



Sen. Cristina Castro

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1 AMENDMENT TO SENATE BILL 224

2 AMENDMENT NO. _____. Amend Senate Bill 224 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Unified Code of Corrections is amended by
5 changing Section 5-2-4 as follows:

6 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

7 Sec. 5-2-4. Proceedings after acquittal by reason of
8 insanity.

9 (a) After a finding or verdict of not guilty by reason of
10 insanity under Sections 104-25, 115-3, or 115-4 of the Code of
11 Criminal Procedure of 1963, the defendant shall be ordered to
12 the Department of Human Services for an evaluation as to
13 whether he is in need of mental health services. The order
14 shall specify whether the evaluation shall be conducted on an
15 inpatient or outpatient basis. If the evaluation is to be
16 conducted on an inpatient basis, the defendant shall be placed

1 in a secure setting. With the court order for evaluation shall
2 be sent a copy of the arrest report, criminal charges, arrest
3 record, jail record, any report prepared under Section 115-6 of
4 the Code of Criminal Procedure of 1963, and any statement
5 prepared under Section 6 of the Rights of Crime Victims and
6 Witnesses Act. The clerk of the circuit court shall transmit
7 this information to the Department within 5 days. If the court
8 orders that the evaluation be done on an inpatient basis, the
9 Department shall evaluate the defendant to determine to which
10 secure facility the defendant shall be transported and, within
11 20 days of the transmittal by the clerk of the circuit court of
12 the placement court order, notify the sheriff of the designated
13 facility. Upon receipt of that notice, the sheriff shall
14 promptly transport the defendant to the designated facility.
15 During the period of time required to determine the appropriate
16 placement, the defendant shall remain in jail. If, within 20
17 days of the transmittal by the clerk of the circuit court of
18 the placement court order, the Department fails to notify the
19 sheriff of the identity of the facility to which the defendant
20 shall be transported, the sheriff shall contact a designated
21 person within the Department to inquire about when a placement
22 will become available at the designated facility and bed
23 availability at other facilities. If, within 20 days of the
24 transmittal by the clerk of the circuit court of the placement
25 court order, the Department fails to notify the sheriff of the
26 identity of the facility to which the defendant shall be

1 transported, the sheriff shall notify the Department of its
2 intent to transfer the defendant to the nearest secure mental
3 health facility operated by the Department and inquire as to
4 the status of the placement evaluation and availability for
5 admission to the facility operated by the Department by
6 contacting a designated person within the Department. The
7 Department shall respond to the sheriff within 2 business days
8 of the notice and inquiry by the sheriff seeking the transfer
9 and the Department shall provide the sheriff with the status of
10 the placement evaluation, information on bed and placement
11 availability, and an estimated date of admission for the
12 defendant and any changes to that estimated date of admission.
13 If the Department notifies the sheriff during the 2 business
14 day period of a facility operated by the Department with
15 placement availability, the sheriff shall promptly transport
16 the defendant to that facility. Individualized placement
17 evaluations by the Department of Human Services determine the
18 most appropriate setting for forensic treatment based upon a
19 number of factors including mental health diagnosis, proximity
20 to surviving victims, security need, age, gender, and proximity
21 to family.

22 The Department shall provide the Court with a report of its
23 evaluation within 30 days of the date of this order. The Court
24 shall hold a hearing as provided under the Mental Health and
25 Developmental Disabilities Code to determine if the individual
26 is: (a) in need of mental health services on an inpatient

1 basis; (b) in need of mental health services on an outpatient
2 basis; (c) a person not in need of mental health services. The
3 court shall afford the victim the opportunity to make a written
4 or oral statement as guaranteed by Article I, Section 8.1 of
5 the Illinois Constitution and Section 6 of the Rights of Crime
6 Victims and Witnesses Act. The court shall allow a victim to
7 make an oral statement if the victim is present in the
8 courtroom and requests to make an oral statement. An oral
9 statement includes the victim or a representative of the victim
10 reading the written statement. The court may allow persons
11 impacted by the crime who are not victims under subsection (a)
12 of Section 3 of the Rights of Crime Victims and Witnesses Act
13 to present an oral or written statement. A victim and any
14 person making an oral statement shall not be put under oath or
15 subject to cross-examination. The court shall consider any
16 statement presented along with all other appropriate factors in
17 determining the sentence of the defendant or disposition of the
18 juvenile. All statements shall become part of the record of the
19 court.

20 If the defendant is found to be in need of mental health
21 services on an inpatient care basis, the Court shall order the
22 defendant to the Department of Human Services. The defendant
23 shall be placed in a secure setting. Such defendants placed in
24 a secure setting shall not be permitted outside the facility's
25 housing unit unless escorted or accompanied by personnel of the
26 Department of Human Services or with the prior approval of the

1 Court for unsupervised on-grounds privileges as provided
2 herein. Any defendant placed in a secure setting pursuant to
3 this Section, transported to court hearings or other necessary
4 appointments off facility grounds by personnel of the
5 Department of Human Services, shall be placed in security
6 devices or otherwise secured during the period of
7 transportation to assure secure transport of the defendant and
8 the safety of Department of Human Services personnel and
9 others. These security measures shall not constitute restraint
10 as defined in the Mental Health and Developmental Disabilities
11 Code. If the defendant is found to be in need of mental health
12 services, but not on an inpatient care basis, the Court shall
13 conditionally release the defendant, under such conditions as
14 set forth in this Section as will reasonably assure the
15 defendant's satisfactory progress and participation in
16 treatment or rehabilitation and the safety of the defendant,
17 the victim, the victim's family members, and others. If the
18 Court finds the person not in need of mental health services,
19 then the Court shall order the defendant discharged from
20 custody.

21 (a-1) Definitions. For the purposes of this Section:

22 (A) (Blank).

23 (B) "In need of mental health services on an inpatient
24 basis" means: a defendant who has been found not guilty by
25 reason of insanity but who, due to mental illness, is
26 reasonably expected to inflict serious physical harm upon

1 himself or another and who would benefit from inpatient
2 care or is in need of inpatient care.

3 (C) "In need of mental health services on an outpatient
4 basis" means: a defendant who has been found not guilty by
5 reason of insanity who is not in need of mental health
6 services on an inpatient basis, but is in need of
7 outpatient care, drug and/or alcohol rehabilitation
8 programs, community adjustment programs, individual,
9 group, or family therapy, or chemotherapy.

10 (D) "Conditional Release" means: the release from
11 either the custody of the Department of Human Services or
12 the custody of the Court of a person who has been found not
13 guilty by reason of insanity under such conditions as the
14 Court may impose which reasonably assure the defendant's
15 satisfactory progress in treatment or habilitation and the
16 safety of the defendant, the victim, the victim's family,
17 and others. The Court shall consider such terms and
18 conditions which may include, but need not be limited to,
19 outpatient care, alcoholic and drug rehabilitation
20 programs, community adjustment programs, individual,
21 group, family, and chemotherapy, random testing to ensure
22 the defendant's timely and continuous taking of any
23 medicines prescribed to control or manage his or her
24 conduct or mental state, and periodic checks with the legal
25 authorities and/or the Department of Human Services. The
26 Court may order as a condition of conditional release that

1 the defendant not contact the victim of the offense that
2 resulted in the finding or verdict of not guilty by reason
3 of insanity or any other person. The Court may order the
4 Department of Human Services to provide care to any person
5 conditionally released under this Section. The Department
6 may contract with any public or private agency in order to
7 discharge any responsibilities imposed under this Section.
8 The Department shall monitor the provision of services to
9 persons conditionally released under this Section and
10 provide periodic reports to the Court concerning the
11 services and the condition of the defendant. Whenever a
12 person is conditionally released pursuant to this Section,
13 the State's Attorney for the county in which the hearing is
14 held shall designate in writing the name, telephone number,
15 and address of a person employed by him or her who shall be
16 notified in the event that either the reporting agency or
17 the Department decides that the conditional release of the
18 defendant should be revoked or modified pursuant to
19 subsection (i) of this Section. Such conditional release
20 shall be for a period of five years. However, the
21 defendant, the person or facility rendering the treatment,
22 therapy, program or outpatient care, the Department, or the
23 State's Attorney may petition the Court for an extension of
24 the conditional release period for an additional 5 years.
25 Upon receipt of such a petition, the Court shall hold a
26 hearing consistent with the provisions of paragraph (a),

1 this paragraph (a-1), and paragraph (f) of this Section,
2 shall determine whether the defendant should continue to be
3 subject to the terms of conditional release, and shall
4 enter an order either extending the defendant's period of
5 conditional release for an additional 5-year period or
6 discharging the defendant. An extension of the conditional
7 release period may not be ordered unless there is clear and
8 convincing evidence that the defendant will not
9 participate in mental health services in the absence of a
10 court order to do so, and that in the absence of those
11 mental health services, the defendant is reasonably
12 expected to inflict serious physical harm upon himself,
13 herself, or others. Additional 5-year periods of
14 conditional release may be ordered following a hearing as
15 provided in this Section. However, in no event shall the
16 defendant's period of conditional release continue beyond
17 the maximum period of commitment ordered by the Court
18 pursuant to paragraph (b) of this Section. These provisions
19 for extension of conditional release shall only apply to
20 defendants conditionally released on or after August 8,
21 2003. However, the extension provisions of Public Act
22 83-1449 apply only to defendants charged with a forcible
23 felony.

24 (E) "Facility director" means the chief officer of a
25 mental health or developmental disabilities facility or
26 his or her designee or the supervisor of a program of

1 treatment or habilitation or his or her designee.

2 "Designee" may include a physician, clinical psychologist,
3 social worker, nurse, or clinical professional counselor.

4 (b) If the Court finds the defendant in need of mental
5 health services on an inpatient basis, the admission,
6 detention, care, treatment or habilitation, treatment plans,
7 review proceedings, including review of treatment and
8 treatment plans, and discharge of the defendant after such
9 order shall be under the Mental Health and Developmental
10 Disabilities Code, except that the initial order for admission
11 of a defendant acquitted of a felony by reason of insanity
12 shall be for an indefinite period of time. Such period of
13 commitment shall not exceed the maximum length of time that the
14 defendant would have been required to serve, less credit for
15 good behavior as provided in Section 5-4-1 of the Unified Code
16 of Corrections, before becoming eligible for release had he
17 been convicted of and received the maximum sentence for the
18 most serious crime for which he has been acquitted by reason of
19 insanity. The Court shall determine the maximum period of
20 commitment by an appropriate order. During this period of time,
21 the defendant shall not be permitted to be in the community in
22 any manner, including, but not limited to, off-grounds
23 privileges, with or without escort by personnel of the
24 Department of Human Services, unsupervised on-grounds
25 privileges, discharge or conditional or temporary release,
26 except by a plan as provided in this Section. In no event shall

1 a defendant's continued unauthorized absence be a basis for
2 discharge. Not more than 30 days after admission and every 90
3 days thereafter so long as the initial order remains in effect,
4 the facility director shall file a treatment plan report in
5 writing with the court and forward a copy of the treatment plan
6 report to the clerk of the court, the State's Attorney, and the
7 defendant's attorney, if the defendant is represented by
8 counsel, or to a person authorized by the defendant under the
9 Mental Health and Developmental Disabilities Confidentiality
10 Act to be sent a copy of the report. The report shall include
11 an opinion as to whether the defendant is currently in need of
12 mental health services on an inpatient basis or in need of
13 mental health services on an outpatient basis. The report shall
14 also summarize the basis for those findings and provide a
15 current summary of the following items from the treatment plan:
16 (1) an assessment of the defendant's treatment needs, (2) a
17 description of the services recommended for treatment, (3) the
18 goals of each type of element of service, (4) an anticipated
19 timetable for the accomplishment of the goals, and (5) a
20 designation of the qualified professional responsible for the
21 implementation of the plan. The report may also include
22 unsupervised on-grounds privileges, off-grounds privileges
23 (with or without escort by personnel of the Department of Human
24 Services), home visits and participation in work programs, but
25 only where such privileges have been approved by specific court
26 order, which order may include such conditions on the defendant

1 as the Court may deem appropriate and necessary to reasonably
2 assure the defendant's satisfactory progress in treatment and
3 the safety of the defendant and others.

4 (c) Every defendant acquitted of a felony by reason of
5 insanity and subsequently found to be in need of mental health
6 services shall be represented by counsel in all proceedings
7 under this Section and under the Mental Health and
8 Developmental Disabilities Code.

9 (1) The Court shall appoint as counsel the public
10 defender or an attorney licensed by this State.

11 (2) Upon filing with the Court of a verified statement
12 of legal services rendered by the private attorney
13 appointed pursuant to paragraph (1) of this subsection, the
14 Court shall determine a reasonable fee for such services.
15 If the defendant is unable to pay the fee, the Court shall
16 enter an order upon the State to pay the entire fee or such
17 amount as the defendant is unable to pay from funds
18 appropriated by the General Assembly for that purpose.

19 (d) When the facility director determines that:

20 (1) the defendant is no longer in need of mental health
21 services on an inpatient basis; and

22 (2) the defendant may be conditionally released
23 because he or she is still in need of mental health
24 services or that the defendant may be discharged as not in
25 need of any mental health services; ~~or~~

26 ~~(3) (blank);~~

1 the facility director shall give written notice to the Court,
2 State's Attorney and defense attorney. Such notice shall set
3 forth in detail the basis for the recommendation of the
4 facility director, and specify clearly the recommendations, if
5 any, of the facility director, concerning conditional release.
6 Any recommendation for conditional release shall include an
7 evaluation of the defendant's need for psychotropic
8 medication, what provisions should be made, if any, to ensure
9 that the defendant will continue to receive psychotropic
10 medication following discharge, and what provisions should be
11 made to assure the safety of the defendant and others in the
12 event the defendant is no longer receiving psychotropic
13 medication. Within 30 days of the notification by the facility
14 director, the Court shall set a hearing and make a finding as
15 to whether the defendant is:

16 (i) (blank); or

17 (ii) in need of mental health services in the form of
18 inpatient care; or

19 (iii) in need of mental health services but not subject
20 to inpatient care; or

21 (iv) no longer in need of mental health services; or

22 (v) (blank).

23 A crime victim shall be allowed to present an oral and
24 written statement. The court shall allow a victim to make an
25 oral statement if the victim is present in the courtroom and
26 requests to make an oral statement. An oral statement includes

1 the victim or a representative of the victim reading the
2 written statement. A victim and any person making an oral
3 statement shall not be put under oath or subject to
4 cross-examination. All statements shall become part of the
5 record of the court.

6 Upon finding by the Court, the Court shall enter its
7 findings and such appropriate order as provided in subsections
8 (a) and (a-1) of this Section.

9 (e) A defendant admitted pursuant to this Section, or any
10 person on his behalf, may file a petition for treatment plan
11 review or discharge or conditional release under the standards
12 of this Section in the Court which rendered the verdict. Upon
13 receipt of a petition for treatment plan review or discharge or
14 conditional release, the Court shall set a hearing to be held
15 within 120 days. Thereafter, no new petition may be filed for
16 180 days without leave of the Court.

17 (f) The Court shall direct that notice of the time and
18 place of the hearing be served upon the defendant, the facility
19 director, the State's Attorney, and the defendant's attorney.
20 If requested by either the State or the defense or if the Court
21 feels it is appropriate, an impartial examination of the
22 defendant by a psychiatrist or clinical psychologist as defined
23 in Section 1-103 of the Mental Health and Developmental
24 Disabilities Code who is not in the employ of the Department of
25 Human Services shall be ordered, and the report considered at
26 the time of the hearing.

1 (g) The findings of the Court shall be established by clear
2 and convincing evidence. The burden of proof and the burden of
3 going forth with the evidence rest with the defendant or any
4 person on the defendant's behalf when a hearing is held to
5 review a petition filed by or on behalf of the defendant. The
6 evidence shall be presented in open Court with the right of
7 confrontation and cross-examination. Such evidence may
8 include, but is not limited to:

9 (1) whether the defendant appreciates the harm caused
10 by the defendant to others and the community by his or her
11 prior conduct that resulted in the finding of not guilty by
12 reason of insanity;

13 (2) Whether the person appreciates the criminality of
14 conduct similar to the conduct for which he or she was
15 originally charged in this matter;

16 (3) the current state of the defendant's illness;

17 (4) what, if any, medications the defendant is taking
18 to control his or her mental illness;

19 (5) what, if any, adverse physical side effects the
20 medication has on the defendant;

21 (6) the length of time it would take for the
22 defendant's mental health to deteriorate if the defendant
23 stopped taking prescribed medication;

24 (7) the defendant's history or potential for alcohol
25 and drug abuse;

26 (8) the defendant's past criminal history;

1 (9) any specialized physical or medical needs of the
2 defendant;

3 (10) any family participation or involvement expected
4 upon release and what is the willingness and ability of the
5 family to participate or be involved;

6 (11) the defendant's potential to be a danger to
7 himself, herself, or others;

8 (11.5) a written or oral statement made by the victim;
9 and

10 (12) any other factor or factors the Court deems
11 appropriate.

12 (h) Before the court orders that the defendant be
13 discharged or conditionally released, it shall order the
14 facility director to establish a discharge plan that includes a
15 plan for the defendant's shelter, support, and medication. If
16 appropriate, the court shall order that the facility director
17 establish a program to train the defendant in self-medication
18 under standards established by the Department of Human
19 Services. If the Court finds, consistent with the provisions of
20 this Section, that the defendant is no longer in need of mental
21 health services it shall order the facility director to
22 discharge the defendant. If the Court finds, consistent with
23 the provisions of this Section, that the defendant is in need
24 of mental health services, and no longer in need of inpatient
25 care, it shall order the facility director to release the
26 defendant under such conditions as the Court deems appropriate

1 and as provided by this Section. Such conditional release shall
2 be imposed for a period of 5 years as provided in paragraph (D)
3 of subsection (a-1) and shall be subject to later modification
4 by the Court as provided by this Section. If the Court finds
5 consistent with the provisions in this Section that the
6 defendant is in need of mental health services on an inpatient
7 basis, it shall order the facility director not to discharge or
8 release the defendant in accordance with paragraph (b) of this
9 Section.

10 (i) If within the period of the defendant's conditional
11 release the State's Attorney determines that the defendant has
12 not fulfilled the conditions of his or her release, the State's
13 Attorney may petition the Court to revoke or modify the
14 conditional release of the defendant. Upon the filing of such
15 petition the defendant may be remanded to the custody of the
16 Department, or to any other mental health facility designated
17 by the Department, pending the resolution of the petition.
18 Nothing in this Section shall prevent the emergency admission
19 of a defendant pursuant to Article VI of Chapter III of the
20 Mental Health and Developmental Disabilities Code or the
21 voluntary admission of the defendant pursuant to Article IV of
22 Chapter III of the Mental Health and Developmental Disabilities
23 Code. If the Court determines, after hearing evidence, that the
24 defendant has not fulfilled the conditions of release, the
25 Court shall order a hearing to be held consistent with the
26 provisions of paragraph (f) and (g) of this Section. At such

1 hearing, if the Court finds that the defendant is in need of
2 mental health services on an inpatient basis, it shall enter an
3 order remanding him or her to the Department of Human Services
4 or other facility. If the defendant is remanded to the
5 Department of Human Services, he or she shall be placed in a
6 secure setting unless the Court determines that there are
7 compelling reasons that such placement is not necessary. If the
8 Court finds that the defendant continues to be in need of
9 mental health services but not on an inpatient basis, it may
10 modify the conditions of the original release in order to
11 reasonably assure the defendant's satisfactory progress in
12 treatment and his or her safety and the safety of others in
13 accordance with the standards established in paragraph (D) of
14 subsection (a-1). Nothing in this Section shall limit a Court's
15 contempt powers or any other powers of a Court.

16 (j) An order of admission under this Section does not
17 affect the remedy of habeas corpus.

18 (k) In the event of a conflict between this Section and the
19 Mental Health and Developmental Disabilities Code or the Mental
20 Health and Developmental Disabilities Confidentiality Act, the
21 provisions of this Section shall govern.

22 (l) Public Act 90-593 shall apply to all persons who have
23 been found not guilty by reason of insanity and who are
24 presently committed to the Department of Mental Health and
25 Developmental Disabilities (now the Department of Human
26 Services).

1 (m) The Clerk of the Court shall transmit a certified copy
2 of the order of discharge or conditional release to the
3 Department of Human Services, to the sheriff of the county from
4 which the defendant was admitted, to the Illinois Department of
5 State Police, to the proper law enforcement agency for the
6 municipality where the offense took place, and to the sheriff
7 of the county into which the defendant is conditionally
8 discharged. The Illinois Department of State Police shall
9 maintain a centralized record of discharged or conditionally
10 released defendants while they are under court supervision for
11 access and use of appropriate law enforcement agencies.

12 (n) The provisions in this Section which allow ~~allows~~ a
13 crime victim to make a written and oral statement do not apply
14 if the defendant was under 18 years of age at the time the
15 offense was committed.

16 (o) If any provision of this Section or its application to
17 any person or circumstance is held invalid, the invalidity of
18 that provision does not affect any other provision or
19 application of this Section that can be given effect without
20 the invalid provision or application.

21 (Source: P.A. 100-27, eff. 1-1-18; 100-424, eff. 1-1-18;
22 100-863, eff. 8-14-18; 100-961, eff. 1-1-19; 101-81, eff.
23 7-12-19; revised 9-24-19.)".