



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1968

Introduced 2/15/2019, by Sen. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1
730 ILCS 5/5-8-6

from Ch. 38, par. 1005-4-1
from Ch. 38, par. 1005-8-6

Amends the Unified Code of Corrections. Provides that in imposing a sentence for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, the court shall determine and indicate in the sentencing order whether the defendant has 4 or more or fewer than 4 months remaining on his or her sentence accounting for time served. Provides that an offender sentenced to a term of imprisonment for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, in which the sentencing order indicates that the offender has less than 4 months remaining on his or her sentence accounting for time served may not be confined in the penitentiary system of the Department of Corrections but may be assigned to electronic home detention, an adult transition center, or another facility or program within the Department of Corrections. Effective January 1, 2020.

LRB101 08002 SLF 53060 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 Sections 5-4-1 and 5-8-6 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 (b) All sentences shall be imposed by the judge based upon
10 his independent assessment of the elements specified above and
11 any agreement as to sentence reached by the parties. The judge
12 who presided at the trial or the judge who accepted the plea of
13 guilty shall impose the sentence unless he is no longer sitting
14 as a judge in that court. Where the judge does not impose
15 sentence at the same time on all defendants who are convicted
16 as a result of being involved in the same offense, the
17 defendant or the State's Attorney may advise the sentencing
18 court of the disposition of any other defendants who have been
19 sentenced.

20 (b-1) In imposing a sentence of imprisonment or periodic
21 imprisonment for a Class 3 or Class 4 felony for which a
22 sentence of probation or conditional discharge is an available
23 sentence, if the defendant has no prior sentence of probation
24 or conditional discharge and no prior conviction for a violent
25 crime, the defendant shall not be sentenced to imprisonment
26 before review and consideration of a presentence report and

1 determination and explanation of why the particular evidence,
2 information, factor in aggravation, factual finding, or other
3 reasons support a sentencing determination that one or more of
4 the factors under subsection (a) of Section 5-6-1 of this Code
5 apply and that probation or conditional discharge is not an
6 appropriate sentence.

7 (c) In imposing a sentence for a violent crime or for an
8 offense of operating or being in physical control of a vehicle
9 while under the influence of alcohol, any other drug or any
10 combination thereof, or a similar provision of a local
11 ordinance, when such offense resulted in the personal injury to
12 someone other than the defendant, the trial judge shall specify
13 on the record the particular evidence, information, factors in
14 mitigation and aggravation or other reasons that led to his
15 sentencing determination. The full verbatim record of the
16 sentencing hearing shall be filed with the clerk of the court
17 and shall be a public record.

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

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 as
18 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 receive

1 an additional one-half day sentence credit for each day of
2 participation in vocational, industry, substance abuse, and
3 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 or
17 after July 27, 2001 (the effective date of Public Act 92-176),
18 and when the sentence is imposed for aggravated driving under
19 the influence of alcohol, other drug or drugs, or intoxicating
20 compound or compounds, or any combination thereof as defined in
21 subparagraph (C) of paragraph (1) of subsection (d) of Section
22 11-501 of the Illinois Vehicle Code committed on or after
23 January 1, 2011 (the effective date of Public Act 96-1230), the
24 judge's statement, to be given after pronouncing the sentence,
25 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 as
4 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 85%
9 of his or her sentence. Assuming the defendant receives 4 1/2
10 days credit for each month of his or her sentence, the period
11 of estimated actual custody is ... years and ... months. If the
12 defendant, because of his or her own misconduct or failure to
13 comply with the institutional regulations receives lesser
14 credit, the actual time served in prison will be longer."

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

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

1 sentence."

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

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

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

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

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

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

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

25 (c-7) In imposing a sentence for a Class 3 or 4 felony,
26 other than a violent crime as defined in Section 3 of the

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

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

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

25 (1) the sentence imposed;

26 (2) any statement by the court of the basis for

1 imposing the sentence;

2 (3) any presentence reports;

3 (3.5) any sex offender evaluations;

4 (3.6) any substance abuse treatment eligibility
5 screening and assessment of the defendant by an agent
6 designated by the State of Illinois to provide assessment
7 services for the Illinois courts;

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 (f) In cases in which the court finds that a motor vehicle

1 was used in the commission of the offense for which the
2 defendant is being sentenced, the clerk of the court shall,
3 within 5 days thereafter, forward a report of such conviction
4 to the Secretary of State.

5 (Source: P.A. 99-861, eff. 1-1-17; 99-938, eff. 1-1-18;
6 100-961, eff. 1-1-19; revised 10-3-18.)

7 (730 ILCS 5/5-8-6) (from Ch. 38, par. 1005-8-6)

8 Sec. 5-8-6. Place of confinement.

9 (a) Except as otherwise provided in this subsection (a),
10 offenders ~~Offenders~~ sentenced to a term of imprisonment for a
11 felony shall be committed to the penitentiary system of the
12 Department of Corrections. However, such sentence shall not
13 limit the powers of the Department of Children and Family
14 Services in relation to any child under the age of one year in
15 the sole custody of a person so sentenced, nor in relation to
16 any child delivered by a female so sentenced while she is so
17 confined as a consequence of such sentence. Except as otherwise
18 provided in this subsection (a), a ~~A~~ person sentenced for a
19 felony may be assigned by the Department of Corrections to any
20 of its institutions, facilities or programs. An offender
21 sentenced to a term of imprisonment for a Class 3 or 4 felony,
22 other than a violent crime as defined in Section 3 of the
23 Rights of Crime Victims and Witnesses Act, in which the
24 sentencing order indicates that the offender has less than 4
25 months remaining on his or her sentence accounting for time

1 served may not be confined in the penitentiary system of the
2 Department of Corrections but may be assigned to electronic
3 home detention under Article 8A of this Chapter V, an adult
4 transition center, or another facility or program within the
5 Department of Corrections.

6 (b) Offenders sentenced to a term of imprisonment for less
7 than one year shall be committed to the custody of the sheriff.
8 A person committed to the Department of Corrections, prior to
9 July 14, 1983, for less than one year may be assigned by the
10 Department to any of its institutions, facilities or programs.

11 (c) All offenders under 18 years of age when sentenced to
12 imprisonment shall be committed to the Department of Juvenile
13 Justice and the court in its order of commitment shall set a
14 definite term. The provisions of Section 3-3-3 shall be a part
15 of such commitment as fully as though written in the order of
16 commitment. The place of confinement for sentences imposed
17 before the effective date of this amendatory Act of the 99th
18 General Assembly are not affected or abated by this amendatory
19 Act of the 99th General Assembly.

20 (d) No defendant shall be committed to the Department of
21 Corrections for the recovery of a fine or costs.

22 (e) When a court sentences a defendant to a term of
23 imprisonment concurrent with a previous and unexpired sentence
24 of imprisonment imposed by any district court of the United
25 States, it may commit the offender to the custody of the
26 Attorney General of the United States. The Attorney General of

1 the United States, or the authorized representative of the
2 Attorney General of the United States, shall be furnished with
3 the warrant of commitment from the court imposing sentence,
4 which warrant of commitment shall provide that, when the
5 offender is released from federal confinement, whether by
6 parole or by termination of sentence, the offender shall be
7 transferred by the Sheriff of the committing county to the
8 Department of Corrections. The court shall cause the Department
9 to be notified of such sentence at the time of commitment and
10 to be provided with copies of all records regarding the
11 sentence.

12 (Source: P.A. 99-628, eff. 1-1-17.)

13 Section 99. Effective date. This Act takes effect January
14 1, 2020.