



**Adopted in House Comm. on Apr 30, 2008**

09500HB5756ham002

LRB095 14924 RLC 49409 a

1 AMENDMENT TO HOUSE BILL 5756

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5756, 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, 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 a violation of Section 55 or Section 65 of the  
10 Methamphetamine Control and Community Protection Act, or  
11 (ii) a Class 4 felony violation of Section 11-14, 11-15,  
12 11-17, 11-18, 11-18.1, or 11-19 of the Criminal Code of  
13 1961, committed by the defendant the opportunity to make a  
14 statement concerning the impact on the victim and to offer  
15 evidence in aggravation or mitigation; provided that the  
16 statement and evidence offered in aggravation or  
17 mitigation must first be prepared in writing in conjunction  
18 with the State's Attorney before it may be presented orally  
19 at the hearing. Any sworn testimony offered by the victim  
20 is subject to the defendant's right to cross-examine. All  
21 statements and evidence offered under this paragraph (7)  
22 shall become part of the record of the court. For the  
23 purpose of this paragraph (7), "qualified individual"  
24 means any person who (i) lived or worked within the  
25 territorial jurisdiction where the offense took place when  
26 the offense took place; and (ii) is familiar with various

1 public places within the territorial jurisdiction where  
2 the offense took place when the offense took place. For the  
3 purposes of this paragraph (7), "qualified individual"  
4 includes any peace officer, or any member of any duly  
5 organized State, county, or municipal peace unit assigned  
6 to the territorial jurisdiction where the offense took  
7 place when the offense 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; and

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.

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

26 (c) In imposing a sentence for a violent crime or for an

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

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

19 (c-2) If the defendant is sentenced to prison, other than  
20 when a sentence of natural life imprisonment or a sentence of  
21 death is imposed, at the time the sentence is imposed the judge  
22 shall state on the record in open court the approximate period  
23 of time the defendant will serve in custody according to the  
24 then current statutory rules and regulations for early release  
25 found in Section 3-6-3 and other related provisions of this  
26 Code. This statement is intended solely to inform the public,

1 has no legal effect on the defendant's actual release, and may  
2 not be relied on by the defendant on appeal.

3 The judge's statement, to be given after pronouncing the  
4 sentence, other than when the sentence is imposed for one of  
5 the offenses enumerated in paragraph (a)(3) of Section 3-6-3,  
6 shall 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, assuming the defendant receives all of his or her good  
14 conduct credit, the period of estimated actual custody is ...  
15 years and ... months, less up to 180 days additional good  
16 conduct credit for meritorious service. If the defendant,  
17 because of his or her own misconduct or failure to comply with  
18 the institutional regulations, does not receive those credits,  
19 the actual time served in prison will be longer. The defendant  
20 may also receive an additional one-half day good conduct credit  
21 for each day of participation in vocational, industry,  
22 substance abuse, and educational programs as provided for by  
23 Illinois statute."

24 When the sentence is imposed for one of the offenses  
25 enumerated in paragraph (a)(3) of Section 3-6-3, other than  
26 when the sentence is imposed for one of the offenses enumerated

1 in paragraph (a) (2) of Section 3-6-3 committed on or after June  
2 19, 1998, and other than when the sentence is imposed for  
3 reckless homicide as defined in subsection (e) of Section 9-3  
4 of the Criminal Code of 1961 if the offense was committed on or  
5 after January 1, 1999, and other than when the sentence is  
6 imposed for aggravated arson if the offense was committed on or  
7 after July 27, 2001 (the effective date of Public Act 92-176),  
8 the judge's statement, to be given after pronouncing the  
9 sentence, shall include the following:

10 "The purpose of this statement is to inform the public of  
11 the actual period of time this defendant is likely to spend in  
12 prison as a result of this sentence. The actual period of  
13 prison time served is determined by the statutes of Illinois as  
14 applied to this sentence by the Illinois Department of  
15 Corrections and the Illinois Prisoner Review Board. In this  
16 case, assuming the defendant receives all of his or her good  
17 conduct credit, the period of estimated actual custody is ...  
18 years and ... months, less up to 90 days additional good  
19 conduct credit for meritorious service. If the defendant,  
20 because of his or her own misconduct or failure to comply with  
21 the institutional regulations, does not receive those credits,  
22 the actual time served in prison will be longer. The defendant  
23 may also receive an additional one-half day good conduct credit  
24 for each day of participation in vocational, industry,  
25 substance abuse, and educational programs as provided for by  
26 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 if the offense was committed on or after  
7 January 1, 1999, and when the sentence is imposed for  
8 aggravated driving under the influence of alcohol, other drug  
9 or drugs, or intoxicating compound or compounds, or any  
10 combination thereof as defined in subparagraph (F) of paragraph  
11 (1) of subsection (d) of Section 11-501 of the Illinois Vehicle  
12 Code, and when the sentence is imposed for aggravated arson if  
13 the offense was committed on or after July 27, 2001 (the  
14 effective date of Public Act 92-176), the judge's statement, to  
15 be given after pronouncing the sentence, shall include the  
16 following:

17           "The purpose of this statement is to inform the public of  
18 the actual period of time this defendant is likely to spend in  
19 prison as a result of this sentence. The actual period of  
20 prison time served is determined by the statutes of Illinois as  
21 applied to this sentence by the Illinois Department of  
22 Corrections and the Illinois Prisoner Review Board. In this  
23 case, the defendant is entitled to no more than 4 1/2 days of  
24 good conduct credit for each month of his or her sentence of  
25 imprisonment. Therefore, this defendant will serve at least 85%  
26 of his or her sentence. Assuming the defendant receives 4 1/2



1 days credit for each month of his or her sentence, the period  
2 of estimated actual custody is ... years and ... months. If the  
3 defendant, because of his or her own misconduct or failure to  
4 comply with the institutional regulations receives lesser  
5 credit, the actual time served in prison will be longer."

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

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

19 When the sentencing order recommends placement in a  
20 substance abuse program for any offense that results in  
21 incarceration in a Department of Corrections facility and the  
22 crime was committed on or after September 1, 2003 (the  
23 effective date of Public Act 93-354), the judge's statement, in  
24 addition to any other judge's statement required under this  
25 Section, to be given after pronouncing the sentence, shall  
26 include the following:

1           "The purpose of this statement is to inform the public of  
2 the actual period of time this defendant is likely to spend in  
3 prison as a result of this sentence. The actual period of  
4 prison time served is determined by the statutes of Illinois as  
5 applied to this sentence by the Illinois Department of  
6 Corrections and the Illinois Prisoner Review Board. In this  
7 case, the defendant shall receive no good conduct credit under  
8 clause (3) of subsection (a) of Section 3-6-3 until he or she  
9 participates in and completes a substance abuse treatment  
10 program or receives a waiver from the Director of Corrections  
11 pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

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. The clerk shall  
24 within 10 days after receiving any such statements transmit a  
25 copy to such department, agency or institution and a copy to  
26 the other party, provided, however, that this shall not be

1 cause for delay in conveying the person to the department,  
2 agency or institution to which he has been committed.

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

6 (1) the sentence imposed;

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

9 (3) any presentence reports;

10 (3.5) any sex offender evaluations;

11 (3.6) any substance abuse treatment eligibility  
12 screening and assessment of the defendant by an agent  
13 designated by the State of Illinois to provide assessment  
14 services for the Illinois courts;

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

19 (4.1) any finding of great bodily harm made by the  
20 court with respect to an offense enumerated in subsection  
21 (c-1);

22 (5) all statements filed under subsection (d) of this  
23 Section;

24 (6) any medical or mental health records or summaries  
25 of the defendant;

26 (7) the municipality where the arrest of the offender

1 or the commission of the offense has occurred, where such  
2 municipality has a population of more than 25,000 persons;

3 (8) all statements made and evidence offered under  
4 paragraph (7) of subsection (a) of this Section; ~~and~~

5 (9) all additional matters which the court directs the  
6 clerk to transmit; ~~and~~

7 (10) the defendant's immigration status as declared by  
8 the defendant in conjunction with the advisement issued by  
9 the court pursuant to Section 113-8 of the Code of Criminal  
10 Procedure of 1963; and

11 (11) the defendant's immigration status as declared by  
12 the defendant in conjunction with advisement issued by the  
13 court at the sentencing hearing conducted pursuant to this  
14 Section.

15 (f) At the sentencing hearing for a conviction or plea of  
16 guilty to a misdemeanor or felony offense, the court shall give  
17 the following advisement to the defendant in open court: "If  
18 you are not a citizen of the United States, you are hereby  
19 advised that your conviction for the offense for which you have  
20 been found guilty or entered a plea of guilty may have  
21 consequences of deportation, exclusion from admission to the  
22 United States, or denial of naturalization under the laws of  
23 the United States."

24 (g) The Illinois Department of Corrections shall submit  
25 information it receives pursuant to paragraphs (10) and (11) of  
26 subsection (e) for all defendants committed to a Department of

1 Corrections facility to the U.S. Department of Immigration  
2 Customs Enforcement.

3 (h) Notwithstanding any other rulemaking authority that  
4 may exist, neither the Governor nor any agency or agency head  
5 under the jurisdiction of the Governor has any authority to  
6 make or promulgate rules to implement or enforce the provisions  
7 of this amendatory Act of the 95th General Assembly. If,  
8 however, the Governor believes that rules are necessary to  
9 implement or enforce the provisions of this amendatory Act of  
10 the 95th General Assembly, the Governor may suggest rules to  
11 the General Assembly by filing them with the Clerk of the House  
12 and the Secretary of the Senate and by requesting that the  
13 General Assembly authorize such rulemaking by law, enact those  
14 suggested rules into law, or take any other appropriate action  
15 in the General Assembly's discretion. Nothing contained in this  
16 amendatory Act of the 95th General Assembly shall be  
17 interpreted to grant rulemaking authority under any other  
18 Illinois statute where such authority is not otherwise  
19 explicitly given. For the purposes of this Section, "rules" is  
20 given the meaning contained in Section 1-70 of the Illinois  
21 Administrative Procedure Act, and "agency" and "agency head"  
22 are given the meanings contained in Sections 1-20 and 1-25 of  
23 the Illinois Administrative Procedure Act to the extent that  
24 such definitions apply to agencies or agency heads under the  
25 jurisdiction of the Governor.

26 (Source: P.A. 94-156, eff. 7-8-05; 94-556, eff. 9-11-05;

1 95-331, eff. 8-21-07.)".