



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB1587

by Rep. Sonya M. Harper

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1

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

Amends the Unified Code of Corrections. Provides that in imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment or probation or conditional discharge of 2 years or more, the court may sentence the offender to probation or conditional discharge or other non-imprisonment sentence it deems appropriate instead of to a sentence of imprisonment or to a lesser sentence of imprisonment, probation, or conditional discharge than the minimum sentence of imprisonment, probation, or conditional discharge provided for the offense if the court finds that the defendant does not pose a risk to public safety and the interest of justice requires the non-imposition of the mandatory sentence of imprisonment or a lesser sentence of imprisonment, probation, or conditional discharge. Provides that the court must state on the record its reasons for not imposing the minimum sentence of imprisonment or a lesser sentence of imprisonment, probation, or conditional discharge. Provides that if the defendant has been charged with an offense involving the use, possession, or discharge of a firearm, the court may not deviate from a mandatory minimum sentence or probation or conditional discharge requirement, unless it is the recommendation of a presentence investigation and there is clear articulable evidence that the defendant is not a threat to the public safety. Provides that an offender convicted of a sex offense or an offense involving the infliction of great bodily harm may not be sentenced to a lesser term of imprisonment, probation, or conditional discharge.

LRB101 07458 SLF 52501 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, the opportunity to
25 present an oral or written statement, as guaranteed by
26 Article I, Section 8.1 of the Illinois Constitution and

1 provided in Section 6 of the Rights of Crime Victims and
2 Witnesses Act. The court shall allow a victim to make an
3 oral statement if the victim is present in the courtroom
4 and requests to make an oral or written statement. An oral
5 or written statement includes the victim or a
6 representative of the victim reading the written
7 statement. The court may allow persons impacted by the
8 crime who are not victims under subsection (a) of Section 3
9 of the Rights of Crime Victims and Witnesses Act to present
10 an oral or written statement. A victim and any person
11 making an oral statement shall not be put under oath or
12 subject to cross-examination. All statements offered under
13 this paragraph (7) shall become part of the record of the
14 court. In this paragraph (7), "victim of a violent crime"
15 means a person who is a victim of a violent crime for which
16 the defendant has been convicted after a bench or jury
17 trial or a person who is the victim of a violent crime with
18 which the defendant was charged and the defendant has been
19 convicted under a plea agreement of a crime that is not a
20 violent crime as defined in subsection (c) of 3 of the
21 Rights of Crime Victims and Witnesses Act;

22 (7.5) afford a qualified person affected by: (i) a
23 violation of Section 405, 405.1, 405.2, or 407 of the
24 Illinois Controlled Substances Act or a violation of
25 Section 55 or Section 65 of the Methamphetamine Control and
26 Community Protection Act; or (ii) a Class 4 felony

1 violation of Section 11-14, 11-14.3 except as described in
2 subdivisions (a) (2) (A) and (a) (2) (B), 11-15, 11-17, 11-18,
3 11-18.1, or 11-19 of the Criminal Code of 1961 or the
4 Criminal Code of 2012, committed by the defendant the
5 opportunity to make a statement concerning the impact on
6 the qualified person and to offer evidence in aggravation
7 or mitigation; provided that the statement and evidence
8 offered in aggravation or mitigation shall first be
9 prepared in writing in conjunction with the State's
10 Attorney before it may be presented orally at the hearing.
11 Sworn testimony offered by the qualified person is subject
12 to the defendant's right to cross-examine. All statements
13 and evidence offered under this paragraph (7.5) shall
14 become part of the record of the court. In this paragraph
15 (7.5), "qualified person" means any person who: (i) lived
16 or worked within the territorial jurisdiction where the
17 offense took place when the offense took place; or (ii) is
18 familiar with various public places within the territorial
19 jurisdiction where the offense took place when the offense
20 took place. "Qualified person" includes any peace officer
21 or any member of any duly organized State, county, or
22 municipal peace officer unit assigned to the territorial
23 jurisdiction where the offense took place when the offense
24 took place;

25 (8) in cases of reckless homicide afford the victim's
26 spouse, guardians, parents or other immediate family

1 members an opportunity to make oral statements;

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

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

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

20 (b-1) In imposing a sentence of imprisonment or periodic
21 imprisonment for a Class 3 or Class 4 felony for which a
22 sentence of probation or conditional discharge is an available
23 sentence, if the defendant has no prior sentence of probation
24 or conditional discharge and no prior conviction for a violent
25 crime, the defendant shall not be sentenced to imprisonment
26 before review and consideration of a presentence report and

1 determination and explanation of why the particular evidence,
2 information, factor in aggravation, factual finding, or other
3 reasons support a sentencing determination that one or more of
4 the factors under subsection (a) of Section 5-6-1 of this Code
5 apply and that probation or conditional discharge is not an
6 appropriate sentence.

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

18 (c-1) In imposing a sentence for the offense of aggravated
19 kidnapping for ransom, home invasion, armed robbery,
20 aggravated vehicular hijacking, aggravated discharge of a
21 firearm, or armed violence with a category I weapon or category
22 II weapon, the trial judge shall make a finding as to whether
23 the conduct leading to conviction for the offense resulted in
24 great bodily harm to a victim, and shall enter that finding and
25 the basis for that finding in the record.

26 (c-1.5) Notwithstanding any other provision of law to the

1 contrary, in imposing a sentence for an offense that requires a
2 mandatory minimum sentence of imprisonment or probation or
3 conditional discharge of 2 years or more, the court may
4 sentence the offender to probation or conditional discharge or
5 other non-imprisonment sentence it deems appropriate instead
6 of to a sentence of imprisonment or to a lesser sentence of
7 imprisonment, probation, or conditional discharge than the
8 minimum sentence of imprisonment, probation, or conditional
9 discharge provided for the offense if the court finds that the
10 defendant does not pose a risk to public safety and the
11 interest of justice requires the non-imposition of the
12 mandatory sentence of imprisonment or a lesser sentence of
13 imprisonment, probation, or conditional discharge. The court
14 must state on the record its reasons for not imposing the
15 minimum sentence of imprisonment or a lesser sentence of
16 imprisonment, probation, or conditional discharge. If the
17 defendant has been charged with an offense involving the use,
18 possession, or discharge of a firearm, the court may not
19 deviate from a mandatory minimum sentence or probation or
20 conditional discharge requirement, unless it is the
21 recommendation of a presentence investigation and there is
22 clear articulable evidence that the defendant is not a threat
23 to the public safety. This must be fully stated by the court
24 into the record at the time of sentencing. An offender
25 convicted of a sex offense under Article 11 of the Criminal
26 Code of 2012 or an offense involving the infliction of great

1 bodily harm may not be sentenced to a lesser term of
2 imprisonment, probation, or conditional discharge under this
3 subsection (c-1.5).

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

14 The judge's statement, to be given after pronouncing the
15 sentence, other than when the sentence is imposed for one of
16 the offenses enumerated in paragraph (a)(4) of Section 3-6-3,
17 shall include the following:

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

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

8 When the sentence is imposed for one of the offenses
9 enumerated in paragraph (a)(2) of Section 3-6-3, other than
10 first degree murder, and the offense was committed on or after
11 June 19, 1998, and when the sentence is imposed for reckless
12 homicide as defined in subsection (e) of Section 9-3 of the
13 Criminal Code of 1961 or the Criminal Code of 2012 if the
14 offense was committed on or after January 1, 1999, and when the
15 sentence is imposed for aggravated driving under the influence
16 of alcohol, other drug or drugs, or intoxicating compound or
17 compounds, or any combination thereof as defined in
18 subparagraph (F) of paragraph (1) of subsection (d) of Section
19 11-501 of the Illinois Vehicle Code, and when the sentence is
20 imposed for aggravated arson if the offense was committed on or
21 after July 27, 2001 (the effective date of Public Act 92-176),
22 and when the sentence is imposed for aggravated driving under
23 the influence of alcohol, other drug or drugs, or intoxicating
24 compound or compounds, or any combination thereof as defined in
25 subparagraph (C) of paragraph (1) of subsection (d) of Section
26 11-501 of the Illinois Vehicle Code committed on or after

1 January 1, 2011 (the effective date of Public Act 96-1230), the
2 judge's statement, to be given after pronouncing the sentence,
3 shall include the following:

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

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

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

1 applied to this sentence by the Illinois Department of
2 Corrections and the Illinois Prisoner Review Board. In this
3 case, the defendant is not entitled to sentence credit.
4 Therefore, this defendant will serve 100% of his or her
5 sentence."

6 When the sentencing order recommends placement in a
7 substance abuse program for any offense that results in
8 incarceration in a Department of Corrections facility and the
9 crime was committed on or after September 1, 2003 (the
10 effective date of Public Act 93-354), the judge's statement, in
11 addition to any other judge's statement required under this
12 Section, to be given after pronouncing the sentence, shall
13 include the following:

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

25 (c-4) Before the sentencing hearing and as part of the
26 presentence investigation under Section 5-3-1, the court shall

1 inquire of the defendant whether the defendant is currently
2 serving in or is a veteran of the Armed Forces of the United
3 States. If the defendant is currently serving in the Armed
4 Forces of the United States or is a veteran of the Armed Forces
5 of the United States and has been diagnosed as having a mental
6 illness by a qualified psychiatrist or clinical psychologist or
7 physician, the court may:

8 (1) order that the officer preparing the presentence
9 report consult with the United States Department of
10 Veterans Affairs, Illinois Department of Veterans'
11 Affairs, or another agency or person with suitable
12 knowledge or experience for the purpose of providing the
13 court with information regarding treatment options
14 available to the defendant, including federal, State, and
15 local programming; and

16 (2) consider the treatment recommendations of any
17 diagnosing or treating mental health professionals
18 together with the treatment options available to the
19 defendant in imposing sentence.

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

25 (c-6) In imposing a sentence, the trial judge shall
26 specify, on the record, the particular evidence and other

1 reasons which led to his or her determination that a motor
2 vehicle was used in the commission of the offense.

3 (d) When the defendant is committed to the Department of
4 Corrections, the State's Attorney shall and counsel for the
5 defendant may file a statement with the clerk of the court to
6 be transmitted to the department, agency or institution to
7 which the defendant is committed to furnish such department,
8 agency or institution with the facts and circumstances of the
9 offense for which the person was committed together with all
10 other factual information accessible to them in regard to the
11 person prior to his commitment relative to his habits,
12 associates, disposition and reputation and any other facts and
13 circumstances which may aid such department, agency or
14 institution during its custody of such person. The clerk shall
15 within 10 days after receiving any such statements transmit a
16 copy to such department, agency or institution and a copy to
17 the other party, provided, however, that this shall not be
18 cause for delay in conveying the person to the department,
19 agency or institution to which he has been committed.

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

23 (1) the sentence imposed;

24 (2) any statement by the court of the basis for
25 imposing the sentence;

26 (3) any presentence reports;

1 (3.5) any sex offender evaluations;

2 (3.6) any substance abuse treatment eligibility
3 screening and assessment of the defendant by an agent
4 designated by the State of Illinois to provide assessment
5 services for the Illinois courts;

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

10 (4.1) any finding of great bodily harm made by the
11 court with respect to an offense enumerated in subsection
12 (c-1);

13 (5) all statements filed under subsection (d) of this
14 Section;

15 (6) any medical or mental health records or summaries
16 of the defendant;

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

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

22 (9) all additional matters which the court directs the
23 clerk to transmit.

24 (f) In cases in which the court finds that a motor vehicle
25 was used in the commission of the offense for which the
26 defendant is being sentenced, the clerk of the court shall,

1 within 5 days thereafter, forward a report of such conviction
2 to the Secretary of State.

3 (Source: P.A. 99-861, eff. 1-1-17; 99-938, eff. 1-1-18;
4 100-961, eff. 1-1-19; revised 10-3-18.)