



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 ~~this~~ Rights of Crime Victims and Witnesses  
13 Act 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 conditional  
7 release shall not be ordered unless the court determines  
8 that there is clear and convincing evidence that: (1) the  
9 defendant continues to need mental health services: (2) in  
10 the absence of a court order, the defendant will not  
11 participate in those services; and (3) in the absence of  
12 services, the defendant's clinical condition will  
13 deteriorate to the point that he or she is in need of  
14 mental health services on an inpatient basis as defined in  
15 this Section. Additional 5-year periods of conditional  
16 release may be ordered following a hearing as provided in  
17 this Section. However, in no event shall the defendant's  
18 period of conditional release continue beyond the maximum  
19 period of commitment ordered by the Court pursuant to  
20 paragraph (b) of this Section. These provisions for  
21 extension of conditional release shall only apply to  
22 defendants conditionally released on or after August 8,  
23 2003. However, the extension provisions of Public Act  
24 83-1449 apply only to defendants charged with a forcible  
25 felony.

26 (E) "Facility director" means the chief officer of a



1           mental health or developmental disabilities facility or  
2           his or her designee or the supervisor of a program of  
3           treatment or habilitation or his or her designee.

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

6           (b) If the Court finds the defendant in need of mental  
7           health services on an inpatient basis, the admission,  
8           detention, care, treatment or habilitation, treatment plans,  
9           review proceedings, including review of treatment and  
10          treatment plans, and discharge of the defendant after such  
11          order shall be under the Mental Health and Developmental  
12          Disabilities Code, except that the initial order for admission  
13          of a defendant acquitted of a felony by reason of insanity  
14          shall be for an indefinite period of time. Such period of  
15          commitment shall not exceed the maximum length of time that the  
16          defendant would have been required to serve, less credit for  
17          good behavior as provided in Section 5-4-1 of the Unified Code  
18          of Corrections, before becoming eligible for release had he  
19          been convicted of and received the maximum sentence for the  
20          most serious crime for which he has been acquitted by reason of  
21          insanity. The Court shall determine the maximum period of  
22          commitment by an appropriate order. During this period of time,  
23          the defendant shall not be permitted to be in the community in  
24          any manner, including, but not limited to, off-grounds  
25          privileges, with or without escort by personnel of the  
26          Department of Human Services, unsupervised on-grounds

1 privileges, discharge or conditional or temporary release,  
2 except by a plan as provided in this Section. In no event shall  
3 a defendant's continued unauthorized absence be a basis for  
4 discharge. Not more than 30 days after admission and every 90  
5 days thereafter so long as the initial order remains in effect,  
6 the facility director shall file a treatment plan report in  
7 writing with the court and forward a copy of the treatment plan  
8 report to the clerk of the court, the State's Attorney, and the  
9 defendant's attorney, if the defendant is represented by  
10 counsel, or to a person authorized by the defendant under the  
11 Mental Health and Developmental Disabilities Confidentiality  
12 Act to be sent a copy of the report. The report shall include  
13 an opinion as to whether the defendant is currently in need of  
14 mental health services on an inpatient basis or in need of  
15 mental health services on an outpatient basis. The report shall  
16 also summarize the basis for those findings and provide a  
17 current summary of the following items from the treatment plan:  
18 (1) an assessment of the defendant's treatment needs, (2) a  
19 description of the services recommended for treatment, (3) the  
20 goals of each type of element of service, (4) an anticipated  
21 timetable for the accomplishment of the goals, and (5) a  
22 designation of the qualified professional responsible for the  
23 implementation of the plan. The report may also include  
24 unsupervised on-grounds privileges, off-grounds privileges  
25 (with or without escort by personnel of the Department of Human  
26 Services), home visits and participation in work programs, but

1 only where such privileges have been approved by specific court  
2 order, which order may include such conditions on the defendant  
3 as the Court may deem appropriate and necessary to reasonably  
4 assure the defendant's satisfactory progress in treatment and  
5 the safety of the defendant and others.

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

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

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

21 (d) When the facility director determines that:

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

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

1           need of any mental health services; or

2           (3) (blank);

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

18                 (i) (blank); or

19                 (ii) in need of mental health services in the form of  
20                 inpatient care; or

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

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

24                 (v) (blank).

25           A crime victim shall be allowed to present an oral and  
26           written statement. The court shall allow a victim to make an

1 oral statement if the victim is present in the courtroom and  
2 requests to make an oral statement. An oral statement includes  
3 the victim or a representative of the victim reading the  
4 written statement. A victim and any person making an oral  
5 statement shall not be put under oath or subject to  
6 cross-examination. All statements shall become part of the  
7 record of the court.

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

11 (e) A defendant admitted pursuant to this Section, or any  
12 person on his behalf, may file a petition for treatment plan  
13 review or discharge or conditional release under the standards  
14 of this Section in the Court which rendered the verdict. Upon  
15 receipt of a petition for treatment plan review or discharge or  
16 conditional release, the Court shall set a hearing to be held  
17 within 120 days. Thereafter, no new petition may be filed for  
18 180 days without leave of the Court.

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

1 Human Services shall be ordered, and the report considered at  
2 the time of the hearing.

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

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

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

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

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

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

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

26 (7) the defendant's history or potential for alcohol

1 and drug abuse;

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

3 (9) any specialized physical or medical needs of the  
4 defendant;

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

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

10 (11.5) a written or oral statement made by the victim;  
11 and

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

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

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

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



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

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

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

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

1 Developmental Disabilities (now the Department of Human  
2 Services).

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

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

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

23 (Source: P.A. 100-27, eff. 1-1-18; 100-424, eff. 1-1-18;  
24 100-863, eff. 8-14-18; 100-961, eff. 1-1-19; revised  
25 10-3-18.)".