



Rep. Sonya M. Harper

Filed: 4/4/2019

10100HB1587ham003

LRB101 07458 SLF 59219 a

1 AMENDMENT TO HOUSE BILL 1587

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

5 "Section 5. The Unified Code of Corrections is amended by
6 changing Section 5-4-1 as follows:

7 (730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)

8 Sec. 5-4-1. Sentencing hearing.

9 (a) Except when the death penalty is sought under hearing
10 procedures otherwise specified, after a determination of
11 guilt, a hearing shall be held to impose the sentence. However,
12 prior to the imposition of sentence on an individual being
13 sentenced for an offense based upon a charge for a violation of
14 Section 11-501 of the Illinois Vehicle Code or a similar
15 provision of a local ordinance, the individual must undergo a
16 professional evaluation to determine if an alcohol or other

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

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

17 (2) consider any presentence reports;

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

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

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

1 (5) hear arguments as to sentencing alternatives;

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

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

1 convicted under a plea agreement of a crime that is not a
2 violent crime as defined in subsection (c) of 3 of the
3 Rights of Crime Victims and Witnesses Act;

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

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

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

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

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

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

1 sentenced.

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

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

26 (c-1) In imposing a sentence for the offense of aggravated

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

8 (c-1.5) Notwithstanding any other provision of law to the
9 contrary, in imposing a sentence for an offense that requires a
10 mandatory minimum sentence of imprisonment or probation or
11 conditional discharge, the court may instead sentence the
12 offender to a lesser term of imprisonment, probation, or
13 conditional discharge it deems appropriate if: (1) the offense
14 involves drug possession, retail theft, or driving on a revoked
15 license; (2) the court finds that the defendant does not pose a
16 risk to public safety; and (3) the interest of justice requires
17 the non-imposition of the mandatory sentence of imprisonment or
18 a lesser sentence of imprisonment, probation, or conditional
19 discharge. The court must state on the record its reasons for
20 not imposing the minimum sentence of imprisonment or a lesser
21 sentence of imprisonment, probation, or conditional discharge.
22 If the defendant has been charged with an offense involving the
23 use, possession, or discharge of a firearm, the court may not
24 deviate from a mandatory minimum sentence or probation or
25 conditional discharge requirement, unless it is the
26 recommendation of a presentence investigation and there is

1 clear articulable evidence that the defendant is not a threat
2 to the public safety. This must be fully stated by the court
3 into the record at the time of sentencing.

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.)".