Card
5 Act or an act of armed violence while armed with a firearm;

6 (20) the defendant (i) committed the offense of
7 reckless homicide under Section 9-3 of the Criminal Code of
8 1961 or the Criminal Code of 2012 or the offense of driving
9 under the influence of alcohol, other drug or drugs,
10 intoxicating compound or compounds or any combination
11 thereof under Section 11-501 of the Illinois Vehicle Code
12 or a similar provision of a local ordinance and (ii) was
13 operating a motor vehicle in excess of 20 miles per hour
14 over the posted speed limit as provided in Article VI of
15 Chapter 11 of the Illinois Vehicle Code;

16 (21) the defendant (i) committed the offense of
17 reckless driving or aggravated reckless driving under
18 Section 11-503 of the Illinois Vehicle Code and (ii) was
19 operating a motor vehicle in excess of 20 miles per hour
20 over the posted speed limit as provided in Article VI of
21 Chapter 11 of the Illinois Vehicle Code;

22 (22) the defendant committed the offense against a
23 person that the defendant knew, or reasonably should have
24 known, was a member of the Armed Forces of the United
25 States serving on active duty. For purposes of this clause
26 (22), the term "Armed Forces" means any of the Armed Forces

1 of the United States, including a member of any reserve
2 component thereof or National Guard unit called to active
3 duty;

4 (23) the defendant committed the offense against a
5 person who was elderly or infirm or who was a person with a
6 disability by taking advantage of a family or fiduciary
7 relationship with the elderly or infirm person or person
8 with a disability;

9 (24) the defendant committed any offense under Section
10 11-20.1 of the Criminal Code of 1961 or the Criminal Code
11 of 2012 and possessed 100 or more images;

12 (25) the defendant committed the offense while the
13 defendant or the victim was in a train, bus, or other
14 vehicle used for public transportation;

15 (26) the defendant committed the offense of child
16 pornography or aggravated child pornography, specifically
17 including paragraph (1), (2), (3), (4), (5), or (7) of
18 subsection (a) of Section 11-20.1 of the Criminal Code of
19 1961 or the Criminal Code of 2012 where a child engaged in,
20 solicited for, depicted in, or posed in any act of sexual
21 penetration or bound, fettered, or subject to sadistic,
22 masochistic, or sadomasochistic abuse in a sexual context
23 and specifically including paragraph (1), (2), (3), (4),
24 (5), or (7) of subsection (a) of Section 11-20.1B or
25 Section 11-20.3 of the Criminal Code of 1961 where a child
26 engaged in, solicited for, depicted in, or posed in any act

1 of sexual penetration or bound, fettered, or subject to
2 sadistic, masochistic, or sadomasochistic abuse in a
3 sexual context;

4 (27) the defendant committed the offense of first
5 degree murder, assault, aggravated assault, battery,
6 aggravated battery, robbery, armed robbery, or aggravated
7 robbery against a person who was a veteran and the
8 defendant knew, or reasonably should have known, that the
9 person was a veteran performing duties as a representative
10 of a veterans' organization. For the purposes of this
11 paragraph (27), "veteran" means an Illinois resident who
12 has served as a member of the United States Armed Forces, a
13 member of the Illinois National Guard, or a member of the
14 United States Reserve Forces; and "veterans' organization"
15 means an organization comprised of members of which
16 substantially all are individuals who are veterans or
17 spouses, widows, or widowers of veterans, the primary
18 purpose of which is to promote the welfare of its members
19 and to provide assistance to the general public in such a
20 way as to confer a public benefit;

21 (28) the defendant committed the offense of assault,
22 aggravated assault, battery, aggravated battery, robbery,
23 armed robbery, or aggravated robbery against a person that
24 the defendant knew or reasonably should have known was a
25 letter carrier or postal worker while that person was
26 performing his or her duties delivering mail for the United

1 States Postal Service;

2 (29) the defendant committed the offense of criminal
3 sexual assault, aggravated criminal sexual assault,
4 criminal sexual abuse, or aggravated criminal sexual abuse
5 against a victim with an intellectual disability, and the
6 defendant holds a position of trust, authority, or
7 supervision in relation to the victim;

8 (30) the defendant committed the offense of promoting
9 juvenile prostitution, patronizing a prostitute, or
10 patronizing a minor engaged in prostitution and at the time
11 of the commission of the offense knew that the prostitute
12 or minor engaged in prostitution was in the custody or
13 guardianship of the Department of Children and Family
14 Services; ~~or~~

15 (31) the defendant (i) committed the offense of driving
16 while under the influence of alcohol, other drug or drugs,
17 intoxicating compound or compounds or any combination
18 thereof in violation of Section 11-501 of the Illinois
19 Vehicle Code or a similar provision of a local ordinance
20 and (ii) the defendant during the commission of the offense
21 was driving his or her vehicle upon a roadway designated
22 for one-way traffic in the opposite direction of the
23 direction indicated by official traffic control devices;
24 or -

25 (32) the defendant verbally indicated or demonstrated
26 by his or her actions to the victim that he or she was

1 presently armed with a firearm or other dangerous weapon,
2 including, but not limited to, a knife, club, ax, or
3 bludgeon even if it that the defendant did not possess a
4 firearm or dangerous weapon when he or she committed the
5 offense, including the possession of an air rifle as
6 defined in Section 24.8-0.1 of the Criminal Code of 2012.

7 In ~~For the purposes of~~ this Section:

8 "School" is defined as a public or private elementary or
9 secondary school, community college, college, or university.

10 "Day care center" means a public or private State certified
11 and licensed day care center as defined in Section 2.09 of the
12 Child Care Act of 1969 that displays a sign in plain view
13 stating that the property is a day care center.

14 "Intellectual disability" means significantly subaverage
15 intellectual functioning which exists concurrently with
16 impairment in adaptive behavior.

17 "Public transportation" means the transportation or
18 conveyance of persons by means available to the general public,
19 and includes paratransit services.

20 "Traffic control devices" means all signs, signals,
21 markings, and devices that conform to the Illinois Manual on
22 Uniform Traffic Control Devices, placed or erected by authority
23 of a public body or official having jurisdiction, for the
24 purpose of regulating, warning, or guiding traffic.

25 (b) The following factors, related to all felonies, may be
26 considered by the court as reasons to impose an extended term

1 sentence under Section 5-8-2 upon any offender:

2 (1) When a defendant is convicted of any felony, after
3 having been previously convicted in Illinois or any other
4 jurisdiction of the same or similar class felony or greater
5 class felony, when such conviction has occurred within 10
6 years after the previous conviction, excluding time spent
7 in custody, and such charges are separately brought and
8 tried and arise out of different series of acts; or

9 (2) When a defendant is convicted of any felony and the
10 court finds that the offense was accompanied by
11 exceptionally brutal or heinous behavior indicative of
12 wanton cruelty; or

13 (3) When a defendant is convicted of any felony
14 committed against:

15 (i) a person under 12 years of age at the time of
16 the offense or such person's property;

17 (ii) a person 60 years of age or older at the time
18 of the offense or such person's property; or

19 (iii) a person who had a physical disability at the
20 time of the offense or such person's property; or

21 (4) When a defendant is convicted of any felony and the
22 offense involved any of the following types of specific
23 misconduct committed as part of a ceremony, rite,
24 initiation, observance, performance, practice or activity
25 of any actual or ostensible religious, fraternal, or social
26 group:

1 (i) the brutalizing or torturing of humans or
2 animals;

3 (ii) the theft of human corpses;

4 (iii) the kidnapping of humans;

5 (iv) the desecration of any cemetery, religious,
6 fraternal, business, governmental, educational, or
7 other building or property; or

8 (v) ritualized abuse of a child; or

9 (5) When a defendant is convicted of a felony other
10 than conspiracy and the court finds that the felony was
11 committed under an agreement with 2 or more other persons
12 to commit that offense and the defendant, with respect to
13 the other individuals, occupied a position of organizer,
14 supervisor, financier, or any other position of management
15 or leadership, and the court further finds that the felony
16 committed was related to or in furtherance of the criminal
17 activities of an organized gang or was motivated by the
18 defendant's leadership in an organized gang; or

19 (6) When a defendant is convicted of an offense
20 committed while using a firearm with a laser sight attached
21 to it. In this paragraph (6) ~~For purposes of this~~
22 ~~paragraph,~~ "laser sight" has the meaning ascribed to it in
23 Section 26-7 of the Criminal Code of 2012; or

24 (7) When a defendant who was at least 17 years of age
25 at the time of the commission of the offense is convicted
26 of a felony and has been previously adjudicated a

1 delinquent minor under the Juvenile Court Act of 1987 for
2 an act that if committed by an adult would be a Class X or
3 Class 1 felony when the conviction has occurred within 10
4 years after the previous adjudication, excluding time
5 spent in custody; or

6 (8) When a defendant commits any felony and the
7 defendant used, possessed, exercised control over, or
8 otherwise directed an animal to assault a law enforcement
9 officer engaged in the execution of his or her official
10 duties or in furtherance of the criminal activities of an
11 organized gang in which the defendant is engaged; or

12 (9) When a defendant commits any felony and the
13 defendant knowingly video or audio records the offense with
14 the intent to disseminate the recording.

15 (c) The following factors may be considered by the court as
16 reasons to impose an extended term sentence under Section 5-8-2
17 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

18 (1) When a defendant is convicted of first degree
19 murder, after having been previously convicted in Illinois
20 of any offense listed under paragraph (c)(2) of Section
21 5-5-3 (~~730 ILCS 5/5-5-3~~), when that conviction has occurred
22 within 10 years after the previous conviction, excluding
23 time spent in custody, and the charges are separately
24 brought and tried and arise out of different series of
25 acts.

26 (1.5) When a defendant is convicted of first degree

1 murder, after having been previously convicted of domestic
2 battery (720 ILCS 5/12-3.2) or aggravated domestic battery
3 (720 ILCS 5/12-3.3) committed on the same victim or after
4 having been previously convicted of violation of an order
5 of protection (720 ILCS 5/12-30) in which the same victim
6 was the protected person.

7 (2) When a defendant is convicted of voluntary
8 manslaughter, second degree murder, involuntary
9 manslaughter, or reckless homicide in which the defendant
10 has been convicted of causing the death of more than one
11 individual.

12 (3) When a defendant is convicted of aggravated
13 criminal sexual assault or criminal sexual assault, when
14 there is a finding that aggravated criminal sexual assault
15 or criminal sexual assault was also committed on the same
16 victim by one or more other individuals, and the defendant
17 voluntarily participated in the crime with the knowledge of
18 the participation of the others in the crime, and the
19 commission of the crime was part of a single course of
20 conduct during which there was no substantial change in the
21 nature of the criminal objective.

22 (4) If the victim was under 18 years of age at the time
23 of the commission of the offense, when a defendant is
24 convicted of aggravated criminal sexual assault or
25 predatory criminal sexual assault of a child under
26 subsection (a)(1) of Section 11-1.40 or subsection (a)(1)

1 of Section 12-14.1 of the Criminal Code of 1961 or the
2 Criminal Code of 2012 (720 ILCS 5/11-1.40 or 5/12-14.1).

3 (5) When a defendant is convicted of a felony violation
4 of Section 24-1 of the Criminal Code of 1961 or the
5 Criminal Code of 2012 ~~(720 ILCS 5/24-1)~~ and there is a
6 finding that the defendant is a member of an organized
7 gang.

8 (6) When a defendant was convicted of unlawful use of
9 weapons under Section 24-1 of the Criminal Code of 1961 or
10 the Criminal Code of 2012 ~~(720 ILCS 5/24-1)~~ for possessing
11 a weapon that is not readily distinguishable as one of the
12 weapons enumerated in Section 24-1 of the Criminal Code of
13 1961 or the Criminal Code of 2012 (720 ILCS 5/24-1).

14 (7) When a defendant is convicted of an offense
15 involving the illegal manufacture of a controlled
16 substance under Section 401 of the Illinois Controlled
17 Substances Act ~~(720 ILCS 570/401)~~, the illegal manufacture
18 of methamphetamine under Section 25 of the Methamphetamine
19 Control and Community Protection Act ~~(720 ILCS 646/25)~~, or
20 the illegal possession of explosives and an emergency
21 response officer in the performance of his or her duties is
22 killed or injured at the scene of the offense while
23 responding to the emergency caused by the commission of the
24 offense. In this paragraph, "emergency" means a situation
25 in which a person's life, health, or safety is in jeopardy;
26 and "emergency response officer" means a peace officer,

1 community policing volunteer, fireman, emergency medical
2 technician-ambulance, emergency medical
3 technician-intermediate, emergency medical
4 technician-paramedic, ambulance driver, other medical
5 assistance or first aid personnel, or hospital emergency
6 room personnel.

7 (8) When the defendant is convicted of attempted mob
8 action, solicitation to commit mob action, or conspiracy to
9 commit mob action under Section 8-1, 8-2, or 8-4 of the
10 Criminal Code of 2012, where the criminal object is a
11 violation of Section 25-1 of the Criminal Code of 2012, and
12 an electronic communication is used in the commission of
13 the offense. In ~~For the purposes of~~ this paragraph (8),
14 "electronic communication" shall have the meaning provided
15 in Section 26.5-0.1 of the Criminal Code of 2012.

16 (d) In ~~For the purposes of~~ this Section, "organized gang"
17 has the meaning ascribed to it in Section 10 of the Illinois
18 Streetgang Terrorism Omnibus Prevention Act.

19 (e) The court may impose an extended term sentence under
20 Article 4.5 of Chapter V upon an offender who has been
21 convicted of a felony violation of Section 11-1.20, 11-1.30,
22 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or
23 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012
24 when the victim of the offense is under 18 years of age at the
25 time of the commission of the offense and, during the
26 commission of the offense, the victim was under the influence

1 of alcohol, regardless of whether or not the alcohol was
2 supplied by the offender; and the offender, at the time of the
3 commission of the offense, knew or should have known that the
4 victim had consumed alcohol.

5 (Source: P.A. 99-77, eff. 1-1-16; 99-143, eff. 7-27-15; 99-180,
6 eff. 7-29-15; 99-283, eff. 1-1-16; 99-347, eff. 1-1-16; 99-642,
7 eff. 7-28-16; 100-1053, eff. 1-1-19.)