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LRB095 03678 RLC 33017 a

1 AMENDMENT TO HOUSE BILL 35

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 35 by replacing  
3 lines 16 through 19 with the following:

4 "Code of Criminal Procedure of 1963. A peace officer may arrest  
5 a person for violation of this Section if the officer has  
6 probable cause to believe that there is imminent danger of  
7 physical harm to the non-aggressor.

8 (b) Sentence. Aggravated domestic assault is a Class A  
9 misdemeanor. Aggravated domestic assault is a Class 4 felony if  
10 the defendant has any prior conviction for domestic assault,  
11 aggravated domestic assault, domestic damage to property,  
12 domestic battery, or aggravated domestic battery.

13 (c) This Section does not apply to a parent or guardian  
14 while exercising parental discipline over a child under his or  
15 her custody.

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

1 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

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

3 (a) The following factors shall be accorded weight in favor  
4 of imposing a term of imprisonment or may be considered by the  
5 court as reasons to impose a more severe sentence under Section  
6 5-8-1:

7 (1) the defendant's conduct caused or threatened  
8 serious harm;

9 (2) the defendant received compensation for committing  
10 the offense;

11 (3) the defendant has a history of prior delinquency or  
12 criminal activity;

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

17 (5) the defendant held public office at the time of the  
18 offense, and the offense related to the conduct of that  
19 office;

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

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

25 (8) the defendant committed the offense against a

1 person 60 years of age or older or such person's property;

2 (9) the defendant committed the offense against a  
3 person who is physically handicapped or such person's  
4 property;

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

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

23 (12) the defendant was convicted of a felony committed  
24 while he was released on bail or his own recognizance  
25 pending trial for a prior felony and was convicted of such  
26 prior felony, or the defendant was convicted of a felony

1 committed while he was serving a period of probation,  
2 conditional discharge, or mandatory supervised release  
3 under subsection (d) of Section 5-8-1 for a prior felony;

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

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

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

23 (16) the defendant committed an offense in violation of  
24 one of the following Sections while in a school, regardless  
25 of the time of day or time of year; on any conveyance  
26 owned, leased, or contracted by a school to transport

1 students to or from school or a school related activity; on  
2 the real property of a school; or on a public way within  
3 1,000 feet of the real property comprising any school:  
4 Section 10-1, 10-2, 10-5, 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, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or  
7 33A-2 of the Criminal Code of 1961;

8 (16.5) the defendant committed an offense in violation  
9 of one of the following Sections while in a day care  
10 center, regardless of the time of day or time of year; on  
11 the real property of a day care center, regardless of the  
12 time of day or time of year; or on a public way within  
13 1,000 feet of the real property comprising any day care  
14 center, regardless of the time of day or time of year:  
15 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,  
16 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,  
17 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or  
18 33A-2 of the Criminal Code of 1961;

19 (17) the defendant committed the offense by reason of  
20 any person's activity as a community policing volunteer or  
21 to prevent any person from engaging in activity as a  
22 community policing volunteer. For the purpose of this  
23 Section, "community policing volunteer" has the meaning  
24 ascribed to it in Section 2-3.5 of the Criminal Code of  
25 1961;

26 (18) the defendant committed the offense in a nursing

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

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

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

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

1 Chapter 11 of the Illinois Vehicle Code; or ~~or~~

2 (22) the defendant committed aggravated domestic  
3 assault and has a prior conviction for domestic assault,  
4 aggravated domestic assault, domestic damage to property,  
5 domestic battery, or aggravated domestic battery.

6 For the purposes of this Section:

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

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

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

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

23 (2) When a defendant is convicted of any felony and the  
24 court finds that the offense was accompanied by  
25 exceptionally brutal or heinous behavior indicative of  
26 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,



1 initiation, observance, performance, practice or activity  
2 of any actual or ostensible religious, fraternal, or social  
3 group:

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

6 (ii) the theft of human corpses;

7 (iii) the kidnapping of humans;

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

11 (v) ritualized abuse of a child; or

12 (7) When a defendant is convicted of first degree  
13 murder, after having been previously convicted in Illinois  
14 of any offense listed under paragraph (c)(2) of Section  
15 5-5-3, when such conviction has occurred within 10 years  
16 after the previous conviction, excluding time spent in  
17 custody, and such charges are separately brought and tried  
18 and arise out of different series of acts; or

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

1 activities of an organized gang or was motivated by the  
2 defendant's leadership in an organized gang; or

3 (9) When a defendant is convicted of a felony violation  
4 of Section 24-1 of the Criminal Code of 1961 and the court  
5 finds that the defendant is a member of an organized gang;  
6 or

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

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

19 (12) When a defendant commits an offense involving the  
20 illegal manufacture of a controlled substance under  
21 Section 401 of the Illinois Controlled Substances Act, the  
22 illegal manufacture of methamphetamine under Section 25 of  
23 the Methamphetamine Control and Community Protection Act,  
24 or the illegal possession of explosives and an emergency  
25 response officer in the performance of his or her duties is  
26 killed or injured at the scene of the offense while

1           responding to the emergency caused by the commission of the  
2           offense. In this paragraph (12), "emergency" means a  
3           situation in which a person's life, health, or safety is in  
4           jeopardy; and "emergency response officer" means a peace  
5           officer, community policing volunteer, fireman, emergency  
6           medical technician-ambulance, emergency medical  
7           technician-intermediate, emergency medical  
8           technician-paramedic, ambulance driver, other medical  
9           assistance or first aid personnel, or hospital emergency  
10          room personnel; or

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

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

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

26           (d) The court may impose an extended term sentence under

1 Section 5-8-2 upon any offender who was convicted of unlawful  
2 use of weapons under Section 24-1 of the Criminal Code of 1961  
3 for possessing a weapon that is not readily distinguishable as  
4 one of the weapons enumerated in Section 24-1 of the Criminal  
5 Code of 1961.

6 (Source: P.A. 94-131, eff. 7-7-05; 94-375, eff. 1-1-06; 94-556,  
7 eff. 9-11-05; 94-819, eff. 5-31-06.)".