



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2281

Introduced 2/18/2009, by Rep. Patricia R. Bellock

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1

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

Amends the Unified Code of Corrections. Provides that before the sentencing hearing and as part of the presentence investigation, the court shall inquire of the defendant whether the defendant is currently serving in or is a veteran of the Armed Forces of the United States. Provides that if the defendant is currently serving in the Armed Forces of the United States or is a veteran of the Armed Forces of the United States and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may: (1) order that the officer preparing the presentence report consult with the United States Department of Veterans Affairs, Illinois Department of Veterans' Affairs, or another agency or person with suitable knowledge or experience for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, State, and local programming; and (2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.

LRB096 09107 RLC 19250 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, 11-15,
4 11-17, 11-18, 11-18.1, or 11-19 of the Criminal Code of
5 1961, committed by the defendant the opportunity to make a
6 statement concerning the impact on the victim and to offer
7 evidence in aggravation or mitigation; provided that the
8 statement and evidence offered in aggravation or
9 mitigation must first be prepared in writing in conjunction
10 with the State's Attorney before it may be presented orally
11 at the hearing. Any sworn testimony offered by the victim
12 is subject to the defendant's right to cross-examine. All
13 statements and evidence offered under this paragraph (7)
14 shall become part of the record of the court. For the
15 purpose of this paragraph (7), "qualified individual"
16 means any person who (i) lived or worked within the
17 territorial jurisdiction where the offense took place when
18 the offense took place; and (ii) is familiar with various
19 public places within the territorial jurisdiction where
20 the offense took place when the offense took place. For the
21 purposes of this paragraph (7), "qualified individual"
22 includes any peace officer, or any member of any duly
23 organized State, county, or municipal peace unit assigned
24 to the territorial jurisdiction where the offense took
25 place when the offense took place;

26 (8) in cases of reckless homicide afford the victim's

1 spouse, guardians, parents or other immediate family
2 members an opportunity to make oral statements; and

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

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

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

1 sentencing hearing shall be filed with the clerk of the court
2 and shall be a public record.

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

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

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

25 "The purpose of this statement is to inform the public of
26 the actual period of time this defendant is likely to spend in

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

16 When the sentence is imposed for one of the offenses
17 enumerated in paragraph (a)(3) of Section 3-6-3, other than
18 when the sentence is imposed for one of the offenses enumerated
19 in paragraph (a)(2) of Section 3-6-3 committed on or after June
20 19, 1998, and other than when the sentence is imposed for
21 reckless homicide as defined in subsection (e) of Section 9-3
22 of the Criminal Code of 1961 if the offense was committed on or
23 after January 1, 1999, and other than when the sentence is
24 imposed for aggravated arson if the offense was committed on or
25 after July 27, 2001 (the effective date of Public Act 92-176),
26 the judge's statement, to be given after pronouncing the

1 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 as
6 applied to this sentence by the Illinois Department of
7 Corrections and the Illinois Prisoner Review Board. In this
8 case, assuming the defendant receives all of his or her good
9 conduct credit, the period of estimated actual custody is ...
10 years and ... months, less up to 90 days additional good
11 conduct credit for meritorious service. If the defendant,
12 because of his or her own misconduct or failure to comply with
13 the institutional regulations, does not receive those credits,
14 the actual time served in prison will be longer. The defendant
15 may also receive an additional one-half day good conduct credit
16 for each day of participation in vocational, industry,
17 substance abuse, and educational programs as provided for by
18 Illinois statute."

19 When the sentence is imposed for one of the offenses
20 enumerated in paragraph (a)(2) of Section 3-6-3, other than
21 first degree murder, and the offense was committed on or after
22 June 19, 1998, and when the sentence is imposed for reckless
23 homicide as defined in subsection (e) of Section 9-3 of the
24 Criminal Code of 1961 if the offense was committed on or after
25 January 1, 1999, and when the sentence is imposed for
26 aggravated driving under the influence of alcohol, other drug

1 or drugs, or intoxicating compound or compounds, or any
2 combination thereof as defined in subparagraph (F) of paragraph
3 (1) of subsection (d) of Section 11-501 of the Illinois Vehicle
4 Code, and when the sentence is imposed for aggravated arson if
5 the offense was committed on or after July 27, 2001 (the
6 effective date of Public Act 92-176), the judge's statement, to
7 be given after pronouncing the sentence, shall include the
8 following:

9 "The purpose of this statement is to inform the public of
10 the actual period of time this defendant is likely to spend in
11 prison as a result of this sentence. The actual period of
12 prison time served is determined by the statutes of Illinois as
13 applied to this sentence by the Illinois Department of
14 Corrections and the Illinois Prisoner Review Board. In this
15 case, the defendant is entitled to no more than 4 1/2 days of
16 good conduct credit for each month of his or her sentence of
17 imprisonment. Therefore, this defendant will serve at least 85%
18 of his or her sentence. Assuming the defendant receives 4 1/2
19 days credit for each month of his or her sentence, the period
20 of estimated actual custody is ... years and ... months. If the
21 defendant, because of his or her own misconduct or failure to
22 comply with the institutional regulations receives lesser
23 credit, the actual time served in prison will be longer."

24 When a sentence of imprisonment is imposed for first degree
25 murder and the offense was committed on or after June 19, 1998,
26 the judge's statement, to be given after pronouncing the

1 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 as
6 applied to this sentence by the Illinois Department of
7 Corrections and the Illinois Prisoner Review Board. In this
8 case, the defendant is not entitled to good conduct credit.
9 Therefore, this defendant will serve 100% of his or her
10 sentence."

11 When the sentencing order recommends placement in a
12 substance abuse program for any offense that results in
13 incarceration in a Department of Corrections facility and the
14 crime was committed on or after September 1, 2003 (the
15 effective date of Public Act 93-354), the judge's statement, in
16 addition to any other judge's statement required under this
17 Section, to be given after pronouncing the sentence, shall
18 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 shall receive no good conduct credit under
26 clause (3) of subsection (a) of Section 3-6-3 until he or she

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

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

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

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

25 For the purposes of this subsection (c-4), "qualified
26 psychiatrist" means a reputable physician licensed in Illinois

1 to practice medicine in all its branches, who has specialized
2 in the diagnosis and treatment of mental and nervous disorders
3 for a period of not less than 5 years.

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

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

24 (1) the sentence imposed;

25 (2) any statement by the court of the basis for
26 imposing the sentence;

- 1 (3) any presentence reports;
- 2 (3.5) any sex offender evaluations;
- 3 (3.6) any substance abuse treatment eligibility
4 screening and assessment of the defendant by an agent
5 designated by the State of Illinois to provide assessment
6 services for the Illinois courts;
- 7 (4) the number of days, if any, which the defendant has
8 been in custody and for which he is entitled to credit
9 against the sentence, which information shall be provided
10 to the clerk by the sheriff;
- 11 (4.1) any finding of great bodily harm made by the
12 court with respect to an offense enumerated in subsection
13 (c-1);
- 14 (5) all statements filed under subsection (d) of this
15 Section;
- 16 (6) any medical or mental health records or summaries
17 of the defendant;
- 18 (7) the municipality where the arrest of the offender
19 or the commission of the offense has occurred, where such
20 municipality has a population of more than 25,000 persons;
- 21 (8) all statements made and evidence offered under
22 paragraph (7) of subsection (a) of this Section; and
- 23 (9) all additional matters which the court directs the
24 clerk to transmit.

25 (Source: P.A. 94-156, eff. 7-8-05; 94-556, eff. 9-11-05;
26 95-331, eff. 8-21-07.)