



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4656

Introduced 2/1/2012, by Rep. John D. Cavaletto

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 upon a defendant when the defendant is convicted of a felony and the court finds that the defendant used a position of trust or supervision including, but not limited to, family member, teacher, scout leader, baby sitter, or day care worker, in relation to a victim under 18 years of age, to commit the offense against the victim.

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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 11-0.1 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 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-11,
24 11-14.4 except for an offense that involves keeping a place
25 of juvenile prostitution, 11-15.1, 11-19.1, 11-19.2,
26 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14, 12-14.1, 12-15

1 or 12-16 of the Criminal Code of 1961 against that victim;

2 (15) the defendant committed an offense related to the
3 activities of an organized gang. For the purposes of this
4 factor, "organized gang" has the meaning ascribed to it in
5 Section 10 of the Streetgang Terrorism Omnibus Prevention
6 Act;

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

20 (16.5) the defendant committed an offense in violation
21 of one of the following Sections while in a day care
22 center, regardless of the time of day or time of year; on
23 the real property of a day care center, regardless of the
24 time of day or time of year; or on a public way within
25 1,000 feet of the real property comprising any day care
26 center, regardless of the time of day or time of year:

1 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,
2 11-1.50, 11-1.60, 11-14.4, 11-15.1, 11-17.1, 11-18.1,
3 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
4 12-6, 12-6.1, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,
5 18-2, or 33A-2, or Section 12-3.05 except for subdivision
6 (a) (4) or (g) (1), of the Criminal Code of 1961;

7 (17) the defendant committed the offense by reason of
8 any person's activity as a community policing volunteer or
9 to prevent any person from engaging in activity as a
10 community policing volunteer. For the purpose of this
11 Section, "community policing volunteer" has the meaning
12 ascribed to it in Section 2-3.5 of the Criminal Code of
13 1961;

14 (18) the defendant committed the offense in a nursing
15 home or on the real property comprising a nursing home. For
16 the purposes of this paragraph (18), "nursing home" means a
17 skilled nursing or intermediate long term care facility
18 that is subject to license by the Illinois Department of
19 Public Health under the Nursing Home Care Act, the
20 Specialized Mental Health Rehabilitation Act, or the ID/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;

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;

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;

10 (26) 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; or

24 (27) the defendant committed the offense of first
25 degree murder, assault, aggravated assault, battery,
26 aggravated battery, robbery, armed robbery, or aggravated

1 robbery against a person who was a veteran and the
2 defendant knew, or reasonably should have known, that the
3 person was a veteran performing duties as a representative
4 of a veterans' organization. For the purposes of this
5 paragraph (27), "veteran" means an Illinois resident who
6 has served as a member of the United States Armed Forces, a
7 member of the Illinois National Guard, or a member of the
8 United States Reserve Forces; and "veterans' organization"
9 means an organization comprised of members of which
10 substantially all are individuals who are veterans or
11 spouses, widows, or widowers of veterans, the primary
12 purpose of which is to promote the welfare of its members
13 and to provide assistance to the general public in such a
14 way as to confer a public benefit.

15 For the purposes of this Section:

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

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

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

25 (b) The following factors, related to all felonies, may be
26 considered by the court as reasons to impose an extended term

1 sentence under Section 5-8-2 upon any offender:

2 (1) When a defendant is convicted of any felony, after
3 having been previously convicted in Illinois or any other
4 jurisdiction of the same or similar class felony or greater
5 class felony, when such conviction has occurred within 10
6 years after the previous conviction, excluding time spent
7 in custody, and such charges are separately brought and
8 tried and arise out of different series of acts; or

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

13 (3) When a defendant is convicted of any felony
14 committed against:

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

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

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

21 (4) When a defendant is convicted of any felony and the
22 offense involved any of the following types of specific
23 misconduct committed as part of a ceremony, rite,
24 initiation, observance, performance, practice or activity
25 of any actual or ostensible religious, fraternal, or social
26 group:

1 (i) the brutalizing or torturing of humans or
2 animals;

3 (ii) the theft of human corpses;

4 (iii) the kidnapping of humans;

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

8 (v) ritualized abuse of a child; or

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

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

24 (7) When a defendant who was at least 17 years of age
25 at the time of the commission of the offense is convicted
26 of a felony and has been previously adjudicated a

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

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

12 (9) When a defendant is convicted of a felony and the
13 court finds that the defendant used a position of trust or
14 supervision including, but not limited to, family member as
15 defined in Section 11-0.1 of the Criminal Code of 1961,
16 teacher, scout leader, baby sitter, or day care worker, in
17 relation to a victim under 18 years of age, to commit the
18 offense against the victim.

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

22 (1) When a defendant is convicted of first degree
23 murder, after having been previously convicted in Illinois
24 of any offense listed under paragraph (c)(2) of Section
25 5-5-3 (730 ILCS 5/5-5-3), when that conviction has occurred
26 within 10 years after the previous conviction, excluding

1 time spent in custody, and the charges are separately
2 brought and tried and arise out of different series of
3 acts.

4 (1.5) When a defendant is convicted of first degree
5 murder, after having been previously convicted of domestic
6 battery (720 ILCS 5/12-3.2) or aggravated domestic battery
7 (720 ILCS 5/12-3.3) committed on the same victim or after
8 having been previously convicted of violation of an order
9 of protection (720 ILCS 5/12-30) in which the same victim
10 was the protected person.

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

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

26 (4) If the victim was under 18 years of age at the time

1 of the commission of the offense, when a defendant is
2 convicted of aggravated criminal sexual assault or
3 predatory criminal sexual assault of a child under
4 subsection (a)(1) of Section 11-1.40 or subsection (a)(1)
5 of Section 12-14.1 of the Criminal Code of 1961 (720 ILCS
6 5/11-1.40 or 5/12-14.1).

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

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

17 (7) When a defendant is convicted of an offense
18 involving the illegal manufacture of a controlled
19 substance under Section 401 of the Illinois Controlled
20 Substances Act (720 ILCS 570/401), the illegal manufacture
21 of methamphetamine under Section 25 of the Methamphetamine
22 Control and Community Protection Act (720 ILCS 646/25), or
23 the illegal possession of explosives and an emergency
24 response officer in the performance of his or her duties is
25 killed or injured at the scene of the offense while
26 responding to the emergency caused by the commission of the

1 offense. In this paragraph, "emergency" means a situation
2 in which a person's life, health, or safety is in jeopardy;
3 and "emergency response officer" means a peace officer,
4 community policing volunteer, fireman, emergency medical
5 technician-ambulance, emergency medical
6 technician-intermediate, emergency medical
7 technician-paramedic, ambulance driver, other medical
8 assistance or first aid personnel, or hospital emergency
9 room personnel.

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

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

24 (Source: P.A. 96-41, eff. 1-1-10; 96-292, eff. 1-1-10; 96-328,
25 eff. 8-11-09; 96-339, eff. 7-1-10; 96-1000, eff. 7-2-10;
26 96-1200, eff. 7-22-10; 96-1228, eff. 1-1-11; 96-1390, eff.

1 1-1-11; 96-1551, Article 1, Section 970, eff. 7-1-11; 96-1551,
2 Article 2, Section 1065, eff. 7-1-11; 97-38, eff. 6-28-11,
3 97-227, eff. 1-1-12; 97-333, eff. 8-12-11; revised 9-14-11.)