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LRB095 03679 RLC 31950 a

1 AMENDMENT TO HOUSE BILL 34

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 34 by replacing  
3 lines 13 through 15 with the following:

4 "battery. A peace officer may arrest a person for violation of  
5 this Section if the officer has probable cause to believe that  
6 there is imminent danger of physical harm to the non-aggressor.

7 (b) Sentence. Domestic assault is a Class B misdemeanor.  
8 Domestic assault is a Class A misdemeanor if the defendant has  
9 any prior conviction for domestic assault, aggravated domestic  
10 assault, domestic damage to property, domestic battery, or  
11 aggravated domestic battery.

12 Section 10. The Unified Code of Corrections is amended by  
13 changing Section 5-5-3.2 as follows:

14 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

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

16 (a) The following factors shall be accorded weight in favor

1 of imposing a term of imprisonment or may be considered by the  
2 court as reasons to impose a more severe sentence under Section  
3 5-8-1:

4 (1) the defendant's conduct caused or threatened  
5 serious harm;

6 (2) the defendant received compensation for committing  
7 the offense;

8 (3) the defendant has a history of prior delinquency or  
9 criminal activity;

10 (4) the defendant, by the duties of his office or by  
11 his position, was obliged to prevent the particular offense  
12 committed or to bring the offenders committing it to  
13 justice;

14 (5) the defendant held public office at the time of the  
15 offense, and the offense related to the conduct of that  
16 office;

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

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

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

24 (9) the defendant committed the offense against a  
25 person who is physically handicapped or such person's  
26 property;

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

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

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

26          (13) the defendant committed or attempted to commit a

1           felony while he was wearing a bulletproof vest. For the  
2           purposes of this paragraph (13), a bulletproof vest is any  
3           device which is designed for the purpose of protecting the  
4           wearer from bullets, shot or other lethal projectiles;

5           (14) the defendant held a position of trust or  
6           supervision such as, but not limited to, family member as  
7           defined in Section 12-12 of the Criminal Code of 1961,  
8           teacher, scout leader, baby sitter, or day care worker, in  
9           relation to a victim under 18 years of age, and the  
10          defendant committed an offense in violation of Section  
11          11-6, 11-11, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13,  
12          12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961  
13          against that victim;

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

19          (16) the defendant committed an offense in violation of  
20          one of the following Sections while in a school, regardless  
21          of the time of day or time of year; on any conveyance  
22          owned, leased, or contracted by a school to transport  
23          students to or from school or a school related activity; on  
24          the real property of a school; or on a public way within  
25          1,000 feet of the real property comprising any school:  
26          Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,

1 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,  
2 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or  
3 33A-2 of the Criminal Code of 1961;

4 (16.5) the defendant committed an offense in violation  
5 of one of the following Sections while in a day care  
6 center, regardless of the time of day or time of year; on  
7 the real property of a day care center, regardless of the  
8 time of day or time of year; or on a public way within  
9 1,000 feet of the real property comprising any day care  
10 center, regardless of the time of day or time of year:  
11 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,  
12 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,  
13 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or  
14 33A-2 of the Criminal Code of 1961;

15 (17) the defendant committed the offense by reason of  
16 any person's activity as a community policing volunteer or  
17 to prevent any person from engaging in activity as a  
18 community policing volunteer. For the purpose of this  
19 Section, "community policing volunteer" has the meaning  
20 ascribed to it in Section 2-3.5 of the Criminal Code of  
21 1961;

22 (18) the defendant committed the offense in a nursing  
23 home or on the real property comprising a nursing home. For  
24 the purposes of this paragraph (18), "nursing home" means a  
25 skilled nursing or intermediate long term care facility  
26 that is subject to license by the Illinois Department of

1 Public Health under the Nursing Home Care Act;

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

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

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

24 (22) the defendant committed domestic assault and has a  
25 prior conviction for domestic assault, aggravated domestic  
26 assault, domestic damage to property, domestic battery, or

1           aggravated domestic battery.

2           For the purposes of this Section:

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

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

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

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

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

23           (3) When a defendant is convicted of voluntary  
24 manslaughter, second degree murder, involuntary  
25 manslaughter or reckless homicide in which the defendant  
26 has been convicted of causing the death of more than one

1 individual; or

2 (4) When a defendant is convicted of any felony  
3 committed against:

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

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

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

10 (5) In the case of a defendant convicted of aggravated  
11 criminal sexual assault or criminal sexual assault, when  
12 the court finds that aggravated criminal sexual assault or  
13 criminal sexual assault was also committed on the same  
14 victim by one or more other individuals, and the defendant  
15 voluntarily participated in the crime with the knowledge of  
16 the participation of the others in the crime, and the  
17 commission of the crime was part of a single course of  
18 conduct during which there was no substantial change in the  
19 nature of the criminal objective; or

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

26 (i) the brutalizing or torturing of humans or



1 animals;

2 (ii) the theft of human corpses;

3 (iii) the kidnapping of humans;

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

7 (v) ritualized abuse of a child; or

8 (7) When a defendant is convicted of first degree  
9 murder, after having been previously convicted in Illinois  
10 of any offense listed under paragraph (c)(2) of Section  
11 5-5-3, when such conviction has occurred within 10 years  
12 after the previous conviction, excluding time spent in  
13 custody, and such charges are separately brought and tried  
14 and arise out of different series of acts; or

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

25 (9) When a defendant is convicted of a felony violation  
26 of Section 24-1 of the Criminal Code of 1961 and the court

1 finds that the defendant is a member of an organized gang;  
2 or

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

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

15 (12) When a defendant commits an offense involving the  
16 illegal manufacture of a controlled substance under  
17 Section 401 of the Illinois Controlled Substances Act, the  
18 illegal manufacture of methamphetamine under Section 25 of  
19 the Methamphetamine Control and Community Protection Act,  
20 or 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 (12), "emergency" means a  
25 situation in which a person's life, health, or safety is in  
26 jeopardy; and "emergency response officer" means a peace

1 officer, community policing volunteer, fireman, emergency  
2 medical 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; or

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

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

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

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

1 Code of 1961.

2 (Source: P.A. 94-131, eff. 7-7-05; 94-375, eff. 1-1-06; 94-556,

3 eff. 9-11-05; 94-819, eff. 5-31-06.)".