



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB0304

by Rep. Chad Hays

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.2

Amends the Unified Code of Corrections. Provides that if a term of natural life imprisonment is not imposed, the court shall impose an extended term sentence when a defendant is convicted of first degree murder, second degree murder, or involuntary manslaughter in which the victim of any of these offenses was an abused person under 18 years of age and the death of the victim resulted from the abuse. Provides that before the imposition of an extended term sentence under this provision, the State's Attorney shall present evidence to the court at the sentencing hearing of the defendant describing the facts in the case. Provides that if the court finds that the death of the person under 18 years of age was the result of the abuse, the court shall impose an extended term sentence upon the defendant. Provides that if the court does not make such finding, the court shall impose any other sentence for the offense as prescribed in the Code.

LRB100 03892 RLC 13897 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 (0-1) 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.

14           For the purposes of this Section:

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

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

21           "Intellectual disability" means significantly subaverage  
22 intellectual functioning which exists concurrently with  
23 impairment in adaptive behavior.

24           "Public transportation" means the transportation or  
25 conveyance of persons by means available to the general public,  
26 and includes paratransit services.

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

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

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

15 (3) When a defendant is convicted of any felony  
16 committed against:

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

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

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

23 (4) When a defendant is convicted of any felony and the  
24 offense involved any of the following types of specific  
25 misconduct committed as part of a ceremony, rite,  
26 initiation, observance, performance, practice or activity

1 of any actual or ostensible religious, fraternal, or social  
2 group:

3 (i) the brutalizing or torturing of humans or  
4 animals;

5 (ii) the theft of human corpses;

6 (iii) the kidnapping of humans;

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

10 (v) ritualized abuse of a child; or

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

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

26 (7) When a defendant who was at least 17 years of age

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

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

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

17 (c) The following factors may be considered by the court as  
18 reasons to impose an extended term sentence under Section 5-8-2  
19 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

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

1 acts.

2 (1.5) When a defendant is convicted of first degree  
3 murder, after having been previously convicted of domestic  
4 battery (720 ILCS 5/12-3.2) or aggravated domestic battery  
5 (720 ILCS 5/12-3.3) committed on the same victim or after  
6 having been previously convicted of violation of an order  
7 of protection (720 ILCS 5/12-30) in which the same victim  
8 was the protected person.

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

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

24 (4) If the victim was under 18 years of age at the time  
25 of the commission of the offense, when a defendant is  
26 convicted of aggravated criminal sexual assault or

1 predatory criminal sexual assault of a child under  
2 subsection (a)(1) of Section 11-1.40 or subsection (a)(1)  
3 of Section 12-14.1 of the Criminal Code of 1961 or the  
4 Criminal Code of 2012 (720 ILCS 5/11-1.40 or 5/12-14.1).

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

10 (6) When a defendant was convicted of unlawful use of  
11 weapons under Section 24-1 of the Criminal Code of 1961 or  
12 the Criminal Code of 2012 (720 ILCS 5/24-1) for possessing  
13 a weapon that is not readily distinguishable as one of the  
14 weapons enumerated in Section 24-1 of the Criminal Code of  
15 1961 or the Criminal Code of 2012 (720 ILCS 5/24-1).

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

1 in which a person's life, health, or safety is in jeopardy;  
2 and "emergency response officer" means a peace officer,  
3 community policing volunteer, fireman, emergency medical  
4 technician-ambulance, emergency medical  
5 technician-intermediate, emergency medical  
6 technician-paramedic, ambulance driver, other medical  
7 assistance or first aid personnel, or hospital emergency  
8 room personnel.

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

18 (c-5) If a term of natural life imprisonment is not  
19 imposed, the court shall impose an extended term sentence under  
20 Article 4.5 of Chapter V when a defendant is convicted of first  
21 degree murder, second degree murder, or involuntary  
22 manslaughter in which the victim of any of these offenses was  
23 an abused person under 18 years of age and the death of the  
24 victim resulted from the abuse. Before the imposition of an  
25 extended term sentence under this subsection (c-5), the State's  
26 Attorney shall present evidence to the court at the sentencing



1 hearing of the defendant describing the facts in the case. If  
2 the court finds that the death of the person under 18 years of  
3 age was the result of the abuse, the court shall impose an  
4 extended term sentence upon the defendant. If the court does  
5 not make that finding, the court shall impose any other  
6 sentence for the offense as prescribed in this Chapter V. For  
7 the purposes of this subsection (c-5), "abused" has the meaning  
8 ascribed to it in Section 2-3 of the Juvenile Court Act of  
9 1987.

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

13 (e) The court may impose an extended term sentence under  
14 Article 4.5 of Chapter V upon an offender who has been  
15 convicted of a felony violation of Section 11-1.20, 11-1.30,  
16 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or  
17 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012  
18 when the victim of the offense is under 18 years of age at the  
19 time of the commission of the offense and, during the  
20 commission of the offense, the victim was under the influence  
21 of alcohol, regardless of whether or not the alcohol was  
22 supplied by the offender; and the offender, at the time of the  
23 commission of the offense, knew or should have known that the  
24 victim had consumed alcohol.

25 (Source: P.A. 98-14, eff. 1-1-14; 98-104, eff. 7-22-13; 98-385,  
26 eff. 1-1-14; 98-756, eff. 7-16-14; 99-77, eff. 1-1-16; 99-143,

1 eff. 7-27-15; 99-180, eff. 7-29-15; 99-283, eff. 1-1-16;  
2 99-347, eff. 1-1-16; 99-642, eff. 7-28-16.)