



Rep. Fred Crespo

Filed: 5/1/2007

09500HB3477ham002

LRB095 09074 RLC 34756 a

1 AMENDMENT TO HOUSE BILL 3477

2 AMENDMENT NO. _____. Amend House Bill 3477, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Criminal Code of 1961 is amended by adding
6 Section 16D-5.5 as follows:

7 (720 ILCS 5/16D-5.5 new)

8 Sec. 16D-5.5. Unlawful use of encryption.

9 (a) For the purpose of this Section:

10 "Access" means to intercept, instruct, communicate
11 with, store data in, retrieve from, or otherwise make use
12 of any resources of a computer, network, or data.

13 "Computer" means an electronic device which performs
14 logical, arithmetic, and memory functions by manipulations
15 of electronic or magnetic impulses and includes all
16 equipment related to the computer in a system or network.

1 "Computer contaminant" means any data, information,
2 image, program, signal, or sound that is designated or has
3 the capability to: (1) contaminate, corrupt, consume,
4 damage, destroy, disrupt, modify, record, or transmit; or
5 (2) cause to be contaminated, corrupted, consumed,
6 damaged, destroyed, disrupted, modified, recorded, or
7 transmitted, any other data, information, image, program,
8 signal, or sound contained in a computer, system, or
9 network without the knowledge or consent of the person who
10 owns the other data, information, image, program, signal,
11 or sound or the computer, system, or network.

12 "Computer contaminant" includes, without limitation:
13 (1) a virus, worm, or Trojan horse; (2) spyware that tracks
14 computer activity and is capable of recording and
15 transmitting such information to third parties; or (3) any
16 other similar data, information, image, program, signal,
17 or sound that is designed or has the capability to prevent,
18 impede, delay, or disrupt the normal operation or use of
19 any component, device, equipment, system, or network.

20 "Data" means a representation in any form of
21 information, knowledge, facts, concepts, or instructions
22 which is being prepared or has been formally prepared and
23 is intended to be processed, is being processed or has been
24 processed in a system or network.

25 "Encryption" means the use of any protective or
26 disruptive measure, including, without limitation,

1 cryptography, enciphering, encoding, or a computer
2 contaminant, to: (1) prevent, impede, delay, or disrupt
3 access to any data, information, image, program, signal, or
4 sound; (2) cause or make any data, information, image,
5 program, signal, or sound unintelligible or unusable; or
6 (3) prevent, impede, delay, or disrupt the normal operation
7 or use of any component, device, equipment, system, or
8 network.

9 "Network" means a set of related, remotely connected
10 devices and facilities, including more than one system,
11 with the capability to transmit data among any of the
12 devices and facilities. The term includes, without
13 limitation, a local, regional, or global computer network.

14 "Program" means an ordered set of data representing
15 coded instructions or statements which can be executed by a
16 computer and cause the computer to perform one or more
17 tasks.

18 "System" means a set of related equipment, whether or
19 not connected, which is used with or for a computer.

20 (b) A person shall not knowingly use or attempt to use
21 encryption, directly or indirectly, to:

22 (1) commit, facilitate, further, or promote any
23 criminal offense;

24 (2) aid, assist, or encourage another person to commit
25 any criminal offense;

26 (3) conceal evidence of the commission of any criminal

1 offense; or

2 (4) conceal or protect the identity of a person who has
3 committed any criminal offense.

4 (c) Sentence. A person who violates this Section is guilty
5 of a Class A misdemeanor, unless the encryption was used or
6 attempted to be used to commit an offense for which a greater
7 penalty is provided by law. If the encryption was used or
8 attempted to be used to commit an offense for which a greater
9 penalty is provided by law, the person shall be punished as
10 prescribed by law for that offense.

11 (d) A person who violates this Section commits a criminal
12 offense that is separate and distinct from any other criminal
13 offense and may be prosecuted and convicted under this Section
14 whether or not the person or any other person is or has been
15 prosecuted or convicted for any other criminal offense arising
16 out of the same facts as the violation of this Section.

17 Section 10. The Unified Code of Corrections is amended by
18 changing Section 5-5-3.2 as follows:

19 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

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

21 (a) The following factors shall be accorded weight in favor
22 of imposing a term of imprisonment or may be considered by the
23 court as reasons to impose a more severe sentence under Section
24 5-8-1:

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

3 (2) the defendant received compensation for committing
4 the offense;

5 (3) the defendant has a history of prior delinquency or
6 criminal activity;

7 (4) the defendant, by the duties of his office or by
8 his position, was obliged to prevent the particular offense
9 committed or to bring the offenders committing it to
10 justice;

11 (5) the defendant held public office at the time of the
12 offense, and the offense related to the conduct of that
13 office;

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

17 (7) the sentence is necessary to deter others from
18 committing the same crime;

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

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

24 (10) by reason of another individual's actual or
25 perceived race, color, creed, religion, ancestry, gender,
26 sexual orientation, physical or mental disability, or

1 national origin, the defendant committed the offense
2 against (i) the person or property of that individual; (ii)
3 the person or property of a person who has an association
4 with, is married to, or has a friendship with the other
5 individual; or (iii) the person or property of a relative
6 (by blood or marriage) of a person described in clause (i)
7 or (ii). For the purposes of this Section, "sexual
8 orientation" means heterosexuality, homosexuality, or
9 bisexuality;

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

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

23 (13) the defendant committed or attempted to commit a
24 felony while he was wearing a bulletproof vest. For the
25 purposes of this paragraph (13), a bulletproof vest is any
26 device which is designed for the purpose of protecting the

1 wearer from bullets, shot or other lethal projectiles;

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

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

16 (16) the defendant committed an offense in violation of
17 one of the following Sections while in a school, regardless
18 of the time of day or time of year; on any conveyance
19 owned, leased, or contracted by a school to transport
20 students to or from school or a school related activity; on
21 the real property of a school; or on a public way within
22 1,000 feet of the real property comprising any school:
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 (16.5) the defendant committed an offense in violation
2 of one of the following Sections while in a day care
3 center, regardless of the time of day or time of year; on
4 the real property of a day care center, regardless of the
5 time of day or time of year; or on a public way within
6 1,000 feet of the real property comprising any day care
7 center, regardless of the time of day or time of year:
8 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
9 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
10 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
11 33A-2 of the Criminal Code of 1961;

12 (17) the defendant committed the offense by reason of
13 any person's activity as a community policing volunteer or
14 to prevent any person from engaging in activity as a
15 community policing volunteer. For the purpose of this
16 Section, "community policing volunteer" has the meaning
17 ascribed to it in Section 2-3.5 of the Criminal Code of
18 1961;

19 (18) the defendant committed the offense in a nursing
20 home or on the real property comprising a nursing home. For
21 the purposes of this paragraph (18), "nursing home" means a
22 skilled nursing or intermediate long term care facility
23 that is subject to license by the Illinois Department of
24 Public Health under the Nursing Home 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 offense of driving under the influence of
8 alcohol, other drug or drugs, intoxicating compound or
9 compounds or any combination thereof under Section 11-501
10 of the Illinois Vehicle Code or a similar provision of a
11 local ordinance and (ii) was operating a motor vehicle in
12 excess of 20 miles per hour over the posted speed limit as
13 provided in Article VI of Chapter 11 of the Illinois
14 Vehicle Code; ~~or~~

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; or -

21 (22) the defendant committed any offense under Section
22 11-20.1 of the Criminal Code of 1961 and possessed 100 or
23 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, and such charges are separately brought and
14 tried and arise out of different series of acts; or

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

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

24 (4) 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 (5) In the case of a defendant convicted of aggravated
7 criminal sexual assault or criminal sexual assault, when
8 the court finds that aggravated criminal sexual assault or
9 criminal sexual assault was also committed on the same
10 victim by one or more other individuals, and the defendant
11 voluntarily participated in the crime with the knowledge of
12 the participation of the others in the crime, and the
13 commission of the crime was part of a single course of
14 conduct during which there was no substantial change in the
15 nature of the criminal objective; or

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

22 (i) the brutalizing or torturing of humans or
23 animals;

24 (ii) the theft of human corpses;

25 (iii) the kidnapping of humans;

26 (iv) the desecration of any cemetery, religious,

1 fraternal, business, governmental, educational, or
2 other building or property; or

3 (v) ritualized abuse of a child; or

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

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

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

25 (10) When a defendant committed the offense using a
26 firearm with a laser sight attached to it. For purposes of

1 this paragraph (10), "laser sight" has the meaning ascribed
2 to it in Section 24.6-5 of the Criminal Code of 1961; or

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

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

1 assistance or first aid personnel, or hospital emergency
2 room personnel; or

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

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

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

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

24 (Source: P.A. 94-131, eff. 7-7-05; 94-375, eff. 1-1-06; 94-556,
25 eff. 9-11-05; 94-819, eff. 5-31-06.)".