



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB1091

Introduced 1/12/2023, by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1

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

Amends the Unified Code of Corrections. Provides if the defendant has been found guilty by a judge or jury after a trial, the prosecutor shall file with the court at the sentencing hearing a verified written statement signed by the prosecutor setting forth the prosecutor's final offer, if any, of any specified sentence and any charge to be dismissed or not charged in a plea discussion in exchange for a plea of guilty from the defendant and waiver of his or her right to trial. Also provides in any sentence, a defendant shall not be punished by the imposition of a heavier or greater sentence merely because he or she exercises his or her constitutional right to be tried before an impartial judge or jury.

LRB103 04845 RLC 49855 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.
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
17 problem. Programs conducting these evaluations shall be
18 licensed by the Department of Human Services. However, if the
19 individual is not a resident of Illinois, the court may, in its
20 discretion, accept an evaluation from a program in the state
21 of such individual's residence. The court shall make a
22 specific finding about whether the defendant is eligible for
23 participation in a Department impact incarceration program as

1 provided in Section 5-8-1.1 or 5-8-1.3, and if not, provide an
2 explanation as to why a sentence to impact incarceration is
3 not an appropriate sentence. The court may in its sentencing
4 order recommend a defendant for placement in a Department of
5 Corrections substance abuse treatment program as provided in
6 paragraph (a) of subsection (1) of Section 3-2-2 conditioned
7 upon the defendant being accepted in a program by the
8 Department of Corrections. At the hearing the court shall:

9 (1) consider the evidence, if any, received upon the
10 trial;

11 (2) consider any presentence reports;

12 (3) consider the financial impact of incarceration
13 based on the financial impact statement filed with the
14 clerk of the court by the Department of Corrections;

15 (4) consider evidence and information offered by the
16 parties in aggravation and mitigation;

17 (4.5) consider substance abuse treatment, eligibility
18 screening, and an assessment, if any, of the defendant by
19 an agent designated by the State of Illinois to provide
20 assessment services for the Illinois courts;

21 (5) hear arguments as to sentencing alternatives;

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

24 (7) afford the victim of a violent crime or a
25 violation of Section 11-501 of the Illinois Vehicle Code,
26 or a similar provision of a local ordinance, the

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

24 (7.5) afford a qualified person affected by: (i) a
25 violation of Section 405, 405.1, 405.2, or 407 of the
26 Illinois Controlled Substances Act or a violation of

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

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

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

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

11 (a-5) If the defendant has been found guilty by a judge or
12 jury after a trial, the prosecutor shall file with the court a
13 verified written statement signed by the prosecutor setting
14 forth the prosecutor's final offer, if any, of any specified
15 sentence and any charge to be dismissed or not charged in a
16 plea discussion in exchange for a plea of guilty from the
17 defendant and waiver of his or her right to trial.

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. In any
21 sentence, a defendant shall not be punished by the imposition
22 of a heavier or greater sentence merely because he or she
23 exercises his or her constitutional right to be tried before
24 an impartial judge or jury. The judge who presided at the trial
25 or the judge who accepted the plea of guilty shall impose the
26 sentence unless he is no longer sitting as a judge in that

1 court. Where the judge does not impose sentence at the same
2 time on all defendants who are convicted as a result of being
3 involved in the same offense, the defendant or the State's
4 Attorney may advise the sentencing court of the disposition of
5 any other defendants who have been sentenced.

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

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

1 led to his sentencing determination. The full verbatim record
2 of the sentencing hearing shall be filed with the clerk of the
3 court and shall be a public record.

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

12 (c-1.5) Notwithstanding any other provision of law to the
13 contrary, in imposing a sentence for an offense that requires
14 a mandatory minimum sentence of imprisonment, the court may
15 instead sentence the offender to probation, conditional
16 discharge, or a lesser term of imprisonment it deems
17 appropriate if: (1) the offense involves the use or possession
18 of drugs, retail theft, or driving on a revoked license due to
19 unpaid financial obligations; (2) the court finds that the
20 defendant does not pose a risk to public safety; and (3) the
21 interest of justice requires imposing a term of probation,
22 conditional discharge, or a lesser term of imprisonment. The
23 court must state on the record its reasons for imposing
24 probation, conditional discharge, or a lesser term of
25 imprisonment.

26 (c-2) If the defendant is sentenced to prison, other than

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

10 The judge's statement, to be given after pronouncing the
11 sentence, other than when the sentence is imposed for one of
12 the offenses enumerated in paragraph (a) (4) of Section 3-6-3,
13 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, assuming the defendant receives all of his or her
21 sentence credit, the period of estimated actual custody is ...
22 years and ... months, less up to 180 days additional earned
23 sentence credit. If the defendant, because of his or her own
24 misconduct or failure to comply with the institutional
25 regulations, does not receive those credits, the actual time
26 served in prison will be longer. The defendant may also

1 receive an additional one-half day sentence credit for each
2 day of participation in vocational, industry, substance abuse,
3 and educational programs as provided for by Illinois statute."

4 When the sentence is imposed for one of the offenses
5 enumerated in paragraph (a)(2) of Section 3-6-3, other than
6 first degree murder, and the offense was committed on or after
7 June 19, 1998, and when the sentence is imposed for reckless
8 homicide as defined in subsection (e) of Section 9-3 of the
9 Criminal Code of 1961 or the Criminal Code of 2012 if the
10 offense was committed on or after January 1, 1999, and when the
11 sentence is imposed for aggravated driving under the influence
12 of alcohol, other drug or drugs, or intoxicating compound or
13 compounds, or any combination thereof as defined in
14 subparagraph (F) of paragraph (1) of subsection (d) of Section
15 11-501 of the Illinois Vehicle Code, and when the sentence is
16 imposed for aggravated arson if the offense was committed on
17 or after July 27, 2001 (the effective date of Public Act
18 92-176), and when the sentence is imposed for aggravated
19 driving under the influence of alcohol, other drug or drugs,
20 or intoxicating compound or compounds, or any combination
21 thereof as defined in subparagraph (C) of paragraph (1) of
22 subsection (d) of Section 11-501 of the Illinois Vehicle Code
23 committed on or after January 1, 2011 (the effective date of
24 Public Act 96-1230), the judge's statement, to be given after
25 pronouncing the sentence, shall include the following:

26 "The purpose of this statement is to inform the public of

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

16 When a sentence of imprisonment is imposed for first
17 degree murder and the offense was committed on or after June
18 19, 1998, the judge's statement, to be given after pronouncing
19 the sentence, 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
24 as applied to this sentence by the Illinois Department of
25 Corrections and the Illinois Prisoner Review Board. In this
26 case, the defendant is not entitled to sentence credit.

1 Therefore, this defendant will serve 100% of his or her
2 sentence."

3 When the sentencing order recommends placement in a
4 substance abuse program for any offense that results in
5 incarceration in a Department of Corrections facility and the
6 crime was committed on or after September 1, 2003 (the
7 effective date of Public Act 93-354), the judge's statement,
8 in addition to any other judge's statement required under this
9 Section, to be given after pronouncing the sentence, shall
10 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
15 as applied to this sentence by the Illinois Department of
16 Corrections and the Illinois Prisoner Review Board. In this
17 case, the defendant shall receive no earned sentence credit
18 under clause (3) of subsection (a) of Section 3-6-3 until he or
19 she participates in and completes a substance abuse treatment
20 program or receives a waiver from the Director of Corrections
21 pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

22 (c-4) Before the sentencing hearing and as part of the
23 presentence investigation under Section 5-3-1, the court shall
24 inquire of the defendant whether the defendant is currently
25 serving in or is a veteran of the Armed Forces of the United
26 States. If the defendant is currently serving in the Armed

1 Forces of the United States or is a veteran of the Armed Forces
2 of the United States and has been diagnosed as having a mental
3 illness by a qualified psychiatrist or clinical psychologist
4 or physician, the court may:

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

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

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

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

26 (c-7) In imposing a sentence for a Class 3 or 4 felony,

1 other than a violent crime as defined in Section 3 of the
2 Rights of Crime Victims and Witnesses Act, the court shall
3 determine and indicate in the sentencing order whether the
4 defendant has 4 or more or fewer than 4 months remaining on his
5 or her sentence accounting for time served.

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

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

26 (1) the sentence imposed;

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

3 (3) any presentence reports;

4 (3.5) any sex offender evaluations;

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

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

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

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

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

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

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

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

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

6 (Source: P.A. 101-81, eff. 7-12-19; 101-105, eff. 1-1-20;
7 101-652, Article 10, Section 10-281, eff. 7-1-21; 101-652,
8 Article 20, Section 20-5, eff. 7-1-21; 102-813, eff. 5-13-22.)