

HB2973



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB2973

Introduced 2/23/2011, by Rep. John E. Bradley

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.2

Amends the Unified Code of Corrections. Provides that the court may impose an extended term sentence when a defendant is convicted of a felony and there is a finding that during the commission of the offense the defendant was hooded, robed, or masked in such manner as to conceal his or her identity.

LRB097 06772 RLC 46862 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)

7 Sec. 5-5-3.2. Factors in Aggravation and Extended-Term
8 Sentencing.

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;

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;

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) 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; or

17 (27) the defendant committed the offense of first
18 degree murder, assault, aggravated assault, battery,
19 aggravated battery, robbery, armed robbery, or aggravated
20 robbery against a person who was a veteran and the
21 defendant knew, or reasonably should have known, that the
22 person was a veteran performing duties as a representative
23 of a veterans' organization. For the purposes of this
24 paragraph (27), "veteran" means an Illinois resident who
25 has served as a member of the United States Armed Forces, a
26 member of the Illinois National Guard, or a member of the

1 United States Reserve Forces; and "veterans' organization"
2 means an organization comprised of members of which
3 substantially all are individuals who are veterans or
4 spouses, widows, or widowers of veterans, the primary
5 purpose of which is to promote the welfare of its members
6 and to provide assistance to the general public in such a
7 way as to confer a public benefit.

8 For the purposes of this Section:

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

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

15 "Public transportation" means the transportation or
16 conveyance of persons by means available to the general public,
17 and includes paratransit services.

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

21 (1) When a defendant is convicted of any felony, after
22 having been previously convicted in Illinois or any other
23 jurisdiction of the same or similar class felony or greater
24 class felony, when such conviction has occurred within 10
25 years after the previous conviction, excluding time spent
26 in custody, and such charges are separately brought and

1 tried and arise out of different series of acts; or

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

6 (3) When a defendant is convicted of any felony
7 committed against:

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

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

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

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

20 (i) the brutalizing or torturing of humans or
21 animals;

22 (ii) the theft of human corpses;

23 (iii) the kidnapping of humans;

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

1 (v) ritualized abuse of a child; or

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

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

17 (7) When a defendant who was at least 17 years of age
18 at the time of the commission of the offense is convicted
19 of a felony and has been previously adjudicated a
20 delinquent minor under the Juvenile Court Act of 1987 for
21 an act that if committed by an adult would be a Class X or
22 Class 1 felony when the conviction has occurred within 10
23 years after the previous adjudication, excluding time
24 spent in custody; or

25 (8) 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 (c) The following factors may be considered by the court as
6 reasons to impose an extended term sentence under Section 5-8-2
7 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

8 (1) When a defendant is convicted of first degree
9 murder, after having been previously convicted in Illinois
10 of any offense listed under paragraph (c)(2) of Section
11 5-5-3 (730 ILCS 5/5-5-3), when that conviction has occurred
12 within 10 years after the previous conviction, excluding
13 time spent in custody, and the charges are separately
14 brought and tried and arise out of different series of
15 acts.

16 (1.5) When a defendant is convicted of first degree
17 murder, after having been previously convicted of domestic
18 battery (720 ILCS 5/12-3.2) or aggravated domestic battery
19 (720 ILCS 5/12-3.3) committed on the same victim or after
20 having been previously convicted of violation of an order
21 of protection (720 ILCS 5/12-30) in which the same victim
22 was the protected person.

23 (2) When a defendant is convicted of voluntary
24 manslaughter, second degree murder, involuntary
25 manslaughter, or reckless homicide in which the defendant
26 has been convicted of causing the death of more than one

1 individual.

2 (3) When a defendant is convicted of aggravated
3 criminal sexual assault or criminal sexual assault, when
4 there is a finding that aggravated criminal sexual assault
5 or 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.

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

18 (5) When a defendant is convicted of a felony violation
19 of Section 24-1 of the Criminal Code of 1961 (720 ILCS
20 5/24-1) and there is a finding that the defendant is a
21 member of an organized gang.

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

1 5/24-1).

2 (7) When a defendant is convicted of an offense
3 involving the illegal manufacture of a controlled
4 substance under Section 401 of the Illinois Controlled
5 Substances Act (720 ILCS 570/401), the illegal manufacture
6 of methamphetamine under Section 25 of the Methamphetamine
7 Control and Community Protection Act (720 ILCS 646/25), or
8 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, "emergency" means a situation
13 in which a person's life, health, or safety is in jeopardy;
14 and "emergency response officer" means a peace officer,
15 community policing volunteer, fireman, emergency medical
16 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.

21 (8) When a defendant is convicted of a felony and there
22 is a finding that during the commission of the offense the
23 defendant was hooded, robed, or masked in such manner as to
24 conceal his or her identity.

25 (d) For the purposes of this Section, "organized gang" has
26 the meaning ascribed to it in Section 10 of the Illinois

1 Streetgang Terrorism Omnibus Prevention Act.

2 (e) The court may impose an extended term sentence under
3 Article 4.5 of Chapter V upon an offender who has been
4 convicted of a felony violation of Section 12-13, 12-14,
5 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 when the
6 victim of the offense is under 18 years of age at the time of
7 the commission of the offense and, during the commission of the
8 offense, the victim was under the influence of alcohol,
9 regardless of whether or not the alcohol was supplied by the
10 offender; and the offender, at the time of the commission of
11 the offense, knew or should have known that the victim had
12 consumed alcohol.

13 (Source: P.A. 95-85, eff. 1-1-08; 95-362, eff. 1-1-08; 95-569,
14 eff. 6-1-08; 95-876, eff. 8-21-08; 95-942, eff. 1-1-09;
15 95-1052, eff. 7-1-09; 96-41, eff. 1-1-10; 96-292, eff. 1-1-10;
16 96-328, eff. 8-11-09; 96-339, eff. 7-1-10; 96-1000, eff.
17 7-2-10; 96-1200, eff. 7-22-10; 96-1228, eff. 1-1-11; 96-1390,
18 eff. 1-1-11; revised 9-16-10.)