



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB6213

Introduced 2/11/2010, by Rep. William B. Black - Chapin Rose

#### 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 if the death penalty is not imposed, the court shall impose an extended term sentence when a defendant is convicted of first degree murder, second degree murder, or involuntary manslaughter in which the victim of any of these offenses was a person under 18 years of age and the death of the victim resulted from child abuse. Provides that before the imposition of an extended term sentence under this provision, the State's Attorney shall present evidence to the court at the sentencing hearing of the defendant describing the facts in the case. Provides that if the court finds that the death of the person under 18 years of age was the result of child abuse, the court shall impose an extended term sentence upon the defendant. Provides that if the court does not make such finding, the court shall impose any other sentence for the offense as prescribed in the Code.

LRB096 17186 RLC 36642 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

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 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;

17 (3) the defendant has a history of prior delinquency or  
18 criminal activity;

19 (4) the defendant, by the duties of his office or by  
20 his position, was obliged to prevent the particular offense  
21 committed or to bring the offenders committing it to  
22 justice;

23 (5) the defendant held public office at the time of the

1 offense, and the offense related to the conduct of that  
2 office;

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

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

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

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

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

25 (11) the offense took place in a place of worship or on  
26 the grounds of a place of worship, immediately prior to,

1 during or immediately following worship services. For  
2 purposes of this subparagraph, "place of worship" shall  
3 mean any church, synagogue or other building, structure or  
4 place used primarily for religious worship;

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

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

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

26 (15) the defendant committed an offense related to the

1 activities of an organized gang. For the purposes of this  
2 factor, "organized gang" has the meaning ascribed to it in  
3 Section 10 of the Streetgang Terrorism Omnibus Prevention  
4 Act;

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

16 (16.5) the defendant committed an offense in violation  
17 of one of the following Sections while in a day care  
18 center, regardless of the time of day or time of year; on  
19 the real property of a day care center, regardless of the  
20 time of day or time of year; or on a public way within  
21 1,000 feet of the real property comprising any day care  
22 center, regardless of the time of day or time of year:  
23 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,  
24 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,  
25 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or  
26 33A-2 of the Criminal Code of 1961;

1           (17) the defendant committed the offense by reason of  
2           any person's activity as a community policing volunteer or  
3           to prevent any person from engaging in activity as a  
4           community policing volunteer. For the purpose of this  
5           Section, "community policing volunteer" has the meaning  
6           ascribed to it in Section 2-3.5 of the Criminal Code of  
7           1961;

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

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

21          (20) the defendant (i) committed the offense of  
22          reckless homicide under Section 9-3 of the Criminal Code of  
23          1961 or the offense of driving under the influence of  
24          alcohol, other drug or drugs, intoxicating compound or  
25          compounds or any combination thereof under Section 11-501  
26          of the Illinois Vehicle Code or a similar provision of a

1 local ordinance and (ii) was operating a motor vehicle in  
2 excess of 20 miles per hour over the posted speed limit as  
3 provided in Article VI of Chapter 11 of the Illinois  
4 Vehicle Code;

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

11 (22) the defendant committed the offense against a  
12 person that the defendant knew, or reasonably should have  
13 known, was a member of the Armed Forces of the United  
14 States serving on active duty. For purposes of this clause  
15 (22), the term "Armed Forces" means any of the Armed Forces  
16 of the United States, including a member of any reserve  
17 component thereof or National Guard unit called to active  
18 duty;

19 (23) the defendant committed the offense against a  
20 person who was elderly, disabled, or infirm by taking  
21 advantage of a family or fiduciary relationship with the  
22 elderly, disabled, or infirm person; ~~or~~

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

26 (25) the defendant committed the offense while the

1 defendant or the victim was in a train, bus, or other  
2 vehicle used for public transportation; or-

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

17 For the purposes of this Section:

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

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

24 "Public transportation" means the transportation or  
25 conveyance of persons by means available to the general public,  
26 and includes paratransit services.



1 (b) The following factors, related to all felonies, may be  
2 considered by the court as reasons to impose an extended term  
3 sentence under Section 5-8-2 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 any felony  
16 committed against:

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

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

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

23 (4) When a defendant is convicted of any felony and the  
24 offense involved any of the following types of specific  
25 misconduct committed as part of a ceremony, rite,  
26 initiation, observance, performance, practice or activity

1 of any actual or ostensible religious, fraternal, or social  
2 group:

3 (i) the brutalizing or torturing of humans or  
4 animals;

5 (ii) the theft of human corpses;

6 (iii) the kidnapping of humans;

7 (iv) the desecration of any cemetery, religious,  
8 fraternal, business, governmental, educational, or  
9 other building or property; or

10 (v) ritualized abuse of a child; or

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

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

26 (7) When a defendant who was at least 17 years of age

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

8 (8) When a defendant commits any felony and the  
9 defendant used, possessed, exercised control over, or  
10 otherwise directed an animal to assault a law enforcement  
11 officer engaged in the execution of his or her official  
12 duties or in furtherance of the criminal activities of an  
13 organized gang in which the defendant is engaged.

14 (c) The following factors may be considered by the court as  
15 reasons to impose an extended term sentence under Section 5-8-2  
16 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

17 (1) When a defendant is convicted of first degree  
18 murder, after having been previously convicted in Illinois  
19 of any offense listed under paragraph (c)(2) of Section  
20 5-5-3 (730 ILCS 5/5-5-3), when that conviction has occurred  
21 within 10 years after the previous conviction, excluding  
22 time spent in custody, and the charges are separately  
23 brought and tried and arise out of different series of  
24 acts.

25 (1.5) When a defendant is convicted of first degree  
26 murder, after having been previously convicted of domestic

1 battery (720 ILCS 5/12-3.2) or aggravated domestic battery  
2 (720 ILCS 5/12-3.3) committed on the same victim or after  
3 having been previously convicted of violation of an order  
4 of protection (720 ILCS 5/12-30) in which the same victim  
5 was the protected person.

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

11 (3) When a defendant is convicted of aggravated  
12 criminal sexual assault or criminal sexual assault, when  
13 there is a finding that aggravated criminal sexual assault  
14 or criminal sexual assault was also committed on the same  
15 victim by one or more other individuals, and the defendant  
16 voluntarily participated in the crime with the knowledge of  
17 the participation of the others in the crime, and the  
18 commission of the crime was part of a single course of  
19 conduct during which there was no substantial change in the  
20 nature of the criminal objective.

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

1           (5) When a defendant is convicted of a felony violation  
2 of Section 24-1 of the Criminal Code of 1961 (720 ILCS  
3 5/24-1) and there is a finding that the defendant is a  
4 member of an organized gang.

5           (6) When a defendant was convicted of unlawful use of  
6 weapons under Section 24-1 of the Criminal Code of 1961  
7 (720 ILCS 5/24-1) for possessing a weapon that is not  
8 readily distinguishable as one of the weapons enumerated in  
9 Section 24-1 of the Criminal Code of 1961 (720 ILCS  
10 5/24-1).

11           (7) When a defendant is convicted of an offense  
12 involving the illegal manufacture of a controlled  
13 substance under Section 401 of the Illinois Controlled  
14 Substances Act (720 ILCS 570/401), the illegal manufacture  
15 of methamphetamine under Section 25 of the Methamphetamine  
16 Control and Community Protection Act (720 ILCS 646/25), or  
17 the illegal possession of explosives and an emergency  
18 response officer in the performance of his or her duties is  
19 killed or injured at the scene of the offense while  
20 responding to the emergency caused by the commission of the  
21 offense. In this paragraph, "emergency" means a situation  
22 in which a person's life, health, or safety is in jeopardy;  
23 and "emergency response officer" means a peace officer,  
24 community policing volunteer, fireman, emergency medical  
25 technician-ambulance,                   emergency                   medical  
26 technician-intermediate,               emergency               medical

1 technician-paramedic, ambulance driver, other medical  
2 assistance or first aid personnel, or hospital emergency  
3 room personnel.

4 (c-5) If the death penalty is not imposed, the court shall  
5 impose an extended term sentence under Article 4.5 of Chapter V  
6 when a defendant is convicted of first degree murder, second  
7 degree murder, or involuntary manslaughter in which the victim  
8 of any of these offenses was a person under 18 years of age and  
9 the death of the victim resulted from child abuse. Before the  
10 imposition of an extended term sentence under this subsection  
11 (c-5), the State's Attorney shall present evidence to the court  
12 at the sentencing hearing of the defendant describing the facts  
13 in the case. If the court finds that the death of the person  
14 under 18 years of age was the result of child abuse, the court  
15 shall impose an extended term sentence upon the defendant. If  
16 the court does not make such finding, the court shall impose  
17 any other sentence for the offense as prescribed in this  
18 Chapter V. For the purposes of this subsection (c-5), "abuse"  
19 has the meaning ascribed to it in Section 2-3 of the Juvenile  
20 Court Act of 1987.

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

24 (Source: P.A. 95-85, eff. 1-1-08; 95-362, eff. 1-1-08; 95-569,  
25 eff. 6-1-08; 95-876, eff. 8-21-08; 95-942, eff. 1-1-09;  
26 95-1052, eff. 7-1-09; 96-41, eff. 1-1-10; 96-292, eff. 1-1-10;

1 96-328, eff. 8-11-09; 96-339, eff. 7-1-10; revised 9-25-09.)