



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5603

by Rep. Patricia R. Bellock

SYNOPSIS AS INTRODUCED:

725 ILCS 5/Art. 106B heading

725 ILCS 5/106B-5

725 ILCS 120/4.5

725 ILCS 120/5

from Ch. 38, par. 1405

725 ILCS 140/4 new

Amends the Code of Criminal Procedure of 1963. Provides that in a proceeding in the prosecution of an offense of criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual abuse, or aggravated criminal sexual abuse, the court may order that the testimony of a victim affected by a developmental disability be taken outside the courtroom and shown in the courtroom by means of a closed circuit television under certain conditions. Provides that "developmental disability" includes, but is not limited to, cerebral palsy, epilepsy, and autism. Amends the Rights of Crime Victims and Witnesses Act. Provides that the Office of the State's Attorney shall inform the crime victim or witness of his or her right to communications access through a sign language interpreter or by other means. Amends the Criminal Proceeding Interpreter Act. Provides that the right to a qualified court-appointed sign language interpreter as provided in the Act shall be afforded to persons with disabilities who are victims of, or are called as witnesses in proceedings relating to, a violation of any penal statute of the State.

LRB095 15507 RLC 45279 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

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

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing the heading of Article 106B and Section
6 106B-5 as follows:

7 (725 ILCS 5/Art. 106B heading)

8 Article 106B. Child and Developmentally Disabled Victims of
9 Sexual Abuse

10 (725 ILCS 5/106B-5)

11 Sec. 106B-5. Testimony by a victim who is a child or a
12 moderately, severely, or profoundly mentally retarded person
13 or a person affected by a developmental disability.

14 (a) In a proceeding in the prosecution of an offense of
15 criminal sexual assault, predatory criminal sexual assault of a
16 child, aggravated criminal sexual assault, criminal sexual
17 abuse, or aggravated criminal sexual abuse, a court may order
18 that the testimony of a victim who is a child under the age of
19 18 years or a moderately, severely, or profoundly mentally
20 retarded person or a person affected by a developmental
21 disability be taken outside the courtroom and shown in the
22 courtroom by means of a closed circuit television if:

1 (1) the testimony is taken during the proceeding; and

2 (2) the judge determines that testimony by the child
3 victim or ~~the~~ moderately, severely, or profoundly mentally
4 retarded victim or victim affected by a developmental
5 disability in the courtroom may ~~will~~ result in the child or
6 moderately, severely, or profoundly mentally retarded
7 person or person affected by a developmental disability
8 suffering serious emotional distress such that the child or
9 moderately, severely, or profoundly mentally retarded
10 person or person affected by a developmental disability
11 cannot reasonably communicate or that the child or
12 moderately, severely, or profoundly mentally retarded
13 person or person affected by a developmental disability may
14 ~~will~~ suffer severe emotional distress that is likely to
15 cause the child or moderately, severely, or profoundly
16 mentally retarded person or person affected by a
17 developmental disability to suffer severe adverse effects.

18 (b) Only the prosecuting attorney, the attorney for the
19 defendant, and the judge may question the child or moderately,
20 severely, or profoundly mentally retarded person or person
21 affected by a developmental disability.

22 (c) The operators of the closed circuit television shall
23 make every effort to be unobtrusive.

24 (d) Only the following persons may be in the room with the
25 child or moderately, severely, or profoundly mentally retarded
26 person or person affected by a developmental disability when

1 the child or moderately, severely, or profoundly mentally
2 retarded person or person affected by a developmental
3 disability testifies by closed circuit television:

4 (1) the prosecuting attorney;

5 (2) the attorney for the defendant;

6 (3) the judge;

7 (4) the operators of the closed circuit television
8 equipment; and

9 (5) any person or persons whose presence, in the
10 opinion of the court, contributes to the well-being of the
11 child or moderately, severely, or profoundly mentally
12 retarded person or person affected by a developmental
13 disability, including a person who has dealt with the child
14 in a therapeutic setting concerning the abuse, a parent or
15 guardian of the child or moderately, severely, or
16 profoundly mentally retarded person or person affected by a
17 developmental disability, and court security personnel.

18 (e) During the child's or moderately, severely, or
19 profoundly mentally retarded person's or person affected by a
20 developmental disability's testimony by closed circuit
21 television, the defendant shall be in the courtroom and shall
22 not communicate with the jury if the cause is being heard
23 before a jury.

24 (f) The defendant shall be allowed to communicate with the
25 persons in the room where the child or moderately, severely, or
26 profoundly mentally retarded person or person affected by a

1 developmental disability is testifying by any appropriate
2 electronic method.

3 (g) The provisions of this Section do not apply if the
4 defendant represents himself pro se.

5 (h) This Section may not be interpreted to preclude, for
6 purposes of identification of a defendant, the presence of both
7 the victim and the defendant in the courtroom at the same time.

8 (i) This Section applies to prosecutions pending on or
9 commenced on or after the effective date of this amendatory Act
10 of 1994.

11 (j) For the purposes of this Section, "developmental
12 disability" includes, but is not limited to, cerebral palsy,
13 epilepsy, and autism.

14 (Source: P.A. 92-434, eff. 1-1-02.)

15 Section 10. The Rights of Crime Victims and Witnesses Act
16 is amended by changing Sections 4.5 and 5 as follows:

17 (725 ILCS 120/4.5)

18 Sec. 4.5. Procedures to implement the rights of crime
19 victims. To afford crime victims their rights, law enforcement,
20 prosecutors, judges and corrections will provide information,
21 as appropriate of the following procedures:

22 (a) At the request of the crime victim, law enforcement
23 authorities investigating the case shall provide notice of the
24 status of the investigation, except where the State's Attorney

1 determines that disclosure of such information would
2 unreasonably interfere with the investigation, until such time
3 as the alleged assailant is apprehended or the investigation is
4 closed.

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

6 (1) shall provide notice of the filing of information,
7 the return of an indictment by which a prosecution for any
8 violent crime is commenced, or the filing of a petition to
9 adjudicate a minor as a delinquent for a violent crime;

10 (2) shall provide notice of the date, time, and place
11 of trial;

12 (3) or victim advocate personnel shall provide
13 information of social services and financial assistance
14 available for victims of crime, including information of
15 how to apply for these services and assistance;

16 (4) shall assist in having any stolen or other personal
17 property held by law enforcement authorities for
18 evidentiary or other purposes returned as expeditiously as
19 possible, pursuant to the procedures set out in Section
20 115-9 of the Code of Criminal Procedure of 1963;

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

26 (6) shall provide information whenever possible, of a

1 secure waiting area during court proceedings that does not
2 require victims to be in close proximity to defendant or
3 juveniles accused of a violent crime, and their families
4 and friends;

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

11 (8) in the case of the death of a person, which death
12 occurred in the same transaction or occurrence in which
13 acts occurred for which a defendant is charged with an
14 offense, shall notify the spouse, parent, child or sibling
15 of the decedent of the date of the trial of the person or
16 persons allegedly responsible for the death;

17 (9) shall inform the victim of the right to have
18 present at all court proceedings, subject to the rules of
19 evidence, an advocate or other support person of the
20 victim's choice, and the right to retain an attorney, at
21 the victim's own expense, who, upon written notice filed
22 with the clerk of the court and State's Attorney, is to
23 receive copies of all notices, motions and court orders
24 filed thereafter in the case, in the same manner as if the
25 victim were a named party in the case; and

26 (10) at the sentencing hearing shall make a good faith

1 attempt to explain the minimum amount of time during which
2 the defendant may actually be physically imprisoned. The
3 Office of the State's Attorney shall further notify the
4 crime victim of the right to request from the Prisoner
5 Review Board information concerning the release of the
6 defendant under subparagraph (d) (1) of this Section; and

7 (11) shall request restitution at sentencing and shall
8 consider restitution in any plea negotiation, as provided
9 by law.

10 (c) At the written request of the crime victim, the office
11 of the State's Attorney shall:

12 (1) provide notice a reasonable time in advance of the
13 following court proceedings: preliminary hearing, any
14 hearing the effect of which may be the release of defendant
15 from custody, or to alter the conditions of bond and the
16 sentencing hearing. The crime victim shall also be notified
17 of the cancellation of the court proceeding in sufficient
18 time, wherever possible, to prevent an unnecessary
19 appearance in court;

20 (2) provide notice within a reasonable time after
21 receipt of notice from the custodian, of the release of the
22 defendant on bail or personal recognizance or the release
23 from detention of a minor who has been detained for a
24 violent crime;

25 (3) explain in nontechnical language the details of any
26 plea or verdict of a defendant, or any adjudication of a

1 juvenile as a delinquent for a violent crime;

2 (4) where practical, consult with the crime victim
3 before the Office of the State's Attorney makes an offer of
4 a plea bargain to the defendant or enters into negotiations
5 with the defendant concerning a possible plea agreement,
6 and shall consider the written victim impact statement, if
7 prepared prior to entering into a plea agreement;

8 (5) provide notice of the ultimate disposition of the
9 cases arising from an indictment or an information, or a
10 petition to have a juvenile adjudicated as a delinquent for
11 a violent crime;

12 (6) provide notice of any appeal taken by the defendant
13 and information on how to contact the appropriate agency
14 handling the appeal;

15 (7) provide notice of any request for post-conviction
16 review filed by the defendant under Article 122 of the Code
17 of Criminal Procedure of 1963, and of the date, time and
18 place of any hearing concerning the petition. Whenever
19 possible, notice of the hearing shall be given in advance;

20 (8) forward a copy of any statement presented under
21 Section 6 to the Prisoner Review Board to be considered by
22 the Board in making its determination under subsection (b)
23 of Section 3-3-8 of the Unified Code of Corrections.

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 of the discharge of any
3 individual who was adjudicated a delinquent for a violent crime
4 from State custody and by the sheriff of the appropriate county
5 of any such person's final discharge from county custody. The
6 Prisoner Review Board, upon written request, shall provide to a
7 victim or any other concerned citizen a recent photograph of
8 any person convicted of a felony, upon his or her release from
9 custody. The Prisoner Review Board, upon written request, shall
10 inform a victim or any other concerned citizen when feasible at
11 least 7 days prior to the prisoner's release on furlough of the
12 times and dates of such furlough. Upon written request by the
13 victim or any other concerned citizen, the State's Attorney
14 shall notify the person once of the times and dates of release
15 of a prisoner sentenced to periodic imprisonment. Notification
16 shall be based on the most recent information as to victim's or
17 other concerned citizen's residence or other location
18 available to the notifying authority. For purposes of this
19 paragraph (1) of subsection (d), "concerned citizen" includes
20 relatives of the victim, friends of the victim, witnesses to
21 the crime, or any other person associated with the victim or
22 prisoner.

23 (2) When the defendant has been committed to the
24 Department of Human Services pursuant to Section 5-2-4 or
25 any other provision of the Unified Code of Corrections, the
26 victim may request to be notified by the releasing

1 authority of the defendant's discharge from State custody.

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

15 (4) The victim of the crime for which the prisoner has
16 been sentenced shall receive reasonable written notice not
17 less than 15 days prior to the parole hearing and may
18 submit, in writing, on film, videotape or other electronic
19 means or in the form of a recording or in person at the
20 parole hearing or if a victim of a violent crime, by
21 calling the toll-free number established in subsection (f)
22 of this Section, information for consideration by the
23 Prisoner Review Board. The victim shall be notified within
24 7 days after the prisoner has been granted parole and shall
25 be informed of the right to inspect the registry of parole
26 decisions, established under subsection (g) of Section

1 3-3-5 of the Unified Code of Corrections. The provisions of
2 this paragraph (4) are subject to the Open Parole Hearings
3 Act.

4 (5) If a statement is presented under Section 6, the
5 Prisoner Review Board shall inform the victim of any order
6 of discharge entered by the Board pursuant to Section 3-3-8
7 of the Unified Code of Corrections.

8 (6) At the written request of the victim of the crime
9 for which the prisoner was sentenced, the Prisoner Review
10 Board shall notify the victim of the death of the prisoner
11 if the prisoner died while on parole or mandatory
12 supervised release.

13 (7) When a defendant who has been committed to the
14 Department of Corrections, the Department of Juvenile
15 Justice, or the Department of Human Services is released or
16 discharged and subsequently committed to the Department of
17 Human Services as a sexually violent person and the victim
18 had requested to be notified by the releasing authority of
19 the defendant's discharge from State custody, the
20 releasing authority shall provide to the Department of
21 Human Services such information that would allow the
22 Department of Human Services to contact the victim.

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

1 General under Section 8.5 of this Act.

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

13 (Source: P.A. 94-696, eff. 6-1-06; 95-317, eff. 8-21-07.)

14 (725 ILCS 120/5) (from Ch. 38, par. 1405)

15 Sec. 5. Rights of Witnesses.

16 (a) Witnesses as defined in subsection (b) of Section 3 of
17 this Act shall have the following rights:

18 (1) to be notified by the Office of the State's
19 Attorney of all court proceedings at which the witness'
20 presence is required in a reasonable amount of time prior
21 to the proceeding, and to be notified of the cancellation
22 of any scheduled court proceeding in sufficient time to
23 prevent an unnecessary appearance in court, where
24 possible;

25 (2) to be provided with appropriate employer

1 intercession services by the Office of the State's Attorney
2 or the victim advocate personnel to ensure that employers
3 of witnesses will cooperate with the criminal justice
4 system in order to minimize an employee's loss of pay and
5 other benefits resulting from court appearances;

6 (3) to be provided, whenever possible, a secure waiting
7 area during court proceedings that does not require
8 witnesses to be in close proximity to defendants and their
9 families and friends;

10 (4) to be provided with notice by the Office of the
11 State's Attorney, where necessary, of the right to have a
12 translator present whenever the witness' presence is
13 required and, in compliance with the federal Americans with
14 Disabilities Act of 1990, to be provided with notice of the
15 right to communications access through a sign language
16 interpreter or by other means.

17 (b) At the written request of the witness, the witness
18 shall:

19 (1) receive notice from the office of the State's
20 Attorney of any request for post-conviction review filed by
21 the defendant under Article 122 of the Code of Criminal
22 Procedure of 1963, and of the date, time, and place of any
23 hearing concerning the petition for post-conviction
24 review; whenever possible, notice of the hearing on the
25 petition shall be given in advance;

26 (2) receive notice by the releasing authority of the

1 defendant's discharge from State custody if the defendant
2 was committed to the Department of Human Services under
3 Section 5-2-4 or any other provision of the Unified Code of
4 Corrections;

5 (3) receive notice from the Prisoner Review Board of
6 the prisoner's escape from State custody, after the Board
7 has been notified of the escape by the Department of
8 Corrections or the Department of Juvenile Justice; when the
9 escapee is apprehended, the Department of Corrections or
10 the Department of Juvenile Justice shall immediately
11 notify the Prisoner Review Board and the Board shall notify
12 the witness;

13 (4) receive notice from the Prisoner Review Board of
14 the prisoner's release on parole, electronic detention,
15 work release or mandatory supervised release and of the
16 prisoner's final discharge from parole, electronic
17 detention, work release, or mandatory supervised release.

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

19 Section 15. The Criminal Proceeding Interpreter Act is
20 amended by adding Section 4 as follows:

21 (725 ILCS 140/4 new)

22 Sec. 4. Victims and witnesses; sign language interpreters.
23 The right to a qualified court-appointed sign language
24 interpreter as provided in this Act shall be afforded to

1 persons with disabilities who are victims of, or are called as
2 witnesses in proceedings relating to, a violation of any penal
3 statute of this State.