

1 AN ACT concerning mental health.

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

4 Section 5. The Mental Health and Developmental
5 Disabilities Code is amended by changing Sections 3-605 and
6 3-819 as follows:

7 (405 ILCS 5/3-605) (from Ch. 91 1/2, par. 3-605)

8 Sec. 3-605. (a) Upon receipt of a petition and
9 certificate prepared pursuant to this Article, the county
10 sheriff of the county in which a respondent is found shall
11 take a respondent into custody and notify the Department.
12 The Department shall ~~and--transport-him-to-a-mental-health~~
13 ~~facility,~~ ~~or-may~~ make arrangements with another public or
14 private entity including a licensed ambulance service to
15 transport the respondent to the mental health facility. In
16 the event it is determined by such facility that the
17 respondent is in need of commitment or treatment at another
18 mental health facility, the Department ~~county--sheriff~~ shall
19 ~~transport--the--respondent--to--the-appropriate-mental-health~~
20 ~~facility,~~ ~~or-the-county-sheriff-may~~ make arrangements with
21 ~~another---public--or--private--entity--including~~ a licensed
22 ambulance service to transport the respondent to the mental
23 health facility.

24 (b) The county sheriff may delegate his duties hereunder
25 to another law enforcement body within that county if that
26 law enforcement body agrees.

27 (c) The transporting authority acting in good faith and
28 without negligence in connection with the transportation of
29 respondents shall incur no liability, civil or criminal, by
30 reason of such transportation.

31 (d) The respondent and the estate of that respondent are

1 liable for the payment of transportation costs for
2 transporting the respondent to a mental health facility. If
3 the respondent is a beneficiary of a trust described in
4 Section 15.1 of the Trusts and Trustees Act, the trust shall
5 not be considered a part of the respondent's estate and shall
6 not be subject to payment for transportation costs for
7 transporting the respondent to a mental health facility under
8 this Section except to the extent permitted under Section
9 15.1 of the Trusts and Trustees Act. If the respondent is
10 unable to pay or if the estate of the respondent is
11 insufficient, the responsible relatives are severally liable
12 for the payment of those sums or for the balance due in case
13 less than the amount owing has been paid. If the respondent
14 is covered by insurance, the insurance carrier shall be
15 liable for payment to the extent authorized by the
16 respondent's insurance policy.

17 (Source: P.A. 87-1158.)

18 (405 ILCS 5/3-819) (from Ch. 91 1/2, par. 3-819)

19 Sec. 3-819. (a) When a recipient is hospitalized upon
20 court order, the order may authorize a relative or friend of
21 the recipient to transport the recipient to the facility if
22 such person is able to do so safely and humanely. When--the
23 Department--indicates--that--it--has--transportation--to--the
24 facility-available,-the-order-may-authorize-the-Department-to
25 transport--the--recipient--there. The court may order the
26 Department sheriff-of-the-county-in--which--such--proceedings
27 are--held to transport the recipient to the facility. When a
28 recipient is hospitalized upon court order, and the recipient
29 has been transported to a mental health facility, other than
30 a state-operated mental health facility, and it is determined
31 by the facility that the recipient is in need of commitment
32 or treatment at another mental health facility, the court
33 shall determine whether a relative or friend of the recipient

1 ~~er--the--Department~~ is authorized to transport the recipient
2 between facilities, or whether the Department ~~county--sheriff~~
3 is responsible for transporting the recipient between
4 facilities. The Department ~~shall~~ ~~sheriff---~~may make
5 arrangements with ~~another-public-or-private-entity-including~~
6 a licensed ambulance service to transport the recipient to
7 the facility. The transporting entity acting in good faith
8 and without negligence in connection with the transportation
9 of recipients shall incur no liability, civil or criminal, by
10 reason of such transportation.

11 (b) The court may authorize the transporting entity to
12 bill the recipient, the estate of the recipient, legally
13 responsible relatives, or insurance carrier for the cost of
14 providing transportation of the recipient to a mental health
15 facility. The recipient and the estate of the recipient are
16 liable for the payment of transportation costs for
17 transporting the recipient to a mental health facility. If
18 the recipient is a beneficiary of a trust described in
19 Section 15.1 of the Trusts and Trustees Act, the trust shall
20 not be considered a part of the recipient's estate and shall
21 not be subject to payment for transportation costs for
22 transporting the recipient to a mental health facility under
23 this section, except to the extent permitted under Section
24 15.1 of the Trusts and Trustees Act. If the recipient is
25 unable to pay or if the estate of the recipient is
26 insufficient, the responsible relatives are severally liable
27 for the payment of those sums or for the balance due in case
28 less than the amount owing has been paid. If the recipient
29 is covered by insurance, the insurance carrier shall be
30 liable for payment to the extent authorized by the
31 recipient's insurance policy.

32 (c) Upon the delivery of a recipient to a facility, in
33 accordance with the procedure set forth in this Article, the
34 facility director of the facility shall sign a receipt

1 acknowledging custody of the recipient and for any personal
2 property belonging to him, which receipt shall be filed with
3 the clerk of the court entering the hospitalization order.

4 (Source: P.A. 87-1158; 88-380.)

5 Section 10. The Code of Criminal Procedure of 1963 is
6 amended by changing Section 104-17 as follows:

7 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

8 Sec. 104-17. Commitment for Treatment; Treatment Plan.

9 (a) If the defendant is eligible to be or has been
10 released on bail or on his own recognizance, the court shall
11 select the least physically restrictive form of treatment
12 therapeutically appropriate and consistent with the treatment
13 plan.

14 (b) If the defendant's disability is mental, the court
15 may order him placed for treatment in the custody of the
16 Department of Human Services, or the court may order him
17 placed in the custody of any other appropriate public or
18 private mental health facility or treatment program which has
19 agreed to provide treatment to the defendant. If the
20 defendant is placed in the custody of the Department of Human
21 Services, the defendant shall be placed in a secure setting
22 unless the court determines that there are compelling reasons
23 why such placement is not necessary. During the period of
24 time required to determine the appropriate placement the
25 defendant shall remain in jail. Upon completion of the
26 placement process, the Department of Human Services sheriff
27 ~~shall-be-notified-and~~ shall make arrangements with a licensed
28 ambulance service to transport the defendant to the
29 designated facility. The placement may be ordered either on
30 an inpatient or an outpatient basis.

31 (c) If the defendant's disability is physical, the court
32 may order him placed under the supervision of the Department

1 of Human Services which shall place and maintain the
2 defendant in a suitable treatment facility or program, or the
3 court may order him placed in an appropriate public or
4 private facility or treatment program which has agreed to
5 provide treatment to the defendant. The placement may be
6 ordered either on an inpatient or an outpatient basis.

7 (d) The clerk of the circuit court shall transmit to the
8 Department, agency or institution, if any, to which the
9 defendant is remanded for treatment, the following:

10 (1) a certified copy of the order to undergo
11 treatment;

12 (2) the county and municipality in which the
13 offense was committed;

14 (3) the county and municipality in which the arrest
15 took place; and

16 (4) all additional matters which the Court directs
17 the clerk to transmit.

18 (e) Within 30 days of entry of an order to undergo
19 treatment, the person supervising the defendant's treatment
20 shall file with the court, the State, and the defense a
21 report assessing the facility's or program's capacity to
22 provide appropriate treatment for the defendant and
23 indicating his opinion as to the probability of the
24 defendant's attaining fitness within a period of one year
25 from the date of the finding of unfitness. If the report
26 indicates that there is a substantial probability that the
27 defendant will attain fitness within the time period, the
28 treatment supervisor shall also file a treatment plan which
29 shall include:

30 (1) A diagnosis of the defendant's disability;

31 (2) A description of treatment goals with respect
32 to rendering the defendant fit, a specification of the
33 proposed treatment modalities, and an estimated timetable
34 for attainment of the goals;

1 (3) An identification of the person in charge of
2 supervising the defendant's treatment.

3 (Source: P.A. 89-507, eff. 7-1-97.)

4 Section 15. The Unified Code of Corrections is amended
5 by changing Section 5-2-4 as follows:

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

7 Sec. 5-2-4. Proceedings after Acquittal by Reason of
8 Insanity.

9 (a) After a finding or verdict of not guilty by reason
10 of insanity under Sections 104-25, 115-3 or 115-4 of The Code
11 of Criminal Procedure of 1963, the defendant shall be ordered
12 to the Department of Human Services for an evaluation as to
13 whether he is subject to involuntary admission or in need of
14 mental health services. The order shall specify whether the
15 evaluation shall be conducted on an inpatient or outpatient
16 basis. If the evaluation is to be conducted on an inpatient
17 basis, the defendant shall be placed in a secure setting
18 unless the Court determines that there are compelling reasons
19 why such placement is not necessary. After the evaluation and
20 during the period of time required to determine the
21 appropriate placement, the defendant shall remain in jail.
22 Upon completion of the placement process the Department of
23 Human Services ~~sheriff--shall--be--notified--and~~ shall make
24 arrangements with a licensed ambulance service to transport
25 the defendant to the designated facility.

26 The Department shall provide the Court with a report of
27 its evaluation within 30 days of the date of this order. The
28 Court shall hold a hearing as provided under the Mental
29 Health and Developmental Disabilities Code to determine if
30 the individual is: (a) subject to involuntary admission; (b)
31 in need of mental health services on an inpatient basis; (c)
32 in need of mental health services on an outpatient basis; (d)

1 a person not in need of mental health services. The Court
2 shall enter its findings.

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

32 (1) Definitions: For the purposes of this Section:

33 (A) "Subject to involuntary admission" means: a
34 defendant has been found not guilty by reason of

1 insanity; and

2 (i) who is mentally ill and who because of his
3 mental illness is reasonably expected to inflict
4 serious physical harm upon himself or another in the
5 near future; or

6 (ii) who is mentally ill and who because of
7 his illness is unable to provide for his basic
8 physical needs so as to guard himself from serious
9 harm.

10 (B) "In need of mental health services on an
11 inpatient basis" means: a defendant who has been found
12 not guilty by reason of insanity who is not subject to
13 involuntary admission but who is reasonably expected to
14 inflict serious physical harm upon himself or another and
15 who would benefit from inpatient care or is in need of
16 inpatient care.

17 (C) "In need of mental health services on an
18 outpatient basis" means: a defendant who has been found
19 not guilty by reason of insanity who is not subject to
20 involuntary admission or in need of mental health
21 services on an inpatient basis, but is in need of
22 outpatient care, drug and/or alcohol rehabilitation
23 programs, community adjustment programs, individual,
24 group, or family therapy, or chemotherapy.

25 (D) "Conditional Release" means: the release from
26 either the custody of the Department of Human Services or
27 the custody of the Court of a person who has been found
28 not guilty by reason of insanity under such conditions as
29 the Court may impose which reasonably assure the
30 defendant's satisfactory progress in treatment or
31 habilitation and the safety of the defendant and others.
32 The Court shall consider such terms and conditions which
33 may include, but need not be limited to, outpatient care,
34 alcoholic and drug rehabilitation programs, community

1 adjustment programs, individual, group, family, and
2 chemotherapy, periodic checks with the legal authorities
3 and/or the Department of Human Services. The person or
4 facility rendering the outpatient care shall be required
5 to periodically report to the Court on the progress of
6 the defendant. Such conditional release shall be for a
7 period of five years, unless the defendant, the person or
8 facility rendering the treatment, therapy, program or
9 outpatient care, or the State's Attorney petitions the
10 Court for an extension of the conditional release period
11 for an additional three years. Upon receipt of such a
12 petition, the Court shall hold a hearing consistent with
13 the provisions of this paragraph (a) and paragraph (f) of
14 this Section, shall determine whether the defendant
15 should continue to be subject to the terms of conditional
16 release, and shall enter an order either extending the
17 defendant's period of conditional release for a single
18 additional three year period or discharging the
19 defendant. In no event shall the defendant's period of
20 conditional release exceed eight years. These provisions
21 for extension of conditional release shall only apply to
22 defendants conditionally released on or after July 1,
23 1979. However the extension provisions of Public Act
24 83-1449 apply only to defendants charged with a forcible
25 felony.

26 (E) "Facility director" means the chief officer of
27 a mental health or developmental disabilities facility or
28 his or her designee or the supervisor of a program of
29 treatment or habilitation or his or her designee.
30 "Designee" may include a physician, clinical
31 psychologist, social worker, or nurse.

32 (b) If the Court finds the defendant subject to
33 involuntary admission or in need of mental health services on
34 an inpatient basis, the admission, detention, care, treatment

1 or habilitation, treatment plans, review proceedings,
2 including review of treatment and treatment plans, and
3 discharge of the defendant after such order shall be under
4 the Mental Health and Developmental Disabilities Code, except
5 that the initial order for admission of a defendant acquitted
6 of a felony by reason of insanity shall be for an indefinite
7 period of time. Such period of commitment shall not exceed
8 the maximum length of time that the defendant would have been
9 required to serve, less credit for good behavior, before
10 becoming eligible for release had he been convicted of and
11 received the maximum sentence for the most serious crime for
12 which he has been acquitted by reason of insanity. The Court
13 shall determine the maximum period of commitment by an
14 appropriate order. During this period of time, the defendant
15 shall not be permitted to be in the community in any manner,
16 including but not limited to off-grounds privileges, with or
17 without escort by personnel of the Department of Human
18 Services, unsupervised on-grounds privileges, discharge or
19 conditional or temporary release, except by a plan as
20 provided in this Section. In no event shall a defendant's
21 continued unauthorized absence be a basis for discharge. Not
22 more than 30 days after admission and every 60 days
23 thereafter so long as the initial order remains in effect,
24 the facility director shall file a treatment plan report with
25 the court and forward a copy of the treatment plan report to
26 the clerk of the court, the State's Attorney, and the
27 defendant's attorney, if the defendant is represented by
28 counsel, or to a person authorized by the defendant under the
29 Mental Health and Developmental Disabilities Confidentiality
30 Act to be sent a copy of the report. The report shall
31 include an opinion as to whether the defendant is currently
32 subject to involuntary admission, in need of mental health
33 services on an inpatient basis, or in need of mental health
34 services on an outpatient basis. The report shall also

1 summarize the basis for those findings and provide a current
2 summary of the following items from the treatment plan: (1)
3 an assessment of the defendant's treatment needs, (2) a
4 description of the services recommended for treatment, (3)
5 the goals of each type of element of service, (4) an
6 anticipated timetable for the accomplishment of the goals,
7 and (5) a designation of the qualified professional
8 responsible for the implementation of the plan. The report
9 may also include unsupervised on-grounds privileges,
10 off-grounds privileges (with or without escort by personnel
11 of the Department of Human Services), home visits and
12 participation in work programs, but only where such
13 privileges have been approved by specific court order, which
14 order may include such conditions on the defendant as the
15 Court may deem appropriate and necessary to reasonably assure
16 the defendant's satisfactory progress in treatment and the
17 safety of the defendant and others.

18 (c) Every defendant acquitted of a felony by reason of
19 insanity and subsequently found to be subject to involuntary
20 admission or in need of mental health services shall be
21 represented by counsel in all proceedings under this Section
22 and under the Mental Health and Developmental Disabilities
23 Code.

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

26 (2) Upon filing with the Court of a verified
27 statement of legal services rendered by the private
28 attorney appointed pursuant to paragraph (1) of this
29 subsection, the Court shall determine a reasonable fee
30 for such services. If the defendant is unable to pay the
31 fee, the Court shall enter an order upon the State to pay
32 the entire fee or such amount as the defendant is unable
33 to pay from funds appropriated by the General Assembly
34 for that purpose.

1 (d) When the facility director determines that:

2 (1) the defendant is no longer subject to
3 involuntary admission or in need of mental health
4 services on an inpatient basis; and

5 (2) the defendant may be conditionally released
6 because he or she is still in need of mental health
7 services or that the defendant may be discharged as not
8 in need of any mental health services; or

9 (3) the defendant no longer requires placement in a
10 secure setting;

11 the facility director shall give written notice to the Court,
12 State's Attorney and defense attorney. Such notice shall set
13 forth in detail the basis for the recommendation of the
14 facility director, and specify clearly the recommendations,
15 if any, of the facility director, concerning conditional
16 release. Within 30 days of the notification by the facility
17 director, the Court shall set a hearing and make a finding as
18 to whether the defendant is:

19 (i) subject to involuntary admission; or

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

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

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

26 (v) no longer requires placement in a secure
27 setting.

28 Upon finding by the Court, the Court shall enter its
29 findings and such appropriate order as provided in subsection
30 (a) of this Section.

31 (e) A defendant admitted pursuant to this Section, or
32 any person on his behalf, may file a petition for treatment
33 plan review, transfer to a non-secure setting within the
34 Department of Human Services or discharge or conditional

1 release under the standards of this Section in the Court
2 which rendered the verdict. Upon receipt of a petition for
3 treatment plan review, transfer to a non-secure setting or
4 discharge or conditional release, the Court shall set a
5 hearing to be held within 120 days. Thereafter, no new
6 petition may be filed for 120 days without leave of the
7 Court.

8 (f) The Court shall direct that notice of the time and
9 place of the hearing be served upon the defendant, the
10 facility director, the State's Attorney, and the defendant's
11 attorney. If requested by either the State or the defense or
12 if the Court feels it is appropriate, an impartial
13 examination of the defendant by a psychiatrist or clinical
14 psychologist as defined in Section 1-103 of the Mental Health
15 and Developmental Disabilities Code who is not in the employ
16 of the Department of Human Services shall be ordered, and the
17 report considered at the time of the hearing.

18 (g) The findings of the Court shall be established by
19 clear and convincing evidence. The burden of proof and the
20 burden of going forth with the evidence rest with the
21 defendant or any person on the defendant's behalf when a
22 hearing is held to review the determination of the facility
23 director that the defendant should be transferred to a
24 non-secure setting, discharged, or conditionally released or
25 when a hearing is held to review a petition filed by or on
26 behalf of the defendant. The evidence shall be presented in
27 open Court with the right of confrontation and
28 cross-examination.

29 (h) If the Court finds that the defendant is no longer
30 in need of mental health services it shall order the facility
31 director to discharge the defendant. If the Court finds that
32 the defendant is in need of mental health services, and no
33 longer in need of inpatient care, it shall order the facility
34 director to release the defendant under such conditions as

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

9 (i) If within the period of the defendant's conditional
10 release, the Court determines, after hearing evidence, that
11 the defendant has not fulfilled the conditions of release,
12 the Court shall order a hearing to be held consistent with
13 the provisions of paragraph (f) and (g) of this Section. At
14 such hearing, if the Court finds that the defendant is
15 subject to involuntary admission or in need of mental health
16 services on an inpatient basis, it shall enter an order
17 remanding him or her to the Department of Human Services or
18 other facility. If the defendant is remanded to the
19 Department of Human Services, he or she shall be placed in a
20 secure setting unless the Court determines that there are
21 compelling reasons that such placement is not necessary. If
22 the Court finds that the defendant continues to be in need
23 of mental health services but not on an inpatient basis, it
24 may modify the conditions of the original release in order to
25 reasonably assure the defendant's satisfactory progress in
26 treatment and his or her safety and the safety of others. In
27 no event shall such conditional release be longer than eight
28 years. Nothing in this Section shall limit a Court's contempt
29 powers or any other powers of a Court.

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

32 (k) In the event of a conflict between this Section and
33 the Mental Health and Developmental Disabilities Code or the
34 Mental Health and Developmental Disabilities Confidentiality

1 Act, the provisions of this Section shall govern.

2 (1) This amendatory Act shall apply to all persons who
3 have been found not guilty by reason of insanity and who are
4 presently committed to the Department of Mental Health and
5 Developmental Disabilities (now the Department of Human
6 Services).

7 (m) The Clerk of the Court shall, after the entry of an
8 order of transfer to a non-secure setting of the Department
9 of Human Services or discharge or conditional release,
10 transmit a certified copy of the order to the Department of
11 Human Services, and the sheriff of the county from which the
12 defendant was admitted. In cases where the arrest of the
13 defendant or the commission of the offense took place in any
14 municipality with a population of more than 25,000 persons,
15 the Clerk of the Court shall also transmit a certified copy
16 of the order of discharge or conditional release to the
17 proper law enforcement agency for said municipality provided
18 the municipality has requested such notice in writing.

19 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
20 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.