



Rep. Terri Bryant

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1 AMENDMENT TO HOUSE BILL 3168

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3168 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Unified Code of Corrections is amended by  
5 changing Sections 5-3-2 and 5-4-1 as follows:

6 (730 ILCS 5/5-3-2) (from Ch. 38, par. 1005-3-2)

7 Sec. 5-3-2. Presentence Report.

8 (a) In felony cases, the presentence report shall set  
9 forth:

10 (1) the defendant's history of delinquency or  
11 criminality, physical and mental history and condition,  
12 family situation and background, economic status,  
13 education, occupation and personal habits;

14 (2) information about special resources within the  
15 community which might be available to assist the  
16 defendant's rehabilitation, including treatment centers,

1 residential facilities, vocational training services,  
2 correctional manpower programs, employment opportunities,  
3 special educational programs, alcohol and drug abuse  
4 programming, psychiatric and marriage counseling, and  
5 other programs and facilities which could aid the  
6 defendant's successful reintegration into society;

7 (3) the effect the offense committed has had upon the  
8 victim or victims thereof, and any compensatory benefit  
9 that various sentencing alternatives would confer on such  
10 victim or victims;

11 (3.5) information provided by the victim's spouse,  
12 guardian, parent, grandparent, and other immediate family  
13 and household members about the effect the offense  
14 committed has had on the victim and on the person providing  
15 the information; if the victim's spouse, guardian, parent,  
16 grandparent, or other immediate family or household member  
17 has provided a written statement, the statement shall be  
18 attached to the report;

19 (4) information concerning the defendant's status  
20 since arrest, including his record if released on his own  
21 recognizance, or the defendant's achievement record if  
22 released on a conditional pre-trial supervision program;

23 (5) when appropriate, a plan, based upon the personal,  
24 economic and social adjustment needs of the defendant,  
25 utilizing public and private community resources as an  
26 alternative to institutional sentencing;

1 (6) any other matters that the investigatory officer  
2 deems relevant or the court directs to be included; ~~and~~

3 (7) information concerning defendant's eligibility for  
4 a sentence to a county impact incarceration program under  
5 Section 5-8-1.2 of this Code; and -

6 (8) information concerning defendant's eligibility for  
7 a sentence to an impact incarceration program administered  
8 by the Department under Section 5-8-1.1.

9 (b) The investigation shall include a physical and mental  
10 examination of the defendant when so ordered by the court. If  
11 the court determines that such an examination should be made,  
12 it shall issue an order that the defendant submit to  
13 examination at such time and place as designated by the court  
14 and that such examination be conducted by a physician,  
15 psychologist or psychiatrist designated by the court. Such an  
16 examination may be conducted in a court clinic if so ordered by  
17 the court. The cost of such examination shall be paid by the  
18 county in which the trial is held.

19 (b-5) In cases involving felony sex offenses in which the  
20 offender is being considered for probation only or any felony  
21 offense that is sexually motivated as defined in the Sex  
22 Offender Management Board Act in which the offender is being  
23 considered for probation only, the investigation shall include  
24 a sex offender evaluation by an evaluator approved by the Board  
25 and conducted in conformance with the standards developed under  
26 the Sex Offender Management Board Act. In cases in which the

1 offender is being considered for any mandatory prison sentence,  
2 the investigation shall not include a sex offender evaluation.

3 (c) In misdemeanor, business offense or petty offense  
4 cases, except as specified in subsection (d) of this Section,  
5 when a presentence report has been ordered by the court, such  
6 presentence report shall contain information on the  
7 defendant's history of delinquency or criminality and shall  
8 further contain only those matters listed in any of paragraphs  
9 (1) through (6) of subsection (a) or in subsection (b) of this  
10 Section as are specified by the court in its order for the  
11 report.

12 (d) In cases under Sections 11-1.50, 12-15, and 12-3.4 or  
13 12-30 of the Criminal Code of 1961 or the Criminal Code of  
14 2012, the presentence report shall set forth information about  
15 alcohol, drug abuse, psychiatric, and marriage counseling or  
16 other treatment programs and facilities, information on the  
17 defendant's history of delinquency or criminality, and shall  
18 contain those additional matters listed in any of paragraphs  
19 (1) through (6) of subsection (a) or in subsection (b) of this  
20 Section as are specified by the court.

21 (e) Nothing in this Section shall cause the defendant to be  
22 held without bail or to have his bail revoked for the purpose  
23 of preparing the presentence report or making an examination.

24 (Source: P.A. 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13;  
25 98-372, eff. 1-1-14.)

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

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

3 (a) Except when the death penalty is sought under hearing  
4 procedures otherwise specified, after a determination of  
5 guilt, a hearing shall be held to impose the sentence. However,  
6 prior to the imposition of sentence on an individual being  
7 sentenced for an offense based upon a charge for a violation of  
8 Section 11-501 of the Illinois Vehicle Code or a similar  
9 provision of a local ordinance, the individual must undergo a  
10 professional evaluation to determine if an alcohol or other  
11 drug abuse problem exists and the extent of such a problem.  
12 Programs conducting these evaluations shall be licensed by the  
13 Department of Human Services. However, if the individual is not  
14 a resident of Illinois, the court may, in its discretion,  
15 accept an evaluation from a program in the state of such  
16 individual's residence. The court shall make a specific finding  
17 about whether the defendant is eligible for participation in a  
18 Department impact incarceration program as provided in Section  
19 5-8-1.1 or 5-8-1.3, and if not, provide an explanation as to  
20 why a sentence to impact incarceration is not an appropriate  
21 sentence ~~may in its sentencing order approve an eligible~~  
22 ~~defendant for placement in a Department of Corrections impact~~  
23 ~~incarceration program as provided in Section 5-8-1.1 or~~  
24 ~~5-8-1.3.~~ The court may in its sentencing order recommend a  
25 defendant for placement in a Department of Corrections  
26 substance abuse treatment program as provided in paragraph (a)

1 of subsection (1) of Section 3-2-2 conditioned upon the  
2 defendant being accepted in a program by the Department of  
3 Corrections. At the hearing the court shall:

4 (1) consider the evidence, if any, received upon the  
5 trial;

6 (2) consider any presentence reports;

7 (3) consider the financial impact of incarceration  
8 based on the financial impact statement filed with the  
9 clerk of the court by the Department of Corrections;

10 (4) consider evidence and information offered by the  
11 parties in aggravation and mitigation;

12 (4.5) consider substance abuse treatment, eligibility  
13 screening, and an assessment, if any, of the defendant by  
14 an agent designated by the State of Illinois to provide  
15 assessment services for the Illinois courts;

16 (5) hear arguments as to sentencing alternatives;

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

19 (7) afford the victim of a violent crime or a violation  
20 of Section 11-501 of the Illinois Vehicle Code, or a  
21 similar provision of a local ordinance, the opportunity to  
22 present an oral or written statement, as guaranteed by  
23 Article I, Section 8.1 of the Illinois Constitution and  
24 provided in Section 6 of the Rights of Crime Victims and  
25 Witnesses Act. The court shall allow a victim to make an  
26 oral statement if the victim is present in the courtroom

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

19 (7.5) afford a qualified person affected by: (i) a  
20 violation of Section 405, 405.1, 405.2, or 407 of the  
21 Illinois Controlled Substances Act or a violation of  
22 Section 55 or Section 65 of the Methamphetamine Control and  
23 Community Protection Act; or (ii) a Class 4 felony  
24 violation of Section 11-14, 11-14.3 except as described in  
25 subdivisions (a) (2) (A) and (a) (2) (B), 11-15, 11-17, 11-18,  
26 11-18.1, or 11-19 of the Criminal Code of 1961 or the

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

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

25 (9) in cases involving a felony sex offense as defined  
26 under the Sex Offender Management Board Act, consider the



1 results of the sex offender evaluation conducted pursuant  
2 to Section 5-3-2 of this Act; and

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

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

17 (b-1) In imposing a sentence of imprisonment or periodic  
18 imprisonment for a Class 3 or Class 4 felony for which a  
19 sentence of probation or conditional discharge is an available  
20 sentence, if the defendant has no prior sentence of probation  
21 or conditional discharge and no prior conviction for a violent  
22 crime, the defendant shall not be sentenced to imprisonment  
23 before review and consideration of a presentence report and  
24 determination and explanation of why the particular evidence,  
25 information, factor in aggravation, factual finding, or other  
26 reasons support a sentencing determination that one or more of

1 the factors under subsection (a) of Section 5-6-1 of this Code  
2 apply and that probation or conditional discharge is not an  
3 appropriate sentence.

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

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

23 (c-2) If the defendant is sentenced to prison, other than  
24 when a sentence of natural life imprisonment or a sentence of  
25 death is imposed, at the time the sentence is imposed the judge  
26 shall state on the record in open court the approximate period

1 of time the defendant will serve in custody according to the  
2 then current statutory rules and regulations for sentence  
3 credit found in Section 3-6-3 and other related provisions of  
4 this Code. This statement is intended solely to inform the  
5 public, has no legal effect on the defendant's actual release,  
6 and may not be relied on by the defendant on appeal.

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

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

1           When the sentence is imposed for one of the offenses  
2 enumerated in paragraph (a)(2) of Section 3-6-3, other than  
3 first degree murder, and the offense was committed on or after  
4 June 19, 1998, and when the sentence is imposed for reckless  
5 homicide as defined in subsection (e) of Section 9-3 of the  
6 Criminal Code of 1961 or the Criminal Code of 2012 if the  
7 offense was committed on or after January 1, 1999, and when the  
8 sentence is imposed for aggravated driving under the influence  
9 of alcohol, other drug or drugs, or intoxicating compound or  
10 compounds, or any combination thereof as defined in  
11 subparagraph (F) of paragraph (1) of subsection (d) of Section  
12 11-501 of the Illinois Vehicle Code, and when the sentence is  
13 imposed for aggravated arson if the offense was committed on or  
14 after July 27, 2001 (the effective date of Public Act 92-176),  
15 and when the sentence is imposed for aggravated driving under  
16 the influence of alcohol, other drug or drugs, or intoxicating  
17 compound or compounds, or any combination thereof as defined in  
18 subparagraph (C) of paragraph (1) of subsection (d) of Section  
19 11-501 of the Illinois Vehicle Code committed on or after  
20 January 1, 2011 (the effective date of Public Act 96-1230), the  
21 judge's statement, to be given after pronouncing the sentence,  
22 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 entitled to no more than 4 1/2 days of  
4 sentence credit for each month of his or her sentence of  
5 imprisonment. Therefore, this defendant will serve at least 85%  
6 of his or her sentence. Assuming the defendant receives 4 1/2  
7 days credit for each month of his or her sentence, the period  
8 of estimated actual custody is ... years and ... months. If the  
9 defendant, because of his or her own misconduct or failure to  
10 comply with the institutional regulations receives lesser  
11 credit, the actual time served in prison will be longer."

12 When a sentence of imprisonment is imposed for first degree  
13 murder and the offense was committed on or after June 19, 1998,  
14 the judge's statement, to be given after pronouncing the  
15 sentence, shall 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 is not entitled to sentence credit.  
23 Therefore, this defendant will serve 100% of his or her  
24 sentence."

25 When the sentencing order recommends placement in a  
26 substance abuse program for any offense that results in

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

7 "The purpose of this statement is to inform the public of  
8 the actual period of time this defendant is likely to spend in  
9 prison as a result of this sentence. The actual period of  
10 prison time served is determined by the statutes of Illinois as  
11 applied to this sentence by the Illinois Department of  
12 Corrections and the Illinois Prisoner Review Board. In this  
13 case, the defendant shall receive no earned sentence credit  
14 under clause (3) of subsection (a) of Section 3-6-3 until he or  
15 she participates in and completes a substance abuse treatment  
16 program or receives a waiver from the Director of Corrections  
17 pursuant to clause (4.5) of subsection (a) of 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; 99-938, eff. 1-1-18;  
23 100-961, eff. 1-1-19; revised 10-3-18.)".