



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5402

Introduced 2/5/2010, by Rep. Constance A. Howard

SYNOPSIS AS INTRODUCED:

720 ILCS 5/18-6 new

730 ILCS 5/5-5-3.2

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

Amends the Criminal Code of 1961. Provides that it is a Class X felony to use force or to threaten the use of force against another person to effect or to attempt to effect a transaction at an electronic fund transfer terminal located in the State. Amends the Unified Code of Corrections. Provides that it is an aggravating factor in sentencing that the defendant committed the offense of first degree murder during the commission of a violation of the new offense.

LRB096 18022 RLC 33394 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 Criminal Code of 1961 is amended by adding
5 Section 18-6 as follows:

6 (720 ILCS 5/18-6 new)

7 Sec. 18-6. Electronic fund transfer terminal; forced
8 transfer of funds.

9 (a) It is unlawful to use force or to threaten the use of
10 force against another person to effect or to attempt to effect
11 a transaction at an electronic fund transfer terminal located
12 in this State.

13 (b) Sentence. A violation of this Section is a Class X
14 felony.

15 (c) In this Section, "electronic fund transfer terminal"
16 has the meaning ascribed to it in Section 2.14 of the Illinois
17 Credit Card and Debit Card Act.

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

20 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

21 (Text of Section after amendment by P.A. 96-339)

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

2 (a) The following factors shall be accorded weight in favor
3 of imposing a term of imprisonment or may be considered by the
4 court as reasons to impose a more severe sentence under Section
5 5-8-1 or Article 4.5 of Chapter V:

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

8 (2) the defendant received compensation for committing
9 the offense;

10 (3) the defendant has a history of prior delinquency or
11 criminal activity;

12 (4) the defendant, by the duties of his office or by
13 his position, was obliged to prevent the particular offense
14 committed or to bring the offenders committing it to
15 justice;

16 (5) the defendant held public office at the time of the
17 offense, and the offense related to the conduct of that
18 office;

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

22 (7) the sentence is necessary to deter others from
23 committing the same crime;

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

26 (9) the defendant committed the offense against a

1 person who is physically handicapped or such person's
2 property;

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

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

21 (12) the defendant was convicted of a felony committed
22 while he was released on bail or his own recognizance
23 pending trial for a prior felony and was convicted of such
24 prior felony, or the defendant was convicted of a felony
25 committed while he was serving a period of probation,
26 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

1 1,000 feet of the real property comprising any school:
2 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
3 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
4 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
5 33A-2 of the Criminal Code of 1961;

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

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 1961;

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 or the MR/DD
4 Community Care Act;

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

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

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

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

9 (23) the defendant committed the offense against a
10 person who was elderly, disabled, or infirm by taking
11 advantage of a family or fiduciary relationship with the
12 elderly, disabled, or infirm person; ~~or~~

13 (24) the defendant committed any offense under Section
14 11-20.1 of the Criminal Code of 1961 and possessed 100 or
15 more images; ~~or~~

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

19 (26) ~~(25)~~ the defendant committed the offense of child
20 pornography or aggravated child pornography, specifically
21 including paragraph (1), (2), (3), (4), (5), or (7) of
22 subsection (a) of Section 11-20.1 of the Criminal Code of
23 1961 where a child engaged in, solicited for, depicted in,
24 or posed in any act of sexual penetration or bound,
25 fettered, or subject to sadistic, masochistic, or
26 sadomasochistic abuse in a sexual context and specifically

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

7 (27) the defendant committed the offense of first
8 degree murder during the commission of a violation of
9 Section 18-6 of the Criminal Code of 1961.

10 For the purposes of this Section:

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

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

17 "Public transportation" means the transportation or
18 conveyance of persons by means available to the general public,
19 and includes paratransit services.

20 (b) The following factors, related to all felonies, may be
21 considered by the court as reasons to impose an extended term
22 sentence under Section 5-8-2 upon any offender:

23 (1) When a defendant is convicted of any felony, after
24 having been previously convicted in Illinois or any other
25 jurisdiction of the same or similar class felony or greater
26 class felony, when such conviction has occurred within 10

1 years after the previous conviction, excluding time spent
2 in custody, and such charges are separately brought and
3 tried and arise out of different series of acts; or

4 (2) When a defendant is convicted of any felony and the
5 court finds that the offense was accompanied by
6 exceptionally brutal or heinous behavior indicative of
7 wanton cruelty; or

8 (3) When a defendant is convicted of any felony
9 committed against:

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

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

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

16 (4) 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 (5) When a defendant is convicted of a felony other
5 than conspiracy and the court finds that the felony was
6 committed under an agreement with 2 or more other persons
7 to commit that offense and the defendant, with respect to
8 the other individuals, occupied a position of organizer,
9 supervisor, financier, or any other position of management
10 or leadership, and the court further finds that the felony
11 committed was related to or in furtherance of the criminal
12 activities of an organized gang or was motivated by the
13 defendant's leadership in an organized gang; or

14 (6) When a defendant is convicted of an offense
15 committed while using a firearm with a laser sight attached
16 to it. For purposes of this paragraph, "laser sight" has
17 the meaning ascribed to it in Section 24.6-5 of the
18 Criminal Code of 1961; or

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

1 (8) 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.

7 (c) The following factors may be considered by the court as
8 reasons to impose an extended term sentence under Section 5-8-2
9 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

10 (1) When a defendant is convicted of first degree
11 murder, after having been previously convicted in Illinois
12 of any offense listed under paragraph (c)(2) of Section
13 5-5-3 (730 ILCS 5/5-5-3), when that conviction has occurred
14 within 10 years after the previous conviction, excluding
15 time spent in custody, and the charges are separately
16 brought and tried and arise out of different series of
17 acts.

18 (1.5) When a defendant is convicted of first degree
19 murder, after having been previously convicted of domestic
20 battery (720 ILCS 5/12-3.2) or aggravated domestic battery
21 (720 ILCS 5/12-3.3) committed on the same victim or after
22 having been previously convicted of violation of an order
23 of protection (720 ILCS 5/12-30) in which the same victim
24 was the protected person.

25 (2) When a defendant is convicted of voluntary
26 manslaughter, second degree murder, involuntary

1 manslaughter, or reckless homicide in which the defendant
2 has been convicted of causing the death of more than one
3 individual.

4 (3) When a defendant is convicted of aggravated
5 criminal sexual assault or criminal sexual assault, when
6 there is a finding that aggravated criminal sexual assault
7 or 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.

14 (4) If the victim was under 18 years of age at the time
15 of the commission of the offense, when a defendant is
16 convicted of aggravated criminal sexual assault or
17 predatory criminal sexual assault of a child under
18 subsection (a)(1) of Section 12-14.1 of the Criminal Code
19 of 1961 (720 ILCS 5/12-14.1).

20 (5) When a defendant is convicted of a felony violation
21 of Section 24-1 of the Criminal Code of 1961 (720 ILCS
22 5/24-1) and there is a finding that the defendant is a
23 member of an organized gang.

24 (6) When a defendant was convicted of unlawful use of
25 weapons under Section 24-1 of the Criminal Code of 1961
26 (720 ILCS 5/24-1) for possessing a weapon that is not

1 readily distinguishable as one of the weapons enumerated in
2 Section 24-1 of the Criminal Code of 1961 (720 ILCS
3 5/24-1).

4 (7) When a defendant is convicted of an offense
5 involving the illegal manufacture of a controlled
6 substance under Section 401 of the Illinois Controlled
7 Substances Act (720 ILCS 570/401), the illegal manufacture
8 of methamphetamine under Section 25 of the Methamphetamine
9 Control and Community Protection Act (720 ILCS 646/25), or
10 the illegal possession of explosives and an emergency
11 response officer in the performance of his or her duties is
12 killed or injured at the scene of the offense while
13 responding to the emergency caused by the commission of the
14 offense. In this paragraph, "emergency" means a situation
15 in which a person's life, health, or safety is in jeopardy;
16 and "emergency response officer" means a peace officer,
17 community policing volunteer, fireman, emergency medical
18 technician-ambulance, emergency medical
19 technician-intermediate, emergency medical
20 technician-paramedic, ambulance driver, other medical
21 assistance or first aid personnel, or hospital emergency
22 room personnel.

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

26 (Source: P.A. 95-85, eff. 1-1-08; 95-362, eff. 1-1-08; 95-569,

1 eff. 6-1-08; 95-876, eff. 8-21-08; 95-942, eff. 1-1-09;
2 95-1052, eff. 7-1-09; 96-41, eff. 1-1-10; 96-292, eff. 1-1-10;
3 96-328, eff. 8-11-09; 96-339, eff. 7-1-10; revised 9-25-09.)