



Rep. La Shawn K. Ford

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10200HB2989ham001

LRB102 10284 KMF 24071 a

1 AMENDMENT TO HOUSE BILL 2989

2 AMENDMENT NO. _____. Amend House Bill 2989 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.
11 However, prior to the imposition of sentence on an individual
12 being sentenced for an offense based upon a charge for a
13 violation of Section 11-501 of the Illinois Vehicle Code or a
14 similar provision of a local ordinance, the individual must
15 undergo a professional evaluation to determine if an alcohol
16 or other drug abuse problem exists and the extent of such a

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

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

18 (2) consider any presentence reports;

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

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

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

1 assessment services for the Illinois courts;

2 (5) hear arguments as to sentencing alternatives;

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

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

1 violent crime with which the defendant was charged and the
2 defendant has been convicted under a plea agreement of a
3 crime that is not a violent crime as defined in subsection
4 (c) of 3 of the Rights of Crime Victims and Witnesses Act;

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

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

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

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

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

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

1 sentencing court of the disposition of any other defendants
2 who have been sentenced.

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

16 (b-2) In imposing a sentence of imprisonment for a
17 violation of the Criminal Code of 2012 Sections including 8-4,
18 9-1.2, 10-2, 11-1.40, 12-3.05, 18-2, 18-4, 19-6, and 33A-3,
19 the court may, in its discretion, decline to impose or impose a
20 term of years less than any otherwise applicable sentencing
21 enhancement based upon firearm possession, possession with
22 personal discharge, or possession with personal discharge that
23 proximately causes great bodily harm, permanent disability,
24 permanent disfigurement, or death to another person. In the
25 exercise of this discretion the court shall consider, among
26 all other relevant factors in aggravation and mitigation:

1 (1) the person's degree of participation and specific
2 role in the offense, including the level of planning by
3 the person before the offense;

4 (2) whether the person is, in part or in full, being
5 held accountable for the actions of others;

6 (3) whether the person was subjected to outside
7 pressure or negative influences;

8 (4) the mental and emotional condition to the extent
9 that such condition mitigates the person's culpability or
10 to the extent that such condition is otherwise plainly
11 relevant;

12 (5) whether the person was under unusual and
13 substantial duress, regardless of whether the duress was
14 of such a degree as to constitute a defense to the charge;
15 and

16 (6) whether the person possessed the firearm in the
17 belief of a need for self-defense, regardless of whether
18 the belief was of such a degree as to constitute a defense
19 to the charge.

20 (c) In imposing a sentence for a violent crime or for an
21 offense of operating or being in physical control of a vehicle
22 while under the influence of alcohol, any other drug or any
23 combination thereof, or a similar provision of a local
24 ordinance, when such offense resulted in the personal injury
25 to someone other than the defendant, the trial judge shall
26 specify on the record the particular evidence, information,

1 factors in mitigation and aggravation or other reasons that
2 led to his sentencing determination. The full verbatim record
3 of the sentencing hearing shall be filed with the clerk of the
4 court and shall be a public record.

5
6 (c-1) In imposing a sentence for the offense of aggravated
7 kidnapping for ransom, home invasion, armed robbery,
8 aggravated vehicular hijacking, aggravated discharge of a
9 firearm, or armed violence with a category I weapon or
10 category II weapon, the trial judge shall make a finding as to
11 whether the conduct leading to conviction for the offense
12 resulted in great bodily harm to a victim, and shall enter that
13 finding and the basis for that finding in the record.

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

24 The judge's statement, to be given after pronouncing the
25 sentence, other than when the sentence is imposed for one of
26 the offenses enumerated in paragraph (a)(4) of Section 3-6-3,

1 shall include the following:

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

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

1 compounds, or any combination thereof as defined in
2 subparagraph (F) of paragraph (1) of subsection (d) of Section
3 11-501 of the Illinois Vehicle Code, and when the sentence is
4 imposed for aggravated arson if the offense was committed on
5 or after July 27, 2001 (the effective date of Public Act
6 92-176), and when the sentence is imposed for aggravated
7 driving under the influence of alcohol, other drug or drugs,
8 or intoxicating compound or compounds, or any combination
9 thereof as defined in subparagraph (C) of paragraph (1) of
10 subsection (d) of Section 11-501 of the Illinois Vehicle Code
11 committed on or after January 1, 2011 (the effective date of
12 Public Act 96-1230), the judge's statement, to be given after
13 pronouncing the sentence, shall 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
18 as applied to this sentence by the Illinois Department of
19 Corrections and the Illinois Prisoner Review Board. In this
20 case, the defendant is entitled to no more than 4 1/2 days of
21 sentence credit for each month of his or her sentence of
22 imprisonment. Therefore, this defendant will serve at least
23 85% of his or her sentence. Assuming the defendant receives 4
24 1/2 days credit for each month of his or her sentence, the
25 period of estimated actual custody is ... years and ...
26 months. If the defendant, because of his or her own misconduct

1 or failure to comply with the institutional regulations
2 receives lesser credit, the actual time served in prison will
3 be longer."

4 When a sentence of imprisonment is imposed for first
5 degree murder and the offense was committed on or after June
6 19, 1998, the judge's statement, to be given after pronouncing
7 the sentence, shall include the following:

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

17 When the sentencing order recommends placement in a
18 substance abuse program for any offense that results in
19 incarceration in a Department of Corrections facility and the
20 crime was committed on or after September 1, 2003 (the
21 effective date of Public Act 93-354), the judge's statement,
22 in addition to any other judge's statement required under this
23 Section, to be given after pronouncing the sentence, shall
24 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
3 as applied to this sentence by the Illinois Department of
4 Corrections and the Illinois Prisoner Review Board. In this
5 case, the defendant shall receive no earned sentence credit
6 under clause (3) of subsection (a) of Section 3-6-3 until he or
7 she participates in and completes a substance abuse treatment
8 program or receives a waiver from the Director of Corrections
9 pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

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

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

1 (2) consider the treatment recommendations of any
2 diagnosing or treating mental health professionals
3 together with the treatment options available to the
4 defendant in imposing sentence.

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

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

14 (d) When the defendant is committed to the Department of
15 Corrections, the State's Attorney shall and counsel for the
16 defendant may file a statement with the clerk of the court to
17 be transmitted to the department, agency or institution to
18 which the defendant is committed to furnish such department,
19 agency or institution with the facts and circumstances of the
20 offense for which the person was committed together with all
21 other factual information accessible to them in regard to the
22 person prior to his commitment relative to his habits,
23 associates, disposition and reputation and any other facts and
24 circumstances which may aid such department, agency or
25 institution during its custody of such person. The clerk shall
26 within 10 days after receiving any such statements transmit a

1 copy to such department, agency or institution and a copy to
2 the other party, provided, however, that this shall not be
3 cause for delay in conveying the person to the department,
4 agency or institution to which he has been committed.

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

8 (1) the sentence imposed;

9 (2) any statement by the court of the basis for
10 imposing the sentence;

11 (3) any presentence reports;

12 (3.5) any sex offender evaluations;

13 (3.6) any substance abuse treatment eligibility
14 screening and assessment of the defendant by an agent
15 designated by the State of Illinois to provide assessment
16 services for the Illinois courts;

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

21 (4.1) any finding of great bodily harm made by the
22 court with respect to an offense enumerated in subsection
23 (c-1);

24 (5) all statements filed under subsection (d) of this
25 Section;

26 (6) any medical or mental health records or summaries

1 of the defendant;

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

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

7 (9) all additional matters which the court directs the
8 clerk to transmit.

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

14 (Source: P.A. 100-961, eff. 1-1-19; 101-81, eff. 7-12-19;
15 101-105, eff. 1-1-20.)".