



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0264

by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1

from Ch. 38, par. 1005-4-1

Amends the Unified Code of Corrections. Provides if the defendant has been found guilty by a judge or jury after a trial, the prosecutor shall file with the court at the sentencing hearing a verified written statement signed by the prosecutor setting forth the prosecutor's final offer, if any, of any specified sentence and any charge to be dismissed or not charged in a plea discussion in exchange for a plea of guilty from the defendant and waiver of his or her right to trial. Also provides in any sentence, a defendant shall not be punished by the imposition of a heavier or greater sentence merely because he or she exercises his or her constitutional right to be tried before an impartial judge or jury.

LRB100 05347 RLC 15358 b

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 Section 5-4-1 as follows:

6 (730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)

7 Sec. 5-4-1. Sentencing Hearing.

8 (a) Except when the death penalty is sought under hearing
9 procedures otherwise specified, after a determination of
10 guilt, a hearing shall be held to impose the sentence. However,
11 prior to the imposition of sentence on an individual being
12 sentenced for an offense based upon a charge for a violation of
13 Section 11-501 of the Illinois Vehicle Code or a similar
14 provision of a local ordinance, the individual must undergo a
15 professional evaluation to determine if an alcohol or other
16 drug abuse problem exists and the extent of such a problem.
17 Programs conducting these evaluations shall be licensed by the
18 Department of Human Services. However, if the individual is not
19 a resident of Illinois, the court may, in its discretion,
20 accept an evaluation from a program in the state of such
21 individual's residence. The court may in its sentencing order
22 approve an eligible defendant for placement in a Department of
23 Corrections impact incarceration program as provided in

1 Section 5-8-1.1 or 5-8-1.3. The court may in its sentencing
2 order recommend a defendant for placement in a Department of
3 Corrections substance abuse treatment program as provided in
4 paragraph (a) of subsection (1) of Section 3-2-2 conditioned
5 upon the defendant being accepted in a program by the
6 Department of Corrections. At the hearing the court shall:

7 (1) consider the evidence, if any, received upon the
8 trial;

9 (2) consider any presentence reports;

10 (3) consider the financial impact of incarceration
11 based on the financial impact statement filed with the
12 clerk of the court by the Department of Corrections;

13 (4) consider evidence and information offered by the
14 parties in aggravation and mitigation;

15 (4.5) consider substance abuse treatment, eligibility
16 screening, and an assessment, if any, of the defendant by
17 an agent designated by the State of Illinois to provide
18 assessment services for the Illinois courts;

19 (5) hear arguments as to sentencing alternatives;

20 (6) afford the defendant the opportunity to make a
21 statement in his own behalf;

22 (7) afford the victim of a violent crime or a violation
23 of Section 11-501 of the Illinois Vehicle Code, or a
24 similar provision of a local ordinance, or a qualified
25 individual affected by: (i) a violation of Section 405,
26 405.1, 405.2, or 407 of the Illinois Controlled Substances

1 Act or a violation of Section 55 or Section 65 of the
2 Methamphetamine Control and Community Protection Act, or
3 (ii) a Class 4 felony violation of Section 11-14, 11-14.3
4 except as described in subdivisions (a)(2)(A) and
5 (a)(2)(B), 11-15, 11-17, 11-18, 11-18.1, or 11-19 of the
6 Criminal Code of 1961 or the Criminal Code of 2012,
7 committed by the defendant the opportunity to make a
8 statement concerning the impact on the victim and to offer
9 evidence in aggravation or mitigation; provided that the
10 statement and evidence offered in aggravation or
11 mitigation must first be prepared in writing in conjunction
12 with the State's Attorney before it may be presented orally
13 at the hearing. Any sworn testimony offered by the victim
14 is subject to the defendant's right to cross-examine. All
15 statements and evidence offered under this paragraph (7)
16 shall become part of the record of the court. For the
17 purpose of this paragraph (7), "qualified individual"
18 means any person who (i) lived or worked within the
19 territorial jurisdiction where the offense took place when
20 the offense took place; and (ii) is familiar with various
21 public places within the territorial jurisdiction where
22 the offense took place when the offense took place. For the
23 purposes of this paragraph (7), "qualified individual"
24 includes any peace officer, or any member of any duly
25 organized State, county, or municipal peace unit assigned
26 to the territorial jurisdiction where the offense took

1 place when the offense took place;

2 (8) in cases of reckless homicide afford the victim's
3 spouse, guardians, parents or other immediate family
4 members an opportunity to make oral statements;

5 (9) in cases involving a felony sex offense as defined
6 under the Sex Offender Management Board Act, consider the
7 results of the sex offender evaluation conducted pursuant
8 to Section 5-3-2 of this Act; and

9 (10) make a finding of whether a motor vehicle was used
10 in the commission of the offense for which the defendant is
11 being sentenced.

12 (a-5) If the defendant has been found guilty by a judge or
13 jury after a trial, the prosecutor shall file with the court a
14 verified written statement signed by the prosecutor setting
15 forth the prosecutor's final offer, if any, of any specified
16 sentence and any charge to be dismissed or not charged in a
17 plea discussion in exchange for a plea of guilty from the
18 defendant and waiver of his or her right to trial.

19 (b) All sentences shall be imposed by the judge based upon
20 his independent assessment of the elements specified above and
21 any agreement as to sentence reached by the parties. In any
22 sentence, a defendant shall not be punished by the imposition
23 of a heavier or greater sentence merely because he or she
24 exercises his or her constitutional right to be tried before an
25 impartial judge or jury. The judge who presided at the trial or
26 the judge who accepted the plea of guilty shall impose the

1 sentence unless he is no longer sitting as a judge in that
2 court. Where the judge does not impose sentence at the same
3 time on all defendants who are convicted as a result of being
4 involved in the same offense, the defendant or the State's
5 Attorney may advise the sentencing court of the disposition of
6 any other defendants who have been sentenced.

7 (b-1) In imposing a sentence of imprisonment or periodic
8 imprisonment for a Class 3 or Class 4 felony for which a
9 sentence of probation or conditional discharge is an available
10 sentence, if the defendant has no prior sentence of probation
11 or conditional discharge and no prior conviction for a violent
12 crime, the defendant shall not be sentenced to imprisonment
13 before review and consideration of a presentence report and
14 determination and explanation of why the particular evidence,
15 information, factor in aggravation, factual finding, or other
16 reasons support a sentencing determination that one or more of
17 the factors under subsection (a) of Section 5-6-1 of this Code
18 apply and that probation or conditional discharge is not an
19 appropriate sentence.

20 (c) In imposing a sentence for a violent crime or for an
21 offense of operating or being in physical control of a vehicle
22 while under the influence of alcohol, any other drug or any
23 combination thereof, or a similar provision of a local
24 ordinance, when such offense resulted in the personal injury to
25 someone other than the defendant, the trial judge shall specify
26 on the record the particular evidence, information, factors in

1 mitigation and aggravation or other reasons that led to his
2 sentencing determination. The full verbatim record of the
3 sentencing hearing shall be filed with the clerk of the court
4 and shall be a public record.

5 (c-1) In imposing a sentence for the offense of aggravated
6 kidnapping for ransom, home invasion, armed robbery,
7 aggravated vehicular hijacking, aggravated discharge of a
8 firearm, or armed violence with a category I weapon or category
9 II weapon, the trial judge shall make a finding as to whether
10 the conduct leading to conviction for the offense resulted in
11 great bodily harm to a victim, and shall enter that finding and
12 the basis for that finding in the record.

13 (c-2) If the defendant is sentenced to prison, other than
14 when a sentence of natural life imprisonment or a sentence of
15 death is imposed, at the time the sentence is imposed the judge
16 shall state on the record in open court the approximate period
17 of time the defendant will serve in custody according to the
18 then current statutory rules and regulations for sentence
19 credit found in Section 3-6-3 and other related provisions of
20 this Code. This statement is intended solely to inform the
21 public, has no legal effect on the defendant's actual release,
22 and may not be relied on by the defendant on appeal.

23 The judge's statement, to be given after pronouncing the
24 sentence, other than when the sentence is imposed for one of
25 the offenses enumerated in paragraph (a) (3) of Section 3-6-3,
26 shall include the following:

1 "The purpose of this statement is to inform the public of
2 the actual period of time this defendant is likely to spend in
3 prison as a result of this sentence. The actual period of
4 prison time served is determined by the statutes of Illinois as
5 applied to this sentence by the Illinois Department of
6 Corrections and the Illinois Prisoner Review Board. In this
7 case, assuming the defendant receives all of his or her
8 sentence credit, the period of estimated actual custody is ...
9 years and ... months, less up to 180 days additional sentence
10 credit for good conduct. If the defendant, because of his or
11 her own misconduct or failure to comply with the institutional
12 regulations, does not receive those credits, the actual time
13 served in prison will be longer. The defendant may also receive
14 an additional one-half day sentence credit for each day of
15 participation in vocational, industry, substance abuse, and
16 educational programs as provided for by Illinois statute."

17 When the sentence is imposed for one of the offenses
18 enumerated in paragraph (a)(3) of Section 3-6-3, other than
19 when the sentence is imposed for one of the offenses enumerated
20 in paragraph (a)(2) of Section 3-6-3 committed on or after June
21 19, 1998, and other than when the sentence is imposed for
22 reckless homicide as defined in subsection (e) of Section 9-3
23 of the Criminal Code of 1961 or the Criminal Code of 2012 if
24 the offense was committed on or after January 1, 1999, and
25 other than when the sentence is imposed for aggravated arson if
26 the offense was committed on or after July 27, 2001 (the

1 effective date of Public Act 92-176), and other than when the
2 sentence is imposed for aggravated driving under the influence
3 of alcohol, other drug or drugs, or intoxicating compound or
4 compounds, or any combination thereof as defined in
5 subparagraph (C) of paragraph (1) of subsection (d) of Section
6 11-501 of the Illinois Vehicle Code committed on or after
7 January 1, 2011 (the effective date of Public Act 96-1230), the
8 judge's statement, to be given after pronouncing the sentence,
9 shall include the following:

10 "The purpose of this statement is to inform the public of
11 the actual period of time this defendant is likely to spend in
12 prison as a result of this sentence. The actual period of
13 prison time served is determined by the statutes of Illinois as
14 applied to this sentence by the Illinois Department of
15 Corrections and the Illinois Prisoner Review Board. In this
16 case, assuming the defendant receives all of his or her
17 sentence credit, the period of estimated actual custody is ...
18 years and ... months, less up to 90 days additional sentence
19 credit for good conduct. If the defendant, because of his or
20 her own misconduct or failure to comply with the institutional
21 regulations, does not receive those credits, the actual time
22 served in prison will be longer. The defendant may also receive
23 an additional one-half day sentence credit for each day of
24 participation in vocational, industry, substance abuse, and
25 educational programs as provided for by Illinois statute."

26 When the sentence is imposed for one of the offenses

1 enumerated in paragraph (a)(2) of Section 3-6-3, other than
2 first degree murder, and the offense was committed on or after
3 June 19, 1998, and when the sentence is imposed for reckless
4 homicide as defined in subsection (e) of Section 9-3 of the
5 Criminal Code of 1961 or the Criminal Code of 2012 if the
6 offense was committed on or after January 1, 1999, and when the
7 sentence is imposed for aggravated driving under the influence
8 of alcohol, other drug or drugs, or intoxicating compound or
9 compounds, or any combination thereof as defined in
10 subparagraph (F) of paragraph (1) of subsection (d) of Section
11 11-501 of the Illinois Vehicle Code, and when the sentence is
12 imposed for aggravated arson if the offense was committed on or
13 after July 27, 2001 (the effective date of Public Act 92-176),
14 and when the sentence is imposed for aggravated driving under
15 the influence of alcohol, other drug or drugs, or intoxicating
16 compound or compounds, or any combination thereof as defined in
17 subparagraph (C) of paragraph (1) of subsection (d) of Section
18 11-501 of the Illinois Vehicle Code committed on or after
19 January 1, 2011 (the effective date of Public Act 96-1230), the
20 judge's statement, to be given after pronouncing the sentence,
21 shall include the following:

22 "The purpose of this statement is to inform the public of
23 the actual period of time this defendant is likely to spend in
24 prison as a result of this sentence. The actual period of
25 prison time served is determined by the statutes of Illinois as
26 applied to this sentence by the Illinois Department of

1 Corrections and the Illinois Prisoner Review Board. In this
2 case, the defendant is entitled to no more than 4 1/2 days of
3 sentence credit for each month of his or her sentence of
4 imprisonment. Therefore, this defendant will serve at least 85%
5 of his or her sentence. Assuming the defendant receives 4 1/2
6 days credit for each month of his or her sentence, the period
7 of estimated actual custody is ... years and ... months. If the
8 defendant, because of his or her own misconduct or failure to
9 comply with the institutional regulations receives lesser
10 credit, the actual time served in prison will be longer."

11 When a sentence of imprisonment is imposed for first degree
12 murder and the offense was committed on or after June 19, 1998,
13 the judge's statement, to be given after pronouncing the
14 sentence, shall include the following:

15 "The purpose of this statement is to inform the public of
16 the actual period of time this defendant is likely to spend in
17 prison as a result of this sentence. The actual period of
18 prison time served is determined by the statutes of Illinois as
19 applied to this sentence by the Illinois Department of
20 Corrections and the Illinois Prisoner Review Board. In this
21 case, the defendant is not entitled to sentence credit.
22 Therefore, this defendant will serve 100% of his or her
23 sentence."

24 When the sentencing order recommends placement in a
25 substance abuse program for any offense that results in
26 incarceration in a Department of Corrections facility and the

1 crime was committed on or after September 1, 2003 (the
2 effective date of Public Act 93-354), the judge's statement, in
3 addition to any other judge's statement required under this
4 Section, to be given after pronouncing the sentence, shall
5 include the following:

6 "The purpose of this statement is to inform the public of
7 the actual period of time this defendant is likely to spend in
8 prison as a result of this sentence. The actual period of
9 prison time served is determined by the statutes of Illinois as
10 applied to this sentence by the Illinois Department of
11 Corrections and the Illinois Prisoner Review Board. In this
12 case, the defendant shall receive no sentence credit for good
13 conduct under clause (3) of subsection (a) of Section 3-6-3
14 until he or she participates in and completes a substance abuse
15 treatment program or receives a waiver from the Director of
16 Corrections pursuant to clause (4.5) of subsection (a) of
17 Section 3-6-3."

18 (c-4) Before the sentencing hearing and as part of the
19 presentence investigation under Section 5-3-1, the court shall
20 inquire of the defendant whether the defendant is currently
21 serving in or is a veteran of the Armed Forces of the United
22 States. If the defendant is currently serving in the Armed
23 Forces of the United States or is a veteran of the Armed Forces
24 of the United States and has been diagnosed as having a mental
25 illness by a qualified psychiatrist or clinical psychologist or
26 physician, the court may:

1 (1) order that the officer preparing the presentence
2 report consult with the United States Department of
3 Veterans Affairs, Illinois Department of Veterans'
4 Affairs, or another agency or person with suitable
5 knowledge or experience for the purpose of providing the
6 court with information regarding treatment options
7 available to the defendant, including federal, State, and
8 local programming; and

9 (2) consider the treatment recommendations of any
10 diagnosing or treating mental health professionals
11 together with the treatment options available to the
12 defendant in imposing sentence.

13 For the purposes of this subsection (c-4), "qualified
14 psychiatrist" means a reputable physician licensed in Illinois
15 to practice medicine in all its branches, who has specialized
16 in the diagnosis and treatment of mental and nervous disorders
17 for a period of not less than 5 years.

18 (c-6) In imposing a sentence, the trial judge shall
19 specify, on the record, the particular evidence and other
20 reasons which led to his or her determination that a motor
21 vehicle was used in the commission of the offense.

22 (d) When the defendant is committed to the Department of
23 Corrections, the State's Attorney shall and counsel for the
24 defendant may file a statement with the clerk of the court to
25 be transmitted to the department, agency or institution to
26 which the defendant is committed to furnish such department,

1 agency or institution with the facts and circumstances of the
2 offense for which the person was committed together with all
3 other factual information accessible to them in regard to the
4 person prior to his commitment relative to his habits,
5 associates, disposition and reputation and any other facts and
6 circumstances which may aid such department, agency or
7 institution during its custody of such person. The clerk shall
8 within 10 days after receiving any such statements transmit a
9 copy to such department, agency or institution and a copy to
10 the other party, provided, however, that this shall not be
11 cause for delay in conveying the person to the department,
12 agency or institution to which he has been committed.

13 (e) The clerk of the court shall transmit to the
14 department, agency or institution, if any, to which the
15 defendant is committed, the following:

16 (1) the sentence imposed;

17 (2) any statement by the court of the basis for
18 imposing the sentence;

19 (3) any presentence reports;

20 (3.5) any sex offender evaluations;

21 (3.6) any substance abuse treatment eligibility
22 screening and assessment of the defendant by an agent
23 designated by the State of Illinois to provide assessment
24 services for the Illinois courts;

25 (4) the number of days, if any, which the defendant has
26 been in custody and for which he is entitled to credit

1 against the sentence, which information shall be provided
2 to the clerk by the sheriff;

3 (4.1) any finding of great bodily harm made by the
4 court with respect to an offense enumerated in subsection
5 (c-1);

6 (5) all statements filed under subsection (d) of this
7 Section;

8 (6) any medical or mental health records or summaries
9 of the defendant;

10 (7) the municipality where the arrest of the offender
11 or the commission of the offense has occurred, where such
12 municipality has a population of more than 25,000 persons;

13 (8) all statements made and evidence offered under
14 paragraph (7) of subsection (a) of this Section; and

15 (9) all additional matters which the court directs the
16 clerk to transmit.

17 (f) In cases in which the court finds that a motor vehicle
18 was used in the commission of the offense for which the
19 defendant is being sentenced, the clerk of the court shall,
20 within 5 days thereafter, forward a report of such conviction
21 to the Secretary of State.

22 (Source: P.A. 99-861, eff. 1-1-17.)