



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB0055

Introduced 1/9/2019, 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.

LRB101 04688 SLF 49697 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

1 Section 5-8-1.1 or 5-8-1.3. The court may in its sentencing
2 order recommend a defendant for placement in a Department of
3 Corrections substance abuse treatment program as provided in
4 paragraph (a) of subsection (1) of Section 3-2-2 conditioned
5 upon the defendant being accepted in a program by the
6 Department of Corrections. At the hearing the court shall:

7 (1) consider the evidence, if any, received upon the
8 trial;

9 (2) consider any presentence reports;

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

13 (4) consider evidence and information offered by the
14 parties in aggravation and mitigation;

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

19 (5) hear arguments as to sentencing alternatives;

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

22 (7) afford the victim of a violent crime or a violation
23 of Section 11-501 of the Illinois Vehicle Code, or a
24 similar provision of a local ordinance, the opportunity to
25 present an oral or written statement, as guaranteed by
26 Article I, Section 8.1 of the Illinois Constitution and

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

22 (7.5) afford a qualified person affected by: (i) a
23 violation of Section 405, 405.1, 405.2, or 407 of the
24 Illinois Controlled Substances Act or a violation of
25 Section 55 or Section 65 of the Methamphetamine Control and
26 Community Protection Act; or (ii) a Class 4 felony

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

25 (8) in cases of reckless homicide afford the victim's
26 spouse, guardians, parents or other immediate family

1 members an opportunity to make oral statements;

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

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

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

16 (b) All sentences shall be imposed by the judge based upon
17 his independent assessment of the elements specified above and
18 any agreement as to sentence reached by the parties. In any
19 sentence, a defendant shall not be punished by the imposition
20 of a heavier or greater sentence merely because he or she
21 exercises his or her constitutional right to be tried before an
22 impartial judge or jury. The judge who presided at the trial or
23 the judge who accepted the plea of guilty shall impose the
24 sentence unless he is no longer sitting as a judge in that
25 court. Where the judge does not impose sentence at the same
26 time on all defendants who are convicted as a result of being

1 involved in the same offense, the defendant or the State's
2 Attorney may advise the sentencing court of the disposition of
3 any other defendants who have been sentenced.

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

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

1 and shall be a public record.

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

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

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

24 "The purpose of this statement is to inform the public of
25 the actual period of time this defendant is likely to spend in
26 prison as a result of this sentence. The actual period of

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

14 When the sentence is imposed for one of the offenses
15 enumerated in paragraph (a)(2) of Section 3-6-3, other than
16 first degree murder, and the offense was committed on or after
17 June 19, 1998, and when the sentence is imposed for reckless
18 homicide as defined in subsection (e) of Section 9-3 of the
19 Criminal Code of 1961 or the Criminal Code of 2012 if the
20 offense was committed on or after January 1, 1999, and when the
21 sentence is imposed for aggravated driving under the influence
22 of alcohol, other drug or drugs, or intoxicating compound or
23 compounds, or any combination thereof as defined in
24 subparagraph (F) of paragraph (1) of subsection (d) of Section
25 11-501 of the Illinois Vehicle Code, and when the sentence is
26 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 and when the sentence is imposed for aggravated driving under
3 the influence of alcohol, other drug or drugs, or intoxicating
4 compound or compounds, or any combination thereof as defined in
5 subparagraph (C) of paragraph (1) of subsection (d) of Section
6 11-501 of the Illinois Vehicle Code committed on or after
7 January 1, 2011 (the effective date of Public Act 96-1230), the
8 judge's statement, to be given after pronouncing the sentence,
9 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 entitled to no more than 4 1/2 days of
17 sentence credit for each month of his or her sentence of
18 imprisonment. Therefore, this defendant will serve at least 85%
19 of his or her sentence. Assuming the defendant receives 4 1/2
20 days credit for each month of his or her sentence, the period
21 of estimated actual custody is ... years and ... months. If the
22 defendant, because of his or her own misconduct or failure to
23 comply with the institutional regulations receives lesser
24 credit, the actual time served in prison will be longer."

25 When a sentence of imprisonment is imposed for first degree
26 murder and the offense was committed on or after June 19, 1998,

1 the judge's statement, 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 is not entitled to sentence credit.
10 Therefore, this defendant will serve 100% of his or her
11 sentence."

12 When the sentencing order recommends placement in a
13 substance abuse program for any offense that results in
14 incarceration in a Department of Corrections facility and the
15 crime was committed on or after September 1, 2003 (the
16 effective date of Public Act 93-354), the judge's statement, in
17 addition to any other judge's statement required under this
18 Section, to be given after pronouncing the sentence, shall
19 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 as
24 applied to this sentence by the Illinois Department of
25 Corrections and the Illinois Prisoner Review Board. In this
26 case, the defendant shall receive no earned sentence credit

1 under clause (3) of subsection (a) of Section 3-6-3 until he or
2 she participates in and completes a substance abuse treatment
3 program or receives a waiver from the Director of Corrections
4 pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

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

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

22 (2) consider the treatment recommendations of any
23 diagnosing or treating mental health professionals
24 together with the treatment options available to the
25 defendant in imposing sentence.

26 For the purposes of this subsection (c-4), "qualified

1 psychiatrist" means a reputable physician licensed in Illinois
2 to practice medicine in all its branches, who has specialized
3 in the diagnosis and treatment of mental and nervous disorders
4 for a period of not less than 5 years.

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

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

26 (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 (3.6) any substance abuse treatment eligibility
9 screening and assessment of the defendant by an agent
10 designated by the State of Illinois to provide assessment
11 services for the Illinois courts;

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

16 (4.1) any finding of great bodily harm made by the
17 court with respect to an offense enumerated in subsection
18 (c-1);

19 (5) all statements filed under subsection (d) of this
20 Section;

21 (6) any medical or mental health records or summaries
22 of the defendant;

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

26 (8) all statements made and evidence offered under

1 paragraph (7) of subsection (a) of this Section; and
2 (9) all additional matters which the court directs the
3 clerk to transmit.

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

9 (Source: P.A. 99-861, eff. 1-1-17; 99-938, eff. 1-1-18;
10 100-961, eff. 1-1-19; revised 10-3-18.)