



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB5573

Introduced 2/16/2018, by Rep. Christian L. Mitchell

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-705	
725 ILCS 120/3	from Ch. 38, par. 1403
725 ILCS 120/4.5	
725 ILCS 120/6	from Ch. 38, par. 1406
730 ILCS 5/5-2-4	from Ch. 38, par. 1005-2-4
730 ILCS 5/5-4-1	from Ch. 38, par. 1005-4-1

Amends the Juvenile Court Act of 1987. Provides that a crime victim shall be allowed to present an oral or written statement in any case in which: (1) a juvenile has been adjudicated delinquent for a violent crime after a bench or jury trial; or (2) the petition alleged the commission of a violent crime and the juvenile has been adjudicated delinquent under a plea agreement of a crime that is not a violent crime. Amends the Rights of Crime Victims and Witnesses Act. Makes changes to the definitions of "sentence", "sentencing", and "court proceeding". Defines "status hearing" and "support person". Provides that a party who intends to call an advocate as a witness at trial must seek permission of the court before the subpoena is issued. Provides that the party must file a written motion at least 90 days before trial that sets forth specifically the issues on which the advocate's testimony is sought and an offer of proof regarding: (1) the content of the anticipated testimony of the advocate; and (2) the relevance, admissibility, and materiality of the anticipated testimony in sufficient time to allow the court to rule and the victim to seek appellate review. Provides that if a victim has asserted the right to have a support person present at the court proceedings, the victim shall provide the name of the person the victim has chosen to be the victim's support person to the prosecuting attorney, who shall provide the name to defendant. Provides that if the defendant intends to call the support person as a witness at trial, the defendant must seek permission of the court before a subpoena is issued. Amends the Unified Code of Corrections. Provides that the court shall allow a victim to make an oral statement if the victim is present in the courtroom and requests to make an oral statement. Provides that an oral statement includes the victim or a representative of the victim reading the written statement. Provides that victim and any person making an oral statement shall not be put under oath or subject to cross-examination. Makes other changes.

LRB100 20734 SLF 36213 b

A BILL FOR

1 AN ACT concerning crime victims.

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

4 Section 5. The Juvenile Court Act of 1987 is amended by  
5 changing Section 5-705 as follows:

6 (705 ILCS 405/5-705)

7 Sec. 5-705. Sentencing hearing; evidence; continuance.

8 (1) In this subsection (1), "violent crime" has the same  
9 meaning ascribed to the term in subsection (c) of Section 3 of  
10 the Rights of Crime Victims and Witnesses Act. At the  
11 sentencing hearing, the court shall determine whether it is in  
12 the best interests of the minor or the public that he or she be  
13 made a ward of the court, and, if he or she is to be made a ward  
14 of the court, the court shall determine the proper disposition  
15 best serving the interests of the minor and the public. All  
16 evidence helpful in determining these questions, including  
17 oral and written reports, may be admitted and may be relied  
18 upon to the extent of its probative value, even though not  
19 competent for the purposes of the trial. A crime victim shall  
20 be allowed to present an oral or written statement, as  
21 guaranteed by Article I, Section 8.1 of the Illinois  
22 Constitution and as provided in Section 6 of the Rights of  
23 Crime Victims and Witnesses Act, in any case in which: (a) a

1 juvenile has been adjudicated delinquent for a violent crime  
2 after a bench or jury trial; or (b) the petition alleged the  
3 commission of a violent crime and the juvenile has been  
4 adjudicated delinquent under a plea agreement of a crime that  
5 is not a violent crime. The court shall allow a victim to make  
6 an oral statement if the victim is present in the courtroom and  
7 requests to make an oral statement. An oral statement includes  
8 the victim or a representative of the victim reading the  
9 written statement. The court may allow persons impacted by the  
10 crime who are not victims under subsection (a) of Section 3 of  
11 the Rights of Crime Victims and Witnesses Act to present an  
12 oral or written statement. A victim and any person making an  
13 oral statement shall not be put under oath or subject to  
14 cross-examination. A record of a prior continuance under  
15 supervision under Section 5-615, whether successfully  
16 completed or not, is admissible at the sentencing hearing. No  
17 order of commitment to the Department of Juvenile Justice shall  
18 be entered against a minor before a written report of social  
19 investigation, which has been completed within the previous 60  
20 days, is presented to and considered by the court.

21 (2) Once a party has been served in compliance with Section  
22 5-525, no further service or notice must be given to that party  
23 prior to proceeding to a sentencing hearing. Before imposing  
24 sentence the court shall advise the State's Attorney and the  
25 parties who are present or their counsel of the factual  
26 contents and the conclusions of the reports prepared for the

1 use of the court and considered by it, and afford fair  
2 opportunity, if requested, to controvert them. Factual  
3 contents, conclusions, documents and sources disclosed by the  
4 court under this paragraph shall not be further disclosed  
5 without the express approval of the court.

6 (3) On its own motion or that of the State's Attorney, a  
7 parent, guardian, legal custodian, or counsel, the court may  
8 adjourn the hearing for a reasonable period to receive reports  
9 or other evidence and, in such event, shall make an appropriate  
10 order for detention of the minor or his or her release from  
11 detention subject to supervision by the court during the period  
12 of the continuance. In the event the court shall order  
13 detention hereunder, the period of the continuance shall not  
14 exceed 30 court days. At the end of such time, the court shall  
15 release the minor from detention unless notice is served at  
16 least 3 days prior to the hearing on the continued date that  
17 the State will be seeking an extension of the period of  
18 detention, which notice shall state the reason for the request  
19 for the extension. The extension of detention may be for a  
20 maximum period of an additional 15 court days or a lesser  
21 number of days at the discretion of the court. However, at the  
22 expiration of the period of extension, the court shall release  
23 the minor from detention if a further continuance is granted.  
24 In scheduling investigations and hearings, the court shall give  
25 priority to proceedings in which a minor is in detention or has  
26 otherwise been removed from his or her home before a sentencing

1 order has been made.

2 (4) When commitment to the Department of Juvenile Justice  
3 is ordered, the court shall state the basis for selecting the  
4 particular disposition, and the court shall prepare such a  
5 statement for inclusion in the record.

6 (Source: P.A. 94-696, eff. 6-1-06.)

7 Section 10. The Rights of Crime Victims and Witnesses Act  
8 is amended by changing Sections 3, 4.5, and 6 as follows:

9 (725 ILCS 120/3) (from Ch. 38, par. 1403)

10 Sec. 3. The terms used in this Act shall have the following  
11 meanings:

12 (a) "Crime victim" or "victim" means: (1) any natural  
13 person determined by the prosecutor or the court to have  
14 suffered direct physical or psychological harm as a result of a  
15 violent crime perpetrated or attempted against that person or  
16 direct physical or psychological harm as a result of (i) a  
17 violation of Section 11-501 of the Illinois Vehicle Code or  
18 similar provision of a local ordinance or (ii) a violation of  
19 Section 9-3 of the Criminal Code of 1961 or the Criminal Code  
20 of 2012; (2) in the case of a crime victim who is under 18 years  
21 of age or an adult victim who is incompetent or incapacitated,  
22 both parents, legal guardians, foster parents, or a single  
23 adult representative; (3) in the case of an adult deceased  
24 victim, 2 representatives who may be the spouse, parent, child

1 or sibling of the victim, or the representative of the victim's  
2 estate; and (4) an immediate family member of a victim under  
3 clause (1) of this paragraph (a) chosen by the victim. If the  
4 victim is 18 years of age or over, the victim may choose any  
5 person to be the victim's representative. In no event shall the  
6 defendant or any person who aided and abetted in the commission  
7 of the crime be considered a victim, a crime victim, or a  
8 representative of the victim.

9 A board, agency, or other governmental entity making  
10 decisions regarding an offender's release, sentence reduction,  
11 or clemency can determine additional persons are victims for  
12 the purpose of its proceedings.

13 (a-3) "Advocate" means a person whose communications with  
14 the victim are privileged under Section 8-802.1 or 8-802.2 of  
15 the Code of Civil Procedure, or Section 227 of the Illinois  
16 Domestic Violence Act of 1986.

17 (a-5) "Confer" means to consult together, share  
18 information, compare opinions and carry on a discussion or  
19 deliberation.

20 (a-7) "Sentence" includes, but is not limited to, the  
21 imposition of sentence, a request for a reduction in sentence,  
22 parole, mandatory supervised release, aftercare release, early  
23 release, inpatient treatment, outpatient treatment,  
24 conditional release after a finding that the defendant is not  
25 guilty by reason of insanity, clemency, or a proposal that  
26 would reduce the defendant's sentence or result in the

1 defendant's release. "Early release" refers to a discretionary  
2 release.

3 (a-9) "Sentencing" includes, but is not limited to, the  
4 imposition of sentence and a request for a reduction in  
5 sentence, parole, mandatory supervised release, aftercare  
6 release, ~~or~~ early release, consideration of inpatient  
7 treatment or outpatient treatment, or conditional release  
8 after a finding that the defendant is not guilty by reason of  
9 insanity.

10 (a-10) "Status hearing" means a hearing designed to provide  
11 information to the court, at which no motion of a substantive  
12 nature and no constitutional or statutory right of a crime  
13 victim is implicated or at issue.

14 (b) "Witness" means: any person who personally observed the  
15 commission of a crime and who will testify on behalf of the  
16 State of Illinois; or a person who will be called by the  
17 prosecution to give testimony establishing a necessary nexus  
18 between the offender and the violent crime.

19 (c) "Violent crime" means: (1) any felony in which force or  
20 threat of force was used against the victim; (2) any offense  
21 involving sexual exploitation, sexual conduct, or sexual  
22 penetration; (3) a violation of Section 11-20.1, 11-20.1B,  
23 11-20.3, 11-23, or 11-23.5 of the Criminal Code of 1961 or the  
24 Criminal Code of 2012; (4) domestic battery or stalking; (5)  
25 violation of an order of protection, a civil no contact order,  
26 or a stalking no contact order; (6) any misdemeanor which

1 results in death or great bodily harm to the victim; or (7) any  
2 violation of Section 9-3 of the Criminal Code of 1961 or the  
3 Criminal Code of 2012, or Section 11-501 of the Illinois  
4 Vehicle Code, or a similar provision of a local ordinance, if  
5 the violation resulted in personal injury or death. "Violent  
6 crime" includes any action committed by a juvenile that would  
7 be a violent crime if committed by an adult. For the purposes  
8 of this paragraph, "personal injury" shall include any Type A  
9 injury as indicated on the traffic accident report completed by  
10 a law enforcement officer that requires immediate professional  
11 attention in either a doctor's office or medical facility. A  
12 type A injury shall include severely bleeding wounds, distorted  
13 extremities, and injuries that require the injured party to be  
14 carried from the scene.

15 (d) (Blank).

16 (e) "Court proceedings" includes, but is not limited to,  
17 the preliminary hearing, any post-arraignment hearing the  
18 effect of which may be the release of the defendant from  
19 custody or to alter the conditions of bond, change of plea  
20 hearing, the trial, any pretrial or post-trial hearing,  
21 sentencing, any oral argument or hearing before an Illinois  
22 appellate court, any hearing under the Mental Health and  
23 Developmental Disabilities Code or Section 5-2-4 of the Unified  
24 Code of Corrections after a finding that the defendant is not  
25 guilty by reason of insanity, including a hearing for  
26 conditional release, any hearing related to a modification of



1 sentence, probation revocation hearing, aftercare release or  
2 parole hearings, post-conviction relief proceedings, habeas  
3 corpus proceedings and clemency proceedings related to the  
4 defendant's conviction or sentence. For purposes of the  
5 victim's right to be present, "court proceedings" does not  
6 include (1) hearings under Section 109-1 of the Code of  
7 Criminal Procedure of 1963, (2) grand jury proceedings, (3)  
8 status hearings, or (4) the issuance of an order or decision of  
9 an Illinois court that dismisses a charge, reverses a  
10 conviction, reduces a sentence, or releases an offender under a  
11 court rule.

12 (f) "Concerned citizen" includes relatives of the victim,  
13 friends of the victim, witnesses to the crime, or any other  
14 person associated with the victim or prisoner.

15 (g) "Victim's attorney" means an attorney retained by the  
16 victim for the purposes of asserting the victim's  
17 constitutional and statutory rights. An attorney retained by  
18 the victim means an attorney who is hired to represent the  
19 victim at the victim's expense or an attorney who has agreed to  
20 provide pro bono representation. Nothing in this statute  
21 creates a right to counsel at public expense for a victim.

22 (h) "Support person" means a person chosen by a victim to  
23 be present at court proceedings.

24 (Source: P.A. 98-558, eff. 1-1-14; 99-143, eff. 7-27-15;  
25 99-413, eff. 8-20-15; 99-642, eff. 7-28-16; 99-671, eff.  
26 1-1-17.)

1 (725 ILCS 120/4.5)

2 Sec. 4.5. Procedures to implement the rights of crime  
3 victims. To afford crime victims their rights, law enforcement,  
4 prosecutors, judges and corrections will provide information,  
5 as appropriate of the following procedures:

6 (a) At the request of the crime victim, law enforcement  
7 authorities investigating the case shall provide notice of the  
8 status of the investigation, except where the State's Attorney  
9 determines that disclosure of such information would  
10 unreasonably interfere with the investigation, until such time  
11 as the alleged assailant is apprehended or the investigation is  
12 closed.

13 (a-5) When law enforcement authorities re-open a closed  
14 case to resume investigating, they shall provide notice of the  
15 re-opening of the case, except where the State's Attorney  
16 determines that disclosure of such information would  
17 unreasonably interfere with the investigation.

18 (b) The office of the State's Attorney:

19 (1) shall provide notice of the filing of an  
20 information, the return of an indictment, or the filing of  
21 a petition to adjudicate a minor as a delinquent for a  
22 violent crime;

23 (2) shall provide timely notice of the date, time, and  
24 place of court proceedings; of any change in the date,  
25 time, and place of court proceedings; and of any

1 cancellation of court proceedings. Notice shall be  
2 provided in sufficient time, wherever possible, for the  
3 victim to make arrangements to attend or to prevent an  
4 unnecessary appearance at court proceedings;

5 (3) or victim advocate personnel shall provide  
6 information of social services and financial assistance  
7 available for victims of crime, including information of  
8 how to apply for these services and assistance;

9 (3.5) or victim advocate personnel shall provide  
10 information about available victim services, including  
11 referrals to programs, counselors, and agencies that  
12 assist a victim to deal with trauma, loss, and grief;

13 (4) shall assist in having any stolen or other personal  
14 property held by law enforcement authorities for  
15 evidentiary or other purposes returned as expeditiously as  
16 possible, pursuant to the procedures set out in Section  
17 115-9 of the Code of Criminal Procedure of 1963;

18 (5) or victim advocate personnel shall provide  
19 appropriate employer intercession services to ensure that  
20 employers of victims will cooperate with the criminal  
21 justice system in order to minimize an employee's loss of  
22 pay and other benefits resulting from court appearances;

23 (6) shall provide, whenever possible, a secure waiting  
24 area during court proceedings that does not require victims  
25 to be in close proximity to defendants or juveniles accused  
26 of a violent crime, and their families and friends;

1           (7) shall provide notice to the crime victim of the  
2 right to have a translator present at all court proceedings  
3 and, in compliance with the federal Americans with  
4 Disabilities Act of 1990, the right to communications  
5 access through a sign language interpreter or by other  
6 means;

7           (8) (blank);

8           (8.5) shall inform the victim of the right to be  
9 present at all court proceedings, unless the victim is to  
10 testify and the court determines that the victim's  
11 testimony would be materially affected if the victim hears  
12 other testimony at trial;

13           (9) shall inform the victim of the right to have  
14 present at all court proceedings, subject to the rules of  
15 evidence and confidentiality, an advocate and other  
16 support person of the victim's choice;

17           (9.3) shall inform the victim of the right to retain an  
18 attorney, at the victim's own expense, who, upon written  
19 notice filed with the clerk of the court and State's  
20 Attorney, is to receive copies of all notices, motions and  
21 court orders filed thereafter in the case, in the same  
22 manner as if the victim were a named party in the case;

23           (9.5) shall inform the victim of (A) the victim's right  
24 under Section 6 of this Act to make a ~~victim-impact~~  
25 statement at the sentencing hearing; (B) the right of the  
26 victim's spouse, guardian, parent, grandparent and other

1 immediate family and household members under Section 6 of  
2 this Act to present a a ~~an-impact~~ statement at sentencing;  
3 and (C) if a presentence report is to be prepared, the  
4 right of the victim's spouse, guardian, parent,  
5 grandparent and other immediate family and household  
6 members to submit information to the preparer of the  
7 presentence report about the effect the offense has had on  
8 the victim and the person;

9 (10) at the sentencing shall make a good faith attempt  
10 to explain the minimum amount of time during which the  
11 defendant may actually be physically imprisoned. The  
12 Office of the State's Attorney shall further notify the  
13 crime victim of the right to request from the Prisoner  
14 Review Board or Department of Juvenile Justice information  
15 concerning the release of the defendant;

16 (11) shall request restitution at sentencing and as  
17 part of a plea agreement if the victim requests  
18 restitution;

19 (12) shall, upon the court entering a verdict of not  
20 guilty by reason of insanity, inform the victim of the  
21 notification services available from the Department of  
22 Human Services, including the statewide telephone number,  
23 under subparagraph (d) (2) of this Section;

24 (13) shall provide notice within a reasonable time  
25 after receipt of notice from the custodian, of the release  
26 of the defendant on bail or personal recognizance or the

1 release from detention of a minor who has been detained;

2 (14) shall explain in nontechnical language the  
3 details of any plea or verdict of a defendant, or any  
4 adjudication of a juvenile as a delinquent;

5 (15) shall make all reasonable efforts to consult with  
6 the crime victim before the Office of the State's Attorney  
7 makes an offer of a plea bargain to the defendant or enters  
8 into negotiations with the defendant concerning a possible  
9 plea agreement, and shall consider the written ~~victim~~  
10 ~~impact~~ statement, if prepared prior to entering into a plea  
11 agreement. The right to consult with the prosecutor does  
12 not include the right to veto a plea agreement or to insist  
13 the case go to trial. If the State's Attorney has not  
14 consulted with the victim prior to making an offer or  
15 entering into plea negotiations with the defendant, the  
16 Office of the State's Attorney shall notify the victim of  
17 the offer or the negotiations within 2 business days and  
18 confer with the victim;

19 (16) shall provide notice of the ultimate disposition  
20 of the cases arising from an indictment or an information,  
21 or a petition to have a juvenile adjudicated as a  
22 delinquent for a violent crime;

23 (17) shall provide notice of any appeal taken by the  
24 defendant and information on how to contact the appropriate  
25 agency handling the appeal, and how to request notice of  
26 any hearing, oral argument, or decision of an appellate

1 court;

2 (18) shall provide timely notice of any request for  
3 post-conviction review filed by the defendant under  
4 Article 122 of the Code of Criminal Procedure of 1963, and  
5 of the date, time and place of any hearing concerning the  
6 petition. Whenever possible, notice of the hearing shall be  
7 given within 48 hours of the court's scheduling of the  
8 hearing; and

9 (19) shall forward a copy of any statement presented  
10 under Section 6 to the Prisoner Review Board or Department  
11 of Juvenile Justice to be considered in making a  
12 determination under Section 3-2.5-85 or subsection (b) of  
13 Section 3-3-8 of the Unified Code of Corrections.

14 (c) The court shall ensure that the rights of the victim  
15 are afforded.

16 (c-5) The following procedures shall be followed to afford  
17 victims the rights guaranteed by Article I, Section 8.1 of the  
18 Illinois Constitution:

19 (1) Written notice. A victim may complete a written  
20 notice of intent to assert rights on a form prepared by the  
21 Office of the Attorney General and provided to the victim  
22 by the State's Attorney. The victim may at any time provide  
23 a revised written notice to the State's Attorney. The  
24 State's Attorney shall file the written notice with the  
25 court. At the beginning of any court proceeding in which  
26 the right of a victim may be at issue, the court and

1 prosecutor shall review the written notice to determine  
2 whether the victim has asserted the right that may be at  
3 issue.

4 (2) Victim's retained attorney. A victim's attorney  
5 shall file an entry of appearance limited to assertion of  
6 the victim's rights. Upon the filing of the entry of  
7 appearance and service on the State's Attorney and the  
8 defendant, the attorney is to receive copies of all  
9 notices, motions and court orders filed thereafter in the  
10 case.

11 (3) Standing. The victim has standing to assert the  
12 rights enumerated in subsection (a) of Article I, Section  
13 8.1 of the Illinois Constitution and the statutory rights  
14 under Section 4 of this Act in any court exercising  
15 jurisdiction over the criminal case. The prosecuting  
16 attorney, a victim, or the victim's retained attorney may  
17 assert the victim's rights. The defendant in the criminal  
18 case has no standing to assert a right of the victim in any  
19 court proceeding, including on appeal.

20 (4) Assertion of and enforcement of rights.

21 (A) The prosecuting attorney shall assert a  
22 victim's right or request enforcement of a right by  
23 filing a motion or by orally asserting the right or  
24 requesting enforcement in open court in the criminal  
25 case outside the presence of the jury. The prosecuting  
26 attorney shall consult with the victim and the victim's



1 attorney regarding the assertion or enforcement of a  
2 right. If the prosecuting attorney decides not to  
3 assert or enforce a victim's right, the prosecuting  
4 attorney shall notify the victim or the victim's  
5 attorney in sufficient time to allow the victim or the  
6 victim's attorney to assert the right or to seek  
7 enforcement of a right.

8 (B) If the prosecuting attorney elects not to  
9 assert a victim's right or to seek enforcement of a  
10 right, the victim or the victim's attorney may assert  
11 the victim's right or request enforcement of a right by  
12 filing a motion or by orally asserting the right or  
13 requesting enforcement in open court in the criminal  
14 case outside the presence of the jury.

15 (C) If the prosecuting attorney asserts a victim's  
16 right or seeks enforcement of a right, and the court  
17 denies the assertion of the right or denies the request  
18 for enforcement of a right, the victim or victim's  
19 attorney may file a motion to assert the victim's right  
20 or to request enforcement of the right within 10 days  
21 of the court's ruling. The motion need not demonstrate  
22 the grounds for a motion for reconsideration. The court  
23 shall rule on the merits of the motion.

24 (D) The court shall take up and decide any motion  
25 or request asserting or seeking enforcement of a  
26 victim's right without delay, unless a specific time

1 period is specified by law or court rule. The reasons  
2 for any decision denying the motion or request shall be  
3 clearly stated on the record.

4 (5) Violation of rights and remedies.

5 (A) If the court determines that a victim's right  
6 has been violated, the court shall determine the  
7 appropriate remedy for the violation of the victim's  
8 right by hearing from the victim and the parties,  
9 considering all factors relevant to the issue, and then  
10 awarding appropriate relief to the victim.

11 (A-5) Consideration of an issue of a substantive  
12 nature or an issue that implicates the constitutional  
13 or statutory right of a victim at a court proceeding  
14 labeled as a status hearing shall constitute a per se  
15 violation of a victim's right.

16 (B) The appropriate remedy shall include only  
17 actions necessary to provide the victim the right to  
18 which the victim was entitled and may include reopening  
19 previously held proceedings; however, in no event  
20 shall the court vacate a conviction. Any remedy shall  
21 be tailored to provide the victim an appropriate remedy  
22 without violating any constitutional right of the  
23 defendant. In no event shall the appropriate remedy be  
24 a new trial, damages, or costs.

25 (6) Right to be heard. Whenever a victim has the right  
26 to be heard, the court shall allow the victim to exercise

1 the right in any reasonable manner the victim chooses.

2 (7) Right to attend trial. A party must file a written  
3 motion to exclude a victim from trial at least 60 days  
4 prior to the date set for trial. The motion must state with  
5 specificity the reason exclusion is necessary to protect a  
6 constitutional right of the party, and must contain an  
7 offer of proof. The court shall rule on the motion within  
8 30 days. If the motion is granted, the court shall set  
9 forth on the record the facts that support its finding that  
10 the victim's testimony will be materially affected if the  
11 victim hears other testimony at trial.

12 (8) Right to have advocate and support person present  
13 at court proceedings.

14 (A) A party who intends to call an advocate as a  
15 witness at trial must seek permission of the court  
16 before the subpoena is issued. The party must file a  
17 written motion at least 90 days before trial that sets  
18 forth specifically the issues on which the advocate's  
19 testimony is sought and an offer of proof regarding (i)  
20 the content of the anticipated testimony of the  
21 advocate; and (ii) the relevance, admissibility, and  
22 materiality of the anticipated testimony ~~in sufficient~~  
23 ~~time to allow the court to rule and the victim to seek~~  
24 ~~appellate review~~. The court shall consider the motion  
25 and make findings within 30 days of the filing of the  
26 motion ~~rule on the motion without delay~~. If the court

1 finds by a preponderance of the evidence that: (i) the  
2 anticipated testimony is not protected by an absolute  
3 privilege; and (ii) the anticipated testimony contains  
4 relevant, admissible, and material evidence that is  
5 not available through other witnesses or evidence, the  
6 court shall issue a subpoena requiring the advocate to  
7 appear to testify at an in camera hearing. The  
8 prosecuting attorney and the victim shall have 15 days  
9 to seek appellate review before the advocate is  
10 required to testify at an ex parte in camera  
11 proceeding.

12 The prosecuting attorney, the victim, and the  
13 advocate's attorney shall be allowed to be present at  
14 the ex parte in camera proceeding. If, after conducting  
15 the ex parte in camera hearing, the court determines  
16 that due process requires any testimony regarding  
17 confidential or privileged information or  
18 communications, the court shall provide to the  
19 prosecuting attorney, the victim, and the advocate's  
20 attorney a written memorandum on the substance of the  
21 advocate's testimony. The prosecuting attorney, the  
22 victim, and the advocate's attorney shall have 15 days  
23 to seek appellate review before a subpoena may be  
24 issued for the advocate to testify at trial. The  
25 presence of the prosecuting attorney at the ex parte in  
26 camera proceeding does not make the substance of the

1 advocate's testimony that the court has ruled  
2 inadmissible subject to discovery.

3 (B) If a victim has asserted the right to have a  
4 support person present at the court proceedings, the  
5 victim shall provide the name of the person the victim  
6 has chosen to be the victim's support person to the  
7 prosecuting attorney, within 60 days of trial. The  
8 prosecuting attorney shall provide the name to the  
9 defendant. If the defendant intends to call the support  
10 person as a witness at trial, the defendant must seek  
11 permission of the court before a subpoena is issued.  
12 The defendant must file a written motion at least 45  
13 days prior to trial that sets forth specifically the  
14 issues on which the support person will testify and an  
15 offer of proof regarding: (i) the content of the  
16 anticipated testimony of the support person; and (ii)  
17 the relevance, admissibility, and materiality of the  
18 anticipated testimony.

19 If the prosecuting attorney intends to call the  
20 support person as a witness during the State's  
21 case-in-chief, the prosecuting attorney shall inform  
22 the court of this intent in the response to the  
23 defendant's written motion. The prosecutor shall call  
24 the support person as the first or second witness  
25 during the State's case-in-chief. A defendant who  
26 intends to call the support person to testify to

1 matters outside the scope of the prosecutor's direct  
2 examination shall be allowed to inquire into these  
3 matters during cross-examination of the support  
4 person. The support person shall be allowed to remain  
5 in the courtroom after the support person has  
6 testified. A defendant who fails to question the  
7 support person about matters outside the scope of  
8 direct examination during the State's case-in-chief  
9 waives the right to challenge the presence of the  
10 support person on appeal. The court shall allow the  
11 support person to testify if called as a witness in the  
12 defendant's case-in-chief or the State's rebuttal.

13 If the prosecuting attorney does not intend to call  
14 the support person in the State's case-in-chief, the  
15 court shall verify with the support person whether the  
16 support person, if called as a witness, would testify  
17 as set forth in the offer of proof. If the court finds  
18 that the support person would testify as set forth in  
19 the offer of proof, the court shall rule on the  
20 relevance, materiality, and admissibility of the  
21 anticipated testimony. If the court rules the  
22 anticipated testimony is admissible, the court shall  
23 issue the subpoena. The support person may remain in  
24 the courtroom after the support person testifies and  
25 shall be allowed to testify in rebuttal.

26 If the court excludes the victim's support person

1 during the State's case-in-chief, the victim shall be  
2 allowed to choose another support person to be present  
3 in court.

4 If the victim fails to designate a support person  
5 within 60 days of trial and the defendant has  
6 subpoenaed the support person to testify at trial, the  
7 court may exclude the support person from the trial  
8 until the support person testifies. If the court  
9 excludes the support person the victim may choose  
10 another person s a support person.

11 (9) Right to notice and hearing before disclosure of  
12 confidential or privileged information or records. A  
13 defendant who seeks to subpoena records of or concerning  
14 the victim that are confidential or privileged by law must  
15 seek permission of the court before the subpoena is issued.  
16 The defendant must file a written motion and an offer of  
17 proof regarding the relevance, admissibility and  
18 materiality of the records. If the court finds by a  
19 preponderance of the evidence that: (A) the records are not  
20 protected by an absolute privilege and (B) the records  
21 contain relevant, admissible, and material evidence that  
22 is not available through other witnesses or evidence, the  
23 court shall issue a subpoena requiring a sealed copy of the  
24 records be delivered to the court to be reviewed in camera.  
25 If, after conducting an in camera review of the records,  
26 the court determines that due process requires disclosure

1 of any portion of the records, the court shall provide  
2 copies of what it intends to disclose to the prosecuting  
3 attorney and the victim. The prosecuting attorney and the  
4 victim shall have 30 days to seek appellate review before  
5 the records are disclosed to the defendant. The disclosure  
6 of copies of any portion of the records to the prosecuting  
7 attorney does not make the records subject to discovery.

8 (10) Right to notice of court proceedings. If the  
9 victim is not present at a court proceeding in which a  
10 right of the victim is at issue, the court shall ask the  
11 prosecuting attorney whether the victim was notified of the  
12 time, place, and purpose of the court proceeding and that  
13 the victim had a right to be heard at the court proceeding.  
14 If the court determines that timely notice was not given or  
15 that the victim was not adequately informed of the nature  
16 of the court proceeding, the court shall not rule on any  
17 substantive issues, accept a plea, or impose a sentence and  
18 shall continue the hearing for the time necessary to notify  
19 the victim of the time, place and nature of the court  
20 proceeding. The time between court proceedings shall not be  
21 attributable to the State under Section 103-5 of the Code  
22 of Criminal Procedure of 1963.

23 (11) Right to timely disposition of the case. A victim  
24 has the right to timely disposition of the case so as to  
25 minimize the stress, cost, and inconvenience resulting  
26 from the victim's involvement in the case. Before ruling on



1 a motion to continue trial or other court proceeding, the  
2 court shall inquire into the circumstances for the request  
3 for the delay and, if the victim has provided written  
4 notice of the assertion of the right to a timely  
5 disposition, and whether the victim objects to the delay.  
6 If the victim objects, the prosecutor shall inform the  
7 court of the victim's objections. If the prosecutor has not  
8 conferred with the victim about the continuance, the  
9 prosecutor shall inform the court of the attempts to  
10 confer. If the court finds the attempts of the prosecutor  
11 to confer with the victim were inadequate to protect the  
12 victim's right to be heard, the court shall give the  
13 prosecutor at least 3 but not more than 5 business days to  
14 confer with the victim. In ruling on a motion to continue,  
15 the court shall consider the reasons for the requested  
16 continuance, the number and length of continuances that  
17 have been granted, the victim's objections and procedures  
18 to avoid further delays. If a continuance is granted over  
19 the victim's objection, the court shall specify on the  
20 record the reasons for the continuance and the procedures  
21 that have been or will be taken to avoid further delays.

22 (12) Right to Restitution.

23 (A) If the victim has asserted the right to  
24 restitution and the amount of restitution is known at  
25 the time of sentencing, the court shall enter the  
26 judgment of restitution at the time of sentencing.

1 (B) If the victim has asserted the right to  
2 restitution and the amount of restitution is not known  
3 at the time of sentencing, the prosecutor shall, within  
4 5 days after sentencing, notify the victim what  
5 information and documentation related to restitution  
6 is needed and that the information and documentation  
7 must be provided to the prosecutor within 45 days after  
8 sentencing. Failure to timely provide information and  
9 documentation related to restitution shall be deemed a  
10 waiver of the right to restitution. The prosecutor  
11 shall file and serve within 60 days after sentencing a  
12 proposed judgment for restitution and a notice that  
13 includes information concerning the identity of any  
14 victims or other persons seeking restitution, whether  
15 any victim or other person expressly declines  
16 restitution, the nature and amount of any damages  
17 together with any supporting documentation, a  
18 restitution amount recommendation, and the names of  
19 any co-defendants and their case numbers. Within 30  
20 days after receipt of the proposed judgment for  
21 restitution, the defendant shall file any objection to  
22 the proposed judgment, a statement of grounds for the  
23 objection, and a financial statement. If the defendant  
24 does not file an objection, the court may enter the  
25 judgment for restitution without further proceedings.  
26 If the defendant files an objection and either party

1 requests a hearing, the court shall schedule a hearing.

2 (13) Access to presentence reports.

3 (A) The victim may request a copy of the  
4 presentence report prepared under the Unified Code of  
5 Corrections from the State's Attorney. The State's  
6 Attorney shall redact the following information before  
7 providing a copy of the report:

8 (i) the defendant's mental history and  
9 condition;

10 (ii) any evaluation prepared under subsection  
11 (b) or (b-5) of Section 5-3-2; and

12 (iii) the name, address, phone number, and  
13 other personal information about any other victim.

14 (B) The State's Attorney or the defendant may  
15 request the court redact other information in the  
16 report that may endanger the safety of any person.

17 (C) The State's Attorney may orally disclose to the  
18 victim any of the information that has been redacted if  
19 there is a reasonable likelihood that the information  
20 will be stated in court at the sentencing.

21 (D) The State's Attorney must advise the victim  
22 that the victim must maintain the confidentiality of  
23 the report and other information. Any dissemination of  
24 the report or information that was not stated at a  
25 court proceeding constitutes indirect criminal  
26 contempt of court.

1           (14) Appellate relief. If the trial court denies the  
2 relief requested, the victim, the victim's attorney or the  
3 prosecuting attorney may file an appeal within 30 days of  
4 the trial court's ruling. The trial or appellate court may  
5 stay the court proceedings if the court finds that a stay  
6 would not violate a constitutional right of the defendant.  
7 If the appellate court denies the relief sought, the  
8 reasons for the denial shall be clearly stated in a written  
9 opinion. In any appeal in a criminal case, the State may  
10 assert as error the court's denial of any crime victim's  
11 right in the proceeding to which the appeal relates.

12           (15) Limitation on appellate relief. In no case shall  
13 an appellate court provide a new trial to remedy the  
14 violation of a victim's right.

15           (16) The right to be reasonably protected from the  
16 accused throughout the criminal justice process and the  
17 right to have the safety of the victim and the victim's  
18 family considered in denying or fixing the amount of bail,  
19 determining whether to release the defendant, and setting  
20 conditions of release after arrest and conviction. A victim  
21 of domestic violence, a sexual offense, or stalking may  
22 request the entry of a protective order under Article 112A  
23 of the Code of Criminal Procedure of 1963.

24           (d) (1) The Prisoner Review Board shall inform a victim or  
25 any other concerned citizen, upon written request, of the  
26 prisoner's release on parole, mandatory supervised release,

1 electronic detention, work release, international transfer or  
2 exchange, or by the custodian, other than the Department of  
3 Juvenile Justice, of the discharge of any individual who was  
4 adjudicated a delinquent for a crime from State custody and by  
5 the sheriff of the appropriate county of any such person's  
6 final discharge from county custody. The Prisoner Review Board,  
7 upon written request, shall provide to a victim or any other  
8 concerned citizen a recent photograph of any person convicted  
9 of a felony, upon his or her release from custody. The Prisoner  
10 Review Board, upon written request, shall inform a victim or  
11 any other concerned citizen when feasible at least 7 days prior  
12 to the prisoner's release on furlough of the times and dates of  
13 such furlough. Upon written request by the victim or any other  
14 concerned citizen, the State's Attorney shall notify the person  
15 once of the times and dates of release of a prisoner sentenced  
16 to periodic imprisonment. Notification shall be based on the  
17 most recent information as to victim's or other concerned  
18 citizen's residence or other location available to the  
19 notifying authority.

20 (2) When the defendant has been committed to the Department  
21 of Human Services pursuant to Section 5-2-4 or any other  
22 provision of the Unified Code of Corrections, the victim may  
23 request to be notified by the releasing authority of the  
24 approval by the court of an on-grounds pass, a supervised  
25 off-grounds pass, an unsupervised off-grounds pass, or  
26 conditional release; the release on an off-grounds pass; the

1 return from an off-grounds pass; transfer to another facility;  
2 conditional release; escape; death; or final discharge from  
3 State custody. The Department of Human Services shall establish  
4 and maintain a statewide telephone number to be used by victims  
5 to make notification requests under these provisions and shall  
6 publicize this telephone number on its website and to the  
7 State's Attorney of each county.

8 (3) In the event of an escape from State custody, the  
9 Department of Corrections or the Department of Juvenile Justice  
10 immediately shall notify the Prisoner Review Board of the  
11 escape and the Prisoner Review Board shall notify the victim.  
12 The notification shall be based upon the most recent  
13 information as to the victim's residence or other location  
14 available to the Board. When no such information is available,  
15 the Board shall make all reasonable efforts to obtain the  
16 information and make the notification. When the escapee is  
17 apprehended, the Department of Corrections or the Department of  
18 Juvenile Justice immediately shall notify the Prisoner Review  
19 Board and the Board shall notify the victim.

20 (4) The victim of the crime for which the prisoner has been  
21 sentenced shall receive reasonable written notice not less than  
22 30 days prior to the parole hearing or target aftercare release  
23 date and may submit, in writing, on film, videotape or other  
24 electronic means or in the form of a recording prior to the  
25 parole hearing or target aftercare release date or in person at  
26 the parole hearing or aftercare release protest hearing or if a

1 victim of a violent crime, by calling the toll-free number  
2 established in subsection (f) of this Section, information for  
3 consideration by the Prisoner Review Board or Department of  
4 Juvenile Justice. The victim shall be notified within 7 days  
5 after the prisoner has been granted parole or aftercare release  
6 and shall be informed of the right to inspect the registry of  
7 parole decisions, established under subsection (g) of Section  
8 3-3-5 of the Unified Code of Corrections. The provisions of  
9 this paragraph (4) are subject to the Open Parole Hearings Act.

10 (5) If a statement is presented under Section 6, the  
11 Prisoner Review Board or Department of Juvenile Justice shall  
12 inform the victim of any order of discharge pursuant to Section  
13 3-2.5-85 or 3-3-8 of the Unified Code of Corrections.

14 (6) At the written or oral request of the victim of the  
15 crime for which the prisoner was sentenced or the State's  
16 Attorney of the county where the person seeking parole or  
17 aftercare release was prosecuted, the Prisoner Review Board or  
18 Department of Juvenile Justice shall notify the victim and the  
19 State's Attorney of the county where the person seeking parole  
20 or aftercare release was prosecuted of the death of the  
21 prisoner if the prisoner died while on parole or aftercare  
22 release or mandatory supervised release.

23 (7) When a defendant who has been committed to the  
24 Department of Corrections, the Department of Juvenile Justice,  
25 or the Department of Human Services is released or discharged  
26 and subsequently committed to the Department of Human Services

1 as a sexually violent person and the victim had requested to be  
2 notified by the releasing authority of the defendant's  
3 discharge, conditional release, death, or escape from State  
4 custody, the releasing authority shall provide to the  
5 Department of Human Services such information that would allow  
6 the Department of Human Services to contact the victim.

7 (8) When a defendant has been convicted of a sex offense as  
8 defined in Section 2 of the Sex Offender Registration Act and  
9 has been sentenced to the Department of Corrections or the  
10 Department of Juvenile Justice, the Prisoner Review Board or  
11 the Department of Juvenile Justice shall notify the victim of  
12 the sex offense of the prisoner's eligibility for release on  
13 parole, aftercare release, mandatory supervised release,  
14 electronic detention, work release, international transfer or  
15 exchange, or by the custodian of the discharge of any  
16 individual who was adjudicated a delinquent for a sex offense  
17 from State custody and by the sheriff of the appropriate county  
18 of any such person's final discharge from county custody. The  
19 notification shall be made to the victim at least 30 days,  
20 whenever possible, before release of the sex offender.

21 (e) The officials named in this Section may satisfy some or  
22 all of their obligations to provide notices and other  
23 information through participation in a statewide victim and  
24 witness notification system established by the Attorney  
25 General under Section 8.5 of this Act.

26 (f) To permit a crime victim of a violent crime to provide



1 information to the Prisoner Review Board or the Department of  
2 Juvenile Justice for consideration by the Board or Department  
3 at a parole hearing or before an aftercare release decision of  
4 a person who committed the crime against the victim in  
5 accordance with clause (d)(4) of this Section or at a  
6 proceeding to determine the conditions of mandatory supervised  
7 release of a person sentenced to a determinate sentence or at a  
8 hearing on revocation of mandatory supervised release of a  
9 person sentenced to a determinate sentence, the Board shall  
10 establish a toll-free number that may be accessed by the victim  
11 of a violent crime to present that information to the Board.

12 (Source: P.A. 99-413, eff. 8-20-15; 99-628, eff. 1-1-17;  
13 100-199, eff. 1-1-18.)

14 (725 ILCS 120/6) (from Ch. 38, par. 1406)

15 Sec. 6. Right to be heard at sentencing.

16 (a) A crime victim shall be allowed to present an oral or  
17 written ~~victim-impact~~ statement in any case in which a  
18 defendant has been convicted of a violent crime or a juvenile  
19 has been adjudicated delinquent for a violent crime after a  
20 bench or jury trial, or a defendant who was charged with a  
21 violent crime and has been convicted under a plea agreement of  
22 a crime that is not a violent crime as defined in subsection  
23 (c) of Section 3 of this Act. The court shall allow a victim to  
24 make an oral ~~impact~~ statement if the victim is present in the  
25 courtroom and requests to make an oral statement. An oral

1 statement includes the victim or a representative of the victim  
2 reading the written ~~impact~~ statement. The court may allow  
3 persons impacted by the crime who are not victims under  
4 subsection (a) of Section 3 of this Act to present an oral or  
5 written statement. A victim and any person making an oral  
6 statement shall not be put under oath or subject to  
7 cross-examination. The court shall consider any ~~impact~~  
8 statement presented along with all other appropriate factors in  
9 determining the sentence of the defendant or disposition of  
10 such juvenile.

11 (a-1) In any case where a defendant has been convicted of a  
12 violation of any statute, ordinance, or regulation relating to  
13 the operation or use of motor vehicles, the use of streets and  
14 highways by pedestrians or the operation of any other wheeled  
15 or tracked vehicle, except parking violations, if the violation  
16 resulted in great bodily harm or death, the person who suffered  
17 great bodily harm, the injured person's representative, or the  
18 representative of a deceased person shall be entitled to notice  
19 of the sentencing hearing. "Representative" includes the  
20 spouse, guardian, grandparent, or other immediate family or  
21 household member of an injured or deceased person. The injured  
22 person or his or her representative and a representative of the  
23 deceased person shall have the right to address the court  
24 regarding the impact that the defendant's criminal conduct has  
25 had upon them. If more than one representative of an injured or  
26 deceased person is present in the courtroom at the time of

1 sentencing, the court has discretion to permit one or more of  
2 the representatives to present an oral impact statement. A  
3 victim and any person making an oral statement shall not be put  
4 under oath or subject to cross-examination. The court shall  
5 consider any impact statement presented along with all other  
6 appropriate factors in determining the sentence of the  
7 defendant.

8 (a-5) A crime victim shall be allowed to present an oral  
9 and written victim impact statement at a hearing ordered by the  
10 court under the Mental Health and Developmental Disabilities  
11 Code to determine if the defendant is: (1) in need of mental  
12 health services on an inpatient basis; (2) in need of mental  
13 health services on an outpatient basis; or (3) not in need of  
14 mental health services. The court shall allow a victim to make  
15 an oral impact statement if the victim is present in the  
16 courtroom and requests to make an oral statement. An oral  
17 statement includes the victim or a representative of the victim  
18 reading the written impact statement. The court may allow  
19 persons impacted by the crime who are not victims under  
20 subsection (a) of Section 3 of this Act, to present an oral or  
21 written statement. A victim and any person making an oral  
22 statement shall not be put under oath or subject to  
23 cross-examination. The court may only consider the impact  
24 statement along with all other appropriate factors in  
25 determining the: (1) threat of serious physical harm poised by  
26 the respondent to himself or herself, or to another person; (2)

1 location of inpatient or outpatient mental health services  
2 ordered by the court, but only after complying with all other  
3 applicable administrative, rule, and statutory requirements;  
4 (3) maximum period of commitment for inpatient mental health  
5 services; and (4) conditions of release for outpatient mental  
6 health services ordered by the court.

7 (b) The crime victim has the right to prepare a victim  
8 impact statement and present it to the Office of the State's  
9 Attorney at any time during the proceedings. Any written victim  
10 impact statement submitted to the Office of the State's  
11 Attorney shall be considered by the court during its  
12 consideration of aggravation and mitigation in plea  
13 proceedings under Supreme Court Rule 402.

14 (c) This Section shall apply to any victims during any  
15 dispositional hearing under Section 5-705 of the Juvenile Court  
16 Act of 1987 which takes place pursuant to an adjudication or  
17 trial or plea of delinquency for any such offense.

18 (Source: P.A. 99-413, eff. 8-20-15.)

19 Section 15. The Unified Code of Corrections is amended by  
20 changing Sections 5-2-4 and 5-4-1 as follows:

21 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

22 Sec. 5-2-4. Proceedings after acquittal by reason of  
23 insanity.

24 (a) After a finding or verdict of not guilty by reason of

1 insanity under Sections 104-25, 115-3, or 115-4 of the Code of  
2 Criminal Procedure of 1963, the defendant shall be ordered to  
3 the Department of Human Services for an evaluation as to  
4 whether he is in need of mental health services. The order  
5 shall specify whether the evaluation shall be conducted on an  
6 inpatient or outpatient basis. If the evaluation is to be  
7 conducted on an inpatient basis, the defendant shall be placed  
8 in a secure setting. With the court order for evaluation shall  
9 be sent a copy of the arrest report, criminal charges, arrest  
10 record, jail record, any report prepared under Section 115-6 of  
11 the Code of Criminal Procedure of 1963, and any ~~victim impact~~  
12 statement prepared under Section 6 of the Rights of Crime  
13 Victims and Witnesses Act. The clerk of the circuit court shall  
14 transmit this information to the Department within 5 days. If  
15 the court orders that the evaluation be done on an inpatient  
16 basis, the Department shall evaluate the defendant to determine  
17 to which secure facility the defendant shall be transported  
18 and, within 20 days of the transmittal by the clerk of the  
19 circuit court of the placement court order, notify the sheriff  
20 of the designated facility. Upon receipt of that notice, the  
21 sheriff shall promptly transport the defendant to the  
22 designated facility. During the period of time required to  
23 determine the appropriate placement, the defendant shall  
24 remain in jail. If, within 20 days of the transmittal by the  
25 clerk of the circuit court of the placement court order, the  
26 Department fails to notify the sheriff of the identity of the

1 facility to which the defendant shall be transported, the  
2 sheriff shall contact a designated person within the Department  
3 to inquire about when a placement will become available at the  
4 designated facility and bed availability at other facilities.  
5 If, within 20 days of the transmittal by the clerk of the  
6 circuit court of the placement court order, the Department  
7 fails to notify the sheriff of the identity of the facility to  
8 which the defendant shall be transported, the sheriff shall  
9 notify the Department of its intent to transfer the defendant  
10 to the nearest secure mental health facility operated by the  
11 Department and inquire as to the status of the placement  
12 evaluation and availability for admission to the ~~such~~ facility  
13 operated by the Department by contacting a designated person  
14 within the Department. The Department shall respond to the  
15 sheriff within 2 business days of the notice and inquiry by the  
16 sheriff seeking the transfer and the Department shall provide  
17 the sheriff with the status of the placement evaluation,  
18 information on bed and placement availability, and an estimated  
19 date of admission for the defendant and any changes to that  
20 estimated date of admission. If the Department notifies the  
21 sheriff during the 2 business day period of a facility operated  
22 by the Department with placement availability, the sheriff  
23 shall promptly transport the defendant to that facility.  
24 Individualized placement evaluations by the Department of  
25 Human Services determine the most appropriate setting for  
26 forensic treatment based upon a number of factors including

1 mental health diagnosis, proximity to surviving victims,  
2 security need, age, gender, and proximity to family.

3 The Department shall provide the Court with a report of its  
4 evaluation within 30 days of the date of this order. The Court  
5 shall hold a hearing as provided under the Mental Health and  
6 Developmental Disabilities Code to determine if the individual  
7 is: (a) in need of mental health services on an inpatient  
8 basis; (b) in need of mental health services on an outpatient  
9 basis; (c) a person not in need of mental health services. The  
10 court shall afford the victim the opportunity to make a written  
11 or oral statement as guaranteed by Article I, Section 8.1 of  
12 the Illinois Constitution and Section 6 of the Rights of Crime  
13 Victims and Witnesses Act. The court shall allow a victim to  
14 make an oral statement if the victim is present in the  
15 courtroom and requests to make an oral statement. An oral  
16 statement includes the victim or a representative of the victim  
17 reading the written statement. The court may allow persons  
18 impacted by the crime who are not victims under subsection (a)  
19 of Section 3 of this Rights of Crime Victims and Witnesses Act  
20 to present an oral or written statement. A victim and any  
21 person making an oral statement shall not be put under oath or  
22 subject to cross-examination. The court shall consider any  
23 statement presented along with all other appropriate factors in  
24 determining the sentence of the defendant or disposition of the  
25 juvenile. All statements shall become part of the record of the  
26 court. ~~The Court shall enter its findings.~~

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



1 custody.

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

3 (A) (Blank).

4 (B) "In need of mental health services on an inpatient  
5 basis" means: a defendant who has been found not guilty by  
6 reason of insanity but who, due to mental illness, is  
7 reasonably expected to inflict serious physical harm upon  
8 himself or another and who would benefit from inpatient  
9 care or is in need of inpatient care.

10 (C) "In need of mental health services on an outpatient  
11 basis" means: a defendant who has been found not guilty by  
12 reason of insanity who is not in need of mental health  
13 services on an inpatient basis, but is in need of  
14 outpatient care, drug and/or alcohol rehabilitation  
15 programs, community adjustment programs, individual,  
16 group, or family therapy, or chemotherapy.

17 (D) "Conditional Release" means: the release from  
18 either the custody of the Department of Human Services or  
19 the custody of the Court of a person who has been found not  
20 guilty by reason of insanity under such conditions as the  
21 Court may impose which reasonably assure the defendant's  
22 satisfactory progress in treatment or habilitation and the  
23 safety of the defendant, the victim, the victim's family,  
24 and others. The Court shall consider such terms and  
25 conditions which may include, but need not be limited to,  
26 outpatient care, alcoholic and drug rehabilitation

1 programs, community adjustment programs, individual,  
2 group, family, and chemotherapy, random testing to ensure  
3 the defendant's timely and continuous taking of any  
4 medicines prescribed to control or manage his or her  
5 conduct or mental state, and periodic checks with the legal  
6 authorities and/or the Department of Human Services. The  
7 Court may order as a condition of conditional release that  
8 the defendant not contact the victim of the offense that  
9 resulted in the finding or verdict of not guilty by reason  
10 of insanity or any other person. The Court may order the  
11 Department of Human Services to provide care to any person  
12 conditionally released under this Section. The Department  
13 may contract with any public or private agency in order to  
14 discharge any responsibilities imposed under this Section.  
15 The Department shall monitor the provision of services to  
16 persons conditionally released under this Section and  
17 provide periodic reports to the Court concerning the  
18 services and the condition of the defendant. Whenever a  
19 person is conditionally released pursuant to this Section,  
20 the State's Attorney for the county in which the hearing is  
21 held shall designate in writing the name, telephone number,  
22 and address of a person employed by him or her who shall be  
23 notified in the event that either the reporting agency or  
24 the Department decides that the conditional release of the  
25 defendant should be revoked or modified pursuant to  
26 subsection (i) of this Section. Such conditional release

1 shall be for a period of five years. However, the  
2 defendant, the person or facility rendering the treatment,  
3 therapy, program or outpatient care, the Department, or the  
4 State's Attorney may petition the Court for an extension of  
5 the conditional release period for an additional 5 years.  
6 Upon receipt of such a petition, the Court shall hold a  
7 hearing consistent with the provisions of paragraph (a),  
8 this paragraph (a-1), and paragraph (f) of this Section,  
9 shall determine whether the defendant should continue to be  
10 subject to the terms of conditional release, and shall  
11 enter an order either extending the defendant's period of  
12 conditional release for an additional 5-year ~~5-year~~ period  
13 or discharging the defendant. 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; ~~and~~

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 ~~This amendatory Act~~ shall apply to  
23 all persons who have been found not guilty by reason of  
24 insanity and who are presently committed to the Department of  
25 Mental Health and Developmental Disabilities (now the  
26 Department of Human 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 (Source: P.A. 100-27, eff. 1-1-18; 100-424, eff. 1-1-18;  
13 revised 10-10-17.)

14 (730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)

15 Sec. 5-4-1. Sentencing hearing.

16 (a) Except when the death penalty is sought under hearing  
17 procedures otherwise specified, after a determination of  
18 guilt, a hearing shall be held to impose the sentence. However,  
19 prior to the imposition of sentence on an individual being  
20 sentenced for an offense based upon a charge for a violation of  
21 Section 11-501 of the Illinois Vehicle Code or a similar  
22 provision of a local ordinance, the individual must undergo a  
23 professional evaluation to determine if an alcohol or other  
24 drug abuse problem exists and the extent of such a problem.  
25 Programs conducting these evaluations shall be licensed by the

1 Department of Human Services. However, if the individual is not  
2 a resident of Illinois, the court may, in its discretion,  
3 accept an evaluation from a program in the state of such  
4 individual's residence. The court may in its sentencing order  
5 approve an eligible defendant for placement in a Department of  
6 Corrections impact incarceration program as provided in  
7 Section 5-8-1.1 or 5-8-1.3. The court may in its sentencing  
8 order recommend a defendant for placement in a Department of  
9 Corrections substance abuse treatment program as provided in  
10 paragraph (a) of subsection (1) of Section 3-2-2 conditioned  
11 upon the defendant being accepted in a program by the  
12 Department of Corrections. At the hearing the court shall:

13 (1) consider the evidence, if any, received upon the  
14 trial;

15 (2) consider any presentence reports;

16 (3) consider the financial impact of incarceration  
17 based on the financial impact statement filed with the  
18 clerk of the court by the Department of Corrections;

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

21 (4.5) consider substance abuse treatment, eligibility  
22 screening, and an assessment, if any, of the defendant by  
23 an agent designated by the State of Illinois to provide  
24 assessment services for the Illinois courts;

25 (5) hear arguments as to sentencing alternatives;

26 (6) afford the defendant the opportunity to make a

1 statement in his own behalf;

2 (7) afford the victim of a violent crime or a violation  
3 of Section 11-501 of the Illinois Vehicle Code, or a  
4 similar provision of a local ordinance, the opportunity to  
5 present an oral or written statement, as guaranteed by  
6 Article I, Section 8.1 of the Illinois Constitution and  
7 provided in Section 6 of the Rights of Crime Victims and  
8 Witnesses Act. The court shall allow a victim to make an  
9 oral statement if the victim is present in the courtroom  
10 and requests to make an oral or written statement. An oral  
11 or written statement includes the victim or a  
12 representative of the victim reading the written  
13 statement. The court may allow persons impacted by the  
14 crime who are not victims under subsection (a) of Section 3  
15 of the Rights of Crime Victims and Witnesses Act to present  
16 an oral or written statement. A victim and any person  
17 making an oral statement shall not be put under oath or  
18 subject to cross-examination., or a qualified individual  
19 affected by: (i) a violation of Section 405, 405.1, 405.2,  
20 or 407 of the Illinois Controlled Substances Act or a  
21 violation of Section 55 or Section 65 of the  
22 Methamphetamine Control and Community Protection Act, or  
23 (ii) a Class 4 felony violation of Section 11-14, 11-14.3  
24 except as described in subdivisions (a)(2)(A) and  
25 (a)(2)(B), 11-15, 11-17, 11-18, 11-18.1, or 11-19 of the  
26 Criminal Code of 1961 or the Criminal Code of 2012,

1 ~~committed by the defendant the opportunity to make a~~  
2 ~~statement concerning the impact on the victim and to offer~~  
3 ~~evidence in aggravation or mitigation; provided that the~~  
4 ~~statement and evidence offered in aggravation or~~  
5 ~~mitigation must first be prepared in writing in conjunction~~  
6 ~~with the State's Attorney before it may be presented orally~~  
7 ~~at the hearing. Any sworn testimony offered by the victim~~  
8 ~~is subject to the defendant's right to cross examine. All~~  
9 ~~statements and evidence offered under this paragraph (7)~~  
10 ~~shall become part of the record of the court. In ~~For the~~~~  
11 ~~purpose of this paragraph (7), "victim of a violent crime"~~  
12 ~~means a person who is a victim of a violent crime for which~~  
13 ~~the defendant has been convicted after a bench or jury~~  
14 ~~trial or a person who is the victim of a violent crime with~~  
15 ~~which the defendant was charged and the defendant has been~~  
16 ~~convicted under a plea agreement of a crime that is not a~~  
17 ~~violent crime as defined in subsection (c) of 3 of the~~  
18 ~~Rights of Crime Victims and Witnesses Act; "qualified~~  
19 ~~individual" means any person who (i) lived or worked within~~  
20 ~~the territorial jurisdiction where the offense took place~~  
21 ~~when the offense took place; and (ii) is familiar with~~  
22 ~~various public places within the territorial jurisdiction~~  
23 ~~where the offense took place when the offense took place.~~  
24 ~~For the purposes of this paragraph (7), "qualified~~  
25 ~~individual" includes any peace officer, or any member of~~  
26 ~~any duly organized State, county, or municipal peace unit~~



1 ~~assigned to the territorial jurisdiction where the offense~~  
2 ~~took place when the offense took place~~

3 (7.5) afford a qualified person affected by: (i) a  
4 violation of Section 405, 405.1, 405.2, or 407 of the  
5 Illinois Controlled Substances Act or a violation of  
6 Section 55 or Section 65 of the Methamphetamine Control and  
7 Community Protection Act; or (ii) a Class 4 felony  
8 violation of Section 11-14, 11-14.3 except as described in  
9 subdivisions (a) (2) (A) and (a) (2) (B), 11-15, 11-17, 11-18,  
10 11-18.1, or 11-19 of the Criminal Code of 1961 or the  
11 Criminal Code of 2012, committed by the defendant the  
12 opportunity to make a statement concerning the impact on  
13 the qualified person and to offer evidence in aggravation  
14 or mitigation; provided that the statement and evidence  
15 offered in aggravation or mitigation shall first be  
16 prepared in writing in conjunction with the State's  
17 Attorney before it may be presented orally at the hearing.  
18 Sworn testimony offered by the qualified person is subject  
19 to the defendant's right to cross-examine. All statements  
20 and evidence offered under this paragraph (7.5) shall  
21 become part of the record of the court. In this paragraph  
22 (7.5), "qualified person" means any person who: (i) lived  
23 or worked within the territorial jurisdiction where the  
24 offense took place when the offense took place; or (ii) is  
25 familiar with various public places within the territorial  
26 jurisdiction where the offense took place when the offense

1       took place. "Qualified person includes any peace officer or  
2       any member of any duly organized State, county, or  
3       municipal peace officer unit assigned to the territorial  
4       jurisdiction where the offense took place when the offense  
5       took place;

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

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

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

16       (b) All sentences shall be imposed by the judge based upon  
17       his independent assessment of the elements specified above and  
18       any agreement as to sentence reached by the parties. The judge  
19       who presided at the trial or the judge who accepted the plea of  
20       guilty shall impose the sentence unless he is no longer sitting  
21       as a judge in that court. Where the judge does not impose  
22       sentence at the same time on all defendants who are convicted  
23       as a result of being involved in the same offense, the  
24       defendant or the State's Attorney may advise the sentencing  
25       court of the disposition of any other defendants who have been  
26       sentenced.

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

14 (c) In imposing a sentence for a violent crime or for an  
15 offense of operating or being in physical control of a vehicle  
16 while under the influence of alcohol, any other drug or any  
17 combination thereof, or a similar provision of a local  
18 ordinance, when such offense resulted in the personal injury to  
19 someone other than the defendant, the trial judge shall specify  
20 on the record the particular evidence, information, factors in  
21 mitigation and aggravation or other reasons that led to his  
22 sentencing determination. The full verbatim record of the  
23 sentencing hearing shall be filed with the clerk of the court  
24 and shall be a public record.

25 (c-1) In imposing a sentence for the offense of aggravated  
26 kidnapping for ransom, home invasion, armed robbery,

1 aggravated vehicular hijacking, aggravated discharge of a  
2 firearm, or armed violence with a category I weapon or category  
3 II weapon, the trial judge shall make a finding as to whether  
4 the conduct leading to conviction for the offense resulted in  
5 great bodily harm to a victim, and shall enter that finding and  
6 the basis for that finding in the record.

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

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

21 "The purpose of this statement is to inform the public of  
22 the actual period of time this defendant is likely to spend in  
23 prison as a result of this sentence. The actual period of  
24 prison time served is determined by the statutes of Illinois as  
25 applied to this sentence by the Illinois Department of  
26 Corrections and the Illinois Prisoner Review Board. In this

1 case, assuming the defendant receives all of his or her  
2 sentence credit, the period of estimated actual custody is ...  
3 years and ... months, less up to 180 days additional earned  
4 sentence credit. If the defendant, because of his or her own  
5 misconduct or failure to comply with the institutional  
6 regulations, does not receive those credits, the actual time  
7 served in prison will be longer. The defendant may also receive  
8 an additional one-half day sentence credit for each day of  
9 participation in vocational, industry, substance abuse, and  
10 educational programs as provided for by Illinois statute."

11 When the sentence is imposed for one of the offenses  
12 enumerated in paragraph (a)(2) of Section 3-6-3, other than  
13 first degree murder, and the offense was committed on or after  
14 June 19, 1998, and when the sentence is imposed for reckless  
15 homicide as defined in subsection (e) of Section 9-3 of the  
16 Criminal Code of 1961 or the Criminal Code of 2012 if the  
17 offense was committed on or after January 1, 1999, and when the  
18 sentence is imposed for aggravated driving under the influence  
19 of alcohol, other drug or drugs, or intoxicating compound or  
20 compounds, or any combination thereof as defined in  
21 subparagraph (F) of paragraph (1) of subsection (d) of Section  
22 11-501 of the Illinois Vehicle Code, and when the sentence is  
23 imposed for aggravated arson if the offense was committed on or  
24 after July 27, 2001 (the effective date of Public Act 92-176),  
25 and when the sentence is imposed for aggravated driving under  
26 the influence of alcohol, other drug or drugs, or intoxicating

1 compound or compounds, or any combination thereof as defined in  
2 subparagraph (C) of paragraph (1) of subsection (d) of Section  
3 11-501 of the Illinois Vehicle Code committed on or after  
4 January 1, 2011 (the effective date of Public Act 96-1230), the  
5 judge's statement, to be given after pronouncing the sentence,  
6 shall include the following:

7 "The purpose of this statement is to inform the public of  
8 the actual period of time this defendant is likely to spend in  
9 prison as a result of this sentence. The actual period of  
10 prison time served is determined by the statutes of Illinois as  
11 applied to this sentence by the Illinois Department of  
12 Corrections and the Illinois Prisoner Review Board. In this  
13 case, the defendant is entitled to no more than 4 1/2 days of  
14 sentence credit for each month of his or her sentence of  
15 imprisonment. Therefore, this defendant will serve at least 85%  
16 of his or her sentence. Assuming the defendant receives 4 1/2  
17 days credit for each month of his or her sentence, the period  
18 of estimated actual custody is ... years and ... months. If the  
19 defendant, because of his or her own misconduct or failure to  
20 comply with the institutional regulations receives lesser  
21 credit, the actual time served in prison will be longer."

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

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

1 the actual period of time this defendant is likely to spend in  
2 prison as a result of this sentence. The actual period of  
3 prison time served is determined by the statutes of Illinois as  
4 applied to this sentence by the Illinois Department of  
5 Corrections and the Illinois Prisoner Review Board. In this  
6 case, the defendant is not entitled to sentence credit.  
7 Therefore, this defendant will serve 100% of his or her  
8 sentence."

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

17 "The purpose of this statement is to inform the public of  
18 the actual period of time this defendant is likely to spend in  
19 prison as a result of this sentence. The actual period of  
20 prison time served is determined by the statutes of Illinois as  
21 applied to this sentence by the Illinois Department of  
22 Corrections and the Illinois Prisoner Review Board. In this  
23 case, the defendant shall receive no earned sentence credit  
24 under clause (3) of subsection (a) of Section 3-6-3 until he or  
25 she participates in and completes a substance abuse treatment  
26 program or receives a waiver from the Director of Corrections

1 pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

2 (c-4) Before the sentencing hearing and as part of the  
3 presentence investigation under Section 5-3-1, the court shall  
4 inquire of the defendant whether the defendant is currently  
5 serving in or is a veteran of the Armed Forces of the United  
6 States. If the defendant is currently serving in the Armed  
7 Forces of the United States or is a veteran of the Armed Forces  
8 of the United States and has been diagnosed as having a mental  
9 illness by a qualified psychiatrist or clinical psychologist or  
10 physician, the court may:

11 (1) order that the officer preparing the presentence  
12 report consult with the United States Department of  
13 Veterans Affairs, Illinois Department of Veterans'  
14 Affairs, or another agency or person with suitable  
15 knowledge or experience for the purpose of providing the  
16 court with information regarding treatment options  
17 available to the defendant, including federal, State, and  
18 local programming; and

19 (2) consider the treatment recommendations of any  
20 diagnosing or treating mental health professionals  
21 together with the treatment options available to the  
22 defendant in imposing sentence.

23 For the purposes of this subsection (c-4), "qualified  
24 psychiatrist" means a reputable physician licensed in Illinois  
25 to practice medicine in all its branches, who has specialized  
26 in the diagnosis and treatment of mental and nervous disorders



1 for a period of not less than 5 years.

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

6 (d) When the defendant is committed to the Department of  
7 Corrections, the State's Attorney shall and counsel for the  
8 defendant may file a statement with the clerk of the court to  
9 be transmitted to the department, agency or institution to  
10 which the defendant is committed to furnish such department,  
11 agency or institution with the facts and circumstances of the  
12 offense for which the person was committed together with all  
13 other factual information accessible to them in regard to the  
14 person prior to his commitment relative to his habits,  
15 associates, disposition and reputation and any other facts and  
16 circumstances which may aid such department, agency or  
17 institution during its custody of such person. The clerk shall  
18 within 10 days after receiving any such statements transmit a  
19 copy to such department, agency or institution and a copy to  
20 the other party, provided, however, that this shall not be  
21 cause for delay in conveying the person to the department,  
22 agency or institution to which he has been committed.

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

26 (1) the sentence imposed;

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

3           (3) any presentence reports;

4           (3.5) any sex offender evaluations;

5           (3.6) any substance abuse treatment eligibility  
6 screening and assessment of the defendant by an agent  
7 designated by the State of Illinois to provide assessment  
8 services for the Illinois courts;

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

13           (4.1) any finding of great bodily harm made by the  
14 court with respect to an offense enumerated in subsection  
15 (c-1);

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

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

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

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

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

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

6           (Source: P.A. 99-861, eff. 1-1-17; 99-938, eff. 1-1-18.)