



Rep. Emily McAsey

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LRB098 18643 MRW 58123 a

1 AMENDMENT TO HOUSE BILL 5710

2 AMENDMENT NO. _____. Amend House Bill 5710 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Sections 110-5 and 110-10 and by adding
6 Section 112A-32 as follows:

7 (725 ILCS 5/110-5) (from Ch. 38, par. 110-5)

8 Sec. 110-5. Determining the amount of bail and conditions
9 of release.

10 (a) In determining the amount of monetary bail or
11 conditions of release, if any, which will reasonably assure the
12 appearance of a defendant as required or the safety of any
13 other person or the community and the likelihood of compliance
14 by the defendant with all the conditions of bail, the court
15 shall, on the basis of available information, take into account
16 such matters as the nature and circumstances of the offense

1 charged, whether the evidence shows that as part of the offense
2 there was a use of violence or threatened use of violence,
3 whether the offense involved corruption of public officials or
4 employees, whether there was physical harm or threats of
5 physical harm to any public official, public employee, judge,
6 prosecutor, juror or witness, senior citizen, child or
7 handicapped person, whether evidence shows that during the
8 offense or during the arrest the defendant possessed or used a
9 firearm, machine gun, explosive or metal piercing ammunition or
10 explosive bomb device or any military or paramilitary armament,
11 whether the evidence shows that the offense committed was
12 related to or in furtherance of the criminal activities of an
13 organized gang or was motivated by the defendant's membership
14 in or allegiance to an organized gang, the condition of the
15 victim, any written statement submitted by the victim or
16 proffer or representation by the State regarding the impact
17 which the alleged criminal conduct has had on the victim and
18 the victim's concern, if any, with further contact with the
19 defendant if released on bail, whether the offense was based on
20 racial, religious, sexual orientation or ethnic hatred, the
21 likelihood of the filing of a greater charge, the likelihood of
22 conviction, the sentence applicable upon conviction, the
23 weight of the evidence against such defendant, whether there
24 exists motivation or ability to flee, whether there is any
25 verification as to prior residence, education, or family ties
26 in the local jurisdiction, in another county, state or foreign

1 country, the defendant's employment, financial resources,
2 character and mental condition, past conduct, prior use of
3 alias names or dates of birth, and length of residence in the
4 community, the consent of the defendant to periodic drug
5 testing in accordance with Section 110-6.5, whether a foreign
6 national defendant is lawfully admitted in the United States of
7 America, whether the government of the foreign national
8 maintains an extradition treaty with the United States by which
9 the foreign government will extradite to the United States its
10 national for a trial for a crime allegedly committed in the
11 United States, whether the defendant is currently subject to
12 deportation or exclusion under the immigration laws of the
13 United States, whether the defendant, although a United States
14 citizen, is considered under the law of any foreign state a
15 national of that state for the purposes of extradition or
16 non-extradition to the United States, the amount of unrecovered
17 proceeds lost as a result of the alleged offense, the source of
18 bail funds tendered or sought to be tendered for bail, whether
19 from the totality of the court's consideration, the loss of
20 funds posted or sought to be posted for bail will not deter the
21 defendant from flight, whether the evidence shows that the
22 defendant is engaged in significant possession, manufacture,
23 or delivery of a controlled substance or cannabis, either
24 individually or in consort with others, whether at the time of
25 the offense charged he or she was on bond or pre-trial release
26 pending trial, probation, periodic imprisonment or conditional

1 discharge pursuant to this Code or the comparable Code of any
2 other state or federal jurisdiction, whether the defendant is
3 on bond or pre-trial release pending the imposition or
4 execution of sentence or appeal of sentence for any offense
5 under the laws of Illinois or any other state or federal
6 jurisdiction, whether the defendant is under parole, aftercare
7 release, mandatory supervised release, or work release from the
8 Illinois Department of Corrections or Illinois Department of
9 Juvenile Justice or any penal institution or corrections
10 department of any state or federal jurisdiction, the
11 defendant's record of convictions, whether the defendant has
12 been convicted of a misdemeanor or ordinance offense in
13 Illinois or similar offense in other state or federal
14 jurisdiction within the 10 years preceding the current charge
15 or convicted of a felony in Illinois, whether the defendant was
16 convicted of an offense in another state or federal
17 jurisdiction that would be a felony if committed in Illinois
18 within the 20 years preceding the current charge or has been
19 convicted of such felony and released from the penitentiary
20 within 20 years preceding the current charge if a penitentiary
21 sentence was imposed in Illinois or other state or federal
22 jurisdiction, the defendant's records of juvenile adjudication
23 of delinquency in any jurisdiction, any record of appearance or
24 failure to appear by the defendant at court proceedings,
25 whether there was flight to avoid arrest or prosecution,
26 whether the defendant escaped or attempted to escape to avoid

1 arrest, whether the defendant refused to identify himself or
2 herself, or whether there was a refusal by the defendant to be
3 fingerprinted as required by law. Information used by the court
4 in its findings or stated in or offered in connection with this
5 Section may be by way of proffer based upon reliable
6 information offered by the State or defendant. All evidence
7 shall be admissible if it is relevant and reliable regardless
8 of whether it would be admissible under the rules of evidence
9 applicable at criminal trials. If the State presents evidence
10 that the offense committed by the defendant was related to or
11 in furtherance of the criminal activities of an organized gang
12 or was motivated by the defendant's membership in or allegiance
13 to an organized gang, and if the court determines that the
14 evidence may be substantiated, the court shall prohibit the
15 defendant from associating with other members of the organized
16 gang as a condition of bail or release. For the purposes of
17 this Section, "organized gang" has the meaning ascribed to it
18 in Section 10 of the Illinois Streetgang Terrorism Omnibus
19 Prevention Act.

20 (b) The amount of bail shall be:

21 (1) Sufficient to assure compliance with the
22 conditions set forth in the bail bond, which shall include
23 the defendant's current address with a written
24 admonishment to the defendant that he or she must comply
25 with the provisions of Section 110-12 regarding any change
26 in his or her address. The defendant's address shall at all

1 times remain a matter of public record with the clerk of
2 the court.

3 (2) Not oppressive.

4 (3) Considerate of the financial ability of the
5 accused.

6 (4) When a person is charged with a drug related
7 offense involving possession or delivery of cannabis or
8 possession or delivery of a controlled substance as defined
9 in the Cannabis Control Act, the Illinois Controlled
10 Substances Act, or the Methamphetamine Control and
11 Community Protection Act, the full street value of the
12 drugs seized shall be considered. "Street value" shall be
13 determined by the court on the basis of a proffer by the
14 State based upon reliable information of a law enforcement
15 official contained in a written report as to the amount
16 seized and such proffer may be used by the court as to the
17 current street value of the smallest unit of the drug
18 seized.

19 (b-5) Upon the filing of a written request demonstrating
20 reasonable cause, the State's Attorney may request a source of
21 bail hearing either before or after the posting of any funds.
22 If the hearing is granted, before the posting of any bail, the
23 accused must file a written notice requesting that the court
24 conduct a source of bail hearing. The notice must be
25 accompanied by justifying affidavits stating the legitimate
26 and lawful source of funds for bail. At the hearing, the court

1 shall inquire into any matters stated in any justifying
2 affidavits, and may also inquire into matters appropriate to
3 the determination which shall include, but are not limited to,
4 the following:

5 (1) the background, character, reputation, and
6 relationship to the accused of any surety; and

7 (2) the source of any money or property deposited by
8 any surety, and whether any such money or property
9 constitutes the fruits of criminal or unlawful conduct; and

10 (3) the source of any money posted as cash bail, and
11 whether any such money constitutes the fruits of criminal
12 or unlawful conduct; and

13 (4) the background, character, reputation, and
14 relationship to the accused of the person posting cash
15 bail.

16 Upon setting the hearing, the court shall examine, under
17 oath, any persons who may possess material information.

18 The State's Attorney has a right to attend the hearing, to
19 call witnesses and to examine any witness in the proceeding.
20 The court shall, upon request of the State's Attorney, continue
21 the proceedings for a reasonable period to allow the State's
22 Attorney to investigate the matter raised in any testimony or
23 affidavit. If the hearing is granted after the accused has
24 posted bail, the court shall conduct a hearing consistent with
25 this subsection (b-5). At the conclusion of the hearing, the
26 court must issue an order either approving or disapproving the

1 bail.

2 (c) When a person is charged with an offense punishable by
3 fine only the amount of the bail shall not exceed double the
4 amount of the maximum penalty.

5 (d) When a person has been convicted of an offense and only
6 a fine has been imposed the amount of the bail shall not exceed
7 double the amount of the fine.

8 (e) The State may appeal any order granting bail or setting
9 a given amount for bail.

10 (f) When a person is charged with a violation of an order
11 of protection under Section 12-3.4 or 12-30 of the Criminal
12 Code of 1961 or the Criminal Code of 2012,

13 (1) whether the alleged incident involved harassment
14 or abuse, as defined in the Illinois Domestic Violence Act
15 of 1986;

16 (2) whether the person has a history of domestic
17 violence, as defined in the Illinois Domestic Violence Act,
18 or a history of other criminal acts;

19 (3) based on the mental health of the person;

20 (4) whether the person has a history of violating the
21 orders of any court or governmental entity;

22 (5) whether the person has been, or is, potentially a
23 threat to any other person;

24 (6) whether the person has access to deadly weapons or
25 a history of using deadly weapons;

26 (7) whether the person has a history of abusing alcohol

1 or any controlled substance;

2 (8) based on the severity of the alleged incident that
3 is the basis of the alleged offense, including, but not
4 limited to, the duration of the current incident, and
5 whether the alleged incident involved physical injury,
6 sexual assault, strangulation, abuse during the alleged
7 victim's pregnancy, abuse of pets, or forcible entry to
8 gain access to the alleged victim;

9 (9) whether a separation of the person from the alleged
10 victim or a termination of the relationship between the
11 person and the alleged victim has recently occurred or is
12 pending;

13 (10) whether the person has exhibited obsessive or
14 controlling behaviors toward the alleged victim,
15 including, but not limited to, stalking, surveillance, or
16 isolation of the alleged victim or victim's family member
17 or members;

18 (11) whether the person has expressed suicidal or
19 homicidal ideations;

20 (12) based on any information contained in the
21 complaint and any police reports, affidavits, or other
22 documents accompanying the complaint,

23 the court may, in its discretion, order the respondent to
24 undergo a risk assessment evaluation conducted by an Illinois
25 Department of Human Services approved partner abuse
26 intervention program provider, pretrial service, probation, or

1 parole agency. These agencies shall have access to summaries of
2 the defendant's criminal history, which shall not include
3 victim interviews or information, for the risk evaluation,
4 except that a pretrial service agency or probation department
5 shall have access to victim interviews conducted by law
6 enforcement agencies and access for a direct interview of the
7 victim for the purpose of determining bail. A probation officer
8 shall not have access to any confidential communications
9 protected under Section 227 of the Illinois Domestic Violence
10 Act of 1986. Prior to any direct interview of a victim by a
11 probation department or pre-trial service agency, a victim must
12 be informed of his or her right to decline the interview by the
13 official who is to conduct the interview. Communications
14 between a domestic violence victim and the probation department
15 or pre-trial service agency are protected under Section 8-802.4
16 of the Code of Civil Procedure. Based on the information
17 collected from the 12 points to be considered at a bail hearing
18 for a violation of an order of protection, the results of any
19 risk evaluation conducted and the other circumstances of the
20 violation, the court may order that the person, as a condition
21 of bail, be placed under electronic surveillance as provided in
22 Section 5-8A-7 of the Unified Code of Corrections.

23 (Source: P.A. 97-1150, eff. 1-25-13; 98-558, eff. 1-1-14.)

24 (725 ILCS 5/110-10) (from Ch. 38, par. 110-10)

25 Sec. 110-10. Conditions of bail bond.

1 (a) If a person is released prior to conviction, either
2 upon payment of bail security or on his or her own
3 recognizance, the conditions of the bail bond shall be that he
4 or she will:

5 (1) Appear to answer the charge in the court having
6 jurisdiction on a day certain and thereafter as ordered by
7 the court until discharged or final order of the court;

8 (2) Submit himself or herself to the orders and process
9 of the court;

10 (3) Not depart this State without leave of the court;

11 (4) Not violate any criminal statute of any
12 jurisdiction;

13 (5) At a time and place designated by the court,
14 surrender all firearms in his or her possession to a law
15 enforcement officer designated by the court to take custody
16 of and impound the firearms and physically surrender his or
17 her Firearm Owner's Identification Card to the clerk of the
18 circuit court when the offense the person has been charged
19 with is a forcible felony, stalking, aggravated stalking,
20 domestic battery, any violation of the Illinois Controlled
21 Substances Act, the Methamphetamine Control and Community
22 Protection Act, or the Cannabis Control Act that is
23 classified as a Class 2 or greater felony, or any felony
24 violation of Article 24 of the Criminal Code of 1961 or the
25 Criminal Code of 2012; the court may, however, forgo the
26 imposition of this condition when the circumstances of the

1 case clearly do not warrant it or when its imposition would
2 be impractical; if the Firearm Owner's Identification Card
3 is confiscated, the clerk of the circuit court shall mail
4 the confiscated card to the Illinois State Police; all
5 legally possessed firearms shall be returned to the person
6 upon the charges being dismissed, or if the person is found
7 not guilty, unless the finding of not guilty is by reason
8 of insanity; and

9 (6) At a time and place designated by the court, submit
10 to a psychological evaluation when the person has been
11 charged with a violation of item (4) of subsection (a) of
12 Section 24-1 of the Criminal Code of 1961 or the Criminal
13 Code of 2012 and that violation occurred in a school or in
14 any conveyance owned, leased, or contracted by a school to
15 transport students to or from school or a school-related
16 activity, or on any public way within 1,000 feet of real
17 property comprising any school.

18 Psychological evaluations ordered pursuant to this Section
19 shall be completed promptly and made available to the State,
20 the defendant, and the court. As a further condition of bail
21 under these circumstances, the court shall order the defendant
22 to refrain from entering upon the property of the school,
23 including any conveyance owned, leased, or contracted by a
24 school to transport students to or from school or a
25 school-related activity, or on any public way within 1,000 feet
26 of real property comprising any school. Upon receipt of the

1 psychological evaluation, either the State or the defendant may
2 request a change in the conditions of bail, pursuant to Section
3 110-6 of this Code. The court may change the conditions of bail
4 to include a requirement that the defendant follow the
5 recommendations of the psychological evaluation, including
6 undergoing psychiatric treatment. The conclusions of the
7 psychological evaluation and any statements elicited from the
8 defendant during its administration are not admissible as
9 evidence of guilt during the course of any trial on the charged
10 offense, unless the defendant places his or her mental
11 competency in issue.

12 (b) The court may impose other conditions, such as the
13 following, if the court finds that such conditions are
14 reasonably necessary to assure the defendant's appearance in
15 court, protect the public from the defendant, or prevent the
16 defendant's unlawful interference with the orderly
17 administration of justice:

18 (1) Report to or appear in person before such person or
19 agency as the court may direct;

20 (2) Refrain from possessing a firearm or other
21 dangerous weapon;

22 (3) Refrain from approaching or communicating with
23 particular persons or classes of persons;

24 (4) Refrain from going to certain described
25 geographical areas or premises;

26 (5) Refrain from engaging in certain activities or

1 indulging in intoxicating liquors or in certain drugs;

2 (6) Undergo treatment for drug addiction or
3 alcoholism;

4 (7) Undergo medical or psychiatric treatment;

5 (8) Work or pursue a course of study or vocational
6 training;

7 (9) Attend or reside in a facility designated by the
8 court;

9 (10) Support his or her dependents;

10 (11) If a minor resides with his or her parents or in a
11 foster home, attend school, attend a non-residential
12 program for youths, and contribute to his or her own
13 support at home or in a foster home;

14 (12) Observe any curfew ordered by the court;

15 (13) Remain in the custody of such designated person or
16 organization agreeing to supervise his release. Such third
17 party custodian shall be responsible for notifying the
18 court if the defendant fails to observe the conditions of
19 release which the custodian has agreed to monitor, and
20 shall be subject to contempt of court for failure so to
21 notify the court;

22 (14) Be placed under direct supervision of the Pretrial
23 Services Agency, Probation Department or Court Services
24 Department in a pretrial bond home supervision capacity
25 with or without the use of an approved electronic
26 monitoring device subject to Article 8A of Chapter V of the

1 Unified Code of Corrections;

2 (14.1) The court shall impose upon a defendant who is
3 charged with any alcohol, cannabis, methamphetamine, or
4 controlled substance violation and is placed under direct
5 supervision of the Pretrial Services Agency, Probation
6 Department or Court Services Department in a pretrial bond
7 home supervision capacity with the use of an approved
8 monitoring device, as a condition of such bail bond, a fee
9 that represents costs incidental to the electronic
10 monitoring for each day of such bail supervision ordered by
11 the court, unless after determining the inability of the
12 defendant to pay the fee, the court assesses a lesser fee
13 or no fee as the case may be. The fee shall be collected by
14 the clerk of the circuit court. The clerk of the circuit
15 court shall pay all monies collected from this fee to the
16 county treasurer for deposit in the substance abuse
17 services fund under Section 5-1086.1 of the Counties Code;

18 (14.2) The court shall impose upon all defendants,
19 including those defendants subject to paragraph (14.1)
20 above, placed under direct supervision of the Pretrial
21 Services Agency, Probation Department or Court Services
22 Department in a pretrial bond home supervision capacity
23 with the use of an approved monitoring device, as a
24 condition of such bail bond, a fee which shall represent
25 costs incidental to such electronic monitoring for each day
26 of such bail supervision ordered by the court, unless after

1 determining the inability of the defendant to pay the fee,
2 the court assesses a lesser fee or no fee as the case may
3 be. The fee shall be collected by the clerk of the circuit
4 court. The clerk of the circuit court shall pay all monies
5 collected from this fee to the county treasurer who shall
6 use the monies collected to defray the costs of
7 corrections. The county treasurer shall deposit the fee
8 collected in the county working cash fund under Section
9 6-27001 or Section 6-29002 of the Counties Code, as the
10 case may be;

11 (14.3) The Chief Judge of the Judicial Circuit may
12 establish reasonable fees to be paid by a person receiving
13 pretrial services while under supervision of a pretrial
14 services agency, probation department, or court services
15 department. Reasonable fees may be charged for pretrial
16 services including, but not limited to, pretrial
17 supervision, diversion programs, electronic monitoring,
18 victim impact services, drug and alcohol testing, DNA
19 testing, GPS electronic monitoring, assessments and
20 evaluations related to domestic violence and other
21 victims, and victim mediation services. The person
22 receiving pretrial services may be ordered to pay all costs
23 incidental to pretrial services in accordance with his or
24 her ability to pay those costs;

25 (14.4) For persons charged with violating Section
26 11-501 of the Illinois Vehicle Code, refrain from operating

1 a motor vehicle not equipped with an ignition interlock
2 device, as defined in Section 1-129.1 of the Illinois
3 Vehicle Code, pursuant to the rules promulgated by the
4 Secretary of State for the installation of ignition
5 interlock devices. Under this condition the court may allow
6 a defendant who is not self-employed to operate a vehicle
7 owned by the defendant's employer that is not equipped with
8 an ignition interlock device in the course and scope of the
9 defendant's employment;

10 (15) Comply with the terms and conditions of an order
11 of protection issued by the court under the Illinois
12 Domestic Violence Act of 1986 or an order of protection
13 issued by the court of another state, tribe, or United
14 States territory;

15 (16) Under Section 110-6.5 comply with the conditions
16 of the drug testing program; and

17 (17) Such other reasonable conditions as the court may
18 impose.

19 (c) When a person is charged with an offense under Section
20 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14,
21 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961 or the
22 Criminal Code of 2012, involving a victim who is a minor under
23 18 years of age living in the same household with the defendant
24 at the time of the offense, in granting bail or releasing the
25 defendant on his own recognizance, the judge shall impose
26 conditions to restrict the defendant's access to the victim

1 which may include, but are not limited to conditions that he
2 will:

- 3 1. Vacate the Household.
- 4 2. Make payment of temporary support to his dependents.
- 5 3. Refrain from contact or communication with the child
6 victim, except as ordered by the court.

7 (d) When a person is charged with a criminal offense and
8 the victim is a family or household member as defined in
9 Article 112A, conditions shall be imposed at the time of the
10 defendant's release on bond that restrict the defendant's
11 access to the victim. Unless provided otherwise by the court,
12 the restrictions shall include requirements that the defendant
13 do the following:

14 (1) refrain from contact or communication with the
15 victim for a minimum period of 72 hours following the
16 defendant's release; and

17 (2) refrain from entering or remaining at the victim's
18 residence for a minimum period of 72 hours following the
19 defendant's release.

20 If the court determines there is a continuing danger to any
21 victim and that the 72-hour period of either no contact with a
22 victim or entering the victim's residence, as provided in this
23 subsection (d) would not be sufficient, then the court shall
24 add a second consecutive 72-hour period of no contact and a
25 prohibition on the defendant from entering the victim's
26 residence.

1 (e) Local law enforcement agencies shall develop
2 standardized bond forms for use in cases involving family or
3 household members as defined in Article 112A, including
4 specific conditions of bond as provided in subsection (d).
5 Failure of any law enforcement department to develop or use
6 those forms shall in no way limit the applicability and
7 enforcement of subsections (d) and (f).

8 (f) If the defendant is admitted to bail after conviction
9 the conditions of the bail bond shall be that he will, in
10 addition to the conditions set forth in subsections (a) and (b)
11 hereof:

12 (1) Duly prosecute his appeal;

13 (2) Appear at such time and place as the court may
14 direct;

15 (3) Not depart this State without leave of the court;

16 (4) Comply with such other reasonable conditions as the
17 court may impose; and

18 (5) If the judgment is affirmed or the cause reversed
19 and remanded for a new trial, forthwith surrender to the
20 officer from whose custody he was bailed.

21 (g) Upon a finding of guilty for any felony offense, the
22 defendant shall physically surrender, at a time and place
23 designated by the court, any and all firearms in his or her
24 possession and his or her Firearm Owner's Identification Card
25 as a condition of remaining on bond pending sentencing.

26 (Source: P.A. 96-340, eff. 8-11-09; 96-1551, eff. 7-1-11;

1 97-401, eff. 1-1-12; 97-1109, eff. 1-1-13; 97-1150, eff.
2 1-25-13.)

3 (725 ILCS 5/112A-32 new)

4 Sec. 112A-32. Confidentiality of statements to probation
5 officers.

6 (a) Section 8-802.4 of the Code of Civil Procedure shall
7 apply to all proceedings under this Article.

8 (b) No probation officer shall disclose any confidential
9 communication or be examined as a witness in any civil,
10 criminal, or administrative proceeding as to any confidential
11 communication without the written consent of the domestic
12 violence victim or a representative of the victim as provided
13 in subsection (d) of Section 8-802.4 of the Code of Civil
14 Procedure, except to the extent the probation officer
15 reasonably believes necessary to prevent reasonably certain
16 death or substantial bodily harm. A probation officer may not
17 disclose, affirm, or deny whether any confidential
18 communication occurred or the existence of any interview,
19 written assessment, work papers, or notes, in any proceeding to
20 determine the conditions of bail in conjunction with a risk
21 assessment evaluation conducted under subsection (f) of
22 Section 110-5 of this Code.

23 Section 10. The Pretrial Services Act is amended by
24 changing Section 31 as follows:

1 (725 ILCS 185/31) (from Ch. 38, par. 331)

2 Sec. 31. (a) Information and records maintained by the
3 pretrial services agency which have not been disclosed in open
4 court during a court proceeding shall not be released by the
5 pretrial services agency to any individual or organization,
6 other than any employee of a Probation and Court Service
7 Department, without the express permission of the interviewed
8 or supervised person at or near the time the information is to
9 be released, except as provided in subsection (b) of this
10 Section. An individual shall have access to all information and
11 records about himself or herself maintained by or collected by
12 the pretrial services agency. The principle of confidentiality
13 shall not bar a pretrial services agency from making its data
14 available for research purposes to qualified personnel,
15 provided that no records or other information shall be made
16 available in which individuals interviewed or supervised are
17 identified or from which their identities are ascertainable.

18 (b) A probation officer shall not disclose any confidential
19 communication nor be examined as a witness in any civil,
20 criminal, or administrative proceeding as to any confidential
21 communication without the written consent of the domestic
22 violence victim or a representative of the victim as provided
23 in subsection (d) of Section 8-802.4 of the Code of Civil
24 Procedure, except to the extent the probation officer
25 reasonably believes necessary to prevent reasonably certain

1 death or substantial bodily harm. A probation officer may not
2 disclose, affirm, or deny whether any confidential
3 communication occurred or the existence of any interview,
4 written assessment, work papers, or notes, in any proceeding to
5 determine the conditions of bail in conjunction with a risk
6 assessment evaluation conducted under subsection (f) of
7 Section 110-5 of the Code of Criminal Procedure of 1963.

8 (Source: P.A. 91-357, eff. 7-29-99.)

9 Section 15. The Probation and Probation Officers Act is
10 amended by adding Section 15.2 as follows:

11 (730 ILCS 110/15.2 new)

12 Sec. 15.2. Protection of domestic violence victims.

13 (a) The General Assembly finds that responses to offenses
14 of domestic violence and violations of domestic orders of
15 protection require careful attention to the safety of the
16 victim and all dependent family members, and that sufficient
17 protections to those victims are required to ensure the public
18 safety of the victims and the community.

19 (b) The Probation Division of the Administrative Office of
20 the Illinois Courts shall, within one year from the effective
21 date of this amendatory Act of the 98th General Assembly, with
22 the assistance of other members of the criminal justice
23 community, mental health or behavioral health experts, and
24 advocates for the protection of domestic violence victims,

1 develop a risk assessment tool to assess the continuing danger
2 to victims of domestic violence and their dependent family
3 members.

4 (c) The Probation Division of the Administrative Office of
5 the Illinois Courts shall implement training standards for
6 probation officers for domestic violence caseloads. A 40 hour
7 specialized course shall be developed with attention to the
8 needs, protections, and special circumstances of domestic
9 violence victims and their dependent family members. It shall
10 also focus on the behavior patterns of domestic violence
11 offenders. The Probation Division shall determine appropriate
12 scheduling and certification for completion. Probation officer
13 basic training shall also include attention to domestic
14 violence training. On and after January 1, 2017, any probation
15 officer who conducts a risk assessment evaluation under
16 subsection (f) of Section 110-5 of the Code of Criminal
17 Procedure of 1963, must be certified under this specialized
18 course.

19 (d) No probation officer shall disclose any confidential
20 communication or be examined as a witness in any civil,
21 criminal or administrative proceeding as to any confidential
22 communication without the written consent of the domestic
23 violence victim or a representative of the victim as provided
24 in subsection (d) of Section 8-802.4 of the Code of Civil
25 Procedure, except to the extent the probation officer
26 reasonably believes necessary to prevent reasonably certain

1 death or substantial bodily harm. A probation officer may not
2 disclose, affirm, or deny whether any confidential
3 communication occurred or the existence of any interview,
4 written assessment, work papers, or notes, in any proceeding to
5 determine the conditions of bail in conjunction with a risk
6 assessment evaluation conducted under subsection (f) of
7 Section 110-5 of the Code of Criminal Procedure of 1963.

8 Section 20. The Code of Civil Procedure is amended by
9 adding Section 8-802.4 as follows:

10 (735 ILCS 5/8-802.4 new)

11 Sec. 8-802.4. Confidentiality of statements made to
12 probation officers by victims of domestic violence.

13 (a) Purpose. This Section is intended to protect victims of
14 domestic violence from public disclosure of interviews,
15 statements they make in confidence to probation officers, and
16 the work product from those interviews and statements. Because
17 of the fear of future or escalating incidents of domestic
18 violence, victims hesitate to seek the protection of the court
19 system. As a result they not only fail to seek intervention,
20 but may feel a lack of safety in seeking the support necessary
21 to report the crime and aid the court system and law
22 enforcement in preventing future crimes.

23 (b) Definitions. As used in this Section:

24 "Confidential communication" means any communication

1 between a domestic violence victim and a probation officer
2 in the course of any risk assessment evaluation conducted
3 under subsection (f) of Section 110-5 of the Code of
4 Criminal Procedure of 1963 for the purposes of assisting
5 the probation officer in recommending conditions of bail,
6 release, and conditions of probation. "Confidential
7 communication" includes all records, notes, work papers,
8 interview notes or written assessments kept by the
9 probation officer or by the probation department in the
10 course of any risk assessment evaluation conducted under
11 subsection (f) of Section 110-5 of the Code of Criminal
12 Procedure of 1963. A probation officer may not disclose,
13 affirm, or deny whether any confidential communication
14 occurred or the existence of any interview, written
15 assessment, work papers, or notes, in any proceeding to
16 determine the conditions of bail in conjunction with a risk
17 assessment evaluation conducted under subsection (f) of
18 Section 110-5 of the Code of Criminal Procedure of 1963.

19 "Domestic violence victim" means a person who
20 communicates with a probation officer for the purpose of
21 assisting the probation officer in recommending conditions
22 of bail, release, and conditions of probation under
23 subsection (f) of Section 110-5 of the Code of Criminal
24 Procedure of 1963, whether or not charges have been filed.

25 "Probation department" means any department as defined
26 in Section 9b of the Probation and Probation Officers Act.

1 "Probation officer" means any probation officer as
2 defined in Section 9b of the Probation and Probation
3 Officers Act who has been trained in accordance with
4 Section 15.2 of that Act.

5 (c) Confidentiality. No probation officer shall disclose
6 any confidential communication or be examined as a witness in
7 any civil, criminal or administrative proceeding as to any
8 confidential communication without the written consent of the
9 domestic violence victim or a representative of the victim as
10 provided in subsection (d) of this Section, except to the
11 extent the probation officer reasonably believes necessary to
12 prevent reasonably certain death or substantial bodily harm.
13 Any probation officer or probation department participating in
14 good faith in the disclosing of communications under this
15 Section shall have immunity from any liability, civil,
16 criminal, or otherwise that might result from the action.

17 (d) Waiver of privilege.

18 (1) The confidential nature of the confidential
19 communication is not waived by: the presence of a third
20 person who further expresses the interests of the domestic
21 violence victim at the time of the communication; or
22 disclosure to a third person with the written consent of
23 the domestic violence victim when reasonably necessary to
24 accomplish the purposes of a risk assessment evaluation
25 under subsection (f) of Section 110-5 of the Code of
26 Criminal Procedure of 1963.

1 (2) The confidential nature of the confidential
2 communication to probation officers is not waived when: the
3 domestic violence victim inspects the records; or in the
4 case of a minor less than 12 years of age, a parent or
5 guardian whose interests are not adverse to the minor
6 inspects the records; or in the case of a minor victim 12
7 years or older, a parent or guardian whose interests are
8 not adverse to the minor inspects the records with the
9 victim's consent, or in the case of an adult who has a
10 guardian of his or her person, the guardian inspects the
11 records with the victim's consent.

12 (3) When a domestic violence victim is deceased, the
13 executor or administrator of the victim's estate may waive
14 the privilege established by this Section, unless the
15 executor or administrator has an interest adverse to the
16 victim.

17 (4) A domestic violence victim who is a minor 12 years
18 of age or older may knowingly waive the privilege
19 established in this Section. When a minor is, in the
20 opinion of the Court, incapable of knowingly waiving the
21 privilege, the parent or guardian of the minor may waive
22 the privilege on behalf of the minor, unless the parent or
23 guardian has been charged with a crime against the minor or
24 otherwise has any interest adverse to that of the minor
25 with respect to the waiver of the privilege.

26 (5) An adult domestic violence victim who has a

1 guardian of his or her person may knowingly waive the
2 privilege established in this Section. When the victim is,
3 in the opinion of the court, incapable of knowingly waiving
4 the privilege, the guardian of the adult victim may waive
5 the privilege on behalf of the victim, unless the guardian
6 has been charged with a crime against the victim or
7 otherwise has any interest adverse to the victim with
8 respect to the privilege.

9 (e) Any probation officer who knowingly discloses any
10 confidential communication in violation of this Section
11 commits a Class C misdemeanor.

12 Section 99. Effective date. This Section and Sections 10
13 and 15 of this Act take effect upon becoming law. Sections 5
14 and 20 of this Act take effect July 1, 2015."