

HB0303



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0303

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.2

Amends the Unified Code of Corrections. Provides that it is an aggravating factor in sentencing that the defendant committed the offense of driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof in violation of the Illinois Vehicle Code or a similar provision of a local ordinance and the defendant during the commission of the offense was driving his or her vehicle upon a roadway designated for one-way traffic in the opposite direction of the direction indicated by official traffic control devices.

LRB100 05313 RLC 15324 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 was released on bail or his own recognizance
7 pending trial for a prior felony and was convicted of such
8 prior felony, or the defendant was convicted of a felony
9 committed while he was serving a period of probation,
10 conditional discharge, or mandatory supervised release
11 under subsection (d) of Section 5-8-1 for a prior felony;

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

17 (14) the defendant held a position of trust or
18 supervision such as, but not limited to, family member as
19 defined in Section 11-0.1 of the Criminal Code of 2012,
20 teacher, scout leader, baby sitter, or day care worker, in
21 relation to a victim under 18 years of age, and the
22 defendant committed an offense in violation of Section
23 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-11,
24 11-14.4 except for an offense that involves keeping a place
25 of juvenile prostitution, 11-15.1, 11-19.1, 11-19.2,
26 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14, 12-14.1, 12-15

1 or 12-16 of the Criminal Code of 1961 or the Criminal Code
2 of 2012 against that victim;

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

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

22 (16.5) the defendant committed an offense in violation
23 of one of the following Sections while in a day care
24 center, regardless of the time of day or time of year; on
25 the real property of a day care center, regardless of the
26 time of day or time of year; or on a public way within

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

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

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

25 (19) the defendant was a federally licensed firearm
26 dealer and was previously convicted of a violation of

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

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

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

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

1 component thereof or National Guard unit called to active
2 duty;

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

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

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

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

1 sadistic, masochistic, or sadomasochistic abuse in a
2 sexual context;

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

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

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

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

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

23 For the purposes of this Section:

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

26 "Day care center" means a public or private State certified

1 and licensed day care center as defined in Section 2.09 of the
2 Child Care Act of 1969 that displays a sign in plain view
3 stating that the property is a day care center.

4 "Intellectual disability" means significantly subaverage
5 intellectual functioning which exists concurrently with
6 impairment in adaptive behavior.

7 "Public transportation" means the transportation or
8 conveyance of persons by means available to the general public,
9 and includes paratransit services.

10 (b) The following factors, related to all felonies, may be
11 considered by the court as reasons to impose an extended term
12 sentence under Section 5-8-2 upon any offender:

13 (1) When a defendant is convicted of any felony, after
14 having been previously convicted in Illinois or any other
15 jurisdiction of the same or similar class felony or greater
16 class felony, when such conviction has occurred within 10
17 years after the previous conviction, excluding time spent
18 in custody, and such charges are separately brought and
19 tried and arise out of different series of acts; or

20 (2) When a defendant is convicted of any felony and the
21 court finds that the offense was accompanied by
22 exceptionally brutal or heinous behavior indicative of
23 wanton cruelty; or

24 (3) When a defendant is convicted of any felony
25 committed against:

26 (i) a person under 12 years of age at the time of

1 the offense or such person's property;

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

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

6 (4) When a defendant is convicted of any felony and the
7 offense involved any of the following types of specific
8 misconduct committed as part of a ceremony, rite,
9 initiation, observance, performance, practice or activity
10 of any actual or ostensible religious, fraternal, or social
11 group:

12 (i) the brutalizing or torturing of humans or
13 animals;

14 (ii) the theft of human corpses;

15 (iii) the kidnapping of humans;

16 (iv) the desecration of any cemetery, religious,
17 fraternal, business, governmental, educational, or
18 other building or property; or

19 (v) ritualized abuse of a child; or

20 (5) When a defendant is convicted of a felony other
21 than conspiracy and the court finds that the felony was
22 committed under an agreement with 2 or more other persons
23 to commit that offense and the defendant, with respect to
24 the other individuals, occupied a position of organizer,
25 supervisor, financier, or any other position of management
26 or leadership, and the court further finds that the felony

1 committed was related to or in furtherance of the criminal
2 activities of an organized gang or was motivated by the
3 defendant's leadership in an organized gang; or

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

9 (7) When a defendant who was at least 17 years of age
10 at the time of the commission of the offense is convicted
11 of a felony and has been previously adjudicated a
12 delinquent minor under the Juvenile Court Act of 1987 for
13 an act that if committed by an adult would be a Class X or
14 Class 1 felony when the conviction has occurred within 10
15 years after the previous adjudication, excluding time
16 spent in custody; or

17 (8) When a defendant commits any felony and the
18 defendant used, possessed, exercised control over, or
19 otherwise directed an animal to assault a law enforcement
20 officer engaged in the execution of his or her official
21 duties or in furtherance of the criminal activities of an
22 organized gang in which the defendant is engaged; or

23 (9) When a defendant commits any felony and the
24 defendant knowingly video or audio records the offense with
25 the intent to disseminate the recording.

26 (c) The following factors may be considered by the court as

1 reasons to impose an extended term sentence under Section 5-8-2
2 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

3 (1) When a defendant is convicted of first degree
4 murder, after having been previously convicted in Illinois
5 of any offense listed under paragraph (c)(2) of Section
6 5-5-3 (730 ILCS 5/5-5-3), when that conviction has occurred
7 within 10 years after the previous conviction, excluding
8 time spent in custody, and the charges are separately
9 brought and tried and arise out of different series of
10 acts.

11 (1.5) When a defendant is convicted of first degree
12 murder, after having been previously convicted of domestic
13 battery (720 ILCS 5/12-3.2) or aggravated domestic battery
14 (720 ILCS 5/12-3.3) committed on the same victim or after
15 having been previously convicted of violation of an order
16 of protection (720 ILCS 5/12-30) in which the same victim
17 was the protected person.

18 (2) When a defendant is convicted of voluntary
19 manslaughter, second degree murder, involuntary
20 manslaughter, or reckless homicide in which the defendant
21 has been convicted of causing the death of more than one
22 individual.

23 (3) When a defendant is convicted of aggravated
24 criminal sexual assault or criminal sexual assault, when
25 there is a finding that aggravated criminal sexual assault
26 or criminal sexual assault was also committed on the same

1 victim by one or more other individuals, and the defendant
2 voluntarily participated in the crime with the knowledge of
3 the participation of the others in the crime, and the
4 commission of the crime was part of a single course of
5 conduct during which there was no substantial change in the
6 nature of the criminal objective.

7 (4) If the victim was under 18 years of age at the time
8 of the commission of the offense, when a defendant is
9 convicted of aggravated criminal sexual assault or
10 predatory criminal sexual assault of a child under
11 subsection (a)(1) of Section 11-1.40 or subsection (a)(1)
12 of Section 12-14.1 of the Criminal Code of 1961 or the
13 Criminal Code of 2012 (720 ILCS 5/11-1.40 or 5/12-14.1).

14 (5) When a defendant is convicted of a felony violation
15 of Section 24-1 of the Criminal Code of 1961 or the
16 Criminal Code of 2012 (720 ILCS 5/24-1) and there is a
17 finding that the defendant is a member of an organized
18 gang.

19 (6) When a defendant was convicted of unlawful use of
20 weapons under Section 24-1 of the Criminal Code of 1961 or
21 the Criminal Code of 2012 (720 ILCS 5/24-1) for possessing
22 a weapon that is not readily distinguishable as one of the
23 weapons enumerated in Section 24-1 of the Criminal Code of
24 1961 or the Criminal Code of 2012 (720 ILCS 5/24-1).

25 (7) When a defendant is convicted of an offense
26 involving the illegal manufacture of a controlled

1 substance under Section 401 of the Illinois Controlled
2 Substances Act (720 ILCS 570/401), the illegal manufacture
3 of methamphetamine under Section 25 of the Methamphetamine
4 Control and Community Protection Act (720 ILCS 646/25), or
5 the illegal possession of explosives and an emergency
6 response officer in the performance of his or her duties is
7 killed or injured at the scene of the offense while
8 responding to the emergency caused by the commission of the
9 offense. In this paragraph, "emergency" means a situation
10 in which a person's life, health, or safety is in jeopardy;
11 and "emergency response officer" means a peace officer,
12 community policing volunteer, fireman, emergency medical
13 technician-ambulance, emergency medical
14 technician-intermediate, emergency medical
15 technician-paramedic, ambulance driver, other medical
16 assistance or first aid personnel, or hospital emergency
17 room personnel.

18 (8) When the defendant is convicted of attempted mob
19 action, solicitation to commit mob action, or conspiracy to
20 commit mob action under Section 8-1, 8-2, or 8-4 of the
21 Criminal Code of 2012, where the criminal object is a
22 violation of Section 25-1 of the Criminal Code of 2012, and
23 an electronic communication is used in the commission of
24 the offense. For the purposes of this paragraph (8),
25 "electronic communication" shall have the meaning provided
26 in Section 26.5-0.1 of the Criminal Code of 2012.

1 (d) For the purposes of this Section, "organized gang" has
2 the meaning ascribed to it in Section 10 of the Illinois
3 Streetgang Terrorism Omnibus Prevention Act.

4 (e) The court may impose an extended term sentence under
5 Article 4.5 of Chapter V upon an offender who has been
6 convicted of a felony violation of Section 11-1.20, 11-1.30,
7 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or
8 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012
9 when the victim of the offense is under 18 years of age at the
10 time of the commission of the offense and, during the
11 commission of the offense, the victim was under the influence
12 of alcohol, regardless of whether or not the alcohol was
13 supplied by the offender; and the offender, at the time of the
14 commission of the offense, knew or should have known that the
15 victim had consumed alcohol.

16 (Source: P.A. 98-14, eff. 1-1-14; 98-104, eff. 7-22-13; 98-385,
17 eff. 1-1-14; 98-756, eff. 7-16-14; 99-77, eff. 1-1-16; 99-143,
18 eff. 7-27-15; 99-180, eff. 7-29-15; 99-283, eff. 1-1-16;
19 99-347, eff. 1-1-16; 99-642, eff. 7-28-16.)