



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1

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

Amends the Unified Code of Corrections. Provides that when the defendant is committed to the Department of Corrections for an offense that is sexual in nature, the State's Attorney shall provide the department, agency, or institution to which the defendant is committed the police records, including statements given by the victim, suspect, and any witnesses or if any of those persons are unavailable, court transcripts regarding the offense.

LRB093 18594 RLC 44317 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. 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.
17 Programs conducting these evaluations shall be licensed by the
18 Department of Human Services. However, if the individual is not
19 a resident of Illinois, the court may, in its discretion,
20 accept an evaluation from a program in the state of such
21 individual's residence. The court may in its sentencing order
22 approve an eligible defendant for placement in a Department of
23 Corrections impact incarceration program as provided in
24 Section 5-8-1.1 or 5-8-1.3. At the hearing the court shall:

25 (1) consider the evidence, if any, received upon the
26 trial;

27 (2) consider any presentence reports;

28 (3) consider the financial impact of incarceration
29 based on the financial impact statement filed with the
30 clerk of the court by the Department of Corrections;

31 (4) consider evidence and information offered by the
32 parties in aggravation and mitigation;

- 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, or a qualified
7 individual affected by: (i) a violation of Section 405,
8 405.1, 405.2, or 407 of the Illinois Controlled Substances
9 Act, or (ii) a Class 4 felony violation of Section 11-14,
10 11-15, 11-17, 11-18, 11-18.1, or 11-19 of the Criminal Code
11 of 1961, committed by the defendant the opportunity to make
12 a statement concerning the impact on the victim and to
13 offer evidence in aggravation or mitigation; provided that
14 the statement and evidence offered in aggravation or
15 mitigation must first be prepared in writing in conjunction
16 with the State's Attorney before it may be presented orally
17 at the hearing. Any sworn testimony offered by the victim
18 is subject to the defendant's right to cross-examine. All
19 statements and evidence offered under this paragraph (7)
20 shall become part of the record of the court. For the
21 purpose of this paragraph (7), "qualified individual"
22 means any person who (i) lived or worked within the
23 territorial jurisdiction where the offense took place when
24 the offense took place; and (ii) is familiar with various
25 public places within the territorial jurisdiction where
26 the offense took place when the offense took place. For the
27 purposes of this paragraph (7), "qualified individual"
28 includes any peace officer, or any member of any duly
29 organized State, county, or municipal peace unit assigned
30 to the territorial jurisdiction where the offense took
31 place when the offense took place;
- 32 (8) in cases of reckless homicide afford the victim's
33 spouse, guardians, parents or other immediate family
34 members an opportunity to make oral statements; and
- 35 (9) in cases involving a felony sex offense as defined
36 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.

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

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,
27 aggravated vehicular hijacking, aggravated discharge of a
28 firearm, or armed violence with a category I weapon or category
29 II weapon, the trial judge shall make a finding as to whether
30 the conduct leading to conviction for the offense resulted in
31 great bodily harm to a victim, and shall enter that finding and
32 the basis for that finding in the record.

33 (c-2) If the defendant is sentenced to prison, other than
34 when a sentence of natural life imprisonment or a sentence of
35 death is imposed, at the time the sentence is imposed the judge
36 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 early release
3 found in Section 3-6-3 and other related provisions of this
4 Code. This statement is intended solely to inform the public,
5 has no legal effect on the defendant's actual release, and may
6 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)(3) 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 good
18 conduct credit, the period of estimated actual custody is ...
19 years and ... months, less up to 180 days additional good
20 conduct credit for meritorious service. If the defendant,
21 because of his or her own misconduct or failure to comply with
22 the institutional regulations, does not receive those credits,
23 the actual time served in prison will be longer. The defendant
24 may also receive an additional one-half day good conduct credit
25 for each day of participation in vocational, industry,
26 substance abuse, and educational programs as provided for by
27 Illinois statute."

28 When the sentence is imposed for one of the offenses
29 enumerated in paragraph (a)(3) of Section 3-6-3, other than
30 when the sentence is imposed for one of the offenses enumerated
31 in paragraph (a)(2) of Section 3-6-3 committed on or after June
32 19, 1998, and other than when the sentence is imposed for
33 reckless homicide as defined in subsection (e) of Section 9-3
34 of the Criminal Code of 1961 if the offense was committed on or
35 after January 1, 1999, and other than when the sentence is
36 imposed for aggravated arson if the offense was committed on or

1 after July 27, 2001 (the effective date of Public Act 92-176)
2 ~~this amendatory Act of the 92nd 93rd General Assembly~~, the
3 judge's statement, to be given after pronouncing the sentence,
4 shall include the following:

5 "The purpose of this statement is to inform the public of
6 the actual period of time this defendant is likely to spend in
7 prison as a result of this sentence. The actual period of
8 prison time served is determined by the statutes of Illinois as
9 applied to this sentence by the Illinois Department of
10 Corrections and the Illinois Prisoner Review Board. In this
11 case, assuming the defendant receives all of his or her good
12 conduct credit, the period of estimated actual custody is ...
13 years and ... months, less up to 90 days additional good
14 conduct credit for meritorious service. If the defendant,
15 because of his or her own misconduct or failure to comply with
16 the institutional regulations, does not receive those credits,
17 the actual time served in prison will be longer. The defendant
18 may also receive an additional one-half day good conduct credit
19 for each day of participation in vocational, industry,
20 substance abuse, and educational programs as provided for by
21 Illinois statute."

22 When the sentence is imposed for one of the offenses
23 enumerated in paragraph (a)(2) of Section 3-6-3, other than
24 first degree murder, and the offense was committed on or after
25 June 19, 1998, and when the sentence is imposed for reckless
26 homicide as defined in subsection (e) of Section 9-3 of the
27 Criminal Code of 1961 if the offense was committed on or after
28 January 1, 1999, and when the sentence is imposed for
29 aggravated driving under the influence of alcohol, other drug
30 or drugs, or intoxicating compound or compounds, or any
31 combination thereof as defined in subparagraph (F) of paragraph
32 (1) of subsection (d) of Section 11-501 of the Illinois Vehicle
33 Code, and when the sentence is imposed for aggravated arson if
34 the offense was committed on or after July 27, 2001 (the
35 effective date of Public Act 92-176) ~~this amendatory Act of the~~
36 ~~92nd 93rd General Assembly~~, the judge's statement, to be given

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

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

21 "The purpose of this statement is to inform the public of
22 the actual period of time this defendant is likely to spend in
23 prison as a result of this sentence. The actual period of
24 prison time served is determined by the statutes of Illinois as
25 applied to this sentence by the Illinois Department of
26 Corrections and the Illinois Prisoner Review Board. In this
27 case, the defendant is not entitled to good conduct credit.
28 Therefore, this defendant will serve 100% of his or her
29 sentence."

30 When the sentence is imposed for any offense that results
31 in incarceration in a Department of Corrections facility
32 committed as a result of the use of, abuse of, or addiction to
33 alcohol or a controlled substance and the crime was committed
34 on or after September 1, 2003 (the effective date of Public Act
35 93-354) ~~this amendatory Act of the 93rd General Assembly~~, the
36 judge's statement, in addition to any other judge's statement

1 required under this Section, to be given after pronouncing the
2 sentence, shall include the following:

3 "The purpose of this statement is to inform the public of
4 the actual period of time this defendant is likely to spend in
5 prison as a result of this sentence. The actual period of
6 prison time served is determined by the statutes of Illinois as
7 applied to this sentence by the Illinois Department of
8 Corrections and the Illinois Prisoner Review Board. In this
9 case, the defendant shall receive no good conduct credit until
10 he or she participates in and completes a substance abuse
11 treatment program."

12 (d) When the defendant is committed to the Department of
13 Corrections, the State's Attorney shall and counsel for the
14 defendant may file a statement with the clerk of the court to
15 be transmitted to the department, agency or institution to
16 which the defendant is committed to furnish such department,
17 agency or institution with the facts and circumstances of the
18 offense for which the person was committed together with all
19 other factual information accessible to them in regard to the
20 person prior to his commitment relative to his habits,
21 associates, disposition and reputation and any other facts and
22 circumstances which may aid such department, agency or
23 institution during its custody of such person. When the
24 defendant is committed to the Department of Corrections for an
25 offense that is sexual in nature, the State's Attorney shall
26 provide the department, agency, or institution to which the
27 defendant is committed the police records, including
28 statements given by the victim, suspect, and any witnesses or
29 if any of those persons are unavailable, court transcripts
30 regarding the offense. The clerk shall within 10 days after
31 receiving any such statements transmit a copy to such
32 department, agency or institution and a copy to the other
33 party, provided, however, that this shall not be cause for
34 delay in conveying the person to the department, agency or
35 institution to which he has been committed.

36 (e) The clerk of the court shall transmit to the

1 department, agency or institution, if any, to which the
2 defendant is committed, the following:

3 (1) the sentence imposed;

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

6 (3) any presentence reports;

7 (3.5) any sex offender evaluations;

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 (Source: P.A. 92-176, eff. 7-27-01; 92-806, eff. 1-1-03;
27 93-213, eff. 7-18-03; 93-317, eff. 1-1-04; 93-354, eff. 9-1-03;
28 93-616, eff. 1-1-04; revised 12-9-03.)