



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB0183

Introduced 1/22/2021, by Rep. Mary E. Flowers

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1

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

Amends the Unified Code of Corrections. Provides if the defendant has been found guilty by a judge or jury after a trial, the prosecutor shall file with the court at the sentencing hearing a verified written statement signed by the prosecutor setting forth the prosecutor's final offer, if any, of any specified sentence and any charge to be dismissed or not charged in a plea discussion in exchange for a plea of guilty from the defendant and waiver of his or her right to trial. Also provides in any sentence, a defendant shall not be punished by the imposition of a heavier or greater sentence merely because he or she exercises his or her constitutional right to be tried before an impartial judge or jury.

LRB102 03785 RLC 13798 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.  
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 (a-5) If the defendant has been found guilty by a judge or  
12 jury after a trial, the prosecutor shall file with the court a  
13 verified written statement signed by the prosecutor setting  
14 forth the prosecutor's final offer, if any, of any specified  
15 sentence and any charge to be dismissed or not charged in a  
16 plea discussion in exchange for a plea of guilty from the  
17 defendant and waiver of his or her right to trial.

18 (b) All sentences shall be imposed by the judge based upon  
19 his independent assessment of the elements specified above and  
20 any agreement as to sentence reached by the parties. In any  
21 sentence, a defendant shall not be punished by the imposition  
22 of a heavier or greater sentence merely because he or she  
23 exercises his or her constitutional right to be tried before  
24 an impartial judge or jury. The judge who presided at the trial  
25 or the judge who accepted the plea of guilty shall impose the  
26 sentence unless he is no longer sitting as a judge in that

1 court. Where the judge does not impose sentence at the same  
2 time on all defendants who are convicted as a result of being  
3 involved in the same offense, the defendant or the State's  
4 Attorney may advise the sentencing court of the disposition of  
5 any other defendants who have been sentenced.

6 (a-5) If the defendant has been found guilty by a judge or  
7 jury after a trial, the prosecutor shall file with the court a  
8 verified written statement signed by the prosecutor setting  
9 forth the prosecutor's final offer, if any, of any specified  
10 sentence and any charge to be dismissed or not charged in a  
11 plea discussion in exchange for a plea of guilty from the  
12 defendant and waiver of his or her right to trial.

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

26 (c) In imposing a sentence for a violent crime or for an

1 offense of operating or being in physical control of a vehicle  
2 while under the influence of alcohol, any other drug or any  
3 combination thereof, or a similar provision of a local  
4 ordinance, when such offense resulted in the personal injury  
5 to someone other than the defendant, the trial judge shall  
6 specify on the record the particular evidence, information,  
7 factors in mitigation and aggravation or other reasons that  
8 led to his sentencing determination. The full verbatim record  
9 of the sentencing hearing shall be filed with the clerk of the  
10 court and shall be a public record.

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

19 (c-2) If the defendant is sentenced to prison, other than  
20 when a sentence of natural life imprisonment or a sentence of  
21 death is imposed, at the time the sentence is imposed the judge  
22 shall state on the record in open court the approximate period  
23 of time the defendant will serve in custody according to the  
24 then current statutory rules and regulations for sentence  
25 credit found in Section 3-6-3 and other related provisions of  
26 this Code. This statement is intended solely to inform the



1 public, has no legal effect on the defendant's actual release,  
2 and may not be relied on by the defendant on appeal.

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

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

23 When the sentence is imposed for one of the offenses  
24 enumerated in paragraph (a) (2) of Section 3-6-3, other than  
25 first degree murder, and the offense was committed on or after  
26 June 19, 1998, and when the sentence is imposed for reckless

1 homicide as defined in subsection (e) of Section 9-3 of the  
2 Criminal Code of 1961 or the Criminal Code of 2012 if the  
3 offense was committed on or after January 1, 1999, and when the  
4 sentence is imposed for aggravated driving under the influence  
5 of alcohol, other drug or drugs, or intoxicating compound or  
6 compounds, or any combination thereof as defined in  
7 subparagraph (F) of paragraph (1) of subsection (d) of Section  
8 11-501 of the Illinois Vehicle Code, and when the sentence is  
9 imposed for aggravated arson if the offense was committed on  
10 or after July 27, 2001 (the effective date of Public Act  
11 92-176), and when the sentence is imposed for aggravated  
12 driving under the influence of alcohol, other drug or drugs,  
13 or intoxicating compound or compounds, or any combination  
14 thereof as defined in subparagraph (C) of paragraph (1) of  
15 subsection (d) of Section 11-501 of the Illinois Vehicle Code  
16 committed on or after January 1, 2011 (the effective date of  
17 Public Act 96-1230), the judge's statement, to be given after  
18 pronouncing the 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  
23 as applied to this sentence by the Illinois Department of  
24 Corrections and the Illinois Prisoner Review Board. In this  
25 case, the defendant is entitled to no more than 4 1/2 days of  
26 sentence credit for each month of his or her sentence of

1 imprisonment. Therefore, this defendant will serve at least  
2 85% of his or her sentence. Assuming the defendant receives 4  
3 1/2 days credit for each month of his or her sentence, the  
4 period of estimated actual custody is ... years and ...  
5 months. If the defendant, because of his or her own misconduct  
6 or failure to comply with the institutional regulations  
7 receives lesser credit, the actual time served in prison will  
8 be longer."

9 When a sentence of imprisonment is imposed for first  
10 degree murder and the offense was committed on or after June  
11 19, 1998, the judge's statement, to be given after pronouncing  
12 the sentence, shall 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 is not entitled to sentence credit.  
20 Therefore, this defendant will serve 100% of his or her  
21 sentence."

22 When the sentencing order recommends placement in a  
23 substance abuse program for any offense that results in  
24 incarceration in a Department of Corrections facility and the  
25 crime was committed on or after September 1, 2003 (the  
26 effective date of Public Act 93-354), the judge's statement,

1 in addition to any other judge's statement required under this  
2 Section, to be given after pronouncing the sentence, shall  
3 include the following:

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

15 (c-4) Before the sentencing hearing and as part of the  
16 presentence investigation under Section 5-3-1, the court shall  
17 inquire of the defendant whether the defendant is currently  
18 serving in or is a veteran of the Armed Forces of the United  
19 States. If the defendant is currently serving in the Armed  
20 Forces of the United States or is a veteran of the Armed Forces  
21 of the United States and has been diagnosed as having a mental  
22 illness by a qualified psychiatrist or clinical psychologist  
23 or physician, the court may:

24 (1) order that the officer preparing the presentence  
25 report consult with the United States Department of  
26 Veterans Affairs, Illinois Department of Veterans'

1           Affairs, or another agency or person with suitable  
2           knowledge or experience for the purpose of providing the  
3           court with information regarding treatment options  
4           available to the defendant, including federal, State, and  
5           local programming; and

6           (2) consider the treatment recommendations of any  
7           diagnosing or treating mental health professionals  
8           together with the treatment options available to the  
9           defendant in imposing sentence.

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

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

19          (d) When the defendant is committed to the Department of  
20          Corrections, the State's Attorney shall and counsel for the  
21          defendant may file a statement with the clerk of the court to  
22          be transmitted to the department, agency or institution to  
23          which the defendant is committed to furnish such department,  
24          agency or institution with the facts and circumstances of the  
25          offense for which the person was committed together with all  
26          other factual information accessible to them in regard to the

1 person prior to his commitment relative to his habits,  
2 associates, disposition and reputation and any other facts and  
3 circumstances which may aid such department, agency or  
4 institution during its custody of such person. The clerk shall  
5 within 10 days after receiving any such statements transmit a  
6 copy to such department, agency or institution and a copy to  
7 the other party, provided, however, that this shall not be  
8 cause for delay in conveying the person to the department,  
9 agency or institution to which he has been committed.

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

13 (1) the sentence imposed;

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

16 (3) any presentence reports;

17 (3.5) any sex offender evaluations;

18 (3.6) any substance abuse treatment eligibility  
19 screening and assessment of the defendant by an agent  
20 designated by the State of Illinois to provide assessment  
21 services for the Illinois courts;

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

26 (4.1) any finding of great bodily harm made by the

1 court with respect to an offense enumerated in subsection  
2 (c-1);

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

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

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

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

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

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

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