



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB3882

by Rep. Sonya M. Harper

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1

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

Amends the Unified Code of Corrections. Provides that notwithstanding any other provision of law to the contrary, in imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment, the court may sentence the offender to probation or conditional discharge or other non-imprisonment sentence it deems appropriate instead of to a sentence of imprisonment or to a lesser sentence of imprisonment than the minimum sentence of imprisonment provided for the offense if the court finds that the defendant does not pose a risk to public safety and the interest of justice requires the non-imposition of the mandatory sentence of imprisonment or a lesser sentence of imprisonment. Provides that the court must state on the record its reasons for not imposing the minimum sentence of imprisonment or a lesser sentence of imprisonment.

LRB100 11029 RLC 21844 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, or a qualified  
25 individual affected by: (i) a violation of Section 405,  
26 405.1, 405.2, or 407 of the Illinois Controlled Substances

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

1 place when the offense took place;

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

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

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

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

23 (b-1) In imposing a sentence of imprisonment or periodic  
24 imprisonment for a Class 3 or Class 4 felony for which a  
25 sentence of probation or conditional discharge is an available  
26 sentence, if the defendant has no prior sentence of probation

1 or conditional discharge and no prior conviction for a violent  
2 crime, the defendant shall not be sentenced to imprisonment  
3 before review and consideration of a presentence report and  
4 determination and explanation of why the particular evidence,  
5 information, factor in aggravation, factual finding, or other  
6 reasons support a sentencing determination that one or more of  
7 the factors under subsection (a) of Section 5-6-1 of this Code  
8 apply and that probation or conditional discharge is not an  
9 appropriate sentence.

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

21 (c-1) In imposing a sentence for the offense of aggravated  
22 kidnapping for ransom, home invasion, armed robbery,  
23 aggravated vehicular hijacking, aggravated discharge of a  
24 firearm, or armed violence with a category I weapon or category  
25 II weapon, the trial judge shall make a finding as to whether  
26 the conduct leading to conviction for the offense resulted in

1 great bodily harm to a victim, and shall enter that finding and  
2 the basis for that finding in the record.

3 (c-1.5) Notwithstanding any other provision of law to the  
4 contrary, in imposing a sentence for an offense that requires a  
5 mandatory minimum sentence of imprisonment, the court may  
6 sentence the offender to probation or conditional discharge or  
7 other non-imprisonment sentence it deems appropriate instead  
8 of to a sentence of imprisonment or to a lesser sentence of  
9 imprisonment than the minimum sentence of imprisonment  
10 provided for the offense if the court finds that the defendant  
11 does not pose a risk to public safety and the interest of  
12 justice requires the non-imposition of the mandatory sentence  
13 of imprisonment or a lesser sentence of imprisonment. The court  
14 must state on the record its reasons for not imposing the  
15 minimum sentence of imprisonment or a lesser sentence of  
16 imprisonment.

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

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

21           When the sentence is imposed for one of the offenses  
22 enumerated in paragraph (a) (3) of Section 3-6-3, other than  
23 when the sentence is imposed for one of the offenses enumerated  
24 in paragraph (a) (2) of Section 3-6-3 committed on or after June  
25 19, 1998, and other than when the sentence is imposed for  
26 reckless homicide as defined in subsection (e) of Section 9-3



1 of the Criminal Code of 1961 or the Criminal Code of 2012 if  
2 the offense was committed on or after January 1, 1999, and  
3 other than when the sentence is imposed for aggravated arson if  
4 the offense was committed on or after July 27, 2001 (the  
5 effective date of Public Act 92-176), and other than when the  
6 sentence is imposed for aggravated driving under the influence  
7 of alcohol, other drug or drugs, or intoxicating compound or  
8 compounds, or any combination thereof as defined in  
9 subparagraph (C) of paragraph (1) of subsection (d) of Section  
10 11-501 of the Illinois Vehicle Code committed on or after  
11 January 1, 2011 (the effective date of Public Act 96-1230), the  
12 judge's statement, to be given after pronouncing the sentence,  
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 90 days additional sentence  
23 credit for good conduct. If the defendant, because of his or  
24 her own 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 sentence credit for good  
17 conduct under clause (3) of subsection (a) of Section 3-6-3  
18 until he or she participates in and completes a substance abuse  
19 treatment program or receives a waiver from the Director of  
20 Corrections pursuant to clause (4.5) of subsection (a) of  
21 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 or  
4 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 (d) When the defendant is committed to the Department of

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

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

20 (1) the sentence imposed;

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

23 (3) any presentence reports;

24 (3.5) any sex offender evaluations;

25 (3.6) any substance abuse treatment eligibility  
26 screening and assessment of the defendant by an agent

1 designated by the State of Illinois to provide assessment  
2 services for the Illinois courts;

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

7 (4.1) any finding of great bodily harm made by the  
8 court with respect to an offense enumerated in subsection  
9 (c-1);

10 (5) all statements filed under subsection (d) of this  
11 Section;

12 (6) any medical or mental health records or summaries  
13 of the defendant;

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

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

19 (9) all additional matters which the court directs the  
20 clerk to transmit.

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

26 (Source: P.A. 99-861, eff. 1-1-17.)