



Sen. John J. Cullerton

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

14          (Source: P.A. 95-85, eff. 1-1-08; 95-362, eff. 1-1-08; 95-569,  
15          eff. 6-1-08; 95-876, eff. 8-21-08; 95-942, eff. 1-1-09;  
16          95-1052, eff. 7-1-09; 96-41, eff. 1-1-10; 96-292, eff. 1-1-10;  
17          96-328, eff. 8-11-09; 96-339, eff. 7-1-10; revised 9-25-09.)".