



Rep. Sonya M. Harper

Filed: 3/14/2019

10100HB1587ham001

LRB101 07458 SLF 57912 a

1 AMENDMENT TO HOUSE BILL 1587

2 AMENDMENT NO. _____. Amend House Bill 1587 by replacing
3 everything after the enacting clause with the following:

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.

1 Programs conducting these evaluations shall be licensed by the
2 Department of Human Services. However, if the individual is not
3 a resident of Illinois, the court may, in its discretion,
4 accept an evaluation from a program in the state of such
5 individual's residence. The court may in its sentencing order
6 approve an eligible defendant for placement in a Department of
7 Corrections impact incarceration program as provided in
8 Section 5-8-1.1 or 5-8-1.3. The court may in its sentencing
9 order recommend a defendant for placement in a Department of
10 Corrections substance abuse treatment program as provided in
11 paragraph (a) of subsection (1) of Section 3-2-2 conditioned
12 upon the defendant being accepted in a program by the
13 Department of Corrections. At the hearing the court shall:

14 (1) consider the evidence, if any, received upon the
15 trial;

16 (2) consider any presentence reports;

17 (3) consider the financial impact of incarceration
18 based on the financial impact statement filed with the
19 clerk of the court by the Department of Corrections;

20 (4) consider evidence and information offered by the
21 parties in aggravation and mitigation;

22 (4.5) consider substance abuse treatment, eligibility
23 screening, and an assessment, if any, of the defendant by
24 an agent designated by the State of Illinois to provide
25 assessment services for the Illinois courts;

26 (5) hear arguments as to sentencing alternatives;

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

3 (7) afford the victim of a violent crime or a violation
4 of Section 11-501 of the Illinois Vehicle Code, or a
5 similar provision of a local ordinance, the opportunity to
6 present an oral or written statement, as guaranteed by
7 Article I, Section 8.1 of the Illinois Constitution and
8 provided in Section 6 of the Rights of Crime Victims and
9 Witnesses Act. The court shall allow a victim to make an
10 oral statement if the victim is present in the courtroom
11 and requests to make an oral or written statement. An oral
12 or written statement includes the victim or a
13 representative of the victim reading the written
14 statement. The court may allow persons impacted by the
15 crime who are not victims under subsection (a) of Section 3
16 of the Rights of Crime Victims and Witnesses Act to present
17 an oral or written statement. A victim and any person
18 making an oral statement shall not be put under oath or
19 subject to cross-examination. All statements offered under
20 this paragraph (7) shall become part of the record of the
21 court. In this paragraph (7), "victim of a violent crime"
22 means a person who is a victim of a violent crime for which
23 the defendant has been convicted after a bench or jury
24 trial or a person who is the victim of a violent crime with
25 which the defendant was charged and the defendant has been
26 convicted under a plea agreement of a crime that is not a

1 violent crime as defined in subsection (c) of 3 of the
2 Rights of Crime Victims and Witnesses Act;

3 (7.5) afford a qualified person affected by: (i) a
4 violation of Section 405, 405.1, 405.2, or 407 of the
5 Illinois Controlled Substances Act or a violation of
6 Section 55 or Section 65 of the Methamphetamine Control and
7 Community Protection Act; or (ii) a Class 4 felony
8 violation of Section 11-14, 11-14.3 except as described in
9 subdivisions (a) (2) (A) and (a) (2) (B), 11-15, 11-17, 11-18,
10 11-18.1, or 11-19 of the Criminal Code of 1961 or the
11 Criminal Code of 2012, committed by the defendant the
12 opportunity to make a statement concerning the impact on
13 the qualified person and to offer evidence in aggravation
14 or mitigation; provided that the statement and evidence
15 offered in aggravation or mitigation shall first be
16 prepared in writing in conjunction with the State's
17 Attorney before it may be presented orally at the hearing.
18 Sworn testimony offered by the qualified person is subject
19 to the defendant's right to cross-examine. All statements
20 and evidence offered under this paragraph (7.5) shall
21 become part of the record of the court. In this paragraph
22 (7.5), "qualified person" means any person who: (i) lived
23 or worked within the territorial jurisdiction where the
24 offense took place when the offense took place; or (ii) is
25 familiar with various public places within the territorial
26 jurisdiction where the offense took place when the offense

1 took place. "Qualified person" includes any peace officer
2 or any member of any duly organized State, county, or
3 municipal peace officer unit assigned to the territorial
4 jurisdiction where the offense took place when the offense
5 took place;

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

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

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

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

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

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

25 (c-1) In imposing a sentence for the offense of aggravated
26 kidnapping for ransom, home invasion, armed robbery,

1 aggravated vehicular hijacking, aggravated discharge of a
2 firearm, or armed violence with a category I weapon or category
3 II weapon, the trial judge shall make a finding as to whether
4 the conduct leading to conviction for the offense resulted in
5 great bodily harm to a victim, and shall enter that finding and
6 the basis for that finding in the record.

7 (c-1.5) Notwithstanding any other provision of law to the
8 contrary, in imposing a sentence for an offense that requires a
9 mandatory minimum sentence of imprisonment or probation or
10 conditional discharge of 2 years or more, the court may instead
11 sentence the offender to a lesser term of imprisonment,
12 probation, or conditional discharge it deems appropriate if the
13 court finds that the defendant does not pose a risk to public
14 safety and the interest of justice requires the non-imposition
15 of the mandatory sentence of imprisonment or a lesser sentence
16 of imprisonment, probation, or conditional discharge. The
17 court must state on the record its reasons for not imposing the
18 minimum sentence of imprisonment or a lesser sentence of
19 imprisonment, probation, or conditional discharge. If the
20 defendant has been charged with an offense involving the use,
21 possession, or discharge of a firearm, the court may not
22 deviate from a mandatory minimum sentence or probation or
23 conditional discharge requirement, unless it is the
24 recommendation of a presentence investigation and there is
25 clear articulable evidence that the defendant is not a threat
26 to the public safety. This must be fully stated by the court

1 into the record at the time of sentencing. An offender
2 convicted of a crime of violence as defined in Section 2 of the
3 Crime Victims Compensation Act may not be sentenced to a lesser
4 term of imprisonment, probation, or conditional discharge
5 under this subsection (c-1.5).

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

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

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

1 sentence credit, the period of estimated actual custody is ...
2 years and ... months, less up to 180 days additional earned
3 sentence credit. If the defendant, because of his or her own
4 misconduct or failure to comply with the institutional
5 regulations, does not receive those credits, the actual time
6 served in prison will be longer. The defendant may also receive
7 an additional one-half day sentence credit for each day of
8 participation in vocational, industry, substance abuse, and
9 educational programs as provided for by Illinois statute."

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

1 subparagraph (C) of paragraph (1) of subsection (d) of Section
2 11-501 of the Illinois Vehicle Code committed on or after
3 January 1, 2011 (the effective date of Public Act 96-1230), the
4 judge's statement, to be given after pronouncing the sentence,
5 shall 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 is entitled to no more than 4 1/2 days of
13 sentence credit for each month of his or her sentence of
14 imprisonment. Therefore, this defendant will serve at least 85%
15 of his or her sentence. Assuming the defendant receives 4 1/2
16 days credit for each month of his or her sentence, the period
17 of estimated actual custody is ... years and ... months. If the
18 defendant, because of his or her own misconduct or failure to
19 comply with the institutional regulations receives lesser
20 credit, the actual time served in prison will be longer."

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

25 "The purpose of this statement is to inform the public of
26 the actual period of time this defendant is likely to spend in

1 prison as a result of this sentence. The actual period of
2 prison time served is determined by the statutes of Illinois as
3 applied to this sentence by the Illinois Department of
4 Corrections and the Illinois Prisoner Review Board. In this
5 case, the defendant is not entitled to sentence credit.
6 Therefore, this defendant will serve 100% of his or her
7 sentence."

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

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

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

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

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

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

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

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

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

25 (1) the sentence imposed;

26 (2) any statement by the court of the basis for

1 imposing the sentence;

2 (3) any presentence reports;

3 (3.5) any sex offender evaluations;

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

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

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

15 (5) all statements filed under subsection (d) of this
16 Section;

17 (6) any medical or mental health records or summaries
18 of the defendant;

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

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

24 (9) all additional matters which the court directs the
25 clerk to transmit.

26 (f) In cases in which the court finds that a motor vehicle

1 was used in the commission of the offense for which the
2 defendant is being sentenced, the clerk of the court shall,
3 within 5 days thereafter, forward a report of such conviction
4 to the Secretary of State.

5 (Source: P.A. 99-861, eff. 1-1-17; 99-938, eff. 1-1-18;
6 100-961, eff. 1-1-19; revised 10-3-18.)".