



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3914

Introduced 12/12/2011, by Rep. Constance A. Howard

SYNOPSIS AS INTRODUCED:

720 ILCS 5/18-6 new
730 ILCS 5/5-5-3.2

Amends the Criminal Code of 1961. Provides that it is unlawful to use force or to threaten the use of force against another person to effect or to attempt to effect a transaction at an electronic fund transfer terminal located in this State. Provides that a violation is a Class X felony. Amends the Unified Code of Corrections. Provides that a violation committed during the course of the commission of first degree murder is an aggravating factor in sentencing.

LRB097 15079 RLC 60170 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 Criminal Code of 1961 is amended by adding
5 Section 18-6 as follows:

6 (720 ILCS 5/18-6 new)

7 Sec. 18-6. Electronic fund transfer terminal; forced
8 transfer of funds.

9 (a) It is unlawful to use force or to threaten the use of
10 force against another person to effect or to attempt to effect
11 a transaction at an electronic fund transfer terminal located
12 in this State.

13 (b) Sentence. A violation of this Section is a Class X
14 felony.

15 (c) In this Section, "electronic fund transfer terminal"
16 has the meaning ascribed to it in Section 17-0.5 of this Code.

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

19 (730 ILCS 5/5-5-3.2)

20 Sec. 5-5-3.2. Factors in Aggravation and Extended-Term
21 Sentencing.

1 (a) The following factors shall be accorded weight in favor
2 of imposing a term of imprisonment or may be considered by the
3 court as reasons to impose a more severe sentence under Section
4 5-8-1 or Article 4.5 of Chapter V:

5 (1) the defendant's conduct caused or threatened
6 serious harm;

7 (2) the defendant received compensation for committing
8 the offense;

9 (3) the defendant has a history of prior delinquency or
10 criminal activity;

11 (4) the defendant, by the duties of his office or by
12 his position, was obliged to prevent the particular offense
13 committed or to bring the offenders committing it to
14 justice;

15 (5) the defendant held public office at the time of the
16 offense, and the offense related to the conduct of that
17 office;

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

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

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

25 (9) the defendant committed the offense against a
26 person who is physically handicapped or such person's

1 property;

2 (10) by reason of another individual's actual or
3 perceived race, color, creed, religion, ancestry, gender,
4 sexual orientation, physical or mental disability, or
5 national origin, the defendant committed the offense
6 against (i) the person or property of that individual; (ii)
7 the person or property of a person who has an association
8 with, is married to, or has a friendship with the other
9 individual; or (iii) the person or property of a relative
10 (by blood or marriage) of a person described in clause (i)
11 or (ii). For the purposes of this Section, "sexual
12 orientation" means heterosexuality, homosexuality, or
13 bisexuality;

14 (11) the offense took place in a place of worship or on
15 the grounds of a place of worship, immediately prior to,
16 during or immediately following worship services. For
17 purposes of this subparagraph, "place of worship" shall
18 mean any church, synagogue or other building, structure or
19 place used primarily for religious worship;

20 (12) the defendant was convicted of a felony committed
21 while he was released on bail or his own recognizance
22 pending trial for a prior felony and was convicted of such
23 prior felony, or the defendant was convicted of a felony
24 committed while he was serving a period of probation,
25 conditional discharge, or mandatory supervised release
26 under subsection (d) of Section 5-8-1 for a prior felony;

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

6 (14) the defendant held a position of trust or
7 supervision such as, but not limited to, family member as
8 defined in Section 11-0.1 of the Criminal Code of 1961,
9 teacher, scout leader, baby sitter, or day care worker, in
10 relation to a victim under 18 years of age, and the
11 defendant committed an offense in violation of Section
12 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-11,
13 11-14.4 except for an offense that involves keeping a place
14 of juvenile prostitution, 11-15.1, 11-19.1, 11-19.2,
15 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14, 12-14.1, 12-15
16 or 12-16 of the Criminal Code of 1961 against that victim;

17 (15) the defendant committed an offense related to the
18 activities of an organized gang. For the purposes of this
19 factor, "organized gang" has the meaning ascribed to it in
20 Section 10 of the Streetgang Terrorism Omnibus Prevention
21 Act;

22 (16) the defendant committed an offense in violation of
23 one of the following Sections while in a school, regardless
24 of the time of day or time of year; on any conveyance
25 owned, leased, or contracted by a school to transport
26 students to or from school or a school related activity; on

1 the real property of a school; or on a public way within
2 1,000 feet of the real property comprising any school:
3 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,
4 11-1.50, 11-1.60, 11-14.4, 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, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,
7 18-2, or 33A-2, or Section 12-3.05 except for subdivision
8 (a) (4) or (g) (1), of the Criminal Code of 1961;

9 (16.5) the defendant committed an offense in violation
10 of one of the following Sections while in a day care
11 center, regardless of the time of day or time of year; on
12 the real property of a day care center, regardless of the
13 time of day or time of year; or on a public way within
14 1,000 feet of the real property comprising any day care
15 center, regardless of the time of day or time of year:
16 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,
17 11-1.50, 11-1.60, 11-14.4, 11-15.1, 11-17.1, 11-18.1,
18 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
19 12-6, 12-6.1, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,
20 18-2, or 33A-2, or Section 12-3.05 except for subdivision
21 (a) (4) or (g) (1), of the Criminal Code of 1961;

22 (17) the defendant committed the offense by reason of
23 any person's activity as a community policing volunteer or
24 to prevent any person from engaging in activity as a
25 community policing volunteer. For the purpose of this
26 Section, "community policing volunteer" has the meaning

1 ascribed to it in Section 2-3.5 of the Criminal Code of
2 1961;

3 (18) the defendant committed the offense in a nursing
4 home or on the real property comprising a nursing home. For
5 the purposes of this paragraph (18), "nursing home" means a
6 skilled nursing or intermediate long term care facility
7 that is subject to license by the Illinois Department of
8 Public Health under the Nursing Home Care Act, the
9 Specialized Mental Health Rehabilitation Act, or the ID/DD
10 Community Care Act;

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

17 (20) the defendant (i) committed the offense of
18 reckless homicide under Section 9-3 of the Criminal Code of
19 1961 or the offense of driving under the influence of
20 alcohol, other drug or drugs, intoxicating compound or
21 compounds or any combination thereof under Section 11-501
22 of the Illinois Vehicle Code or a similar provision of a
23 local ordinance and (ii) was operating a motor vehicle in
24 excess of 20 miles per hour over the posted speed limit as
25 provided in Article VI of Chapter 11 of the Illinois
26 Vehicle Code;

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

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

15 (23) the defendant committed the offense against a
16 person who was elderly, disabled, or infirm by taking
17 advantage of a family or fiduciary relationship with the
18 elderly, disabled, or infirm person;

19 (24) the defendant committed any offense under Section
20 11-20.1 of the Criminal Code of 1961 and possessed 100 or
21 more images;

22 (25) the defendant committed the offense while the
23 defendant or the victim was in a train, bus, or other
24 vehicle used for public transportation;

25 (26) the defendant committed the offense of child
26 pornography or aggravated child pornography, specifically

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

13 (27) the defendant committed the offense of first
14 degree murder, assault, aggravated assault, battery,
15 aggravated battery, robbery, armed robbery, or aggravated
16 robbery against a person who was a veteran and the
17 defendant knew, or reasonably should have known, that the
18 person was a veteran performing duties as a representative
19 of a veterans' organization. For the purposes of this
20 paragraph (27), "veteran" means an Illinois resident who
21 has served as a member of the United States Armed Forces, a
22 member of the Illinois National Guard, or a member of the
23 United States Reserve Forces; and "veterans' organization"
24 means an organization comprised of members of which
25 substantially all are individuals who are veterans or
26 spouses, widows, or widowers of veterans, the primary

1 purpose of which is to promote the welfare of its members
2 and to provide assistance to the general public in such a
3 way as to confer a public benefit; or -

4 (28) the defendant committed the offense of first
5 degree murder during the commission of a violation of
6 Section 18-6 of the Criminal Code of 1961.

7 For the purposes of this Section:

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

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

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

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

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

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

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

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

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

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

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

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

21 (ii) the theft of human corpses;

22 (iii) the kidnapping of humans;

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

26 (v) ritualized abuse of a child; or

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

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

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

24 (8) When a defendant commits any felony and the
25 defendant used, possessed, exercised control over, or
26 otherwise directed an animal to assault a law enforcement

1 officer engaged in the execution of his or her official
2 duties or in furtherance of the criminal activities of an
3 organized gang in which the defendant is engaged.

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

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

15 (1.5) When a defendant is convicted of first degree
16 murder, after having been previously convicted of domestic
17 battery (720 ILCS 5/12-3.2) or aggravated domestic battery
18 (720 ILCS 5/12-3.3) committed on the same victim or after
19 having been previously convicted of violation of an order
20 of protection (720 ILCS 5/12-30) in which the same victim
21 was the protected person.

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

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

11 (4) If the victim was under 18 years of age at the time
12 of the commission of the offense, when a defendant is
13 convicted of aggravated criminal sexual assault or
14 predatory criminal sexual assault of a child under
15 subsection (a)(1) of Section 11-1.40 or subsection (a)(1)
16 of Section 12-14.1 of the Criminal Code of 1961 (720 ILCS
17 5/11-1.40 or 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 (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 (e) The court may impose an extended term sentence under
25 Article 4.5 of Chapter V upon an offender who has been
26 convicted of a felony violation of Section 12-13, 12-14,

1 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 when the
2 victim of the offense is under 18 years of age at the time of
3 the commission of the offense and, during the commission of the
4 offense, the victim was under the influence of alcohol,
5 regardless of whether or not the alcohol was supplied by the
6 offender; and the offender, at the time of the commission of
7 the offense, knew or should have known that the victim had
8 consumed alcohol.

9 (Source: P.A. 96-41, eff. 1-1-10; 96-292, eff. 1-1-10; 96-328,
10 eff. 8-11-09; 96-339, eff. 7-1-10; 96-1000, eff. 7-2-10;
11 96-1200, eff. 7-22-10; 96-1228, eff. 1-1-11; 96-1390, eff.
12 1-1-11; 96-1551, Article 1, Section 970, eff. 7-1-11; 96-1551,
13 Article 2, Section 1065, eff. 7-1-11; 97-38, eff. 6-28-11,
14 97-227, eff. 1-1-12; 97-333, eff. 8-12-11; revised 9-14-11.)