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09400HB3648sam001

LRB094 11229 DRH 45655 a

1 AMENDMENT TO HOUSE BILL 3648

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3648 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Unified Code of Corrections is amended by  
5 changing Sections 5-5-3.2 and 5-6-1 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  
24 office;

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

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

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

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

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

23           (11) the offense took place in a place of worship or on  
24 the grounds of a place of worship, immediately prior to,  
25 during or immediately following worship services. For  
26 purposes of this subparagraph, "place of worship" shall  
27 mean any church, synagogue or other building, structure or  
28 place used primarily for religious worship;

29           (12) the defendant was convicted of a felony committed  
30 while he was released on bail or his own recognizance  
31 pending trial for a prior felony and was convicted of such  
32 prior felony, or the defendant was convicted of a felony  
33 committed while he was serving a period of probation,  
34 conditional discharge, or mandatory supervised release

1 under subsection (d) of Section 5-8-1 for a prior felony;

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

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

16 (15) the defendant committed an offense related to the  
17 activities of an organized gang. For the purposes of this  
18 factor, "organized gang" has the meaning ascribed to it in  
19 Section 10 of the Streetgang Terrorism Omnibus Prevention  
20 Act;

21 (16) the defendant committed an offense in violation of  
22 one of the following Sections while in a school, regardless  
23 of the time of day or time of year; on any conveyance  
24 owned, leased, or contracted by a school to transport  
25 students to or from school or a school related activity; on  
26 the real property of a school; or on a public way within  
27 1,000 feet of the real property comprising any school:  
28 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,  
29 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,  
30 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or  
31 33A-2 of the Criminal Code of 1961;

32 (16.5) the defendant committed an offense in violation  
33 of one of the following Sections while in a day care  
34 center, regardless of the time of day or time of year; on

1 the real property of a day care center, regardless of the  
2 time of day or time of year; or on a public way within  
3 1,000 feet of the real property comprising any day care  
4 center, regardless of the time of day or time of year:  
5 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,  
6 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,  
7 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or  
8 33A-2 of the Criminal Code of 1961;

9 (17) the defendant committed the offense by reason of  
10 any person's activity as a community policing volunteer or  
11 to prevent any person from engaging in activity as a  
12 community policing volunteer. For the purpose of this  
13 Section, "community policing volunteer" has the meaning  
14 ascribed to it in Section 2-3.5 of the Criminal Code of  
15 1961;

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

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  
27 Act or an act of armed violence while armed with a firearm;  
28 or =

29 (20) the defendant (i) committed the offense of  
30 reckless driving or aggravated reckless driving under  
31 Section 11-503 of the Illinois Vehicle Code and (ii) was  
32 operating a motor vehicle in excess of 20 miles per hour  
33 over the posted speed limit as provided in Article VI of  
34 Chapter 11 of the Illinois Vehicle Code.

1 For the purposes of this Section:

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

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

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

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

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

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

27 (4) When a defendant is convicted of any felony  
28 committed against:

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

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

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

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

11           (6) When a defendant is convicted of any felony and the  
12 offense involved any of the following types of specific  
13 misconduct committed as part of a ceremony, rite,  
14 initiation, observance, performance, practice or activity  
15 of any actual or ostensible religious, fraternal, or social  
16 group:

17                 (i) the brutalizing or torturing of humans or  
18 animals;

19                 (ii) the theft of human corpses;

20                 (iii) the kidnapping of humans;

21                 (iv) the desecration of any cemetery, religious,  
22 fraternal, business, governmental, educational, or  
23 other building or property; or

24                 (v) ritualized abuse of a child; or

25           (7) When a defendant is convicted of first degree  
26 murder, after having been previously convicted in Illinois  
27 of any offense listed under paragraph (c)(2) of Section  
28 5-5-3, when such conviction has occurred within 10 years  
29 after the previous conviction, excluding time spent in  
30 custody, and such charges are separately brought and tried  
31 and arise out of different series of acts; or

32           (8) When a defendant is convicted of a felony other  
33 than conspiracy and the court finds that the felony was  
34 committed under an agreement with 2 or more other persons

1 to commit that offense and the defendant, with respect to  
2 the other individuals, occupied a position of organizer,  
3 supervisor, financier, or any other position of management  
4 or leadership, and the court further finds that the felony  
5 committed was related to or in furtherance of the criminal  
6 activities of an organized gang or was motivated by the  
7 defendant's leadership in an organized gang; or

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

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

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

24 (12) When a defendant commits an offense involving the  
25 illegal manufacture of a controlled substance under  
26 Section 401 of the Illinois Controlled Substances Act or  
27 the illegal possession of explosives and an emergency  
28 response officer in the performance of his or her duties is  
29 killed or injured at the scene of the offense while  
30 responding to the emergency caused by the commission of the  
31 offense. In this paragraph (12), "emergency" means a  
32 situation in which a person's life, health, or safety is in  
33 jeopardy; and "emergency response officer" means a peace  
34 officer, community policing volunteer, fireman, emergency

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

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

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

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

21 (Source: P.A. 91-119, eff. 1-1-00; 91-120, eff. 7-15-99;  
22 91-252, eff. 1-1-00; 91-267, eff. 1-1-00; 91-268, eff. 1-1-00;  
23 91-357, eff. 7-29-99; 91-437, eff. 1-1-00; 91-696, eff.  
24 4-13-00; 92-266, eff. 1-1-02.)

25 (730 ILCS 5/5-6-1) (from Ch. 38, par. 1005-6-1)

26 Sec. 5-6-1. Sentences of Probation and of Conditional  
27 Discharge and Disposition of Supervision. The General Assembly  
28 finds that in order to protect the public, the criminal justice  
29 system must compel compliance with the conditions of probation  
30 by responding to violations with swift, certain and fair  
31 punishments and intermediate sanctions. The Chief Judge of each  
32 circuit shall adopt a system of structured, intermediate  
33 sanctions for violations of the terms and conditions of a



1 sentence of probation, conditional discharge or disposition of  
2 supervision.

3 (a) Except where specifically prohibited by other  
4 provisions of this Code, the court shall impose a sentence of  
5 probation or conditional discharge upon an offender unless,  
6 having regard to the nature and circumstance of the offense,  
7 and to the history, character and condition of the offender,  
8 the court is of the opinion that:

9 (1) his imprisonment or periodic imprisonment is  
10 necessary for the protection of the public; or

11 (2) probation or conditional discharge would deprecate  
12 the seriousness of the offender's conduct and would be  
13 inconsistent with the ends of justice; or

14 (3) a combination of imprisonment with concurrent or  
15 consecutive probation when an offender has been admitted  
16 into a drug court program under Section 20 of the Drug  
17 Court Treatment Act is necessary for the protection of the  
18 public and for the rehabilitation of the offender.

19 The court shall impose as a condition of a sentence of  
20 probation, conditional discharge, or supervision, that the  
21 probation agency may invoke any sanction from the list of  
22 intermediate sanctions adopted by the chief judge of the  
23 circuit court for violations of the terms and conditions of the  
24 sentence of probation, conditional discharge, or supervision,  
25 subject to the provisions of Section 5-6-4 of this Act.

26 (b) The court may impose a sentence of conditional  
27 discharge for an offense if the court is of the opinion that  
28 neither a sentence of imprisonment nor of periodic imprisonment  
29 nor of probation supervision is appropriate.

30 (b-1) Subsections (a) and (b) of this Section do not apply  
31 to a defendant charged with a misdemeanor or felony under the  
32 Illinois Vehicle Code or reckless homicide under Section 9-3 of  
33 the Criminal Code of 1961 if the defendant within the past 12  
34 months has been convicted of or pleaded guilty to a misdemeanor

1 or felony under the Illinois Vehicle Code or reckless homicide  
2 under Section 9-3 of the Criminal Code of 1961.

3 (c) The court may, upon a plea of guilty or a stipulation  
4 by the defendant of the facts supporting the charge or a  
5 finding of guilt, defer further proceedings and the imposition  
6 of a sentence, and enter an order for supervision of the  
7 defendant, if the defendant is not charged with: (i) a Class A  
8 misdemeanor, as defined by the following provisions of the  
9 Criminal Code of 1961: Sections 12-3.2; 12-15; 26-5; 31-1;  
10 31-6; 31-7; subsections (b) and (c) of Section 21-1; paragraph  
11 (1) through (5), (8), (10), and (11) of subsection (a) of  
12 Section 24-1; (ii) a Class A misdemeanor violation of Section  
13 3.01, 3.03-1, or 4.01 of the Humane Care for Animals Act; or  
14 (iii) felony. If the defendant is not barred from receiving an  
15 order for supervision as provided in this subsection, the court  
16 may enter an order for supervision after considering the  
17 circumstances of the offense, and the history, character and  
18 condition of the offender, if the court is of the opinion that:

19 (1) the offender is not likely to commit further  
20 crimes;

21 (2) the defendant and the public would be best served  
22 if the defendant were not to receive a criminal record; and

23 (3) in the best interests of justice an order of  
24 supervision is more appropriate than a sentence otherwise  
25 permitted under this Code.

26 (d) The provisions of paragraph (c) shall not apply to a  
27 defendant charged with violating Section 11-501 of the Illinois  
28 Vehicle Code or a similar provision of a local ordinance when  
29 the defendant has previously been:

30 (1) convicted for a violation of Section 11-501 of the  
31 Illinois Vehicle Code or a similar provision of a local  
32 ordinance or any similar law or ordinance of another state;  
33 or

34 (2) assigned supervision for a violation of Section

1 11-501 of the Illinois Vehicle Code or a similar provision  
2 of a local ordinance or any similar law or ordinance of  
3 another state; or

4 (3) pleaded guilty to or stipulated to the facts  
5 supporting a charge or a finding of guilty to a violation  
6 of Section 11-503 of the Illinois Vehicle Code or a similar  
7 provision of a local ordinance or any similar law or  
8 ordinance of another state, and the plea or stipulation was  
9 the result of a plea agreement.

10 The court shall consider the statement of the prosecuting  
11 authority with regard to the standards set forth in this  
12 Section.

13 (e) The provisions of paragraph (c) shall not apply to a  
14 defendant charged with violating Section 16A-3 of the Criminal  
15 Code of 1961 if said defendant has within the last 5 years  
16 been:

17 (1) convicted for a violation of Section 16A-3 of the  
18 Criminal Code of 1961; or

19 (2) assigned supervision for a violation of Section  
20 16A-3 of the Criminal Code of 1961.

21 The court shall consider the statement of the prosecuting  
22 authority with regard to the standards set forth in this  
23 Section.

24 (f) The provisions of paragraph (c) shall not apply to a  
25 defendant charged with violating Sections 15-111, 15-112,  
26 15-301, paragraph (b) of Section 6-104, Section 11-605, or  
27 Section 11-1414 of the Illinois Vehicle Code or a similar  
28 provision of a local ordinance.

29 (g) Except as otherwise provided in paragraph (i) of this  
30 Section, the provisions of paragraph (c) shall not apply to a  
31 defendant charged with violating Section 3-707, 3-708, 3-710,  
32 or 5-401.3 of the Illinois Vehicle Code or a similar provision  
33 of a local ordinance if the defendant has within the last 5  
34 years been:

1 (1) convicted for a violation of Section 3-707, 3-708,  
2 3-710, or 5-401.3 of the Illinois Vehicle Code or a similar  
3 provision of a local ordinance; or

4 (2) assigned supervision for a violation of Section  
5 3-707, 3-708, 3-710, or 5-401.3 of the Illinois Vehicle  
6 Code or a similar provision of a local ordinance.

7 The court shall consider the statement of the prosecuting  
8 authority with regard to the standards set forth in this  
9 Section.

10 (h) The provisions of paragraph (c) shall not apply to a  
11 defendant under the age of 21 years charged with violating a  
12 serious traffic offense as defined in Section 1-187.001 of the  
13 Illinois Vehicle Code:

14 (1) unless the defendant, upon payment of the fines,  
15 penalties, and costs provided by law, agrees to attend and  
16 successfully complete a traffic safety program approved by  
17 the court under standards set by the Conference of Chief  
18 Circuit Judges. The accused shall be responsible for  
19 payment of any traffic safety program fees. If the accused  
20 fails to file a certificate of successful completion on or  
21 before the termination date of the supervision order, the  
22 supervision shall be summarily revoked and conviction  
23 entered. The provisions of Supreme Court Rule 402 relating  
24 to pleas of guilty do not apply in cases when a defendant  
25 enters a guilty plea under this provision; or

26 (2) if the defendant has previously been sentenced  
27 under the provisions of paragraph (c) on or after January  
28 1, 1998 for any serious traffic offense as defined in  
29 Section 1-187.001 of the Illinois Vehicle Code.

30 (i) The provisions of paragraph (c) shall not apply to a  
31 defendant charged with violating Section 3-707 of the Illinois  
32 Vehicle Code or a similar provision of a local ordinance if the  
33 defendant has been assigned supervision for a violation of  
34 Section 3-707 of the Illinois Vehicle Code or a similar

1 provision of a local ordinance.

2 (j) The provisions of paragraph (c) shall not apply to a  
3 defendant charged with violating Section 6-303 of the Illinois  
4 Vehicle Code or a similar provision of a local ordinance when  
5 the revocation or suspension was for a violation of Section  
6 11-501 or a similar provision of a local ordinance, a violation  
7 of Section 11-501.1 or paragraph (b) of Section 11-401 of the  
8 Illinois Vehicle Code, or a violation of Section 9-3 of the  
9 Criminal Code of 1961 if the defendant has within the last 10  
10 years been:

11 (1) convicted for a violation of Section 6-303 of the  
12 Illinois Vehicle Code or a similar provision of a local  
13 ordinance; or

14 (2) assigned supervision for a violation of Section  
15 6-303 of the Illinois Vehicle Code or a similar provision  
16 of a local ordinance.

17 (Source: P.A. 93-388, eff. 7-25-03; 93-1014, eff. 1-1-05.)".