

AN ACT concerning criminal law.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Unified Code of Corrections is amended by changing Sections 5-3-2 and 5-4-1 as follows:

(730 ILCS 5/5-3-2) (from Ch. 38, par. 1005-3-2)

Sec. 5-3-2. Presentence Report.

(a) In felony cases, the presentence report shall set forth:

(1) the defendant's history of delinquency or criminality, physical and mental history and condition, family situation and background, economic status, education, occupation and personal habits;

(2) information about special resources within the community which might be available to assist the defendant's rehabilitation, including treatment centers, residential facilities, vocational training services, correctional manpower programs, employment opportunities, special educational programs, alcohol and drug abuse programming, psychiatric and marriage counseling, and other programs and facilities which could aid the defendant's successful reintegration into society;

(3) the effect the offense committed has had upon the

victim or victims thereof, and any compensatory benefit that various sentencing alternatives would confer on such victim or victims;

(3.5) information provided by the victim's spouse, guardian, parent, grandparent, and other immediate family and household members about the effect the offense committed has had on the victim and on the person providing the information; if the victim's spouse, guardian, parent, grandparent, or other immediate family or household member has provided a written statement, the statement shall be attached to the report;

(4) information concerning the defendant's status since arrest, including his record if released on his own recognizance, or the defendant's achievement record if released on a conditional pre-trial supervision program;

(5) when appropriate, a plan, based upon the personal, economic and social adjustment needs of the defendant, utilizing public and private community resources as an alternative to institutional sentencing;

(6) any other matters that the investigatory officer deems relevant or the court directs to be included; ~~and~~

(7) information concerning defendant's eligibility for a sentence to a county impact incarceration program under Section 5-8-1.2 of this Code; and -

(8) information concerning defendant's eligibility for a sentence to an impact incarceration program administered

by the Department under Section 5-8-1.1.

(b) The investigation shall include a physical and mental examination of the defendant when so ordered by the court. If the court determines that such an examination should be made, it shall issue an order that the defendant submit to examination at such time and place as designated by the court and that such examination be conducted by a physician, psychologist or psychiatrist designated by the court. Such an examination may be conducted in a court clinic if so ordered by the court. The cost of such examination shall be paid by the county in which the trial is held.

(b-5) In cases involving felony sex offenses in which the offender is being considered for probation only or any felony offense that is sexually motivated as defined in the Sex Offender Management Board Act in which the offender is being considered for probation only, the investigation shall include a sex offender evaluation by an evaluator approved by the Board and conducted in conformance with the standards developed under the Sex Offender Management Board Act. In cases in which the offender is being considered for any mandatory prison sentence, the investigation shall not include a sex offender evaluation.

(c) In misdemeanor, business offense or petty offense cases, except as specified in subsection (d) of this Section, when a presentence report has been ordered by the court, such presentence report shall contain information on the defendant's history of delinquency or criminality and shall

further contain only those matters listed in any of paragraphs (1) through (6) of subsection (a) or in subsection (b) of this Section as are specified by the court in its order for the report.

(d) In cases under Sections 11-1.50, 12-15, and 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012, the presentence report shall set forth information about alcohol, drug abuse, psychiatric, and marriage counseling or other treatment programs and facilities, information on the defendant's history of delinquency or criminality, and shall contain those additional matters listed in any of paragraphs (1) through (6) of subsection (a) or in subsection (b) of this Section as are specified by the court.

(e) Nothing in this Section shall cause the defendant to be held without bail or to have his bail revoked for the purpose of preparing the presentence report or making an examination.

(Source: P.A. 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13; 98-372, eff. 1-1-14.)

(730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)

Sec. 5-4-1. Sentencing hearing.

(a) Except when the death penalty is sought under hearing procedures otherwise specified, after a determination of guilt, a hearing shall be held to impose the sentence. However, prior to the imposition of sentence on an individual being sentenced for an offense based upon a charge for a violation of

Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance, the individual must undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of such a problem. Programs conducting these evaluations shall be licensed by the Department of Human Services. However, if the individual is not a resident of Illinois, the court may, in its discretion, accept an evaluation from a program in the state of such individual's residence. The court shall make a specific finding about whether the defendant is eligible for participation in a Department impact incarceration program as provided in Section 5-8-1.1 or 5-8-1.3, and if not, provide an explanation as to why a sentence to impact incarceration is not an appropriate sentence ~~may in its sentencing order approve an eligible defendant for placement in a Department of Corrections impact incarceration program as provided in Section 5-8-1.1 or 5-8-1.3.~~ The court may in its sentencing order recommend a defendant for placement in a Department of Corrections substance abuse treatment program as provided in paragraph (a) of subsection (1) of Section 3-2-2 conditioned upon the defendant being accepted in a program by the Department of Corrections. At the hearing the court shall:

- (1) consider the evidence, if any, received upon the trial;
- (2) consider any presentence reports;
- (3) consider the financial impact of incarceration

based on the financial impact statement filed with the clerk of the court by the Department of Corrections;

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

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

(5) hear arguments as to sentencing alternatives;

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

(7) afford the victim of a violent crime or a violation of Section 11-501 of the Illinois Vehicle Code, or a similar provision of a local ordinance, the opportunity to present an oral or written statement, as guaranteed by Article I, Section 8.1 of the Illinois Constitution and provided in Section 6 of the Rights of Crime Victims and Witnesses Act. The court shall allow a victim to make an oral statement if the victim is present in the courtroom and requests to make an oral or written statement. An oral or written statement includes the victim or a representative of the victim reading the written statement. The court may allow persons impacted by the crime who are not victims under subsection (a) of Section 3 of the Rights of Crime Victims and Witnesses Act to present an oral or written statement. A victim and any person

making an oral statement shall not be put under oath or subject to cross-examination. All statements offered under this paragraph (7) shall become part of the record of the court. In this paragraph (7), "victim of a violent crime" means a person who is a victim of a violent crime for which the defendant has been convicted after a bench or jury trial or a person who is the victim of a violent crime with which the defendant was charged and the defendant has been convicted under a plea agreement of a crime that is not a violent crime as defined in subsection (c) of 3 of the Rights of Crime Victims and Witnesses Act;

(7.5) afford a qualified person affected by: (i) a violation of Section 405, 405.1, 405.2, or 407 of the Illinois Controlled Substances Act or a violation of Section 55 or Section 65 of the Methamphetamine Control and Community Protection Act; or (ii) a Class 4 felony violation of Section 11-14, 11-14.3 except as described in subdivisions (a)(2)(A) and (a)(2)(B), 11-15, 11-17, 11-18, 11-18.1, or 11-19 of the Criminal Code of 1961 or the Criminal Code of 2012, committed by the defendant the opportunity to make a statement concerning the impact on the qualified person and to offer evidence in aggravation or mitigation; provided that the statement and evidence offered in aggravation or mitigation shall first be prepared in writing in conjunction with the State's Attorney before it may be presented orally at the hearing.

Sworn testimony offered by the qualified person is subject to the defendant's right to cross-examine. All statements and evidence offered under this paragraph (7.5) shall become part of the record of the court. In this paragraph (7.5), "qualified person" means any person who: (i) lived or worked within the territorial jurisdiction where the offense took place when the offense took place; or (ii) is familiar with various public places within the territorial jurisdiction where the offense took place when the offense took place. "Qualified person" includes any peace officer or any member of any duly organized State, county, or municipal peace officer unit assigned to the territorial jurisdiction where the offense took place when the offense took place;

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

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

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

(b) All sentences shall be imposed by the judge based upon his independent assessment of the elements specified above and



any agreement as to sentence reached by the parties. The judge who presided at the trial or the judge who accepted the plea of guilty shall impose the sentence unless he is no longer sitting as a judge in that court. Where the judge does not impose sentence at the same time on all defendants who are convicted as a result of being involved in the same offense, the defendant or the State's Attorney may advise the sentencing court of the disposition of any other defendants who have been sentenced.

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

(c) In imposing a sentence for a violent crime or for an offense of operating or being in physical control of a vehicle while under the influence of alcohol, any other drug or any combination thereof, or a similar provision of a local

ordinance, when such offense resulted in the personal injury to someone other than the defendant, the trial judge shall specify on the record the particular evidence, information, factors in mitigation and aggravation or other reasons that led to his sentencing determination. The full verbatim record of the sentencing hearing shall be filed with the clerk of the court and shall be a public record.

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

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

The judge's statement, to be given after pronouncing the

sentence, other than when the sentence is imposed for one of the offenses enumerated in paragraph (a)(4) of Section 3-6-3, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, assuming the defendant receives all of his or her sentence credit, the period of estimated actual custody is ... years and ... months, less up to 180 days additional earned sentence credit. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations, does not receive those credits, the actual time served in prison will be longer. The defendant may also receive an additional one-half day sentence credit for each day of participation in vocational, industry, substance abuse, and educational programs as provided for by Illinois statute."

When the sentence is imposed for one of the offenses enumerated in paragraph (a)(2) of Section 3-6-3, other than first degree murder, and the offense was committed on or after June 19, 1998, and when the sentence is imposed for reckless homicide as defined in subsection (e) of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012 if the offense was committed on or after January 1, 1999, and when the

sentence is imposed for aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, and when the sentence is imposed for aggravated arson if the offense was committed on or after July 27, 2001 (the effective date of Public Act 92-176), and when the sentence is imposed for aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (C) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code committed on or after January 1, 2011 (the effective date of Public Act 96-1230), the judge's statement, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant is entitled to no more than 4 1/2 days of sentence credit for each month of his or her sentence of imprisonment. Therefore, this defendant will serve at least 85% of his or her sentence. Assuming the defendant receives 4 1/2 days credit for each month of his or her sentence, the period

of estimated actual custody is ... years and ... months. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations receives lesser credit, the actual time served in prison will be longer."

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

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

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

"The purpose of this statement is to inform the public of

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

(c-4) Before the sentencing hearing and as part of the presentence investigation under Section 5-3-1, 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. 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.

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

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

(d) When the defendant is committed to the Department of Corrections, the State's Attorney shall and counsel for the defendant may file a statement with the clerk of the court to be transmitted to the department, agency or institution to which the defendant is committed to furnish such department, agency or institution with the facts and circumstances of the offense for which the person was committed together with all other factual information accessible to them in regard to the person prior to his commitment relative to his habits, associates, disposition and reputation and any other facts and circumstances which may aid such department, agency or institution during its custody of such person. The clerk shall

within 10 days after receiving any such statements transmit a copy to such department, agency or institution and a copy to the other party, provided, however, that this shall not be cause for delay in conveying the person to the department, agency or institution to which he has been committed.

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

(1) the sentence imposed;

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

(3) any presentence reports;

(3.5) any sex offender evaluations;

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

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

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

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



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

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

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

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

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

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