



Rep. Dennis M. Reboletti

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1 AMENDMENT TO HOUSE BILL 5640

2 AMENDMENT NO. _____. Amend House Bill 5640 by replacing
3 everything after the enacting clause with the following:

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 (Text of Section after amendment by P.A. 96-339)

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

9 (a) The following factors shall be accorded weight in favor
10 of imposing a term of imprisonment or may be considered by the
11 court as reasons to impose a more severe sentence under Section
12 5-8-1 or Article 4.5 of Chapter V:

13 (1) the defendant's conduct caused or threatened
14 serious harm;

15 (2) the defendant received compensation for committing
16 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 or the MR/DD
21 Community Care Act;

22 (19) the defendant was a federally licensed firearm
23 dealer and was previously convicted of a violation of
24 subsection (a) of Section 3 of the Firearm Owners
25 Identification Card Act and has now committed either a
26 felony violation of the Firearm Owners Identification Card

1 Act or an act of armed violence while armed with a firearm;

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

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

18 (22) the defendant committed the offense against a
19 person that the defendant knew, or reasonably should have
20 known, was a member of the Armed Forces of the United
21 States serving on active duty. For purposes of this clause
22 (22), the term "Armed Forces" means any of the Armed Forces
23 of the United States, including a member of any reserve
24 component thereof or National Guard unit called to active
25 duty;

26 (23) the defendant committed the offense against a

1 person who was elderly, disabled, or infirm by taking
2 advantage of a family or fiduciary relationship with the
3 elderly, disabled, or infirm person; ~~or~~

4 (24) the defendant committed any offense under Section
5 11-20.1 of the Criminal Code of 1961 and possessed 100 or
6 more images; ~~or~~

7 (25) the defendant committed the offense while the
8 defendant or the victim was in a train, bus, or other
9 vehicle used for public transportation; or-

10 (26)-(25) the defendant committed the offense of child
11 pornography or aggravated child pornography, specifically
12 including paragraph (1), (2), (3), (4), (5), or (7) of
13 subsection (a) of Section 11-20.1 of the Criminal Code of
14 1961 where a child engaged in, solicited for, depicted in,
15 or posed in any act of sexual penetration or bound,
16 fettered, or subject to sadistic, masochistic, or
17 sadomasochistic abuse in a sexual context and specifically
18 including paragraph (1), (2), (3), (4), (5), or (7) of
19 subsection (a) of Section 11-20.3 of the Criminal Code of
20 1961 where a child engaged in, solicited for, depicted in,
21 or posed in any act of sexual penetration or bound,
22 fettered, or subject to sadistic, masochistic, or
23 sadomasochistic abuse in a sexual context.

24 For the purposes of this Section:

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

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

5 "Public transportation" means the transportation or
6 conveyance of persons by means available to the general public,
7 and includes paratransit services.

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

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

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

22 (3) When a defendant is convicted of any felony
23 committed against:

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

26 (ii) a person 60 years of age or older at the time

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

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

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

10 (i) the brutalizing or torturing of humans or
11 animals;

12 (ii) the theft of human corpses;

13 (iii) the kidnapping of humans;

14 (iv) the desecration of any cemetery, religious,
15 fraternal, business, governmental, educational, or
16 other building or property; or

17 (v) ritualized abuse of a child; or

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

1 defendant's leadership in an organized gang; or

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

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

21 (c) The following factors may be considered by the court as
22 reasons to impose an extended term sentence under Section 5-8-2
23 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

24 (1) When a defendant is convicted of first degree
25 murder, after having been previously convicted in Illinois
26 of any offense listed under paragraph (c) (2) of Section

1 5-5-3 (730 ILCS 5/5-5-3), when that conviction has occurred
2 within 10 years after the previous conviction, excluding
3 time spent in custody, and the charges are separately
4 brought and tried and arise out of different series of
5 acts.

6 (1.5) When a defendant is convicted of first degree
7 murder, after having been previously convicted of domestic
8 battery (720 ILCS 5/12-3.2) or aggravated domestic battery
9 (720 ILCS 5/12-3.3) committed on the same victim or after
10 having been previously convicted of violation of an order
11 of protection (720 ILCS 5/12-30) in which the same victim
12 was the protected person.

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

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

1 nature of the criminal objective.

2 (4) If the victim was under 18 years of age at the time
3 of the commission of the offense, when a defendant is
4 convicted of aggravated criminal sexual assault or
5 predatory criminal sexual assault of a child under
6 subsection (a)(1) of Section 12-14.1 of the Criminal Code
7 of 1961 (720 ILCS 5/12-14.1).

8 (5) When a defendant is convicted of a felony violation
9 of Section 24-1 of the Criminal Code of 1961 (720 ILCS
10 5/24-1) and there is a finding that the defendant is a
11 member of an organized gang.

12 (6) When a defendant was convicted of unlawful use of
13 weapons under Section 24-1 of the Criminal Code of 1961
14 (720 ILCS 5/24-1) for possessing a weapon that is not
15 readily distinguishable as one of the weapons enumerated in
16 Section 24-1 of the Criminal Code of 1961 (720 ILCS
17 5/24-1).

18 (7) When a defendant is convicted of an offense
19 involving the illegal manufacture of a controlled
20 substance under Section 401 of the Illinois Controlled
21 Substances Act (720 ILCS 570/401), the illegal manufacture
22 of methamphetamine under Section 25 of the Methamphetamine
23 Control and Community Protection Act (720 ILCS 646/25), or
24 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, "emergency" means a situation
3 in which a person's life, health, or safety is in jeopardy;
4 and "emergency response officer" means a peace officer,
5 community policing volunteer, fireman, emergency medical
6 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.

11 (c-5) The court may impose an extended term sentence under
12 Article 4.5 of Chapter V upon an offender who has been
13 convicted of a felony violation of Section 12-13, 12-14,
14 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 when the
15 victim of the offense is under 18 years of age at the time of
16 the commission of the offense and, during the commission of the
17 offense, the victim was under the influence of alcohol,
18 regardless of whether or not the alcohol was supplied by the
19 offender.

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

23 (Source: P.A. 95-85, eff. 1-1-08; 95-362, eff. 1-1-08; 95-569,
24 eff. 6-1-08; 95-876, eff. 8-21-08; 95-942, eff. 1-1-09;
25 95-1052, eff. 7-1-09; 96-41, eff. 1-1-10; 96-292, eff. 1-1-10;
26 96-328, eff. 8-11-09; 96-339, eff. 7-1-10; revised 9-25-09.)".