



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4152

Introduced 1/21/2004, by Sidney H. Mathias

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.2

from Ch. 38, par. 1005-5-3.2

Amends the Unified Code of Corrections. Provides that the court may impose an extended term sentence upon an offender who has been convicted of first degree murder when the offender has previously been convicted of domestic battery or aggravated domestic battery committed against the murdered individual or has previously been convicted of violation of an order of protection in which the murdered individual was the protected person.

LRB093 16665 RLC 42316 b

1 AN ACT in relation to 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) (from Ch. 38, par. 1005-5-3.2)

7 Sec. 5-5-3.2. Factors in Aggravation.

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

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

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

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

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

22 (5) the defendant held public office at the time of the
23 offense, and the offense related to the conduct of that
24 office;

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

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

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

32 (9) the defendant committed the offense against a

1 person who is physically handicapped or such person's
2 property;

3 (10) by reason of another individual's actual or
4 perceived race, color, creed, religion, ancestry, gender,
5 sexual orientation, physical or mental disability, or
6 national origin, the defendant committed the offense
7 against (i) the person or property of that individual; (ii)
8 the person or property of a person who has an association
9 with, is married to, or has a friendship with the other
10 individual; or (iii) the person or property of a relative
11 (by blood or marriage) of a person described in clause (i)
12 or (ii). For the purposes of this Section, "sexual
13 orientation" means heterosexuality, homosexuality, or
14 bisexuality;

15 (11) the offense took place in a place of worship or on
16 the grounds of a place of worship, immediately prior to,
17 during or immediately following worship services. For
18 purposes of this subparagraph, "place of worship" shall
19 mean any church, synagogue or other building, structure or
20 place used primarily for religious worship;

21 (12) the defendant was convicted of a felony committed
22 while he was released on bail or his own recognizance
23 pending trial for a prior felony and was convicted of such
24 prior felony, or the defendant was convicted of a felony
25 committed while he was serving a period of probation,
26 conditional discharge, or mandatory supervised release
27 under subsection (d) of Section 5-8-1 for a prior felony;

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

33 (14) the defendant held a position of trust or
34 supervision such as, but not limited to, family member as
35 defined in Section 12-12 of the Criminal Code of 1961,
36 teacher, scout leader, baby sitter, or day care worker, in

1 relation to a victim under 18 years of age, and the
2 defendant committed an offense in violation of Section
3 11-6, 11-11, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13,
4 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961
5 against that victim;

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

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

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
27 1,000 feet of the real property comprising any day care
28 center, regardless of the time of day or time of year:
29 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
30 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
31 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
32 33A-2 of the Criminal Code of 1961;

33 (17) the defendant committed the offense by reason of
34 any person's activity as a community policing volunteer or
35 to prevent any person from engaging in activity as a
36 community policing volunteer. For the purpose of this

1 Section, "community policing volunteer" has the meaning
2 ascribed to it in Section 2-3.5 of the Criminal Code of
3 1961;

4 (18) the defendant committed the offense in a nursing
5 home or on the real property comprising a nursing home. For
6 the purposes of this paragraph (18), "nursing home" means a
7 skilled nursing or intermediate long term care facility
8 that is subject to license by the Illinois Department of
9 Public Health under the Nursing Home Care Act; or

10 (19) the defendant was a federally licensed firearm
11 dealer and was previously convicted of a violation of
12 subsection (a) of Section 3 of the Firearm Owners
13 Identification Card Act and has now committed either a
14 felony violation of the Firearm Owners Identification Card
15 Act or an act of armed violence while armed with a firearm.
16 For the purposes of this Section:

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

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

23 (b) The following factors may be considered by the court as
24 reasons to impose an extended term sentence under Section 5-8-2
25 upon any offender:

26 (1) When a defendant is convicted of any felony, after
27 having been previously convicted in Illinois or any other
28 jurisdiction of the same or similar class felony or greater
29 class felony, when such conviction has occurred within 10
30 years after the previous conviction, excluding time spent
31 in custody, and such charges are separately brought and
32 tried and arise out of different series of acts; or

33 (2) When a defendant is convicted of any felony and the
34 court finds that the offense was accompanied by
35 exceptionally brutal or heinous behavior indicative of
36 wanton cruelty; or

1 (3) When a defendant is convicted of voluntary
2 manslaughter, second degree murder, involuntary
3 manslaughter or reckless homicide in which the defendant
4 has been convicted of causing the death of more than one
5 individual; or

6 (4) When a defendant is convicted of any felony
7 committed against:

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

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

12 (iii) a person physically handicapped at the time
13 of the offense or such person's property; or

14 (5) In the case of a defendant convicted of aggravated
15 criminal sexual assault or criminal sexual assault, when
16 the court finds that aggravated criminal sexual assault or
17 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; or

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

30 (i) the brutalizing or torturing of humans or
31 animals;

32 (ii) the theft of human corpses;

33 (iii) the kidnapping of humans;

34 (iv) the desecration of any cemetery, religious,
35 fraternal, business, governmental, educational, or
36 other building or property; or

1 (v) ritualized abuse of a child; or

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

9 (8) 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 (9) When a defendant is convicted of a felony violation
20 of Section 24-1 of the Criminal Code of 1961 and the court
21 finds that the defendant is a member of an organized gang;
22 or

23 (10) When a defendant committed the offense using a
24 firearm with a laser sight attached to it. For purposes of
25 this paragraph (10), "laser sight" has the meaning ascribed
26 to it in Section 24.6-5 of the Criminal Code of 1961; or

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

35 (12) When a defendant commits an offense involving the
36 illegal manufacture of a controlled substance under

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

15 (b-1) For the purposes of this Section, "organized gang"
16 has the meaning ascribed to it in Section 10 of the Illinois
17 Streetgang Terrorism Omnibus Prevention Act.

18 (c) The court may impose an extended term sentence under
19 Section 5-8-2 upon any offender who was convicted of aggravated
20 criminal sexual assault or predatory criminal sexual assault of
21 a child under subsection (a)(1) of Section 12-14.1 of the
22 Criminal Code of 1961 where the victim was under 18 years of
23 age at the time of the commission of the offense.

24 (d) The court may impose an extended term sentence under
25 Section 5-8-2 upon any offender who was convicted of unlawful
26 use of weapons under Section 24-1 of the Criminal Code of 1961
27 for possessing a weapon that is not readily distinguishable as
28 one of the weapons enumerated in Section 24-1 of the Criminal
29 Code of 1961.

30 (e) The court may impose an extended term sentence under
31 Section 5-8-2 upon an offender who has been convicted of first
32 degree murder when the offender has previously been convicted
33 of domestic battery or aggravated domestic battery committed
34 against the murdered individual or has previously been
35 convicted of violation of an order of protection in which the
36 murdered individual was the protected person.

1 (Source: P.A. 91-119, eff. 1-1-00; 91-120, eff. 7-15-99;
2 91-252, eff. 1-1-00; 91-267, eff. 1-1-00; 91-268, eff. 1-1-00;
3 91-357, eff. 7-29-99; 91-437, eff. 1-1-00; 91-696, eff.
4 4-13-00; 92-266, eff. 1-1-02.)