



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3355

by Rep. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1
730 ILCS 5/5-8-6

from Ch. 38, par. 1005-4-1
from Ch. 38, par. 1005-8-6

Amends the Unified Code of Corrections. Provides that in imposing a sentence for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, the court shall determine and indicate in the sentencing order whether the defendant has 4 or more or fewer than 4 months remaining on his or her sentence accounting for time served. Provides that an offender sentenced to a term of imprisonment for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, in which the sentencing order indicates that the offender has less than 4 months remaining on his or her sentence accounting for time served may not be confined in the penitentiary system of the Department of Corrections but may be assigned to electronic home detention, an adult transition center, or another facility or program within the Department of Corrections. Effective January 1, 2019.

LRB100 08485 RLC 21551 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 Sections 5-4-1 and 5-8-6 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 (b) All sentences shall be imposed by the judge based upon
13 his independent assessment of the elements specified above and
14 any agreement as to sentence reached by the parties. The judge
15 who presided at the trial or the judge who accepted the plea of
16 guilty shall impose the sentence unless he is no longer sitting
17 as a judge in that court. Where the judge does not impose
18 sentence at the same time on all defendants who are convicted
19 as a result of being involved in the same offense, the
20 defendant or the State's Attorney may advise the sentencing
21 court of the disposition of any other defendants who have been
22 sentenced.

23 (b-1) In imposing a sentence of imprisonment or periodic
24 imprisonment for a Class 3 or Class 4 felony for which a
25 sentence of probation or conditional discharge is an available
26 sentence, if the defendant has no prior sentence of probation

1 or conditional discharge and no prior conviction for a violent
2 crime, the defendant shall not be sentenced to imprisonment
3 before review and consideration of a presentence report and
4 determination and explanation of why the particular evidence,
5 information, factor in aggravation, factual finding, or other
6 reasons support a sentencing determination that one or more of
7 the factors under subsection (a) of Section 5-6-1 of this Code
8 apply and that probation or conditional discharge is not an
9 appropriate sentence.

10 (c) In imposing a sentence for a violent crime or for an
11 offense of operating or being in physical control of a vehicle
12 while under the influence of alcohol, any other drug or any
13 combination thereof, or a similar provision of a local
14 ordinance, when such offense resulted in the personal injury to
15 someone other than the defendant, the trial judge shall specify
16 on the record the particular evidence, information, factors in
17 mitigation and aggravation or other reasons that led to his
18 sentencing determination. The full verbatim record of the
19 sentencing hearing shall be filed with the clerk of the court
20 and shall be a public record.

21 (c-1) In imposing a sentence for the offense of aggravated
22 kidnapping for ransom, home invasion, armed robbery,
23 aggravated vehicular hijacking, aggravated discharge of a
24 firearm, or armed violence with a category I weapon or category
25 II weapon, the trial judge shall make a finding as to whether
26 the conduct leading to conviction for the offense resulted in

1 great bodily harm to a victim, and shall enter that finding and
2 the basis for that finding in the record.

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

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

17 "The purpose of this statement is to inform the public of
18 the actual period of time this defendant is likely to spend in
19 prison as a result of this sentence. The actual period of
20 prison time served is determined by the statutes of Illinois as
21 applied to this sentence by the Illinois Department of
22 Corrections and the Illinois Prisoner Review Board. In this
23 case, assuming the defendant receives all of his or her
24 sentence credit, the period of estimated actual custody is ...
25 years and ... months, less up to 180 days additional sentence
26 credit for good conduct. If the defendant, because of his or

1 her own misconduct or failure to comply with the institutional
2 regulations, does not receive those credits, the actual time
3 served in prison will be longer. The defendant may also receive
4 an additional one-half day sentence credit for each day of
5 participation in vocational, industry, substance abuse, and
6 educational programs as provided for by Illinois statute."

7 When the sentence is imposed for one of the offenses
8 enumerated in paragraph (a)(3) of Section 3-6-3, other than
9 when the sentence is imposed for one of the offenses enumerated
10 in paragraph (a)(2) of Section 3-6-3 committed on or after June
11 19, 1998, and other than when the sentence is imposed for
12 reckless homicide as defined in subsection (e) of Section 9-3
13 of the Criminal Code of 1961 or the Criminal Code of 2012 if
14 the offense was committed on or after January 1, 1999, and
15 other than when the sentence is imposed for aggravated arson if
16 the offense was committed on or after July 27, 2001 (the
17 effective date of Public Act 92-176), and other than when the
18 sentence is imposed for aggravated driving under the influence
19 of alcohol, other drug or drugs, or intoxicating compound or
20 compounds, or any combination thereof as defined in
21 subparagraph (C) of paragraph (1) of subsection (d) of Section
22 11-501 of the Illinois Vehicle Code committed on or after
23 January 1, 2011 (the effective date of Public Act 96-1230), the
24 judge's statement, to be given after pronouncing the sentence,
25 shall include the following:

26 "The purpose of this statement is to inform the public of

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

16 When the sentence is imposed for one of the offenses
17 enumerated in paragraph (a)(2) of Section 3-6-3, other than
18 first degree murder, and the offense was committed on or after
19 June 19, 1998, and when the sentence is imposed for reckless
20 homicide as defined in subsection (e) of Section 9-3 of the
21 Criminal Code of 1961 or the Criminal Code of 2012 if the
22 offense was committed on or after January 1, 1999, and when the
23 sentence is imposed for aggravated driving under the influence
24 of alcohol, other drug or drugs, or intoxicating compound or
25 compounds, or any combination thereof as defined in
26 subparagraph (F) of paragraph (1) of subsection (d) of Section

1 11-501 of the Illinois Vehicle Code, and when the sentence is
2 imposed for aggravated arson if the offense was committed on or
3 after July 27, 2001 (the effective date of Public Act 92-176),
4 and when the sentence is imposed for aggravated driving under
5 the influence of alcohol, other drug or drugs, or intoxicating
6 compound or compounds, or any combination thereof as defined in
7 subparagraph (C) of paragraph (1) of subsection (d) of Section
8 11-501 of the Illinois Vehicle Code committed on or after
9 January 1, 2011 (the effective date of Public Act 96-1230), the
10 judge's statement, to be given after pronouncing the sentence,
11 shall include the following:

12 "The purpose of this statement is to inform the public of
13 the actual period of time this defendant is likely to spend in
14 prison as a result of this sentence. The actual period of
15 prison time served is determined by the statutes of Illinois as
16 applied to this sentence by the Illinois Department of
17 Corrections and the Illinois Prisoner Review Board. In this
18 case, the defendant is entitled to no more than 4 1/2 days of
19 sentence credit for each month of his or her sentence of
20 imprisonment. Therefore, this defendant will serve at least 85%
21 of his or her sentence. Assuming the defendant receives 4 1/2
22 days credit for each month of his or her sentence, the period
23 of estimated actual custody is ... years and ... months. If the
24 defendant, because of his or her own misconduct or failure to
25 comply with the institutional regulations receives lesser
26 credit, the actual time served in prison will be longer."

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

5 "The purpose of this statement is to inform the public of
6 the actual period of time this defendant is likely to spend in
7 prison as a result of this sentence. The actual period of
8 prison time served is determined by the statutes of Illinois as
9 applied to this sentence by the Illinois Department of
10 Corrections and the Illinois Prisoner Review Board. In this
11 case, the defendant is not entitled to sentence credit.
12 Therefore, this defendant will serve 100% of his or her
13 sentence."

14 When the sentencing order recommends placement in a
15 substance abuse program for any offense that results in
16 incarceration in a Department of Corrections facility and the
17 crime was committed on or after September 1, 2003 (the
18 effective date of Public Act 93-354), the judge's statement, in
19 addition to any other judge's statement required under this
20 Section, to be given after pronouncing the sentence, shall
21 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 shall receive no sentence credit for good
3 conduct under clause (3) of subsection (a) of Section 3-6-3
4 until he or she participates in and completes a substance abuse
5 treatment program or receives a waiver from the Director of
6 Corrections pursuant to clause (4.5) of subsection (a) of
7 Section 3-6-3."

8 (c-4) Before the sentencing hearing and as part of the
9 presentence investigation under Section 5-3-1, the court shall
10 inquire of the defendant whether the defendant is currently
11 serving in or is a veteran of the Armed Forces of the United
12 States. If the defendant is currently serving in the Armed
13 Forces of the United States or is a veteran of the Armed Forces
14 of the United States and has been diagnosed as having a mental
15 illness by a qualified psychiatrist or clinical psychologist or
16 physician, the court may:

17 (1) order that the officer preparing the presentence
18 report consult with the United States Department of
19 Veterans Affairs, Illinois Department of Veterans'
20 Affairs, or another agency or person with suitable
21 knowledge or experience for the purpose of providing the
22 court with information regarding treatment options
23 available to the defendant, including federal, State, and
24 local programming; and

25 (2) consider the treatment recommendations of any
26 diagnosing or treating mental health professionals

1 together with the treatment options available to the
2 defendant in imposing sentence.

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

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

12 (c-7) In imposing a sentence for a Class 3 or 4 felony,
13 other than a violent crime as defined in Section 3 of the
14 Rights of Crime Victims and Witnesses Act, the court shall
15 determine and indicate in the sentencing order whether the
16 defendant has 4 or more or fewer than 4 months remaining on his
17 or her sentence accounting for time served.

18 (d) When the defendant is committed to the Department of
19 Corrections, the State's Attorney shall and counsel for the
20 defendant may file a statement with the clerk of the court to
21 be transmitted to the department, agency or institution to
22 which the defendant is committed to furnish such department,
23 agency or institution with the facts and circumstances of the
24 offense for which the person was committed together with all
25 other factual information accessible to them in regard to the
26 person prior to his commitment relative to his habits,

1 associates, disposition and reputation and any other facts and
2 circumstances which may aid such department, agency or
3 institution during its custody of such person. The clerk shall
4 within 10 days after receiving any such statements transmit a
5 copy to such department, agency or institution and a copy to
6 the other party, provided, however, that this shall not be
7 cause for delay in conveying the person to the department,
8 agency or institution to which he has been committed.

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

12 (1) the sentence imposed;

13 (2) any statement by the court of the basis for
14 imposing the sentence;

15 (3) any presentence reports;

16 (3.5) any sex offender evaluations;

17 (3.6) any substance abuse treatment eligibility
18 screening and assessment of the defendant by an agent
19 designated by the State of Illinois to provide assessment
20 services for the Illinois courts;

21 (4) the number of days, if any, which the defendant has
22 been in custody and for which he is entitled to credit
23 against the sentence, which information shall be provided
24 to the clerk by the sheriff;

25 (4.1) any finding of great bodily harm made by the
26 court with respect to an offense enumerated in subsection

1 (c-1);

2 (5) all statements filed under subsection (d) of this
3 Section;

4 (6) any medical or mental health records or summaries
5 of the defendant;

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

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

11 (9) all additional matters which the court directs the
12 clerk to transmit.

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

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

19 (730 ILCS 5/5-8-6) (from Ch. 38, par. 1005-8-6)

20 Sec. 5-8-6. Place of confinement.

21 (a) Except as otherwise provided in this subsection (a),
22 offenders ~~Offenders~~ sentenced to a term of imprisonment for a
23 felony shall be committed to the penitentiary system of the
24 Department of Corrections. However, such sentence shall not
25 limit the powers of the Department of Children and Family

1 Services in relation to any child under the age of one year in
2 the sole custody of a person so sentenced, nor in relation to
3 any child delivered by a female so sentenced while she is so
4 confined as a consequence of such sentence. Except as otherwise
5 provided in this subsection (a), a ~~A~~ person sentenced for a
6 felony may be assigned by the Department of Corrections to any
7 of its institutions, facilities or programs. An offender
8 sentenced to a term of imprisonment for a Class 3 or 4 felony,
9 other than a violent crime as defined in Section 3 of the
10 Rights of Crime Victims and Witnesses Act, in which the
11 sentencing order indicates that the offender has less than 4
12 months remaining on his or her sentence accounting for time
13 served may not be confined in the penitentiary system of the
14 Department of Corrections but may be assigned to electronic
15 home detention under Article 8A of this Chapter V, an adult
16 transition center, or another facility or program within the
17 Department of Corrections.

18 (b) Offenders sentenced to a term of imprisonment for less
19 than one year shall be committed to the custody of the sheriff.
20 A person committed to the Department of Corrections, prior to
21 July 14, 1983, for less than one year may be assigned by the
22 Department to any of its institutions, facilities or programs.

23 (c) All offenders under 18 years of age when sentenced to
24 imprisonment shall be committed to the Department of Juvenile
25 Justice and the court in its order of commitment shall set a
26 definite term. The provisions of Section 3-3-3 shall be a part

1 of such commitment as fully as though written in the order of
2 commitment. The place of confinement for sentences imposed
3 before the effective date of this amendatory Act of the 99th
4 General Assembly are not affected or abated by this amendatory
5 Act of the 99th General Assembly.

6 (d) No defendant shall be committed to the Department of
7 Corrections for the recovery of a fine or costs.

8 (e) When a court sentences a defendant to a term of
9 imprisonment concurrent with a previous and unexpired sentence
10 of imprisonment imposed by any district court of the United
11 States, it may commit the offender to the custody of the
12 Attorney General of the United States. The Attorney General of
13 the United States, or the authorized representative of the
14 Attorney General of the United States, shall be furnished with
15 the warrant of commitment from the court imposing sentence,
16 which warrant of commitment shall provide that, when the
17 offender is released from federal confinement, whether by
18 parole or by termination of sentence, the offender shall be
19 transferred by the Sheriff of the committing county to the
20 Department of Corrections. The court shall cause the Department
21 to be notified of such sentence at the time of commitment and
22 to be provided with copies of all records regarding the
23 sentence.

24 (Source: P.A. 99-628, eff. 1-1-17.)

25 Section 99. Effective date. This Act takes effect on
26 January 1, 2019.