



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2187

Introduced 2/26/2021, 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, 2022.

LRB102 12160 KMF 17497 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.
11 However, prior to the imposition of sentence on an individual
12 being sentenced for an offense based upon a charge for a
13 violation of Section 11-501 of the Illinois Vehicle Code or a
14 similar provision of a local ordinance, the individual must
15 undergo a professional evaluation to determine if an alcohol
16 or other drug abuse problem exists and the extent of such a
17 problem. Programs conducting these evaluations shall be
18 licensed by the Department of Human Services. However, if the
19 individual is not a resident of Illinois, the court may, in its
20 discretion, accept an evaluation from a program in the state
21 of such individual's residence. The court shall make a
22 specific finding about whether the defendant is eligible for
23 participation in a Department impact incarceration program as

1 provided in Section 5-8-1.1 or 5-8-1.3, and if not, provide an
2 explanation as to why a sentence to impact incarceration is
3 not an appropriate sentence. The court may in its sentencing
4 order recommend a defendant for placement in a Department of
5 Corrections substance abuse treatment program as provided in
6 paragraph (a) of subsection (1) of Section 3-2-2 conditioned
7 upon the defendant being accepted in a program by the
8 Department of Corrections. At the hearing the court shall:

9 (1) consider the evidence, if any, received upon the
10 trial;

11 (2) consider any presentence reports;

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

15 (4) consider evidence and information offered by the
16 parties in aggravation and mitigation;

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

21 (5) hear arguments as to sentencing alternatives;

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

24 (7) afford the victim of a violent crime or a
25 violation of Section 11-501 of the Illinois Vehicle Code,
26 or a similar provision of a local ordinance, the

1 opportunity to present an oral or written statement, as
2 guaranteed by Article I, Section 8.1 of the Illinois
3 Constitution and provided in Section 6 of the Rights of
4 Crime Victims and Witnesses Act. The court shall allow a
5 victim to make an oral statement if the victim is present
6 in the courtroom and requests to make an oral or written
7 statement. An oral or written statement includes the
8 victim or a representative of the victim reading the
9 written statement. The court may allow persons impacted by
10 the crime who are not victims under subsection (a) of
11 Section 3 of the Rights of Crime Victims and Witnesses Act
12 to present an oral or written statement. A victim and any
13 person making an oral statement shall not be put under
14 oath or subject to cross-examination. All statements
15 offered under this paragraph (7) shall become part of the
16 record of the court. In this paragraph (7), "victim of a
17 violent crime" means a person who is a victim of a violent
18 crime for which the defendant has been convicted after a
19 bench or jury trial or a person who is the victim of a
20 violent crime with which the defendant was charged and the
21 defendant has been convicted under a plea agreement of a
22 crime that is not a violent crime as defined in subsection
23 (c) of 3 of the Rights of Crime Victims and Witnesses Act;

24 (7.5) afford a qualified person affected by: (i) a
25 violation of Section 405, 405.1, 405.2, or 407 of the
26 Illinois Controlled Substances Act or a violation of

1 Section 55 or Section 65 of the Methamphetamine Control
2 and Community Protection Act; or (ii) a Class 4 felony
3 violation of Section 11-14, 11-14.3 except as described in
4 subdivisions (a) (2) (A) and (a) (2) (B), 11-15, 11-17, 11-18,
5 11-18.1, or 11-19 of the Criminal Code of 1961 or the
6 Criminal Code of 2012, committed by the defendant the
7 opportunity to make a statement concerning the impact on
8 the qualified person and to offer evidence in aggravation
9 or mitigation; provided that the statement and evidence
10 offered in aggravation or mitigation shall first be
11 prepared in writing in conjunction with the State's
12 Attorney before it may be presented orally at the hearing.
13 Sworn testimony offered by the qualified person is subject
14 to the defendant's right to cross-examine. All statements
15 and evidence offered under this paragraph (7.5) shall
16 become part of the record of the court. In this paragraph
17 (7.5), "qualified person" means any person who: (i) lived
18 or worked within the territorial jurisdiction where the
19 offense took place when the offense took place; or (ii) is
20 familiar with various public places within the territorial
21 jurisdiction where the offense took place when the offense
22 took place. "Qualified person" includes any peace officer
23 or any member of any duly organized State, county, or
24 municipal peace officer unit assigned to the territorial
25 jurisdiction where the offense took place when the offense
26 took place;

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

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

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

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

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

1 crime, the defendant shall not be sentenced to imprisonment
2 before review and consideration of a presentence report and
3 determination and explanation of why the particular evidence,
4 information, factor in aggravation, factual finding, or other
5 reasons support a sentencing determination that one or more of
6 the factors under subsection (a) of Section 5-6-1 of this Code
7 apply and that probation or conditional discharge is not an
8 appropriate sentence.

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

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

1 finding and the basis for that finding in the record.

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

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

16 "The purpose of this statement is to inform the public of
17 the actual period of time this defendant is likely to spend in
18 prison as a result of this sentence. The actual period of
19 prison time served is determined by the statutes of Illinois
20 as applied to this sentence by the Illinois Department of
21 Corrections and the Illinois Prisoner Review Board. In this
22 case, assuming the defendant receives all of his or her
23 sentence credit, the period of estimated actual custody is ...
24 years and ... months, less up to 180 days additional earned
25 sentence credit. If the defendant, because of his or her own
26 misconduct or failure to comply with the institutional

1 regulations, does not receive those credits, the actual time
2 served in prison will be longer. The defendant may also
3 receive an additional one-half day sentence credit for each
4 day of participation in vocational, industry, substance abuse,
5 and educational programs as provided for by Illinois statute."

6 When the sentence is imposed for one of the offenses
7 enumerated in paragraph (a)(2) of Section 3-6-3, other than
8 first degree murder, and the offense was committed on or after
9 June 19, 1998, and when the sentence is imposed for reckless
10 homicide as defined in subsection (e) of Section 9-3 of the
11 Criminal Code of 1961 or the Criminal Code of 2012 if the
12 offense was committed on or after January 1, 1999, and when the
13 sentence is imposed for aggravated driving under the influence
14 of alcohol, other drug or drugs, or intoxicating compound or
15 compounds, or any combination thereof as defined in
16 subparagraph (F) of paragraph (1) of subsection (d) of Section
17 11-501 of the Illinois Vehicle Code, and when the sentence is
18 imposed for aggravated arson if the offense was committed on
19 or after July 27, 2001 (the effective date of Public Act
20 92-176), and when the sentence is imposed for aggravated
21 driving under the influence of alcohol, other drug or drugs,
22 or intoxicating compound or compounds, or any combination
23 thereof as defined in subparagraph (C) of paragraph (1) of
24 subsection (d) of Section 11-501 of the Illinois Vehicle Code
25 committed on or after January 1, 2011 (the effective date of
26 Public Act 96-1230), the judge's statement, to be given after

1 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
6 as 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 sentence credit for each month of his or her sentence of
10 imprisonment. Therefore, this defendant will serve at least
11 85% of his or her sentence. Assuming the defendant receives 4
12 1/2 days credit for each month of his or her sentence, the
13 period of estimated actual custody is ... years and ...
14 months. If the defendant, because of his or her own misconduct
15 or failure to comply with the institutional regulations
16 receives lesser credit, the actual time served in prison will
17 be longer."

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

22 "The purpose of this statement is to inform the public of
23 the actual period of time this defendant is likely to spend in
24 prison as a result of this sentence. The actual period of
25 prison time served is determined by the statutes of Illinois
26 as applied to this sentence by the Illinois Department of

1 Corrections and the Illinois Prisoner Review Board. In this
2 case, the defendant is not entitled to sentence credit.
3 Therefore, this defendant will serve 100% of his or her
4 sentence."

5 When the sentencing order recommends placement in a
6 substance abuse program for any offense that results in
7 incarceration in a Department of Corrections facility and the
8 crime was committed on or after September 1, 2003 (the
9 effective date of Public Act 93-354), the judge's statement,
10 in addition to any other judge's statement required under this
11 Section, to be given after pronouncing the sentence, shall
12 include the following:

13 "The purpose of this statement is to inform the public of
14 the actual period of time this defendant is likely to spend in
15 prison as a result of this sentence. The actual period of
16 prison time served is determined by the statutes of Illinois
17 as applied to this sentence by the Illinois Department of
18 Corrections and the Illinois Prisoner Review Board. In this
19 case, the defendant shall receive no earned sentence credit
20 under clause (3) of subsection (a) of Section 3-6-3 until he or
21 she participates in and completes a substance abuse treatment
22 program or receives a waiver from the Director of Corrections
23 pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

24 (c-4) Before the sentencing hearing and as part of the
25 presentence investigation under Section 5-3-1, the court shall
26 inquire of the defendant whether the defendant is currently

1 serving in or is a veteran of the Armed Forces of the United
2 States. If the defendant is currently serving in the Armed
3 Forces of the United States or is a veteran of the Armed Forces
4 of the United States and has been diagnosed as having a mental
5 illness by a qualified psychiatrist or clinical psychologist
6 or physician, the court may:

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

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

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

24 (c-6) In imposing a sentence, the trial judge shall
25 specify, on the record, the particular evidence and other
26 reasons which led to his or her determination that a motor

1 vehicle was used in the commission of the offense.

2 (c-7) In imposing a sentence for a Class 3 or 4 felony,
3 other than a violent crime as defined in Section 3 of the
4 Rights of Crime Victims and Witnesses Act, the court shall
5 determine and indicate in the sentencing order whether the
6 defendant has 4 or more or fewer than 4 months remaining on his
7 or her sentence accounting for time served.

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

25 (e) The clerk of the court shall transmit to the
26 department, agency or institution, if any, to which the

1 defendant is committed, the following:

2 (1) the sentence imposed;

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

5 (3) any presentence reports;

6 (3.5) any sex offender evaluations;

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

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

15 (4.1) any finding of great bodily harm made by the
16 court with respect to an offense enumerated in subsection
17 (c-1);

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

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

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

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

1 (9) all additional matters which the court directs the
2 clerk to transmit.

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

8 (Source: P.A. 100-961, eff. 1-1-19; 101-81, eff. 7-12-19;
9 101-105, eff. 1-1-20.)

10 (730 ILCS 5/5-8-6) (from Ch. 38, par. 1005-8-6)

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

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

1 Section 3 of the Rights of Crime Victims and Witnesses Act, in
2 which the sentencing order indicates that the offender has
3 less than 4 months remaining on his or her sentence accounting
4 for time served may not be confined in the penitentiary system
5 of the Department of Corrections but may be assigned to
6 electronic home detention under Article 8A of this Chapter V,
7 an adult transition center, or another facility or program
8 within the Department of Corrections.

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

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

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

25 (e) When a court sentences a defendant to a term of
26 imprisonment concurrent with a previous and unexpired sentence

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

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

16 Section 99. Effective date. This Act takes effect January
17 1, 2022.