

HB0900



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB0900

Introduced 2/7/2007, by Rep. 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.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

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

1 office;

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

5 (7) the sentence is necessary to deter others from
6 committing the same crime;

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

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

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

24 (11) the offense took place in a place of worship or on
25 the grounds of a place of worship, immediately prior to,
26 during or immediately following worship services. For

1 purposes of this subparagraph, "place of worship" shall
2 mean any church, synagogue or other building, structure or
3 place used primarily for religious worship;

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

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

16 (14) the defendant held a position of trust or
17 supervision such as, but not limited to, family member as
18 defined in Section 12-12 of the Criminal Code of 1961,
19 teacher, scout leader, baby sitter, or day care worker, in
20 relation to a victim under 18 years of age, and the
21 defendant committed an offense in violation of Section
22 11-6, 11-11, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13,
23 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961
24 against that victim;

25 (15) the defendant committed an offense related to the
26 activities of an organized gang. For the purposes of this

1 factor, "organized gang" has the meaning ascribed to it in
2 Section 10 of the Streetgang Terrorism Omnibus Prevention
3 Act;

4 (16) the defendant committed an offense in violation of
5 one of the following Sections while in a school, regardless
6 of the time of day or time of year; on any conveyance
7 owned, leased, or contracted by a school to transport
8 students to or from school or a school related activity; on
9 the real property of a school; or on a public way within
10 1,000 feet of the real property comprising any school:
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 (16.5) the defendant committed an offense in violation
16 of one of the following Sections while in a day care
17 center, regardless of the time of day or time of year; on
18 the real property of a day care center, regardless of the
19 time of day or time of year; or on a public way within
20 1,000 feet of the real property comprising any day care
21 center, regardless of the time of day or time of year:
22 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
23 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
24 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
25 33A-2 of the Criminal Code of 1961;

26 (17) the defendant committed the offense by reason of

1 any person's activity as a community policing volunteer or
2 to prevent any person from engaging in activity as a
3 community policing volunteer. For the purpose of this
4 Section, "community policing volunteer" has the meaning
5 ascribed to it in Section 2-3.5 of the Criminal Code of
6 1961;

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

13 (19) the defendant was a federally licensed firearm
14 dealer and was previously convicted of a violation of
15 subsection (a) of Section 3 of the Firearm Owners
16 Identification Card Act and has now committed either a
17 felony violation of the Firearm Owners Identification Card
18 Act or an act of armed violence while armed with a firearm;

19 (20) the defendant (i) committed the offense of
20 reckless homicide under Section 9-3 of the Criminal Code of
21 1961 or the offense of driving under the influence of
22 alcohol, other drug or drugs, intoxicating compound or
23 compounds or any combination thereof under Section 11-501
24 of the Illinois Vehicle Code or a similar provision of a
25 local ordinance and (ii) was operating a motor vehicle in
26 excess of 20 miles per hour over the posted speed limit as

1 provided in Article VI of Chapter 11 of the Illinois
2 Vehicle Code; or

3 (21) the defendant (i) committed the offense of
4 reckless driving or aggravated reckless driving under
5 Section 11-503 of the Illinois Vehicle Code and (ii) was
6 operating a motor vehicle in excess of 20 miles per hour
7 over the posted speed limit as provided in Article VI of
8 Chapter 11 of the Illinois Vehicle Code.

9 For the purposes of this Section:

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

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

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

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

26 (2) When a defendant is convicted of any felony and the

1 court finds that the offense was accompanied by
2 exceptionally brutal or heinous behavior indicative of
3 wanton cruelty; or

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

9 (4) When a defendant is convicted of any felony
10 committed against:

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

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

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

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

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

7 (i) the brutalizing or torturing of humans or
8 animals;

9 (ii) the theft of human corpses;

10 (iii) the kidnapping of humans;

11 (iv) the desecration of any cemetery, religious,
12 fraternal, business, governmental, educational, or
13 other building or property; or

14 (v) ritualized abuse of a child; or

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

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

1 supervisor, financier, or any other position of management
2 or leadership, and the court further finds that the felony
3 committed was related to or in furtherance of the criminal
4 activities of an organized gang or was motivated by the
5 defendant's leadership in an organized gang; or

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

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

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

22 (12) When a defendant commits an offense involving the
23 illegal manufacture of a controlled substance under
24 Section 401 of the Illinois Controlled Substances Act, the
25 illegal manufacture of methamphetamine under Section 25 of
26 the Methamphetamine Control and Community Protection Act,

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

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

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

23 (c) The court may impose an extended term sentence under
24 Section 5-8-2 upon any offender who was convicted of aggravated
25 criminal sexual assault or predatory criminal sexual assault of
26 a child under subsection (a)(1) of Section 12-14.1 of the

1 Criminal Code of 1961 where the victim was under 18 years of
2 age at the time of the commission of the offense.

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

9 (e) The court may impose an extended term sentence under
10 Section 5-8-2 upon an offender who has been convicted of first
11 degree murder when the offender has previously been convicted
12 of domestic battery or aggravated domestic battery committed
13 against the murdered individual or has previously been
14 convicted of violation of an order of protection in which the
15 murdered individual was the protected person.

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