



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB0701

Introduced 2/6/2009, by Rep. Dennis M. Reboletti

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.2

from Ch. 38, par. 1005-5-3.2

Amends the Unified Code of Corrections. In the provision that permits the court to impose an extended term sentence when a defendant is convicted of any felony, after having been previously convicted in Illinois or any other jurisdiction of the same or similar class felony or greater class felony, when such conviction has occurred within 10 years after the previous conviction, and such charges are separately brought and tried and arise out of different series of acts, excludes the defendant's voluntary absence from the court's jurisdiction during pending criminal proceedings from such 10 year period (under present law only time spent in custody is excluded). Effective immediately.

LRB096 07808 RLC 17911 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 Sec. 5-5-3.2. Factors in Aggravation.

8 (a) The following factors shall be accorded weight in favor  
9 of imposing a term of imprisonment or may be considered by the  
10 court as reasons to impose a more severe sentence under Section  
11 5-8-1:

12 (1) the defendant's conduct caused or threatened  
13 serious harm;

14 (2) the defendant received compensation for committing  
15 the offense;

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

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

22 (5) the defendant held public office at the time of the  
23 offense, and the offense related to the conduct of that

1 office;

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

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

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

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

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

24 (11) the offense took place in a place of worship or on  
25 the grounds of a place of worship, immediately prior to,  
26 during or immediately following worship services. For

1 purposes of this subparagraph, "place of worship" shall  
2 mean any church, synagogue or other building, structure or  
3 place used primarily for religious worship;

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

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

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

25 (15) the defendant committed an offense related to the  
26 activities of an organized gang. For the purposes of this

1 factor, "organized gang" has the meaning ascribed to it in  
2 Section 10 of the Streetgang Terrorism Omnibus Prevention  
3 Act;

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

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

26 (17) the defendant committed the offense by reason of

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

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

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

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

1 provided in Article VI of Chapter 11 of the Illinois  
2 Vehicle Code;

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

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

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

21 (24) ~~(22)~~ the defendant committed any offense under  
22 Section 11-20.1 of the Criminal Code of 1961 and possessed  
23 100 or more images.

24 For the purposes of this Section:

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

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

5 (b) The following factors may be considered by the court as  
6 reasons to impose an extended term sentence under Section 5-8-2  
7 upon any offender:

8 (1) When a defendant is convicted of any felony, after  
9 having been previously convicted in Illinois or any other  
10 jurisdiction of the same or similar class felony or greater  
11 class felony, when such conviction has occurred within 10  
12 years after the previous conviction, excluding time spent  
13 in custody or the defendant's voluntary absence from the  
14 court's jurisdiction during pending criminal proceedings,  
15 and such charges are separately brought and tried and arise  
16 out of different series of acts; or

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

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

26 (4) When a defendant is convicted of any felony



1 committed against:

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

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

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

8 (5) In the case of a defendant convicted of aggravated  
9 criminal sexual assault or criminal sexual assault, when  
10 the court finds that aggravated criminal sexual assault or  
11 criminal sexual assault was also committed on the same  
12 victim by one or more other individuals, and the defendant  
13 voluntarily participated in the crime with the knowledge of  
14 the participation of the others in the crime, and the  
15 commission of the crime was part of a single course of  
16 conduct during which there was no substantial change in the  
17 nature of the criminal objective; or

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

24 (i) the brutalizing or torturing of humans or  
25 animals;

26 (ii) the theft of human corpses;

1 (iii) the kidnapping of humans;

2 (iv) the desecration of any cemetery, religious,  
3 fraternal, business, governmental, educational, or  
4 other building or property; or

5 (v) ritualized abuse of a child; or

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

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

23 (9) When a defendant is convicted of a felony violation  
24 of Section 24-1 of the Criminal Code of 1961 and the court  
25 finds that the defendant is a member of an organized gang;  
26 or

1           (10) When a defendant committed the offense using a  
2 firearm with a laser sight attached to it. For purposes of  
3 this paragraph (10), "laser sight" has the meaning ascribed  
4 to it in Section 24.6-5 of the Criminal Code of 1961; or

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

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

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

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

11 (b-1) For the purposes of this Section, "organized gang"  
12 has the meaning ascribed to it in Section 10 of the Illinois  
13 Streetgang Terrorism Omnibus Prevention Act.

14 (c) The court may impose an extended term sentence under  
15 Section 5-8-2 upon any offender who was convicted of aggravated  
16 criminal sexual assault or predatory criminal sexual assault of  
17 a child under subsection (a)(1) of Section 12-14.1 of the  
18 Criminal Code of 1961 where the victim was under 18 years of  
19 age at the time of the commission of the offense.

20 (d) The court may impose an extended term sentence under  
21 Section 5-8-2 upon any offender who was convicted of unlawful  
22 use of weapons under Section 24-1 of the Criminal Code of 1961  
23 for possessing a weapon that is not readily distinguishable as  
24 one of the weapons enumerated in Section 24-1 of the Criminal  
25 Code of 1961.

26 (e) The court may impose an extended term sentence under

1 Section 5-8-2 upon an offender who has been convicted of first  
2 degree murder when the offender has previously been convicted  
3 of domestic battery or aggravated domestic battery committed  
4 against the murdered individual or has previously been  
5 convicted of violation of an order of protection in which the  
6 murdered individual was the protected person.

7 (Source: P.A. 94-131, eff. 7-7-05; 94-375, eff. 1-1-06; 94-556,  
8 eff. 9-11-05; 94-819, eff. 5-31-06; 95-85, eff. 1-1-08; 95-362,  
9 eff. 1-1-08; 95-569, eff. 6-1-08; 95-876, eff. 8-21-08; 95-942,  
10 eff. 1-1-09; revised 9-23-08.)

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.