

1 appropriate placement, the defendant shall remain in jail.
2 Upon completion of the placement process the sheriff shall
3 be notified and shall transport the defendant to the
4 designated facility.

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

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

1 mental health services, but not on an inpatient care basis,
2 the Court shall conditionally release the defendant, under
3 such conditions as set forth in this Section as will
4 reasonably assure the defendant's satisfactory progress in
5 treatment or rehabilitation and the safety of the defendant
6 or others. If the Court finds the person not in need of
7 mental health services, then the Court shall order the
8 defendant discharged from custody.

9 (1) Definitions: ~~In For-the-purposes-of~~ this Section:

10 (A) "Subject to involuntary admission" means: a
11 defendant has been found not guilty by reason of
12 insanity; and

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

17 (ii) who is mentally ill and who because of
18 his illness is unable to provide for his basic
19 physical needs so as to guard himself from serious
20 harm.

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

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

1 group, or family therapy, or chemotherapy.

2 (D) "Conditional Release" means: the release from
3 either the custody of the Department of Human Services or
4 the custody of the Court of a person who has been found
5 not guilty by reason of insanity under such conditions as
6 the Court may impose which reasonably assure the
7 defendant's satisfactory progress in treatment or
8 habilitation and the safety of the defendant and others.
9 The Court shall consider such terms and conditions which
10 may include, but need not be limited to, outpatient care,
11 alcoholic and drug rehabilitation programs, community
12 adjustment programs, individual, group, family, and
13 chemotherapy, periodic checks with the legal authorities
14 and/or the Department of Human Services. The person or
15 facility rendering the outpatient care shall be required
16 to periodically report to the Court on the progress of
17 the defendant. Such conditional release shall be for a
18 period of five years, unless the defendant, the person or
19 facility rendering the treatment, therapy, program or
20 outpatient care, or the State's Attorney petitions the
21 Court for an extension of the conditional release period
22 for an additional three years. Upon receipt of such a
23 petition, the Court shall hold a hearing consistent with
24 the provisions of this paragraph (a) and paragraph (f) of
25 this Section, shall determine whether the defendant
26 should continue to be subject to the terms of conditional
27 release, and shall enter an order either extending the
28 defendant's period of conditional release for a single
29 additional three year period or discharging the
30 defendant. In no event shall the defendant's period of
31 conditional release exceed eight years. These provisions
32 for extension of conditional release shall only apply to
33 defendants conditionally released on or after July 1,
34 1979. However the extension provisions of Public Act

1 83-1449 apply only to defendants charged with a forcible
2 felony.

3 (E) "Facility director" means the chief officer of
4 a mental health or developmental disabilities facility or
5 his or her designee or the supervisor of a program of
6 treatment or habilitation or his or her designee.
7 "Designee" may include a physician, clinical
8 psychologist, social worker, or nurse.

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

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

29 (c) Every defendant acquitted of a felony by reason of
30 insanity and subsequently found to be subject to involuntary
31 admission or in need of mental health services shall be
32 represented by counsel in all proceedings under this Section
33 and under the Mental Health and Developmental Disabilities
34 Code.

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

3 (2) Upon filing with the Court of a verified
4 statement of legal services rendered by the private
5 attorney appointed pursuant to paragraph (1) of this
6 subsection, the Court shall determine a reasonable fee
7 for such services. If the defendant is unable to pay the
8 fee, the Court shall enter an order upon the State to pay
9 the entire fee or such amount as the defendant is unable
10 to pay from funds appropriated by the General Assembly
11 for that purpose.

12 (d) When the facility director determines that:

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

16 (2) the defendant may be conditionally released
17 because he or she is still in need of mental health
18 services or that the defendant may be discharged as not
19 in need of any mental health services; or

20 (3) the defendant no longer requires placement in a
21 secure setting;

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

30 (i) subject to involuntary admission; or

31 (ii) in need of mental health services in the form
32 of inpatient care; or

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

1 (iv) no longer in need of mental health services;
2 or
3 (v) no longer requires placement in a secure
4 setting.

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

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

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

29 (g) The findings of the Court shall be established by
30 clear and convincing evidence. The burden of proof and the
31 burden of going forth with the evidence rest with the
32 defendant or any person on the defendant's behalf when a
33 hearing is held to review the determination of the facility
34 director that the defendant should be transferred to a

1 non-secure setting, discharged, or conditionally released or
2 when a hearing is held to review a petition filed by or on
3 behalf of the defendant. The evidence shall be presented in
4 open Court with the right of confrontation and
5 cross-examination.

6 (h) If the Court finds that the defendant is no longer
7 in need of mental health services it shall order the facility
8 director to discharge the defendant. If the Court finds that
9 the defendant is in need of mental health services, and no
10 longer in need of inpatient care, it shall order the facility
11 director to release the defendant under such conditions as
12 the Court deems appropriate and as provided by this Section.
13 Such conditional release shall be imposed for a period of
14 five years and shall be subject to later modification by the
15 Court as provided by this Section. If the Court finds that
16 the defendant is subject to involuntary admission or in need
17 of mental health services on an inpatient basis, it shall
18 order the facility director not to discharge or release the
19 defendant in accordance with paragraph (b) of this Section.

20 (i) If within the period of the defendant's conditional
21 release, the Court determines, after hearing evidence, that
22 the defendant has not fulfilled the conditions of release,
23 the Court shall order a hearing to be held consistent with
24 the provisions of paragraph (f) and (g) of this Section. At
25 such hearing, if the Court finds that the defendant is
26 subject to involuntary admission or in need of mental health
27 services on an inpatient basis, it shall enter an order
28 remanding him or her to the Department of Human Services or
29 other facility. If the defendant is remanded to the
30 Department of Human Services, he or she shall be placed in a
31 secure setting unless the Court determines that there are
32 compelling reasons that such placement is not necessary. If
33 the Court finds that the defendant continues to be in need
34 of mental health services but not on an inpatient basis, it

1 may modify the conditions of the original release in order to
2 reasonably assure the defendant's satisfactory progress in
3 treatment and his or her safety and the safety of others. In
4 no event shall such conditional release be longer than eight
5 years. Nothing in this Section shall limit a Court's contempt
6 powers or any other powers of a Court.

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

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

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

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

30 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
31 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)".