



Rep. Frances Ann Hurley

Filed: 5/24/2019

10100SB0416ham002

LRB101 04189 TAE 61192 a

1 AMENDMENT TO SENATE BILL 416

2 AMENDMENT NO. _____. Amend Senate Bill 416 by replacing
3 everything after the enacting clause with the following:

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;

1 (3) the defendant has a history of prior delinquency or
2 criminal activity;

3 (4) the defendant, by the duties of his office or by
4 his position, was obliged to prevent the particular offense
5 committed or to bring the offenders committing it to
6 justice;

7 (5) the defendant held public office at the time of the
8 offense, and the offense related to the conduct of that
9 office;

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

13 (7) the sentence is necessary to deter others from
14 committing the same crime;

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

17 (9) the defendant committed the offense against a
18 person who has a physical disability or such person's
19 property;

20 (10) by reason of another individual's actual or
21 perceived race, color, creed, religion, ancestry, gender,
22 sexual orientation, physical or mental disability, or
23 national origin, the defendant committed the offense
24 against (i) the person or property of that individual; (ii)
25 the person or property of a person who has an association
26 with, is married to, or has a friendship with the other

1 individual; or (iii) the person or property of a relative
2 (by blood or marriage) of a person described in clause (i)
3 or (ii). For the purposes of this Section, "sexual
4 orientation" has the meaning ascribed to it in paragraph
5 (0-1) of Section 1-103 of the Illinois Human Rights Act;

6 (11) the offense took place in a place of worship or on
7 the grounds of a place of worship, immediately prior to,
8 during or immediately following worship services. For
9 purposes of this subparagraph, "place of worship" shall
10 mean any church, synagogue or other building, structure or
11 place used primarily for religious worship;

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

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

24 (14) the defendant held a position of trust or
25 supervision such as, but not limited to, family member as
26 defined in Section 11-0.1 of the Criminal Code of 2012,

1 teacher, scout leader, baby sitter, or day care worker, in
2 relation to a victim under 18 years of age, and the
3 defendant committed an offense in violation of Section
4 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-11,
5 11-14.4 except for an offense that involves keeping a place
6 of juvenile prostitution, 11-15.1, 11-19.1, 11-19.2,
7 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14, 12-14.1, 12-15
8 or 12-16 of the Criminal Code of 1961 or the Criminal Code
9 of 2012 against that victim;

10 (15) the defendant committed an offense related to the
11 activities of an organized gang. For the purposes of this
12 factor, "organized gang" has the meaning ascribed to it in
13 Section 10 of the Streetgang Terrorism Omnibus Prevention
14 Act;

15 (16) the defendant committed an offense in violation of
16 one of the following Sections while in a school, regardless
17 of the time of day or time of year; on any conveyance
18 owned, leased, or contracted by a school to transport
19 students to or from school or a school related activity; on
20 the real property of a school; or on a public way within
21 1,000 feet of the real property comprising any school:
22 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,
23 11-1.50, 11-1.60, 11-14.4, 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, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,
26 18-2, or 33A-2, or Section 12-3.05 except for subdivision

1 (a) (4) or (g) (1), of the Criminal Code of 1961 or the
2 Criminal Code of 2012;

3 (16.5) the defendant committed an offense in violation
4 of one of the following Sections while in a day care
5 center, regardless of the time of day or time of year; on
6 the real property of a day care center, regardless of the
7 time of day or time of year; or on a public way within
8 1,000 feet of the real property comprising any day care
9 center, regardless of the time of day or time of year:
10 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,
11 11-1.50, 11-1.60, 11-14.4, 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, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,
14 18-2, or 33A-2, or Section 12-3.05 except for subdivision
15 (a) (4) or (g) (1), of the Criminal Code of 1961 or the
16 Criminal Code of 2012;

17 (17) the defendant committed the offense by reason of
18 any person's activity as a community policing volunteer or
19 to prevent any person from engaging in activity as a
20 community policing volunteer. For the purpose of this
21 Section, "community policing volunteer" has the meaning
22 ascribed to it in Section 2-3.5 of the Criminal Code of
23 2012;

24 (18) the defendant committed the offense in a nursing
25 home or on the real property comprising a nursing home. For
26 the purposes of this paragraph (18), "nursing home" means a

1 skilled nursing or intermediate long term care facility
2 that is subject to license by the Illinois Department of
3 Public Health under the Nursing Home Care Act, the
4 Specialized Mental Health Rehabilitation Act of 2013, the
5 ID/DD Community Care Act, or the MC/DD Act;

6 (19) the defendant was a federally licensed firearm
7 dealer and was previously convicted of a violation of
8 subsection (a) of Section 3 of the Firearm Owners
9 Identification Card Act and has now committed either a
10 felony violation of the Firearm Owners Identification Card
11 Act or an act of armed violence while armed with a firearm;

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

22 (21) the defendant (i) committed the offense of
23 reckless driving or aggravated reckless driving under
24 Section 11-503 of the Illinois Vehicle Code and (ii) was
25 operating a motor vehicle in excess of 20 miles per hour
26 over the posted speed limit as provided in Article VI of

1 Chapter 11 of the Illinois Vehicle Code;

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

10 (23) the defendant committed the offense against a
11 person who was elderly or infirm or who was a person with a
12 disability by taking advantage of a family or fiduciary
13 relationship with the elderly or infirm person or person
14 with a disability;

15 (24) the defendant committed any offense under Section
16 11-20.1 of the Criminal Code of 1961 or the Criminal Code
17 of 2012 and possessed 100 or more images;

18 (25) the defendant committed the offense while the
19 defendant or the victim was in a train, bus, or other
20 vehicle used for public transportation;

21 (26) the defendant committed the offense of child
22 pornography or aggravated child pornography, specifically
23 including paragraph (1), (2), (3), (4), (5), or (7) of
24 subsection (a) of Section 11-20.1 of the Criminal Code of
25 1961 or the Criminal Code of 2012 where a child engaged in,
26 solicited for, depicted in, or posed in any act of sexual

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

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

1 (28) the defendant committed the offense of assault,
2 aggravated assault, battery, aggravated battery, robbery,
3 armed robbery, or aggravated robbery against a person that
4 the defendant knew or reasonably should have known was a
5 letter carrier or postal worker while that person was
6 performing his or her duties delivering mail for the United
7 States Postal Service;

8 (29) the defendant committed the offense of criminal
9 sexual assault, aggravated criminal sexual assault,
10 criminal sexual abuse, or aggravated criminal sexual abuse
11 against a victim with an intellectual disability, and the
12 defendant holds a position of trust, authority, or
13 supervision in relation to the victim;

14 (30) the defendant committed the offense of promoting
15 juvenile prostitution, patronizing a prostitute, or
16 patronizing a minor engaged in prostitution and at the time
17 of the commission of the offense knew that the prostitute
18 or minor engaged in prostitution was in the custody or
19 guardianship of the Department of Children and Family
20 Services; ~~or~~

21 (31) the defendant (i) committed the offense of driving
22 while under the influence of alcohol, other drug or drugs,
23 intoxicating compound or compounds or any combination
24 thereof in violation of Section 11-501 of the Illinois
25 Vehicle Code or a similar provision of a local ordinance
26 and (ii) the defendant during the commission of the offense

1 was driving his or her vehicle upon a roadway designated
2 for one-way traffic in the opposite direction of the
3 direction indicated by official traffic control devices;
4 or -

5 (32) the defendant was found guilty of an
6 administrative infraction related to an act or acts of
7 public indecency or sexual misconduct in the penal
8 institution. In this paragraph (32), "penal institution"
9 has the same meaning as in Section 2-14 of the Criminal
10 Code of 2012.

11 For the purposes of this Section:

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

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

18 "Intellectual disability" means significantly subaverage
19 intellectual functioning which exists concurrently with
20 impairment in adaptive behavior.

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

24 "Traffic control devices" means all signs, signals,
25 markings, and devices that conform to the Illinois Manual on
26 Uniform Traffic Control Devices, placed or erected by authority

1 of a public body or official having jurisdiction, for the
2 purpose of regulating, warning, or guiding traffic.

3 (b) The following factors, related to all felonies, may be
4 considered by the court as reasons to impose an extended term
5 sentence under Section 5-8-2 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 any felony
18 committed against:

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

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

23 (iii) a person who had a physical disability at the
24 time of the offense or such person's property; or

25 (4) When a defendant is convicted of any felony and the
26 offense involved any of the following types of specific

1 misconduct committed as part of a ceremony, rite,
2 initiation, observance, performance, practice or activity
3 of any actual or ostensible religious, fraternal, or social
4 group:

5 (i) the brutalizing or torturing of humans or
6 animals;

7 (ii) the theft of human corpses;

8 (iii) the kidnapping of humans;

9 (iv) the desecration of any cemetery, religious,
10 fraternal, business, governmental, educational, or
11 other building or property; or

12 (v) ritualized abuse of a child; or

13 (5) 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 (6) When a defendant is convicted of an offense
24 committed while using a firearm with a laser sight attached
25 to it. For purposes of this paragraph, "laser sight" has
26 the meaning ascribed to it in Section 26-7 of the Criminal

1 Code of 2012; or

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

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

16 (9) When a defendant commits any felony and the
17 defendant knowingly video or audio records the offense with
18 the intent to disseminate the recording.

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 or the
6 Criminal Code of 2012 (720 ILCS 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 or the
9 Criminal Code of 2012 (720 ILCS 5/24-1) and there is a
10 finding that the defendant is a member of an organized
11 gang.

12 (6) When a defendant was convicted of unlawful use of
13 weapons under Section 24-1 of the Criminal Code of 1961 or
14 the Criminal Code of 2012 (720 ILCS 5/24-1) for possessing
15 a weapon that is not readily distinguishable as one of the
16 weapons enumerated in Section 24-1 of the Criminal Code of
17 1961 or the Criminal Code of 2012 (720 ILCS 5/24-1).

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

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

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

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

23 (e) The court may impose an extended term sentence under
24 Article 4.5 of Chapter V upon an offender who has been
25 convicted of a felony violation of Section 11-1.20, 11-1.30,
26 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or

1 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012
2 when the victim of the offense is under 18 years of age at the
3 time of the commission of the offense and, during the
4 commission of the offense, the victim was under the influence
5 of alcohol, regardless of whether or not the alcohol was
6 supplied by the offender; and the offender, at the time of the
7 commission of the offense, knew or should have known that the
8 victim had consumed alcohol.

9 (Source: P.A. 99-77, eff. 1-1-16; 99-143, eff. 7-27-15; 99-180,
10 eff. 7-29-15; 99-283, eff. 1-1-16; 99-347, eff. 1-1-16; 99-642,
11 eff. 7-28-16; 100-1053, eff. 1-1-19.)".