



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3912

by Rep. Chad Hays

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.2

Amends the Unified Code of Corrections. Provides that 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.

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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 2012,  
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 or the Criminal Code  
2 of 2012 against that victim;

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

8 (16) the defendant committed an offense in violation of  
9 one of the following Sections while in a school, regardless  
10 of the time of day or time of year; on any conveyance  
11 owned, leased, or contracted by a school to transport  
12 students to or from school or a school related activity; on  
13 the real property of a school; or on a public way within  
14 1,000 feet of the real property comprising any school:  
15 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,  
16 11-1.50, 11-1.60, 11-14.4, 11-15.1, 11-17.1, 11-18.1,  
17 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,  
18 12-6, 12-6.1, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,  
19 18-2, or 33A-2, or Section 12-3.05 except for subdivision  
20 (a)(4) or (g)(1), of the Criminal Code of 1961 or the  
21 Criminal Code of 2012;

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

1 1,000 feet of the real property comprising any day care  
2 center, regardless of the time of day or time of year:  
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 or the  
9 Criminal Code of 2012;

10 (17) the defendant committed the offense by reason of  
11 any person's activity as a community policing volunteer or  
12 to prevent any person from engaging in activity as a  
13 community policing volunteer. For the purpose of this  
14 Section, "community policing volunteer" has the meaning  
15 ascribed to it in Section 2-3.5 of the Criminal Code of  
16 2012;

17 (18) the defendant committed the offense in a nursing  
18 home or on the real property comprising a nursing home. For  
19 the purposes of this paragraph (18), "nursing home" means a  
20 skilled nursing or intermediate long term care facility  
21 that is subject to license by the Illinois Department of  
22 Public Health under the Nursing Home Care Act, the  
23 Specialized Mental Health Rehabilitation Act of 2013, or  
24 the ID/DD Community Care Act;

25 (19) the defendant was a federally licensed firearm  
26 dealer and was previously convicted of a violation of

1 subsection (a) of Section 3 of the Firearm Owners  
2 Identification Card Act and has now committed either a  
3 felony violation of the Firearm Owners Identification Card  
4 Act or an act of armed violence while armed with a firearm;

5 (20) the defendant (i) committed the offense of  
6 reckless homicide under Section 9-3 of the Criminal Code of  
7 1961 or the Criminal Code of 2012 or the offense of driving  
8 under the influence of alcohol, other drug or drugs,  
9 intoxicating compound or compounds or any combination  
10 thereof under Section 11-501 of the Illinois Vehicle Code  
11 or a similar provision of a local ordinance and (ii) was  
12 operating a motor vehicle in excess of 20 miles per hour  
13 over the posted speed limit as provided in Article VI of  
14 Chapter 11 of the Illinois Vehicle Code;

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

21 (22) the defendant committed the offense against a  
22 person that the defendant knew, or reasonably should have  
23 known, was a member of the Armed Forces of the United  
24 States serving on active duty. For purposes of this clause  
25 (22), the term "Armed Forces" means any of the Armed Forces  
26 of the United States, including a member of any reserve

1 component thereof or National Guard unit called to active  
2 duty;

3 (23) the defendant committed the offense against a  
4 person who was elderly, disabled, or infirm by taking  
5 advantage of a family or fiduciary relationship with the  
6 elderly, disabled, or infirm person;

7 (24) the defendant committed any offense under Section  
8 11-20.1 of the Criminal Code of 1961 or the Criminal Code  
9 of 2012 and possessed 100 or more images;

10 (25) the defendant committed the offense while the  
11 defendant or the victim was in a train, bus, or other  
12 vehicle used for public transportation;

13 (26) the defendant committed the offense of child  
14 pornography or aggravated child pornography, specifically  
15 including paragraph (1), (2), (3), (4), (5), or (7) of  
16 subsection (a) of Section 11-20.1 of the Criminal Code of  
17 1961 or the Criminal Code of 2012 where a child engaged in,  
18 solicited for, depicted in, or posed in any act of sexual  
19 penetration or bound, fettered, or subject to sadistic,  
20 masochistic, or sadomasochistic abuse in a sexual context  
21 and specifically including paragraph (1), (2), (3), (4),  
22 (5), or (7) of subsection (a) of Section 11-20.1B or  
23 Section 11-20.3 of the Criminal Code of 1961 where a child  
24 engaged in, solicited for, depicted in, or posed in any act  
25 of sexual penetration or bound, fettered, or subject to  
26 sadistic, masochistic, or sadomasochistic abuse in a



1 sexual context;

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

19 (28) the defendant committed the offense of assault,  
20 aggravated assault, battery, aggravated battery, robbery,  
21 armed robbery, or aggravated robbery against a person that  
22 the defendant knew or reasonably should have known was a  
23 letter carrier or postal worker while that person was  
24 performing his or her duties delivering mail for the United  
25 States Postal Service.

26 For the purposes of this Section:

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

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

7 "Public transportation" means the transportation or  
8 conveyance of persons by means available to the general public,  
9 and includes paratransit services.

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

13 (1) When a defendant is convicted of any felony, after  
14 having been previously convicted in Illinois or any other  
15 jurisdiction of the same or similar class felony or greater  
16 class felony, when such conviction has occurred within 10  
17 years after the previous conviction, excluding time spent  
18 in custody, and such charges are separately brought and  
19 tried and arise out of different series of acts; or

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

24 (3) When a defendant is convicted of any felony  
25 committed against:

26 (i) a person under 12 years of age at the time of

1 the offense or such person's property;

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

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

6 (4) When a defendant is convicted of any felony and the  
7 offense involved any of the following types of specific  
8 misconduct committed as part of a ceremony, rite,  
9 initiation, observance, performance, practice or activity  
10 of any actual or ostensible religious, fraternal, or social  
11 group:

12 (i) the brutalizing or torturing of humans or  
13 animals;

14 (ii) the theft of human corpses;

15 (iii) the kidnapping of humans;

16 (iv) the desecration of any cemetery, religious,  
17 fraternal, business, governmental, educational, or  
18 other building or property; or

19 (v) ritualized abuse of a child; or

20 (5) When a defendant is convicted of a felony other  
21 than conspiracy and the court finds that the felony was  
22 committed under an agreement with 2 or more other persons  
23 to commit that offense and the defendant, with respect to  
24 the other individuals, occupied a position of organizer,  
25 supervisor, financier, or any other position of management  
26 or leadership, and the court further finds that the felony

1 committed was related to or in furtherance of the criminal  
2 activities of an organized gang or was motivated by the  
3 defendant's leadership in an organized gang; or

4 (6) When a defendant is convicted of an offense  
5 committed while using a firearm with a laser sight attached  
6 to it. For purposes of this paragraph, "laser sight" has  
7 the meaning ascribed to it in Section 26-7 of the Criminal  
8 Code of 2012; or

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

17 (8) When a defendant commits any felony and the  
18 defendant used, possessed, exercised control over, or  
19 otherwise directed an animal to assault a law enforcement  
20 officer engaged in the execution of his or her official  
21 duties or in furtherance of the criminal activities of an  
22 organized gang in which the defendant is engaged; or

23 (9) When a defendant commits any felony and the  
24 defendant knowingly video or audio records the offense with  
25 the intent to disseminate the recording.

26 (c) The following factors may be considered by the court as

1 reasons to impose an extended term sentence under Section 5-8-2  
2 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

3 (1) When a defendant is convicted of first degree  
4 murder, after having been previously convicted in Illinois  
5 of any offense listed under paragraph (c)(2) of Section  
6 5-5-3 (730 ILCS 5/5-5-3), when that conviction has occurred  
7 within 10 years after the previous conviction, excluding  
8 time spent in custody, and the charges are separately  
9 brought and tried and arise out of different series of  
10 acts.

11 (1.5) When a defendant is convicted of first degree  
12 murder, after having been previously convicted of domestic  
13 battery (720 ILCS 5/12-3.2) or aggravated domestic battery  
14 (720 ILCS 5/12-3.3) committed on the same victim or after  
15 having been previously convicted of violation of an order  
16 of protection (720 ILCS 5/12-30) in which the same victim  
17 was the protected person.

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

23 (3) When a defendant is convicted of aggravated  
24 criminal sexual assault or criminal sexual assault, when  
25 there is a finding that aggravated criminal sexual assault  
26 or criminal sexual assault was also committed on the same

1 victim by one or more other individuals, and the defendant  
2 voluntarily participated in the crime with the knowledge of  
3 the participation of the others in the crime, and the  
4 commission of the crime was part of a single course of  
5 conduct during which there was no substantial change in the  
6 nature of the criminal objective.

7 (4) If the victim was under 18 years of age at the time  
8 of the commission of the offense, when a defendant is  
9 convicted of aggravated criminal sexual assault or  
10 predatory criminal sexual assault of a child under  
11 subsection (a)(1) of Section 11-1.40 or subsection (a)(1)  
12 of Section 12-14.1 of the Criminal Code of 1961 or the  
13 Criminal Code of 2012 (720 ILCS 5/11-1.40 or 5/12-14.1).

14 (5) When a defendant is convicted of a felony violation  
15 of Section 24-1 of the Criminal Code of 1961 or the  
16 Criminal Code of 2012 (720 ILCS 5/24-1) and there is a  
17 finding that the defendant is a member of an organized  
18 gang.

19 (6) When a defendant was convicted of unlawful use of  
20 weapons under Section 24-1 of the Criminal Code of 1961 or  
21 the Criminal Code of 2012 (720 ILCS 5/24-1) for possessing  
22 a weapon that is not readily distinguishable as one of the  
23 weapons enumerated in Section 24-1 of the Criminal Code of  
24 1961 or the Criminal Code of 2012 (720 ILCS 5/24-1).

25 (7) When a defendant is convicted of an offense  
26 involving the illegal manufacture of a controlled

1 substance under Section 401 of the Illinois Controlled  
2 Substances Act (720 ILCS 570/401), the illegal manufacture  
3 of methamphetamine under Section 25 of the Methamphetamine  
4 Control and Community Protection Act (720 ILCS 646/25), or  
5 the illegal possession of explosives and an emergency  
6 response officer in the performance of his or her duties is  
7 killed or injured at the scene of the offense while  
8 responding to the emergency caused by the commission of the  
9 offense. In this paragraph, "emergency" means a situation  
10 in which a person's life, health, or safety is in jeopardy;  
11 and "emergency response officer" means a peace officer,  
12 community policing volunteer, fireman, emergency medical  
13 technician-ambulance, emergency medical  
14 technician-intermediate, emergency medical  
15 technician-paramedic, ambulance driver, other medical  
16 assistance or first aid personnel, or hospital emergency  
17 room personnel.

18 (8) When the defendant is convicted of attempted mob  
19 action, solicitation to commit mob action, or conspiracy to  
20 commit mob action under Section 8-1, 8-2, or 8-4 of the  
21 Criminal Code of 2012, where the criminal object is a  
22 violation of Section 25-1 of the Criminal Code of 2012, and  
23 an electronic communication is used in the commission of  
24 the offense. For the purposes of this paragraph (8),  
25 "electronic communication" shall have the meaning provided  
26 in Section 26.5-0.1 of the Criminal Code of 2012.

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

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

20       (e) The court may impose an extended term sentence under  
21 Article 4.5 of Chapter V upon an offender who has been  
22 convicted of a felony violation of Section 11-1.20, 11-1.30,  
23 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or  
24 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012  
25 when the victim of the offense is under 18 years of age at the  
26 time of the commission of the offense and, during the



1 commission of the offense, the victim was under the influence  
2 of alcohol, regardless of whether or not the alcohol was  
3 supplied by the offender; and the offender, at the time of the  
4 commission of the offense, knew or should have known that the  
5 victim had consumed alcohol.

6 (Source: P.A. 97-38, eff. 6-28-11, 97-227, eff. 1-1-12; 97-333,  
7 eff. 8-12-11; 97-693, eff. 1-1-13; 97-1108, eff. 1-1-13;  
8 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13; 98-14, eff.  
9 1-1-14; 98-104, eff. 7-22-13; 98-385, eff. 1-1-14; 98-756, eff.  
10 7-16-14.)