

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 Criminal Code of 1961 is amended by adding  
5 Section 16D-5.5 as follows:

6 (720 ILCS 5/16D-5.5 new)

7 Sec. 16D-5.5. Unlawful use of encryption.

8 (a) For the purpose of this Section:

9 "Access" means to intercept, instruct, communicate  
10 with, store data in, retrieve from, or otherwise make use  
11 of any resources of a computer, network, or data.

12 "Computer" means an electronic device which performs  
13 logical, arithmetic, and memory functions by manipulations  
14 of electronic or magnetic impulses and includes all  
15 equipment related to the computer in a system or network.

16 "Computer contaminant" means any data, information,  
17 image, program, signal, or sound that is designated or has  
18 the capability to: (1) contaminate, corrupt, consume,  
19 damage, destroy, disrupt, modify, record, or transmit; or  
20 (2) cause to be contaminated, corrupted, consumed,  
21 damaged, destroyed, disrupted, modified, recorded, or  
22 transmitted, any other data, information, image, program,  
23 signal, or sound contained in a computer, system, or

1 network without the knowledge or consent of the person who  
2 owns the other data, information, image, program, signal,  
3 or sound or the computer, system, or network.

4 "Computer contaminant" includes, without limitation:  
5 (1) a virus, worm, or Trojan horse; (2) spyware that tracks  
6 computer activity and is capable of recording and  
7 transmitting such information to third parties; or (3) any  
8 other similar data, information, image, program, signal,  
9 or sound that is designed or has the capability to prevent,  
10 impede, delay, or disrupt the normal operation or use of  
11 any component, device, equipment, system, or network.

12 "Data" means a representation in any form of  
13 information, knowledge, facts, concepts, or instructions  
14 which is being prepared or has been formally prepared and  
15 is intended to be processed, is being processed or has been  
16 processed in a system or network.

17 "Encryption" means the use of any protective or  
18 disruptive measure, including, without limitation,  
19 cryptography, enciphering, encoding, or a computer  
20 contaminant, to: (1) prevent, impede, delay, or disrupt  
21 access to any data, information, image, program, signal, or  
22 sound; (2) cause or make any data, information, image,  
23 program, signal, or sound unintelligible or unusable; or  
24 (3) prevent, impede, delay, or disrupt the normal operation  
25 or use of any component, device, equipment, system, or  
26 network.

1           "Network" means a set of related, remotely connected  
2           devices and facilities, including more than one system,  
3           with the capability to transmit data among any of the  
4           devices and facilities. The term includes, without  
5           limitation, a local, regional, or global computer network.

6           "Program" means an ordered set of data representing  
7           coded instructions or statements which can be executed by a  
8           computer and cause the computer to perform one or more  
9           tasks.

10           "System" means a set of related equipment, whether or  
11           not connected, which is used with or for a computer.

12           (b) A person shall not knowingly use or attempt to use  
13           encryption, directly or indirectly, to:

14           (1) commit, facilitate, further, or promote any  
15           criminal offense;

16           (2) aid, assist, or encourage another person to commit  
17           any criminal offense;

18           (3) conceal evidence of the commission of any criminal  
19           offense; or

20           (4) conceal or protect the identity of a person who has  
21           committed any criminal offense.

22           (c) Sentence. A person who violates this Section is guilty  
23           of a Class A misdemeanor, unless the encryption was used or  
24           attempted to be used to commit an offense for which a greater  
25           penalty is provided by law. If the encryption was used or  
26           attempted to be used to commit an offense for which a greater

1 penalty is provided by law, the person shall be punished as  
2 prescribed by law for that offense.

3 (d) A person who violates this Section commits a criminal  
4 offense that is separate and distinct from any other criminal  
5 offense and may be prosecuted and convicted under this Section  
6 whether or not the person or any other person is or has been  
7 prosecuted or convicted for any other criminal offense arising  
8 out of the same facts as the violation of this Section.

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

11 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

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

13 (a) The following factors shall be accorded weight in favor  
14 of imposing a term of imprisonment or may be considered by the  
15 court as reasons to impose a more severe sentence under Section  
16 5-8-1:

17 (1) the defendant's conduct caused or threatened  
18 serious harm;

19 (2) the defendant received compensation for committing  
20 the offense;

21 (3) the defendant has a history of prior delinquency or  
22 criminal activity;

23 (4) the defendant, by the duties of his office or by  
24 his position, was obliged to prevent the particular offense

1 committed or to bring the offenders committing it to  
2 justice;

3 (5) the defendant held public office at the time of the  
4 offense, and the offense related to the conduct of that  
5 office;

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

9 (7) the sentence is necessary to deter others from  
10 committing the same crime;

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

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

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

1           bisexuality;

2           (11) the offense took place in a place of worship or on  
3           the grounds of a place of worship, immediately prior to,  
4           during or immediately following worship services. For  
5           purposes of this subparagraph, "place of worship" shall  
6           mean any church, synagogue or other building, structure or  
7           place used primarily for religious worship;

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

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

20          (14) the defendant held a position of trust or  
21          supervision such as, but not limited to, family member as  
22          defined in Section 12-12 of the Criminal Code of 1961,  
23          teacher, scout leader, baby sitter, or day care worker, in  
24          relation to a victim under 18 years of age, and the  
25          defendant committed an offense in violation of Section  
26          11-6, 11-11, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13,

1 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961  
2 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, 11-15.1, 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 (16.5) the defendant committed an offense in violation  
20 of one of the following Sections while in a day care  
21 center, regardless of the time of day or time of year; on  
22 the real property of a day care center, regardless of the  
23 time of day or time of year; or on a public way within  
24 1,000 feet of the real property comprising any day care  
25 center, regardless of the time of day or time of year:  
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 (17) the defendant committed the offense by reason of  
5 any person's activity as a community policing volunteer or  
6 to prevent any person from engaging in activity as a  
7 community policing volunteer. For the purpose of this  
8 Section, "community policing volunteer" has the meaning  
9 ascribed to it in Section 2-3.5 of the Criminal Code of  
10 1961;

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

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

23 (20) the defendant (i) committed the offense of  
24 reckless homicide under Section 9-3 of the Criminal Code of  
25 1961 or the offense of driving under the influence of  
26 alcohol, other drug or drugs, intoxicating compound or



1 compounds or any combination thereof under Section 11-501  
2 of the Illinois Vehicle Code or a similar provision of a  
3 local ordinance and (ii) was operating a motor vehicle in  
4 excess of 20 miles per hour over the posted speed limit as  
5 provided in Article VI of Chapter 11 of the Illinois  
6 Vehicle Code; ~~or~~

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

13 (22) the defendant committed any offense under Section  
14 11-20.1 of the Criminal Code of 1961 and possessed 100 or  
15 more images.

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

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

7           (2) When a defendant is convicted of any felony and the  
8           court finds that the offense was accompanied by  
9           exceptionally brutal or heinous behavior indicative of  
10          wanton cruelty; or

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

16          (4) When a defendant is convicted of any felony  
17          committed against:

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

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

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

24          (5) In the case of a defendant convicted of aggravated  
25          criminal sexual assault or criminal sexual assault, when  
26          the court finds that aggravated criminal sexual assault or

1 criminal sexual assault was also committed on the same  
2 victim by one or more other individuals, and the defendant  
3 voluntarily participated in the crime with the knowledge of  
4 the participation of the others in the crime, and the  
5 commission of the crime was part of a single course of  
6 conduct during which there was no substantial change in the  
7 nature of the criminal objective; or

8 (6) When a defendant is convicted of any felony and the  
9 offense involved any of the following types of specific  
10 misconduct committed as part of a ceremony, rite,  
11 initiation, observance, performance, practice or activity  
12 of any actual or ostensible religious, fraternal, or social  
13 group:

14 (i) the brutalizing or torturing of humans or  
15 animals;

16 (ii) the theft of human corpses;

17 (iii) the kidnapping of humans;

18 (iv) the desecration of any cemetery, religious,  
19 fraternal, business, governmental, educational, or  
20 other building or property; or

21 (v) ritualized abuse of a child; or

22 (7) When a defendant is convicted of first degree  
23 murder, after having been previously convicted in Illinois  
24 of any offense listed under paragraph (c)(2) of Section  
25 5-5-3, when such conviction has occurred within 10 years  
26 after the previous conviction, excluding time spent in

1 custody, and such charges are separately brought and tried  
2 and arise out of different series of acts; or

3 (8) When a defendant is convicted of a felony other  
4 than conspiracy and the court finds that the felony was  
5 committed under an agreement with 2 or more other persons  
6 to commit that offense and the defendant, with respect to  
7 the other individuals, occupied a position of organizer,  
8 supervisor, financier, or any other position of management  
9 or leadership, and the court further finds that the felony  
10 committed was related to or in furtherance of the criminal  
11 activities of an organized gang or was motivated by the  
12 defendant's leadership in an organized gang; or

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

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

21 (11) When a defendant who was at least 17 years of age  
22 at the time of the commission of the offense is convicted  
23 of a felony and has been previously adjudicated a  
24 delinquent minor under the Juvenile Court Act of 1987 for  
25 an act that if committed by an adult would be a Class X or  
26 Class 1 felony when the conviction has occurred within 10

1 years after the previous adjudication, excluding time  
2 spent in custody; or

3 (12) When a defendant commits an offense involving the  
4 illegal manufacture of a controlled substance under  
5 Section 401 of the Illinois Controlled Substances Act, the  
6 illegal manufacture of methamphetamine under Section 25 of  
7 the Methamphetamine Control and Community Protection Act,  
8 or the illegal possession of explosives and an emergency  
9 response officer in the performance of his or her duties is  
10 killed or injured at the scene of the offense while  
11 responding to the emergency caused by the commission of the  
12 offense. In this paragraph (12), "emergency" means a  
13 situation in which a person's life, health, or safety is in  
14 jeopardy; and "emergency response officer" means a peace  
15 officer, community policing volunteer, fireman, emergency  
16 medical technician-ambulance, emergency medical  
17 technician-intermediate, emergency medical  
18 technician-paramedic, ambulance driver, other medical  
19 assistance or first aid personnel, or hospital emergency  
20 room personnel; or

21 (13) When a defendant commits any felony and the  
22 defendant used, possessed, exercised control over, or  
23 otherwise directed an animal to assault a law enforcement  
24 officer engaged in the execution of his or her official  
25 duties or in furtherance of the criminal activities of an  
26 organized gang in which the defendant is engaged.

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

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

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

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.)