

1 AMENDMENT TO SENATE BILL 1342

2 AMENDMENT NO. _____. Amend Senate Bill 1342 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. 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 sheriff shall

1 be notified and shall transport the defendant to the
2 designated facility.

3 The Department shall provide the Court with a report of
4 its evaluation within 30 days of the date of this order. The
5 Court shall hold a hearing as provided under the Mental
6 Health and Developmental Disabilities Code to determine if
7 the individual is: ~~(a)-subject-to-involuntary-admission;~~ (a)
8 ~~(b)~~ in need of mental health services on an inpatient basis;
9 (b) ~~(c)~~ in need of mental health services on an outpatient
10 basis; (c) ~~(d)~~ a person not in need of mental health
11 services. The Court shall enter its findings.

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

1 such conditions as set forth in this Section as will
 2 reasonably assure the defendant's satisfactory progress and
 3 participation in treatment or rehabilitation and the safety
 4 of the defendant and or others. If the Court finds the
 5 person not in need of mental health services, then the Court
 6 shall order the defendant discharged from custody.

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

8 (A) (Blank). "Subject--to--involuntary--admission"
 9 means:--a-defendant-has-been-found-not-guilty--by--reason
 10 of-insanity;-and

11 (i)--who-is-mentally-ill-and-who-because-of-his
 12 mental--illness--is--reasonably--expected-to-inflict
 13 serious-physical-harm-upon-himself-or-another-in-the
 14 near-future;-or

15 (ii)--who-is-mentally-ill-and--who--because--of
 16 his--illness--is--unable--to--provide--for-his-basie
 17 physical-needs-so-as-to-guard-himself--from--serious
 18 harm-

19 (B) "In need of mental health services on an
 20 inpatient basis" means: a defendant who has been found
 21 not guilty by reason of insanity who-is--not--subject--to
 22 involuntary--admission but who due to mental illness is
 23 reasonably expected to inflict serious physical harm upon
 24 himself or another and who would benefit from inpatient
 25 care or is in need of inpatient care.

26 (C) "In need of mental health services on an
 27 outpatient basis" means: a defendant who has been found
 28 not guilty by reason of insanity who is not subject--to
 29 involuntary---admission--or in need of mental health
 30 services on an inpatient basis, but is in need of
 31 outpatient care, drug and/or alcohol rehabilitation
 32 programs, community adjustment programs, individual,
 33 group, or family therapy, or chemotherapy.

34 (D) "Conditional Release" means: the release from

1 either the custody of the Department of Human Services or
2 the custody of the Court of a person who has been found
3 not guilty by reason of insanity under such conditions as
4 the Court may impose which reasonably assure the
5 defendant's satisfactory progress in treatment or
6 habilitation and the safety of the defendant and others.
7 The Court shall consider such terms and conditions which
8 may include, but need not be limited to, outpatient care,
9 alcoholic and drug rehabilitation programs, community
10 adjustment programs, individual, group, family, and
11 chemotherapy, random testing to ensure the defendant's
12 timely and continuous taking of any medicines prescribed
13 to control or manage his or her conduct or mental state,
14 and periodic checks with the legal authorities and/or the
15 Department of Human Services. The court may order as a
16 condition of conditional release that the defendant not
17 contact the victim of the offense that resulted in the
18 finding or verdict of not guilty by reason of insanity or
19 any other person. The Court may order the Department of
20 Human Services to provide care to any person
21 conditionally released under this Section. The
22 Department may contract with any public or private agency
23 in order to discharge any responsibilities imposed under
24 this Section. The Department shall monitor the provision
25 of services to persons conditionally released under this
26 Section and provide periodic reports to the Court
27 concerning the services and the condition of the
28 defendant. Whenever a person is conditionally released
29 pursuant to this Section, the State's Attorney for the
30 county in which the hearing is held shall designate in
31 writing the name, telephone number, and address of a
32 person employed by him or her who shall be notified in
33 the event that either the reporting agency or the
34 Department decides that the conditional release of the

1 defendant should be revoked or modified pursuant to
2 subsection (i) of this Section ~~The--person--or--facility~~
3 ~~rendering--the--outpatient--care--shall--be--required--to~~
4 ~~periodically--report--to--the--Court--on--the--progress--of--the~~
5 defendant. Such conditional release shall be for a period
6 of five years. However, unless the defendant, the person
7 or facility rendering the treatment, therapy, program or
8 outpatient care, the Department, or the State's Attorney
9 may petition petitions the Court for an extension of the
10 conditional release period for an additional 5 three
11 years. Upon receipt of such a petition, the Court shall
12 hold a hearing consistent with the provisions of this
13 paragraph (a) and paragraph (f) of this Section, shall
14 determine whether the defendant should continue to be
15 subject to the terms of conditional release, and shall
16 enter an order either extending the defendant's period of
17 conditional release for an a-single additional 5 three
18 year period or discharging the defendant. Additional
19 5-year periods of conditional release may be ordered
20 following a hearing as provided in this Section.
21 However, in no event shall the defendant's period of
22 conditional release continue beyond the maximum period of
23 commitment ordered by the court pursuant to paragraph (b)
24 of this Section exceed-eight-years. These provisions for
25 extension of conditional release shall only apply to
26 defendants conditionally released on or after the
27 effective date of this amendatory Act of the 93rd General
28 Assembly July-17-1979. However the extension provisions
29 of Public Act 83-1449 apply only to defendants charged
30 with a forcible felony.

31 (E) "Facility director" means the chief officer of
32 a mental health or developmental disabilities facility or
33 his or her designee or the supervisor of a program of
34 treatment or habilitation or his or her designee.

1 "Designee" may include a physician, clinical
2 psychologist, social worker, or nurse.

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

1 the Mental Health and Developmental Disabilities
2 Confidentiality Act to be sent a copy of the report. The
3 report shall include an opinion as to whether the defendant
4 is currently ~~subject--to--involuntary-admission~~, in need of
5 mental health services on an inpatient basis, or in need of
6 mental health services on an outpatient basis. The report
7 shall also summarize the basis for those findings and provide
8 a current summary of the following items from the treatment
9 plan: (1) an assessment of the defendant's treatment needs,
10 (2) a description of the services recommended for treatment,
11 (3) the goals of each type of element of service, (4) an
12 anticipated timetable for the accomplishment of the goals,
13 and (5) a designation of the qualified professional
14 responsible for the implementation of the plan. The report
15 may also include unsupervised on-grounds privileges,
16 off-grounds privileges (with or without escort by personnel
17 of the Department of Human Services), home visits and
18 participation in work programs, but only where such
19 privileges have been approved by specific court order, which
20 order may include such conditions on the defendant as the
21 Court may deem appropriate and necessary to reasonably assure
22 the defendant's satisfactory progress in treatment and the
23 safety of the defendant and others.

24 (c) Every defendant acquitted of a felony by reason of
25 insanity and subsequently found to be ~~subject--to--involuntary~~
26 ~~admission--or~~ in need of mental health services shall be
27 represented by counsel in all proceedings under this Section
28 and under the Mental Health and Developmental Disabilities
29 Code.

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

32 (2) Upon filing with the Court of a verified
33 statement of legal services rendered by the private
34 attorney appointed pursuant to paragraph (1) of this

1 subsection, the Court shall determine a reasonable fee
 2 for such services. If the defendant is unable to pay the
 3 fee, the Court shall enter an order upon the State to pay
 4 the entire fee or such amount as the defendant is unable
 5 to pay from funds appropriated by the General Assembly
 6 for that purpose.

7 (d) When the facility director determines that:

8 (1) the defendant is no longer subject---to
 9 involuntary---admission--er in need of mental health
 10 services on an inpatient basis; and

11 (2) the defendant may be conditionally released
 12 because he or she is still in need of mental health
 13 services or that the defendant may be discharged as not
 14 in need of any mental health services; or

15 (3) the defendant no longer requires placement in a
 16 secure setting;

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

25 (i) (blank) subject-to-involuntary-admission; or

26 (ii) in need of mental health services in the form
 27 of inpatient care; or

28 (iii) in need of mental health services but not
 29 subject to involuntary-admission-er inpatient care; or

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

32 (v) no longer requires placement in a secure
 33 setting.

34 Upon finding by the Court, the Court shall enter its

1 findings and such appropriate order as provided in subsection
2 (a) of this Section.

3 (e) A defendant admitted pursuant to this Section, or
4 any person on his behalf, may file a petition for treatment
5 plan review, transfer to a non-secure setting within the
6 Department of Human Services or discharge or conditional
7 release under the standards of this Section in the Court
8 which rendered the verdict. Upon receipt of a petition for
9 treatment plan review, transfer to a non-secure setting or
10 discharge or conditional release, the Court shall set a
11 hearing to be held within 120 days. Thereafter, no new
12 petition may be filed for 180 ~~120~~ days without leave of the
13 Court.

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

24 (g) The findings of the Court shall be established by
25 clear and convincing evidence. The burden of proof and the
26 burden of going forth with the evidence rest with the
27 defendant or any person on the defendant's behalf when a
28 hearing is held to review a petition filed by or on behalf of
29 the defendant. The evidence shall be presented in open Court
30 with the right of confrontation and cross-examination. Such
31 evidence may include, but is not limited to:

32 (1) whether the defendant appreciates the harm
33 caused by the defendant to others and the community by
34 his or her prior conduct that resulted in the finding of

1 not guilty by reason of insanity;

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

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

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

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

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

13 (7) the defendant's history or potential for
14 alcohol and drug abuse;

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

16 (9) any specialized physical or medical needs of
17 the defendant;

18 (10) any family participation or involvement
19 expected upon release and what is the willingness and
20 ability of the family to participate or be involved;

21 (11) the defendant's potential to be a danger to
22 himself, herself, or others; and

23 (12) any other factor or factors the court deems
24 appropriate.

25 (h) If the Court finds, consistent with the provisions
26 of this Section, that the defendant is no longer in need of
27 mental health services it shall order the facility director
28 to discharge the defendant. If the Court finds, consistent
29 with the provisions of this Section, that the defendant is in
30 need of mental health services, and no longer in need of
31 inpatient care, it shall order the facility director to
32 release the defendant under such conditions as the Court
33 deems appropriate and as provided by this Section. Such
34 conditional release shall be imposed for a period of 5 five

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

9 (i) If within the period of the defendant's conditional
10 release the State's Attorney determines that the defendant
11 has not fulfilled the conditions of his or her release, the
12 State's Attorney may petition the Court to revoke or modify
13 the conditional release of the defendant. Upon the filing of
14 such petition the defendant may be remanded to the custody of
15 the Department, or to any other mental health facility
16 designated by the Department, pending the resolution of the
17 petition. Nothing in this Section shall prevent the
18 emergency admission of a defendant pursuant to Article VI of
19 Chapter III of the Mental Health and Developmental
20 Disabilities Code or the voluntary admission of the defendant
21 pursuant to Article IV of Chapter III of the Mental Health
22 and Developmental Disabilities Code. If the Court determines,
23 after hearing evidence, that the defendant has not fulfilled
24 the conditions of release, the Court shall order a hearing to
25 be held consistent with the provisions of paragraph (f) and
26 (g) of this Section. At such hearing, if the Court finds that
27 the defendant is ~~subject-to-involuntary-admission-or~~ in need
28 of mental health services on an inpatient basis, it shall
29 enter an order remanding him or her to the Department of
30 Human Services or other facility. If the defendant is
31 remanded to the Department of Human Services, he or she shall
32 be placed in a secure setting unless the Court determines
33 that there are compelling reasons that such placement is not
34 necessary. If the Court finds that the defendant continues

1 to be in need of mental health services but not on an
2 inpatient basis, it may modify the conditions of the original
3 release in order to reasonably assure the defendant's
4 satisfactory progress in treatment and his or her safety and
5 the safety of others in accordance with the standards
6 established in paragraph (1) (D) of subsection (a). ~~In no~~
7 ~~event shall such conditional release be longer than eight~~
8 ~~years.~~ Nothing in this Section shall limit a Court's contempt
9 powers or any other powers of a Court.

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

12 (k) In the event of a conflict between this Section and
13 the Mental Health and Developmental Disabilities Code or the
14 Mental Health and Developmental Disabilities Confidentiality
15 Act, the provisions of this Section shall govern.

16 (l) This amendatory Act shall apply to all persons who
17 have been found not guilty by reason of insanity and who are
18 presently committed to the Department of Mental Health and
19 Developmental Disabilities (now the Department of Human
20 Services).

21 (m) The Clerk of the Court shall, after the entry of an
22 order of transfer to a non-secure setting of the Department
23 of Human Services or discharge or conditional release,
24 transmit a certified copy of the order to the Department of
25 Human Services, and the sheriff of the county from which the
26 defendant was admitted. In cases where the arrest of the
27 defendant or the commission of the offense took place in any
28 municipality with a population of more than 25,000 persons,
29 the Clerk of the Court shall also transmit a certified copy
30 of the order of discharge or conditional release to the
31 proper law enforcement agency for said municipality provided
32 the municipality has requested such notice in writing.

33 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
34 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".