

SB2383



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2383

Introduced 2/14/2008, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.2

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

730 ILCS 5/5-8-4

from Ch. 38, par. 1005-8-4

Amends the Unified Code of Corrections. Provides that the court may impose an extended term sentence when a defendant is convicted of a violation of Section 12-6 (intimidation), 31-4 (communicating with jurors and witnesses), or 32-4a (harassment of representatives for the child, jurors, witnesses and others) of the Criminal Code of 1961, and that offense was in furtherance or concealment of (or the testimony, proceeding, or act related to the defendant's commission of) a sex offense as defined in subsection (B) of Section 2 of the Sex Offender Registration Act for which the defendant was convicted and the victim of which was under 18 years of age at the time of the sex offense. Provides that the court shall impose consecutive sentences under those circumstances.

LRB095 17441 RLC 43513 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 Sections 5-5-3.2 and 5-8-4 as follows:

6 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

7 (Text of Section after amendment by P.A. 95-569)

8 Sec. 5-5-3.2. Factors in Aggravation.

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:

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;

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

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

1 excess of 20 miles per hour over the posted speed limit as
2 provided in Article VI of Chapter 11 of the Illinois
3 Vehicle Code;

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

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

18 (23) ~~(22)~~ the defendant committed the offense against a
19 person who was elderly, disabled, or infirm by taking
20 advantage of a family or fiduciary relationship with the
21 elderly, disabled, or infirm person.

22 For the purposes of this Section:

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

25 "Day care center" means a public or private State certified
26 and licensed day care center as defined in Section 2.09 of the

1 Child Care Act of 1969 that displays a sign in plain view
2 stating that the property is a day care center.

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

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

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

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

22 (4) When a defendant is convicted of any felony
23 committed against:

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

26 (ii) a person 60 years of age or older at the time

1 of the offense or such person's property; or

2 (iii) a person physically handicapped at the time

3 of the offense or such person's property; or

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

14 (6) 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 (7) When a defendant is convicted of first degree
3 murder, after having been previously convicted in Illinois
4 of any offense listed under paragraph (c)(2) of Section
5 5-5-3, when such conviction has occurred within 10 years
6 after the previous conviction, excluding time spent in
7 custody, and such charges are separately brought and tried
8 and arise out of different series of acts; or

9 (8) 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 (9) When a defendant is convicted of a felony violation
20 of Section 24-1 of the Criminal Code of 1961 and the court
21 finds that the defendant is a member of an organized gang;
22 or

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

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

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

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

7 (14) When a defendant is convicted of a violation of
8 Section 12-6 (intimidation), 31-4 (communicating with
9 jurors and witnesses), or 32-4a (harassment of
10 representatives for the child, jurors, witnesses and
11 others) of the Criminal Code of 1961, and that offense was
12 in furtherance or concealment of (or the testimony,
13 proceeding, or act related to the defendant's commission
14 of) a sex offense as defined in subsection (B) of Section 2
15 of the Sex Offender Registration Act for which the
16 defendant was convicted and the victim of which was under
17 18 years of age at the time of the sex offense.

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

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

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

7 (e) The court may impose an extended term sentence under
8 Section 5-8-2 upon an offender who has been convicted of first
9 degree murder when the offender has previously been convicted
10 of domestic battery or aggravated domestic battery committed
11 against the murdered individual or has previously been
12 convicted of violation of an order of protection in which the
13 murdered individual was the protected person.

14 (Source: P.A. 94-131, eff. 7-7-05; 94-375, eff. 1-1-06; 94-556,
15 eff. 9-11-05; 94-819, eff. 5-31-06; 95-85, eff. 1-1-08; 95-362,
16 eff. 1-1-08; 95-569, eff. 6-1-08; revised 11-19-07.)

17 (730 ILCS 5/5-8-4) (from Ch. 38, par. 1005-8-4)

18 Sec. 5-8-4. Concurrent and Consecutive Terms of
19 Imprisonment.

20 (a) When multiple sentences of imprisonment are imposed on
21 a defendant at the same time, or when a term of imprisonment is
22 imposed on a defendant who is already subject to sentence in
23 this State or in another state, or for a sentence imposed by
24 any district court of the United States, the sentences shall
25 run concurrently or consecutively as determined by the court.

1 When one of the offenses for which a defendant was convicted
2 was a violation of Section 32-5.2 of the Criminal Code of 1961
3 and the offense was committed in attempting or committing a
4 forcible felony, the court may impose consecutive sentences.
5 When a term of imprisonment is imposed on a defendant by an
6 Illinois circuit court and the defendant is subsequently
7 sentenced to a term of imprisonment by another state or by a
8 district court of the United States, the Illinois circuit court
9 which imposed the sentence may order that the Illinois sentence
10 be made concurrent with the sentence imposed by the other state
11 or district court of the United States. The defendant must
12 apply to the circuit court within 30 days after the defendant's
13 sentence imposed by the other state or district of the United
14 States is finalized. The court shall impose consecutive
15 sentences if:

16 (i) one of the offenses for which defendant was
17 convicted was first degree murder or a Class X or Class 1
18 felony and the defendant inflicted severe bodily injury, or

19 (ii) the defendant was convicted of a violation of
20 Section 12-13, 12-14, or 12-14.1 of the Criminal Code of
21 1961, or

22 (iii) the defendant was convicted of armed violence
23 based upon the predicate offense of solicitation of murder,
24 solicitation of murder for hire, heinous battery,
25 aggravated battery of a senior citizen, criminal sexual
26 assault, a violation of subsection (g) of Section 5 of the

1 Cannabis Control Act, cannabis trafficking, a violation of
2 subsection (a) of Section 401 of the Illinois Controlled
3 Substances Act, controlled substance trafficking involving
4 a Class X felony amount of controlled substance under
5 Section 401 of the Illinois Controlled Substances Act, a
6 violation of the Methamphetamine Control and Community
7 Protection Act, calculated criminal drug conspiracy, or
8 streetgang criminal drug conspiracy, or

9 (iv) the defendant was convicted of the offense of
10 leaving the scene of a motor vehicle accident involving
11 death or personal injuries under Section 11-401 and either:
12 (A) aggravated driving under the influence of alcohol,
13 other drug or drugs, or intoxicating compound or compounds,
14 or any combination thereof under Section 11-501 of the
15 Illinois Vehicle Code, or (B) reckless homicide under
16 Section 9-3 of the Criminal Code of 1961, or both an
17 offense described in subdivision (A) and an offense
18 described in subdivision (B), or

19 (v) the defendant was convicted of a violation of
20 Section 9-3.1 (concealment of homicidal death) or Section
21 12-20.5 (dismembering a human body) of the Criminal Code of
22 1961, or

23 (vi) the defendant was convicted of a violation of
24 Section 12-6 (intimidation), 31-4 (communicating with
25 jurors and witnesses), or 32-4a (harassment of
26 representatives for the child, jurors, witnesses and

1 others) of the Criminal Code of 1961, and that offense was
2 in furtherance or concealment of (or the testimony,
3 proceeding, or act related to the defendant's commission
4 of) a sex offense as defined in subsection (B) of Section 2
5 of the Sex Offender Registration Act for which the
6 defendant was convicted and the victim of which was under
7 18 years of age at the time of the sex offense.

8 in which event the court shall enter sentences to run
9 consecutively. Sentences shall run concurrently unless
10 otherwise specified by the court.

11 (b) Except in cases where consecutive sentences are
12 mandated, the court shall impose concurrent sentences unless,
13 having regard to the nature and circumstances of the offense
14 and the history and character of the defendant, it is of the
15 opinion that consecutive sentences are required to protect the
16 public from further criminal conduct by the defendant, the
17 basis for which the court shall set forth in the record.

18 (c) (1) For sentences imposed under law in effect prior to
19 February 1, 1978 the aggregate maximum of consecutive
20 sentences shall not exceed the maximum term authorized
21 under Section 5-8-1 for the 2 most serious felonies
22 involved. The aggregate minimum period of consecutive
23 sentences shall not exceed the highest minimum term
24 authorized under Section 5-8-1 for the 2 most serious
25 felonies involved. When sentenced only for misdemeanors, a
26 defendant shall not be consecutively sentenced to more than

1 the maximum for one Class A misdemeanor.

2 (2) For sentences imposed under the law in effect on or
3 after February 1, 1978, the aggregate of consecutive
4 sentences for offenses that were committed as part of a
5 single course of conduct during which there was no
6 substantial change in the nature of the criminal objective
7 shall not exceed the sum of the maximum terms authorized
8 under Section 5-8-2 for the 2 most serious felonies
9 involved, but no such limitation shall apply for offenses
10 that were not committed as part of a single course of
11 conduct during which there was no substantial change in the
12 nature of the criminal objective. When sentenced only for
13 misdemeanors, a defendant shall not be consecutively
14 sentenced to more than the maximum for one Class A
15 misdemeanor.

16 (d) An offender serving a sentence for a misdemeanor who is
17 convicted of a felony and sentenced to imprisonment shall be
18 transferred to the Department of Corrections, and the
19 misdemeanor sentence shall be merged in and run concurrently
20 with the felony sentence.

21 (e) In determining the manner in which consecutive
22 sentences of imprisonment, one or more of which is for a
23 felony, will be served, the Department of Corrections shall
24 treat the offender as though he had been committed for a single
25 term with the following incidents:

26 (1) the maximum period of a term of imprisonment shall

1 consist of the aggregate of the maximums of the imposed
2 indeterminate terms, if any, plus the aggregate of the
3 imposed determinate sentences for felonies plus the
4 aggregate of the imposed determinate sentences for
5 misdemeanors subject to paragraph (c) of this Section;

6 (2) the parole or mandatory supervised release term
7 shall be as provided in paragraph (e) of Section 5-8-1 of
8 this Code for the most serious of the offenses involved;

9 (3) the minimum period of imprisonment shall be the
10 aggregate of the minimum and determinate periods of
11 imprisonment imposed by the court, subject to paragraph (c)
12 of this Section; and

13 (4) the offender shall be awarded credit against the
14 aggregate maximum term and the aggregate minimum term of
15 imprisonment for all time served in an institution since
16 the commission of the offense or offenses and as a
17 consequence thereof at the rate specified in Section 3-6-3
18 of this Code.

19 (f) A sentence of an offender committed to the Department
20 of Corrections at the time of the commission of the offense
21 shall be served consecutive to the sentence under which he is
22 held by the Department of Corrections. However, in case such
23 offender shall be sentenced to punishment by death, the
24 sentence shall be executed at such time as the court may fix
25 without regard to the sentence under which such offender may be
26 held by the Department.

1 (g) A sentence under Section 3-6-4 for escape or attempted
2 escape shall be served consecutive to the terms under which the
3 offender is held by the Department of Corrections.

4 (h) If a person charged with a felony commits a separate
5 felony while on pre-trial release or in pretrial detention in a
6 county jail facility or county detention facility, the
7 sentences imposed upon conviction of these felonies shall be
8 served consecutively regardless of the order in which the
9 judgments of conviction are entered.

10 (h-1) If a person commits a battery against a county
11 correctional officer or sheriff's employee while serving a
12 sentence or in pretrial detention in a county jail facility,
13 then the sentence imposed upon conviction of the battery shall
14 be served consecutively with the sentence imposed upon
15 conviction of the earlier misdemeanor or felony, regardless of
16 the order in which the judgments of conviction are entered.

17 (i) If a person admitted to bail following conviction of a
18 felony commits a separate felony while free on bond or if a
19 person detained in a county jail facility or county detention
20 facility following conviction of a felony commits a separate
21 felony while in detention, any sentence following conviction of
22 the separate felony shall be consecutive to that of the
23 original sentence for which the defendant was on bond or
24 detained.

25 (Source: P.A. 94-556, eff. 9-11-05; 94-985, eff. 1-1-07;
26 95-379, eff. 8-23-07.)