

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) Telecommunications carriers and information service  
23           providers are not liable under this Section, except for willful  
24           and wanton misconduct, for providing encryption services used  
25           by others in violation of this Section.

26           (d) Sentence. A person who violates this Section is guilty

1 of a Class A misdemeanor, unless the encryption was used or  
2 attempted to be used to commit an offense for which a greater  
3 penalty is provided by law. If the encryption was used or  
4 attempted to be used to commit an offense for which a greater  
5 penalty is provided by law, the person shall be punished as  
6 prescribed by law for that offense.

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

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

15 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

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

17 (a) The following factors shall be accorded weight in favor  
18 of imposing a term of imprisonment or may be considered by the  
19 court as reasons to impose a more severe sentence under Section  
20 5-8-1:

21 (1) the defendant's conduct caused or threatened  
22 serious harm;

23 (2) the defendant received compensation for committing  
24 the offense;

1           (3) the defendant has a history of prior delinquency or  
2 criminal activity;

3           (4) the defendant, by the duties of his office or by  
4 his position, was obliged to prevent the particular offense  
5 committed or to bring the offenders committing it to  
6 justice;

7           (5) the defendant held public office at the time of the  
8 offense, and the offense related to the conduct of that  
9 office;

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

13          (7) the sentence is necessary to deter others from  
14 committing the same crime;

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

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

20          (10) by reason of another individual's actual or  
21 perceived race, color, creed, religion, ancestry, gender,  
22 sexual orientation, physical or mental disability, or  
23 national origin, the defendant committed the offense  
24 against (i) the person or property of that individual; (ii)  
25 the person or property of a person who has an association  
26 with, is married to, or has a friendship with the other

1 individual; or (iii) the person or property of a relative  
2 (by blood or marriage) of a person described in clause (i)  
3 or (ii). For the purposes of this Section, "sexual  
4 orientation" means heterosexuality, homosexuality, or  
5 bisexuality;

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

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

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

24 (14) the defendant held a position of trust or  
25 supervision such as, but not limited to, family member as  
26 defined in Section 12-12 of the Criminal Code of 1961,

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

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

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

23 (16.5) the defendant committed an offense in violation  
24 of one of the following Sections while in a day care  
25 center, regardless of the time of day or time of year; on  
26 the real property of a day care center, regardless of the

1 time of day or time of year; or on a public way within  
2 1,000 feet of the real property comprising any day care  
3 center, regardless of the time of day or time of year:  
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 (17) the defendant committed the offense by reason of  
9 any person's activity as a community policing volunteer or  
10 to prevent any person from engaging in activity as a  
11 community policing volunteer. For the purpose of this  
12 Section, "community policing volunteer" has the meaning  
13 ascribed to it in Section 2-3.5 of the Criminal Code of  
14 1961;

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

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



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

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

17           (22) the defendant committed any offense under Section  
18 11-20.1 of the Criminal Code of 1961 and possessed 100 or  
19 more images.

20 For the purposes of this Section:

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

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

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

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

11 (2) When a defendant is convicted of any felony and the  
12 court finds that the offense was accompanied by  
13 exceptionally brutal or heinous behavior indicative of  
14 wanton cruelty; or

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

20 (4) When a defendant is convicted of any felony  
21 committed against:

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

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

26 (iii) a person physically handicapped at the time

1 of the offense or such person's property; or

2 (5) In the case of a defendant convicted of aggravated  
3 criminal sexual assault or criminal sexual assault, when  
4 the court finds that aggravated criminal sexual assault or  
5 criminal sexual assault was also committed on the same  
6 victim by one or more other individuals, and the defendant  
7 voluntarily participated in the crime with the knowledge of  
8 the participation of the others in the crime, and the  
9 commission of the crime was part of a single course of  
10 conduct during which there was no substantial change in the  
11 nature of the criminal objective; or

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

18 (i) the brutalizing or torturing of humans or  
19 animals;

20 (ii) the theft of human corpses;

21 (iii) the kidnapping of humans;

22 (iv) the desecration of any cemetery, religious,  
23 fraternal, business, governmental, educational, or  
24 other building or property; or

25 (v) ritualized abuse of a child; or

26 (7) When a defendant is convicted of first degree

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

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

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

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

25 (11) When a defendant who was at least 17 years of age  
26 at the time of the commission of the offense is convicted

1 of a felony and has been previously adjudicated a  
2 delinquent minor under the Juvenile Court Act of 1987 for  
3 an act that if committed by an adult would be a Class X or  
4 Class 1 felony when the conviction has occurred within 10  
5 years after the previous adjudication, excluding time  
6 spent in custody; or

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

25 (13) When a defendant commits any felony and the  
26 defendant used, possessed, exercised control over, or

1 otherwise directed an animal to assault a law enforcement  
2 officer engaged in the execution of his or her official  
3 duties or in furtherance of the criminal activities of an  
4 organized gang in which the defendant is engaged.

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

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

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

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