



Rep. Paul D. Froehlich

Filed: 3/28/2006

09400SB2204ham002

LRB094 15519 LCT 57778 a

1 AMENDMENT TO SENATE BILL 2204

2 AMENDMENT NO. _____. Amend Senate Bill 2204, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Mental Health and Developmental
6 Disabilities Code is amended by changing Section 2-107.1 as
7 follows:

8 (405 ILCS 5/2-107.1) (from Ch. 91 1/2, par. 2-107.1)

9 Sec. 2-107.1. Administration of authorized involuntary
10 treatment upon application to a court.

11 (a) An adult recipient of services and the recipient's
12 guardian, if the recipient is under guardianship, and the
13 substitute decision maker, if any, shall be informed of the
14 recipient's right to refuse medication. The recipient and the
15 recipient's guardian or substitute decision maker shall be
16 given the opportunity to refuse generally accepted mental
17 health or developmental disability services, including but not
18 limited to medication.

19 (a-5) Notwithstanding the provisions of Section 2-107 of
20 this Code, authorized involuntary treatment may be
21 administered to an adult recipient of services without the
22 informed consent of the recipient under the following
23 standards:

24 (1) Any person 18 years of age or older, including any

1 guardian, may petition the circuit court for an order
2 authorizing the administration of authorized involuntary
3 treatment to a recipient of services. The petition shall
4 state that the petitioner has made a good faith attempt to
5 determine whether the recipient has executed a power of
6 attorney for health care under the Powers of Attorney for
7 Health Care Law or a declaration for mental health
8 treatment under the Mental Health Treatment Preference
9 Declaration Act and to obtain copies of these instruments
10 if they exist. If either of the above-named instruments is
11 available to the petitioner, the instrument or a copy of
12 the instrument shall be attached to the petition as an
13 exhibit. The petitioner shall deliver a copy of the
14 petition, and notice of the time and place of the hearing,
15 to the respondent, his or her attorney, any known agent or
16 attorney-in-fact, if any, and the guardian, if any, no
17 later than 3 days prior to the date of the hearing. Service
18 of the petition and notice of the time and place of the
19 hearing may be made by transmitting them via facsimile
20 machine to the respondent or other party. Upon receipt of
21 the petition and notice, the party served, or the person
22 delivering the petition and notice to the party served,
23 shall acknowledge service. If the party sending the
24 petition and notice does not receive acknowledgement of
25 service within 24 hours, service must be made by personal
26 service.

27 The petition may include a request that the court
28 authorize such testing and procedures as may be essential
29 for the safe and effective administration of the authorized
30 involuntary treatment sought to be administered, but only
31 where the petition sets forth the specific testing and
32 procedures sought to be administered.

33 If a hearing is requested to be held immediately
34 following the hearing on a petition for involuntary

1 admission, then the notice requirement shall be the same as
2 that for the hearing on the petition for involuntary
3 admission, and the petition filed pursuant to this Section
4 shall be filed with the petition for involuntary admission.

5 (2) The court shall hold a hearing within 7 days of the
6 filing of the petition. The People, the petitioner, or the
7 respondent shall be entitled to a continuance of up to 7
8 days as of right. An additional continuance of not more
9 than 7 days may be granted to any party (i) upon a showing
10 that the continuance is needed in order to adequately
11 prepare for or present evidence in a hearing under this
12 Section or (ii) under exceptional circumstances. The court
13 may grant an additional continuance not to exceed 21 days
14 when, in its discretion, the court determines that such a
15 continuance is necessary in order to provide the recipient
16 with an examination pursuant to Section 3-803 or 3-804 of
17 this Act, to provide the recipient with a trial by jury as
18 provided in Section 3-802 of this Act, or to arrange for
19 the substitution of counsel as provided for by the Illinois
20 Supreme Court Rules. The hearing shall be separate from a
21 judicial proceeding held to determine whether a person is
22 subject to involuntary admission but may be heard
23 immediately preceding or following such a judicial
24 proceeding and may be heard by the same trier of fact or
25 law as in that judicial proceeding.

26 (3) Unless otherwise provided herein, the procedures
27 set forth in Article VIII of Chapter 3 of this Act,
28 including the provisions regarding appointment of counsel,
29 shall govern hearings held under this subsection (a-5).

30 (4) Authorized involuntary treatment shall not be
31 administered to the recipient unless it has been determined
32 by clear and convincing evidence that all of the following
33 factors are present. In determining whether a person meets
34 the criteria specified in the following paragraphs (A)

1 through (G), the court may consider evidence of the
2 person's history of serious violence, repeated past
3 pattern of specific behavior, actions related to the
4 person's illness, or past outcomes of various treatment
5 options. ÷

6 (A) That the recipient has a serious mental illness
7 or developmental disability.

8 (B) That because of said mental illness or
9 developmental disability, the recipient currently
10 exhibits any one of the following: (i) deterioration of
11 his or her ability to function, as compared to the
12 recipient's ability to function prior to the current
13 onset of symptoms of the mental illness or disability
14 for which treatment is presently sought, (ii)
15 suffering, or (iii) threatening behavior.

16 (C) That the illness or disability has existed for
17 a period marked by the continuing presence of the
18 symptoms set forth in item (B) of this subdivision (4)
19 or the repeated episodic occurrence of these symptoms.

20 (D) That the benefits of the treatment outweigh the
21 harm.

22 (E) That the recipient lacks the capacity to make a
23 reasoned decision about the treatment.

24 (F) That other less restrictive services have been
25 explored and found inappropriate.

26 (G) If the petition seeks authorization for
27 testing and other procedures, that such testing and
28 procedures are essential for the safe and effective
29 administration of the treatment.

30 (5) In no event shall an order issued under this
31 Section be effective for more than 90 days. A second 90-day
32 period of involuntary treatment may be authorized pursuant
33 to a hearing that complies with the standards and
34 procedures of this subsection (a-5). Thereafter,

1 additional 180-day periods of involuntary treatment may be
2 authorized pursuant to the standards and procedures of this
3 Section without limit. If a new petition to authorize the
4 administration of authorized involuntary treatment is
5 filed at least 15 days prior to the expiration of the prior
6 order, and if any continuance of the hearing is agreed to
7 by the recipient, the administration of the treatment may
8 continue in accordance with the prior order pending the
9 completion of a hearing under this Section.

10 (6) An order issued under this subsection (a-5) shall
11 designate the persons authorized to administer the
12 authorized involuntary treatment under the standards and
13 procedures of this subsection (a-5). Those persons shall
14 have complete discretion not to administer any treatment
15 authorized under this Section. The order shall also specify
16 the medications and the anticipated range of dosages that
17 have been authorized and may include a list of any
18 alternative medications and range of dosages deemed
19 necessary.

20 (b) A guardian may be authorized to consent to the
21 administration of authorized involuntary treatment to an
22 objecting recipient only under the standards and procedures of
23 subsection (a-5).

24 (c) Notwithstanding any other provision of this Section, a
25 guardian may consent to the administration of authorized
26 involuntary treatment to a non-objecting recipient under
27 Article XIa of the Probate Act of 1975.

28 (d) Nothing in this Section shall prevent the
29 administration of authorized involuntary treatment to
30 recipients in an emergency under Section 2-107 of this Act.

31 (e) Notwithstanding any of the provisions of this Section,
32 authorized involuntary treatment may be administered pursuant
33 to a power of attorney for health care under the Powers of
34 Attorney for Health Care Law or a declaration for mental health

1 treatment under the Mental Health Treatment Preference
2 Declaration Act.

3 (Source: P.A. 92-16, eff. 6-28-01; 93-573, eff. 8-21-03.)

4 Section 10. The Health Care Workplace Violence Prevention
5 Act is amended by changing Section 35 as follows:

6 (405 ILCS 90/35)

7 Sec. 35. Pilot project; task force.

8 (a) The Department of Human Services and the Department of
9 Public Health shall initially implement this Act as a 2-year
10 pilot project in which only the following health care
11 workplaces shall participate:

12 (1) The Chester Mental Health Center.

13 (2) The Alton Mental Health Center.

14 (3) The Douglas Singer Mental Health Center.

15 (4) The Andrew McFarland Mental Health Center.

16 (5) The Jacksonville Developmental Center.

17 Each health care workplace participating in the pilot
18 project shall comply with this Act as provided in this Act.

19 (b) The Governor shall convene a 11-member ~~6-member~~ task
20 force consisting of the following: one member appointed by the
21 President of the Senate; one member appointed by the Minority
22 Leader of the Senate; one member appointed by the Speaker of
23 House of Representatives; one member appointed by the Minority
24 Leader of the House of Representatives; one representative from
25 a statewide association representing licensed registered
26 professional nurses; one licensed registered professional
27 nurse involved in direct patient care, appointed by the
28 Governor; one representative of an organization representing
29 State, county, and municipal employees, appointed by the
30 Governor; one representative of an organization representing
31 public employees, appointed by the Governor; and 3
32 representatives of the Department of Human Services, with one

1 representative from the Division of Mental Health, one
2 representative from the Division of Developmental
3 Disabilities, and one representative from the Division of
4 Rehabilitation Services of the Department of Human Services.

5 The task force shall submit a report to the Illinois General
6 Assembly by January 1, 2008 that shall (i) evaluate the
7 effectiveness of the health care workplace violence prevention
8 pilot project in the facilities participating in the pilot
9 project and (ii) make recommendations concerning the
10 implementation of workplace violence prevention programs in
11 all health care workplaces.

12 (c) The Department of Human Services shall provide all
13 necessary administrative support to the task force.

14 (Source: P.A. 94-347, eff. 7-28-05.)

15 Section 15. The Code of Criminal Procedure of 1963 is
16 amended by changing Sections 104-13, 104-17, and 104-24 and by
17 adding Section 104-17.5 as follows:

18 (725 ILCS 5/104-13) (from Ch. 38, par. 104-13)

19 Sec. 104-13. Fitness Examination.

20 (a) When the issue of fitness involves the defendant's
21 mental condition, the court shall order an examination of the
22 defendant by one or more licensed physicians, clinical
23 psychologists, or psychiatrists chosen by the court. No
24 physician, clinical psychologist or psychiatrist employed by
25 or under contract with the Department of Human Services or the
26 Department of Corrections shall be ordered to perform, in his
27 official capacity, an examination under this Section.

28 (b) If the issue of fitness involves the defendant's
29 physical condition, the court shall appoint one or more
30 physicians and in addition, such other experts as it may deem
31 appropriate to examine the defendant and to report to the court
32 regarding the defendant's condition.

1 (c) An examination ordered under this Section shall be
2 given at the place designated by the person who will conduct
3 the examination, except that if the defendant is being held in
4 custody, the examination shall take place at such location as
5 the court directs. No examinations under this Section shall be
6 ordered to take place at mental health or developmental
7 disabilities facilities operated by the Department of Human
8 Services. If the defendant fails to keep appointments without
9 reasonable cause or if the person conducting the examination
10 reports to the court that diagnosis requires hospitalization or
11 extended observation, the court may order the defendant
12 admitted to an appropriate facility for an examination, other
13 than a screening examination, for not more than 7 days. The
14 court may, upon a showing of good cause, grant an additional 7
15 days to complete the examination.

16 (d) Release on bail or on recognizance shall not be revoked
17 and an application therefor shall not be denied on the grounds
18 that an examination has been ordered.

19 (e) Upon request by the defense and if the defendant is
20 indigent, the court may appoint, in addition to the expert or
21 experts chosen pursuant to subsection (a) of this Section, a
22 qualified expert selected by the defendant to examine him and
23 to make a report as provided in Section 104-15. Upon the filing
24 with the court of a verified statement of services rendered,
25 the court shall enter an order on the county board to pay such
26 expert a reasonable fee stated in the order.

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

28 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

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

1 (b) If the defendant's disability is mental, the court may
2 order him placed for treatment in the custody of the Department
3 of Human Services, or the court may order him placed in the
4 custody of any other appropriate public or private mental
5 health facility or treatment program which has agreed to
6 provide treatment to the defendant; or, if the defendant is
7 concurrently serving a felony sentence of imprisonment in the
8 Department of Corrections, the court shall order the Department
9 of Human Services to perform a placement evaluation and to
10 submit a written placement recommendation based upon the
11 treatment and security needs of the defendant and the safety of
12 staff and other recipients of services, which the court shall
13 use to determine whether to place the defendant for treatment
14 in the Department of Corrections or the Department of Human
15 Services. The court may order the defendant placed in the
16 Department of Corrections or the Department of Human Services.
17 The written placement recommendation shall be sent to the
18 court, the State, and the defense within 21 days of the order.
19 If the defendant is placed in the custody of the Department of
20 Human Services, the defendant shall be placed in a secure
21 setting unless the court determines that there are compelling
22 reasons why such placement is not necessary. If the defendant
23 is remanded to the Department of Corrections for treatment, the
24 Department of Human Services, upon request by the Department of
25 Corrections, shall provide consultation and other resources
26 required to assist in rendering the person fit to stand trial,
27 including, but not limited to, providing ongoing training,
28 sharing personal service contract personnel, and, in
29 individual cases, agreeing to a transfer to a Department of
30 Human Services facility pursuant to Section 3-8-5 of the
31 Unified Code of Corrections. During the period of time required
32 to determine the appropriate placement the defendant shall
33 remain in jail or other correctional setting. Upon completion
34 of the placement process, the sheriff shall be notified and

1 shall transport the defendant to the designated facility.
2 Except for defendants remanded to the custody of the Department
3 of Corrections, the ~~The~~ placement may be ordered either on an
4 inpatient or an outpatient basis.

5 (c) If the defendant's disability is physical, the court
6 may order him placed under the supervision of the Department of
7 Human Services, which shall place and maintain the defendant in
8 a suitable treatment facility or program, or the court may
9 order him placed in an appropriate public or private facility
10 or treatment program which has agreed to provide treatment to
11 the defendant; or, if the defendant is concurrently serving a
12 felony sentence of imprisonment in the Department of
13 Corrections, the court shall order the Department of Human
14 Services to perform a placement evaluation and to submit a
15 written placement recommendation based upon the treatment and
16 security needs of the defendant and the safety of staff and
17 other recipients of services, which the court shall use to
18 determine whether to place the defendant for treatment in the
19 Department of Corrections or the Department of Human Services.
20 The written placement recommendation shall be sent to the
21 court, the State, and the defense within 21 days of the order.
22 If the defendant is remanded to the Department of Corrections
23 for treatment, the Department of Human Services, upon request
24 by the Department of Corrections, shall provide consultation
25 and other resources required to assist in rendering the person
26 fit to stand trial. Except for defendants remanded to the
27 custody of the Department of Corrections, the ~~The~~ placement may
28 be ordered either on an inpatient or an outpatient basis.

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

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

33 (2) the county and municipality in which the offense
34 was committed;

1 (3) the county and municipality in which the arrest
2 took place; and

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

5 (e) Within 30 days of entry of an order to undergo
6 treatment, the person supervising the defendant's treatment
7 shall file with the court, the State, and the defense a report
8 assessing the facility's or program's capacity to provide
9 appropriate treatment for the defendant and indicating his
10 opinion as to the probability of the defendant's attaining
11 fitness within a period of one year from the date of the
12 finding of unfitness. If the report indicates that there is a
13 substantial probability that the defendant will attain fitness
14 within the time period, the treatment supervisor shall also
15 file a treatment plan which shall include:

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

17 (2) A description of treatment goals with respect to
18 rendering the defendant fit, a specification of the
19 proposed treatment modalities, and an estimated timetable
20 for attainment of the goals;

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

23 (f) Within 60 days after the effective date of this
24 amendatory Act of the 94th General Assembly, the Department of
25 Human Services and the Department of Corrections shall enter
26 into an interagency agreement for the sharing of resources to
27 effectuate the services required for the evaluation,
28 treatment, and report writing required by the Department of
29 Corrections pursuant to this Section. The cost of these
30 services shall be provided by the Department of Human Services.

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

32 (725 ILCS 5/104-17.5 new)

33 Sec. 104-17.5. Fitness for trial; administration of

1 authorized involuntary medication upon application to a court.

2 (a) Generally. Involuntary medication may be administered
3 to an adult defendant without the informed consent of the
4 defendant by order of the circuit court pursuant to the
5 procedures and standards set forth in this Section.
6 Notwithstanding any other provisions of this Section, a
7 defendant in the custody of the Department of Human Services
8 may also be administered medication as provided in the Mental
9 Health and Developmental Disabilities Code. A defendant in the
10 custody of the Department of Corrections may also be
11 administered medication as provided in the rules and
12 regulations of the Department of Corrections.

13 (b) Definition. For purposes of this Section, "authorized
14 involuntary medication" means:

15 (1) Psychotropic medication whose use for
16 anti-psychotic, antidepressant, anti-manic, anti-anxiety,
17 behavioral modification, or behavioral management purposes
18 is listed in the latest edition of the AMA Drug Evaluations
19 or Physician's Desk Reference or that is administered for
20 any of these purposes.

21 (2) Tests and other related procedures that are
22 essential for the safe and effective administration of a
23 psychotropic medication.

24 (c) Petition. The State on behalf of a facility director
25 may petition the circuit court for an order authorizing the
26 administration of authorized involuntary medication to a
27 defendant. The petition shall include:

28 (1) A copy of the defendant's power of attorney for
29 health care under the Illinois Power of Attorney Act, a
30 declaration for mental health under the Mental Health
31 Treatment Preference Declaration Act, or a statement by the
32 petitioner that a good faith attempt was made to determine
33 whether such instruments exist and that none were found to
34 exist.

1 (2) A treatment plan with diagnosis, proposed
2 medications and their dosages and side effects, any
3 alternative medications and their dosages and side
4 effects, testing and procedures essential for the safe and
5 effective administration of the authorized involuntary
6 medication, and the staff members responsible for
7 implementing the treatment plan.

8 (3) If applicable, specific testing and procedures
9 sought to be administered and a request that the court
10 authorize such testing and procedures as may be essential
11 for the safe and effective administration of the authorized
12 involuntary medication sought to be administered.

13 (4) A statement that other, less restrictive services
14 have been explored and found inappropriate or, taking
15 account of less intrusive alternatives, the authorized
16 involuntary medication is necessary to render the
17 defendant fit.

18 If the defendant is in the custody of the Department of
19 Human Services, the statement shall include a statement
20 that the defendant was evaluated and could not be medicated
21 under Section 2-102, 2-107, or 2-107.1 of the Mental Health
22 and Developmental Disabilities Code.

23 If the defendant is in the custody of the Department of
24 Corrections, the statement shall include a statement that
25 the defendant was evaluated and could not be medicated
26 under the Department of Corrections Rules for Involuntary
27 Administration of Psychotropic Medication under 20
28 Illinois Administrative Code 415.

29 (d) Service of petition and notice. No later than 7 days
30 prior to the date of the hearing, the petitioner shall deliver
31 a copy the petition and notice of the time and place of the
32 hearing to the defendant, his or her attorney, any known agent
33 or attorney-in-fact, if any, and the guardian, if any. Service
34 may be made by facsimile transmission, mail, or in person. Upon

1 receipt of the petition and notice, the party served, or the
2 person delivering the petition and notice to the party served,
3 shall acknowledge service. If the sending party does not
4 receive acknowledgment of service within 24 hours, service must
5 be made by personal service.

6 (e) Hearing. The court shall hold a hearing within 14 days
7 after the filing of the petition. The people or the petitioner
8 shall be entitled to a continuance of not more than 7 days as
9 of right. An additional continuance of not more than 7 days may
10 be granted to any party (i) upon a showing that the continuance
11 is needed in order to adequately prepare for or present
12 evidence in a hearing under this Section or (ii) under
13 exceptional circumstances. The court may grant an additional
14 continuance not to exceed 21 days when, in its discretion, the
15 court determines that such a continuance is necessary to
16 provide the defendant an examination, a trial by jury, or
17 substitution of counsel as provided for by the Illinois Supreme
18 Court Rules.

19 (f) Evidence. Authorized involuntary medication shall not
20 be administered to the defendant unless it has been determined
21 by clear and convincing evidence that all of the following
22 factors are present:

23 (1) The defendant has a serious mental illness or
24 developmental disability.

25 (2) The authorized involuntary medication is medically
26 appropriate.

27 (3) The authorized involuntary medication is
28 substantially likely to render the defendant fit to stand
29 trial.

30 (4) The authorized involuntary medication is
31 substantially unlikely to have side effects that may
32 undermine the fairness of the trial.

33 (5) Other, less restrictive services have been
34 explored and found inappropriate or, taking account of less

1 intrusive alternatives, the authorized involuntary
2 medication is necessary significantly to further important
3 governmental trial-related interests.

4 (6) If the petition seeks authorization for testing and
5 other procedures, such testing and procedures are
6 essential for the safe and effective administration of the
7 medication.

8 (g) Order. An order issued under this Section shall
9 designate the persons authorized to administer the authorized
10 involuntary medication under the standards and procedures of
11 this Section. Those persons shall have complete discretion not
12 to administer any medication authorized under this Section. The
13 order shall also specify the medication and the anticipated
14 range of dosages that have been authorized and may include a
15 list of any alternative medications and range of dosages deemed
16 necessary. Alternatively, the court may order the proposed
17 treatment plan that was presented in the petition.

18 (h) Duration of order. In no event shall an order issued
19 under this Section be effective for more than 90 days. A second
20 90-day period of involuntary medication may be authorized
21 pursuant to this Section. Thereafter, additional 180-day
22 periods of involuntary medication may be authorized pursuant to
23 the standards and procedures of this Section without limit. If
24 a new petition is filed at least 15 days prior to the
25 expiration of the prior order and the defendant agrees to a
26 hearing continuance, the administration of the medication may
27 continue in accordance with the prior order pending the
28 completion of a hearing under this Section.

29 (i) Power of attorney or declaration for mental health
30 treatment. Notwithstanding any other provisions of this
31 Section, authorized involuntary treatment may be administered
32 pursuant to a power of attorney for health care under the
33 Illinois Power of Attorney Act or a declaration for mental
34 health treatment under the Mental Health Treatment Preference

1 Declaration Act.

2 (725 ILCS 5/104-24) (from Ch. 38, par. 104-24)

3 Sec. 104-24. Time Credit.

4 (a) Time spent in custody pursuant to orders issued under
5 Section 104-17 or 104-20 or pursuant to a commitment to the
6 Department of Human Services following a finding of unfitness
7 or incompetency under prior law, shall be credited against any
8 sentence imposed on the defendant in the pending criminal case
9 or in any other case arising out of the same conduct.

10 (b) A defendant serving a felony sentence of imprisonment
11 in the Department of Corrections concurrently with time spent
12 in the custody of the Department of Corrections pursuant to an
13 order issued under this Article shall not remain in the
14 Department of Corrections pursuant to this Article at the
15 expiration of the felony sentence. Upon completion of the time
16 served under all felony sentences of imprisonment, the
17 Department of Corrections shall notify the court of any
18 defendant still in custody pursuant to this Article, and the
19 court shall evaluate the defendant for placement with the
20 Department of Human Services in accordance with the provisions
21 of this Article. A court order of commitment to the Department
22 of Human Services shall serve as a condition of any remaining
23 term of mandatory supervised release or parole.

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

25 Section 20. The Unified Code of Corrections is amended by
26 changing Sections 3-6-2, 3-8-5, and 5-2-4 as follows:

27 (730 ILCS 5/3-6-2) (from Ch. 38, par. 1003-6-2)

28 (Text of Section before amendment by P.A. 94-696)

29 Sec. 3-6-2. Institutions and Facility Administration.

30 (a) Each institution and facility of the Department shall
31 be administered by a chief administrative officer appointed by

1 the Director. A chief administrative officer shall be
2 responsible for all persons assigned to the institution or
3 facility. The chief administrative officer shall administer
4 the programs of the Department for the custody and treatment of
5 such persons.

6 (b) The chief administrative officer shall have such
7 assistants as the Department may assign.

8 (c) The Director or Assistant Director shall have the
9 emergency powers to temporarily transfer individuals without
10 formal procedures to any State, county, municipal or regional
11 correctional or detention institution or facility in the State,
12 subject to the acceptance of such receiving institution or
13 facility, or to designate any reasonably secure place in the
14 State as such an institution or facility and to make transfers
15 thereto. However, transfers made under emergency powers shall
16 be reviewed as soon as practicable under Article 8, and shall
17 be subject to Section 5-905 of the Juvenile Court Act of 1987.
18 This Section shall not apply to transfers to the Department of
19 Human Services which are provided for under Section 3-8-5 or
20 Section 3-10-5.

21 (d) The Department shall provide educational programs for
22 all committed persons so that all persons have an opportunity
23 to attain the achievement level equivalent to the completion of
24 the twelfth grade in the public school system in this State.
25 Other higher levels of attainment shall be encouraged and
26 professional instruction shall be maintained wherever
27 possible. The Department may establish programs of mandatory
28 education and may establish rules and regulations for the
29 administration of such programs. A person committed to the
30 Department who, during the period of his or her incarceration,
31 participates in an educational program provided by or through
32 the Department and through that program is awarded or earns the
33 number of hours of credit required for the award of an
34 associate, baccalaureate, or higher degree from a community

1 college, college, or university located in Illinois shall
2 reimburse the State, through the Department, for the costs
3 incurred by the State in providing that person during his or
4 her incarceration with the education that qualifies him or her
5 for the award of that degree. The costs for which reimbursement
6 is required under this subsection shall be determined and
7 computed by the Department under rules and regulations that it
8 shall establish for that purpose. However, interest at the rate
9 of 6% per annum shall be charged on the balance of those costs
10 from time to time remaining unpaid, from the date of the
11 person's parole, mandatory supervised release, or release
12 constituting a final termination of his or her commitment to
13 the Department until paid.

14 (d-5) A person committed to the Department is entitled to
15 confidential testing for infection with human immunodeficiency
16 virus (HIV) and to counseling in connection with such testing,
17 with no copay to the committed person. A person committed to
18 the Department who has tested positive for infection with HIV
19 is entitled to medical care while incarcerated, counseling, and
20 referrals to support services, in connection with that positive
21 test result. Implementation of this subsection (d-5) is subject
22 to appropriation.

23 (e) A person committed to the Department who becomes in
24 need of medical or surgical treatment but is incapable of
25 giving consent thereto shall receive such medical or surgical
26 treatment by the chief administrative officer consenting on the
27 person's behalf. Before the chief administrative officer
28 consents, he or she shall obtain the advice of one or more
29 physicians licensed to practice medicine in all its branches in
30 this State. If such physician or physicians advise:

31 (1) that immediate medical or surgical treatment is
32 required relative to a condition threatening to cause
33 death, damage or impairment to bodily functions, or
34 disfigurement; and

1 (2) that the person is not capable of giving consent to
2 such treatment; the chief administrative officer may give
3 consent for such medical or surgical treatment, and such
4 consent shall be deemed to be the consent of the person for
5 all purposes, including, but not limited to, the authority
6 of a physician to give such treatment.

7 (e-5) If a physician providing medical care to a committed
8 person on behalf of the Department advises the chief
9 administrative officer that the committed person's mental or
10 physical health has deteriorated as a result of the cessation
11 of ingestion of food or liquid to the point where medical or
12 surgical treatment is required to prevent death, damage, or
13 impairment to bodily functions, the chief administrative
14 officer may authorize such medical or surgical treatment.

15 (f) In the event that the person requires medical care and
16 treatment at a place other than the institution or facility,
17 the person may be removed therefrom under conditions prescribed
18 by the Department. The Department shall require the committed
19 person receiving medical or dental services on a non-emergency
20 basis to pay a \$2 co-payment to the Department for each visit
21 for medical or dental services. The amount of each co-payment
22 shall be deducted from the committed person's individual
23 account. A committed person who has a chronic illness, as
24 defined by Department rules and regulations, shall be exempt
25 from the \$2 co-payment for treatment of the chronic illness. A
26 committed person shall not be subject to a \$2 co-payment for
27 follow-up visits ordered by a physician, who is employed by, or
28 contracts with, the Department. A committed person who is
29 indigent is exempt from the \$2 co-payment and is entitled to
30 receive medical or dental services on the same basis as a
31 committed person who is financially able to afford the
32 co-payment. Notwithstanding any other provision in this
33 subsection (f) to the contrary, any person committed to any
34 facility operated by the Juvenile Division, as set forth in

1 subsection (b) of Section 3-2-5 of this Code, is exempt from
2 the co-payment requirement for the duration of confinement in
3 those facilities.

4 (g) Any person having sole custody of a child at the time
5 of commitment or any woman giving birth to a child after her
6 commitment, may arrange through the Department of Children and
7 Family Services for suitable placement of the child outside of
8 the Department of Corrections. The Director of the Department
9 of Corrections may determine that there are special reasons why
10 the child should continue in the custody of the mother until
11 the child is 6 years old.

12 (h) The Department may provide Family Responsibility
13 Services which may consist of, but not be limited to the
14 following:

15 (1) family advocacy counseling;

16 (2) parent self-help group;

17 (3) parenting skills training;

18 (4) parent and child overnight program;

19 (5) parent and child reunification counseling, either
20 separately or together, preceding the inmate's release;
21 and

22 (6) a prerelease reunification staffing involving the
23 family advocate, the inmate and the child's counselor, or
24 both and the inmate.

25 (i) Prior to the release of any inmate who has a documented
26 history of intravenous drug use, and upon the receipt of that
27 inmate's written informed consent, the Department shall
28 provide for the testing of such inmate for infection with human
29 immunodeficiency virus (HIV) and any other identified
30 causative agent of acquired immunodeficiency syndrome (AIDS).
31 The testing provided under this subsection shall consist of an
32 enzyme-linked immunosorbent assay (ELISA) test or such other
33 test as may be approved by the Illinois Department of Public
34 Health. If the test result is positive, the Western Blot Assay

1 or more reliable confirmatory test shall be administered. All
2 inmates tested in accordance with the provisions of this
3 subsection shall be provided with pre-test and post-test
4 counseling. Notwithstanding any provision of this subsection
5 to the contrary, the Department shall not be required to
6 conduct the testing and counseling required by this subsection
7 unless sufficient funds to cover all costs of such testing and
8 counseling are appropriated for that purpose by the General
9 Assembly.

10 (j) Any person convicted of a sex offense as defined in the
11 Sex Offender Management Board Act shall be required to receive
12 a sex offender evaluation prior to release into the community
13 from the Department of Corrections. The sex offender evaluation
14 shall be conducted in conformance with the standards and
15 guidelines developed under the Sex Offender Management Board
16 Act and by an evaluator approved by the Board.

17 (k) Any minor committed to the Department of
18 Corrections-Juvenile Division for a sex offense as defined by
19 the Sex Offender Management Board Act shall be required to
20 undergo sex offender treatment by a treatment provider approved
21 by the Board and conducted in conformance with the Sex Offender
22 Management Board Act.

23 (l) Prior to the release of any inmate, the Department must
24 provide the inmate with the option of testing for infection
25 with human immunodeficiency virus (HIV), as well as counseling
26 in connection with such testing, with no copayment for the
27 test. At the same time, the Department shall require each such
28 inmate to sign a form stating that the inmate has been informed
29 of his or her rights with respect to the testing required to be
30 offered under this subsection (l) and providing the inmate with
31 an opportunity to indicate either that he or she wants to be
32 tested or that he or she does not want to be tested. The
33 Department, in consultation with the Department of Public
34 Health, shall prescribe the contents of the form. The testing

1 provided under this subsection (1) shall consist of an
2 enzyme-linked immunosorbent assay (ELISA) test or any other
3 test approved by the Department of Public Health. If the test
4 result is positive, the Western Blot Assay or more reliable
5 confirmatory test shall be administered.

6 Prior to the release of an inmate who the Department knows
7 has tested positive for infection with HIV, the Department in a
8 timely manner shall offer the inmate transitional case
9 management, including referrals to other support services.

10 Implementation of this subsection (1) is subject to
11 appropriation.

12 (Source: P.A. 93-616, eff. 1-1-04; 93-928, eff. 1-1-05; 94-629,
13 eff. 1-1-06.)

14 (Text of Section after amendment by P.A. 94-696)

15 Sec. 3-6-2. Institutions and Facility Administration.

16 (a) Each institution and facility of the Department shall
17 be administered by a chief administrative officer appointed by
18 the Director. A chief administrative officer shall be
19 responsible for all persons assigned to the institution or
20 facility. The chief administrative officer shall administer
21 the programs of the Department for the custody and treatment of
22 such persons.

23 (b) The chief administrative officer shall have such
24 assistants as the Department may assign.

25 (c) The Director or Assistant Director shall have the
26 emergency powers to temporarily transfer individuals without
27 formal procedures to any State, county, municipal or regional
28 correctional or detention institution or facility in the State,
29 subject to the acceptance of such receiving institution or
30 facility, or to designate any reasonably secure place in the
31 State as such an institution or facility and to make transfers
32 thereto. However, transfers made under emergency powers shall
33 be reviewed as soon as practicable under Article 8, and shall

1 be subject to Section 5-905 of the Juvenile Court Act of 1987.
2 This Section shall not apply to transfers to the Department of
3 Human Services which are provided for under Section 3-8-5 or
4 Section 3-10-5.

5 (d) The Department shall provide educational programs for
6 all committed persons so that all persons have an opportunity
7 to attain the achievement level equivalent to the completion of
8 the twelfth grade in the public school system in this State.
9 Other higher levels of attainment shall be encouraged and
10 professional instruction shall be maintained wherever
11 possible. The Department may establish programs of mandatory
12 education and may establish rules and regulations for the
13 administration of such programs. A person committed to the
14 Department who, during the period of his or her incarceration,
15 participates in an educational program provided by or through
16 the Department and through that program is awarded or earns the
17 number of hours of credit required for the award of an
18 associate, baccalaureate, or higher degree from a community
19 college, college, or university located in Illinois shall
20 reimburse the State, through the Department, for the costs
21 incurred by the State in providing that person during his or
22 her incarceration with the education that qualifies him or her
23 for the award of that degree. The costs for which reimbursement
24 is required under this subsection shall be determined and
25 computed by the Department under rules and regulations that it
26 shall establish for that purpose. However, interest at the rate
27 of 6% per annum shall be charged on the balance of those costs
28 from time to time remaining unpaid, from the date of the
29 person's parole, mandatory supervised release, or release
30 constituting a final termination of his or her commitment to
31 the Department until paid.

32 (d-5) A person committed to the Department is entitled to
33 confidential testing for infection with human immunodeficiency
34 virus (HIV) and to counseling in connection with such testing,

1 with no copay to the committed person. A person committed to
2 the Department who has tested positive for infection with HIV
3 is entitled to medical care while incarcerated, counseling, and
4 referrals to support services, in connection with that positive
5 test result. Implementation of this subsection (d-5) is subject
6 to appropriation.

7 (e) A person committed to the Department who becomes in
8 need of medical or surgical treatment but is incapable of
9 giving consent thereto shall receive such medical or surgical
10 treatment by the chief administrative officer consenting on the
11 person's behalf. Before the chief administrative officer
12 consents, he or she shall obtain the advice of one or more
13 physicians licensed to practice medicine in all its branches in
14 this State. If such physician or physicians advise:

15 (1) that immediate medical or surgical treatment is
16 required relative to a condition threatening to cause
17 death, damage or impairment to bodily functions, or
18 disfigurement; and

19 (2) that the person is not capable of giving consent to
20 such treatment; the chief administrative officer may give
21 consent for such medical or surgical treatment, and such
22 consent shall be deemed to be the consent of the person for
23 all purposes, including, but not limited to, the authority
24 of a physician to give such treatment.

25 (e-5) If a physician providing medical care to a committed
26 person on behalf of the Department advises the chief
27 administrative officer that the committed person's mental or
28 physical health has deteriorated as a result of the cessation
29 of ingestion of food or liquid to the point where medical or
30 surgical treatment is required to prevent death, damage, or
31 impairment to bodily functions, the chief administrative
32 officer may authorize such medical or surgical treatment.

33 (e-10) A person committed to the Department who has a
34 mental illness or developmental disability and who, because of

1 that mental illness or developmental disability, exhibits (i)
2 deterioration of his or her ability to function, (ii)
3 suffering, or (iii) threatening behavior may be administered
4 involuntary psychotropic medications, provided that (A) the
5 illness or disability has existed for a period marked by the
6 continuing presence of the symptoms sent forth or repeated
7 episodic occurrence of these symptoms, (B) the benefits of the
8 treatment outweigh the harm, and (C) the committed person lacks
9 the capacity to make a reasoned decision about the treatment.
10 The Department may establish rules and regulations for the
11 administration of such psychotropic medication. For the
12 purpose of this Section, "psychotropic medication" means
13 medication whose use for anti-psychotic, antidepressant,
14 anti-manic, anti-anxiety, behavioral modification, or
15 behavioral management purposes is listed in the latest edition
16 of the AMA Drug Evaluations or Physician's Desk Reference or
17 that is administered for any of these purposes. "Psychotropic
18 medication" includes tests and other related procedures that
19 are essential for the safe and effective administration of a
20 psychotropic medication.

21 (f) In the event that the person requires medical care and
22 treatment at a place other than the institution or facility,
23 the person may be removed therefrom under conditions prescribed
24 by the Department. The Department shall require the committed
25 person receiving medical or dental services on a non-emergency
26 basis to pay a \$2 co-payment to the Department for each visit
27 for medical or dental services. The amount of each co-payment
28 shall be deducted from the committed person's individual
29 account. A committed person who has a chronic illness, as
30 defined by Department rules and regulations, shall be exempt
31 from the \$2 co-payment for treatment of the chronic illness. A
32 committed person shall not be subject to a \$2 co-payment for
33 follow-up visits ordered by a physician, who is employed by, or
34 contracts with, the Department. A committed person who is

1 indigent is exempt from the \$2 co-payment and is entitled to
2 receive medical or dental services on the same basis as a
3 committed person who is financially able to afford the
4 co-payment. Notwithstanding any other provision in this
5 subsection (f) to the contrary, any person committed to any
6 facility operated by the Department of Juvenile Justice, as set
7 forth in Section 3-2.5-15 of this Code, is exempt from the
8 co-payment requirement for the duration of confinement in those
9 facilities.

10 (g) Any person having sole custody of a child at the time
11 of commitment or any woman giving birth to a child after her
12 commitment, may arrange through the Department of Children and
13 Family Services for suitable placement of the child outside of
14 the Department of Corrections. The Director of the Department
15 of Corrections may determine that there are special reasons why
16 the child should continue in the custody of the mother until
17 the child is 6 years old.

18 (h) The Department may provide Family Responsibility
19 Services which may consist of, but not be limited to the
20 following:

21 (1) family advocacy counseling;

22 (2) parent self-help group;

23 (3) parenting skills training;

24 (4) parent and child overnight program;

25 (5) parent and child reunification counseling, either
26 separately or together, preceding the inmate's release;

27 and

28 (6) a prerelease reunification staffing involving the
29 family advocate, the inmate and the child's counselor, or
30 both and the inmate.

31 (i) Prior to the release of any inmate who has a documented
32 history of intravenous drug use, and upon the receipt of that
33 inmate's written informed consent, the Department shall
34 provide for the testing of such inmate for infection with human

1 immunodeficiency virus (HIV) and any other identified
2 causative agent of acquired immunodeficiency syndrome (AIDS).
3 The testing provided under this subsection shall consist of an
4 enzyme-linked immunosorbent assay (ELISA) test or such other
5 test as may be approved by the Illinois Department of Public
6 Health. If the test result is positive, the Western Blot Assay
7 or more reliable confirmatory test shall be administered. All
8 inmates tested in accordance with the provisions of this
9 subsection shall be provided with pre-test and post-test
10 counseling. Notwithstanding any provision of this subsection
11 to the contrary, the Department shall not be required to
12 conduct the testing and counseling required by this subsection
13 unless sufficient funds to cover all costs of such testing and
14 counseling are appropriated for that purpose by the General
15 Assembly.

16 (j) Any person convicted of a sex offense as defined in the
17 Sex Offender Management Board Act shall be required to receive
18 a sex offender evaluation prior to release into the community
19 from the Department of Corrections. The sex offender evaluation
20 shall be conducted in conformance with the standards and
21 guidelines developed under the Sex Offender Management Board
22 Act and by an evaluator approved by the Board.

23 (k) Any minor committed to the Department of Juvenile
24 Justice for a sex offense as defined by the Sex Offender
25 Management Board Act shall be required to undergo sex offender
26 treatment by a treatment provider approved by the Board and
27 conducted in conformance with the Sex Offender Management Board
28 Act.

29 (l) Prior to the release of any inmate, the Department must
30 provide the inmate with the option of testing for infection
31 with human immunodeficiency virus (HIV), as well as counseling
32 in connection with such testing, with no copayment for the
33 test. At the same time, the Department shall require each such
34 inmate to sign a form stating that the inmate has been informed

1 of his or her rights with respect to the testing required to be
2 offered under this subsection (1) and providing the inmate with
3 an opportunity to indicate either that he or she wants to be
4 tested or that he or she does not want to be tested. The
5 Department, in consultation with the Department of Public
6 Health, shall prescribe the contents of the form. The testing
7 provided under this subsection (1) shall consist of an
8 enzyme-linked immunosorbent assay (ELISA) test or any other
9 test approved by the Department of Public Health. If the test
10 result is positive, the Western Blot Assay or more reliable
11 confirmatory test shall be administered.

12 Prior to the release of an inmate who the Department knows
13 has tested positive for infection with HIV, the Department in a
14 timely manner shall offer the inmate transitional case
15 management, including referrals to other support services.

16 Implementation of this subsection (1) is subject to
17 appropriation.

18 (Source: P.A. 93-616, eff. 1-1-04; 93-928, eff. 1-1-05; 94-629,
19 eff. 1-1-06; 94-696, eff. 6-1-06.)

20 (730 ILCS 5/3-8-5) (from Ch. 38, par. 1003-8-5)

21 Sec. 3-8-5. Transfer to Department of Human Services.

22 (a) The Department shall cause inquiry and examination at
23 periodic intervals to ascertain whether any person committed to
24 it may be subject to involuntary admission, as defined in
25 Section 1-119 of the Mental Health and Developmental
26 Disabilities Code, or pursuant to Section 5-2-4 of this Code,
27 or meets the standard for judicial admission as defined in
28 Section 4-500 of the Mental Health and Developmental
29 Disabilities Code, or is an addict, alcoholic or intoxicated
30 person as defined in the Alcoholism and Other Drug Abuse and
31 Dependency Act, or is committed by a court for treatment or a
32 treatment plan pursuant to Article 104 of the Code of Criminal
33 Procedure of 1963. The Department may provide special

1 psychiatric or psychological or other counseling or treatment
2 to such persons in a separate institution within the
3 Department, or the Director of the Department of Corrections
4 may transfer such persons other than addicts, alcoholics or
5 intoxicated persons to the Department of Human Services for
6 observation, diagnosis and treatment, subject to the approval
7 of the Director of the Department of Human Services, for a
8 period of not more than 6 months, if the person consents in
9 writing to the transfer. The person shall be advised of his
10 right not to consent, and if he does not consent, such transfer
11 may be effected only by commitment under paragraphs (c) and (d)
12 of this Section.

13 (b) The person's spouse, guardian or nearest relative and
14 his attorney of record shall be advised of their right to
15 object, and if objection is made, such transfer may be effected
16 only by commitment under paragraph (c) of this Section. Notices
17 of such transfer shall be mailed to such person's spouse,
18 guardian or nearest relative and to the attorney of record
19 marked for delivery to addressee only at his last known address
20 by certified mail with return receipt requested together with
21 written notification of the manner and time within which he may
22 object thereto.

23 (c) If a committed person does not consent to his transfer
24 to the Department of Human Services or if a person objects
25 under paragraph (b) of this Section, or if the Department of
26 Human Services determines that a transferred person requires
27 commitment to the Department of Human Services for more than 6
28 months, or if the person's sentence will expire within 6
29 months, the Director of the Department of Corrections shall
30 file a petition in the circuit court of the county in which the
31 correctional institution or facility is located requesting the
32 transfer of such person to the Department of Human Services. A
33 certificate of a psychiatrist, clinical psychologist or, if
34 admission to a developmental disability facility is sought, of

1 a physician that the person is in need of commitment to the
2 Department of Human Services for treatment or habilitation
3 shall be attached to the petition. Copies of the petition shall
4 be furnished to the named person and to the state's attorneys
5 of the county in which the correctional institution or facility
6 is located and the county in which the named person was
7 committed to the Department of Corrections.

8 (d) The court shall set a date for a hearing on the
9 petition within the time limit set forth in the Mental Health
10 and Developmental Disabilities Code. The hearing shall be
11 conducted in the manner prescribed by the Mental Health and
12 Developmental Disabilities Code. If the person is found to be
13 in need of commitment to the Department of Human Services for
14 treatment or habilitation, the court may commit him to that
15 Department.

16 (e) Nothing in this Section shall limit the right of the
17 Director or the chief administrative officer of any institution
18 or facility to utilize the emergency admission provisions of
19 the Mental Health and Developmental Disabilities Code with
20 respect to any person in his custody or care. The transfer of a
21 person to an institution or facility of the Department of Human
22 Services under paragraph (a) of this Section does not discharge
23 the person from the control of the Department.

24 (Source: P.A. 88-670, eff. 12-2-94; 89-507, eff. 7-1-97.)

25 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

26 Sec. 5-2-4. Proceedings after Acquittal by Reason of
27 Insanity.

28 (a) After a finding or verdict of not guilty by reason of
29 insanity under Sections 104-25, 115-3 or 115-4 of The Code of
30 Criminal Procedure of 1963, the defendant shall be ordered to
31 the Department of Human Services for an evaluation as to
32 whether he is in need of mental health services; or, if the
33 defendant is concurrently serving a felony sentence of

1 imprisonment in the Department of Corrections, the court shall
2 order the Department of Human Services to perform a placement
3 evaluation and to submit a written placement recommendation
4 based upon the treatment and security needs of the defendant
5 and the safety of staff and other recipients of services, which
6 the court shall use to determine whether to place the defendant
7 for treatment in the Department of Corrections or the
8 Department of Human Services. The court may order the defendant
9 placed in the Department of Corrections or the Department of
10 Human Services. The written placement recommendation shall be
11 sent to the court, the State, and the defense within 21 days of
12 the order. For persons concurrently serving a felony sentence
13 of imprisonment in the Department of Corrections, placement
14 evaluations shall occur in the jail or other correctional
15 setting. The order shall specify whether the evaluation shall
16 be conducted on an inpatient or outpatient basis. If the
17 evaluation is to be conducted on an inpatient basis, the
18 defendant shall be placed in a secure setting unless the Court
19 determines that there are compelling reasons why such placement
20 is not necessary.

21 (a-0.2) After the evaluation and during the period of time
22 required to determine the appropriate placement, the defendant
23 shall remain in jail. Upon completion of the placement process
24 the sheriff shall be notified and shall transport the defendant
25 to the designated facility.

26 (a-0.4) If the defendant is concurrently serving a felony
27 sentence of imprisonment in the Department of Corrections, the
28 court shall use the placement recommendation submitted by the
29 Department of Human Services to determine whether to place the
30 defendant in the Department of Corrections or the Department of
31 Human Services. In addition, if the defendant is placed in the
32 Department of Corrections:

33 (1) The Department of Corrections, and not the
34 Department of Human Services, shall provide all

1 evaluations, reports, and treatment pursuant to
2 subsections (a), (a-0.6), (b-15), and (d) of this Section.

3 (2) The provisions relating to privileges, home
4 visits, non-secure settings, conditional release, or
5 discharge do not apply while the defendant is concurrently
6 serving a felony sentence of imprisonment in the Department
7 of Corrections.

8 (3) The provisions in subsections (a-0.8), (b),
9 (b-10), and (h) shall not apply.

10 (4) The Department of Human Services, upon request by
11 the Department of Corrections, shall provide consultation
12 and other resources required to assist in treatment,
13 including, but not limited to, providing ongoing training,
14 sharing personal service contract personnel, and, in
15 individual cases, agreeing to a transfer to a Department of
16 Human Services facility pursuant to Section 3-8-5.

17 (a-0.6) The Department shall provide the Court with a
18 report of its evaluation within 30 days of the date of this
19 order. The Court shall hold a hearing as provided under the
20 Mental Health and Developmental Disabilities Code to determine
21 if the individual is: (a) in need of mental health services on
22 an inpatient basis; (b) in need of mental health services on an
23 outpatient basis; (c) a person not in need of mental health
24 services. The Court shall enter its findings.

25 (a-0.8) If the defendant is found to be in need of mental
26 health services on an inpatient care basis, the Court shall
27 order the defendant to the Department of Human Services. The
28 defendant shall be placed in a secure setting unless the Court
29 determines that there are compelling reasons why such placement
30 is not necessary. Such defendants placed in a secure setting
31 shall not be permitted outside the facility's housing unit
32 unless escorted or accompanied by personnel of the Department
33 of Human Services or with the prior approval of the Court for
34 unsupervised on-grounds privileges as provided herein. Any

1 defendant placed in a secure setting pursuant to this Section,
2 transported to court hearings or other necessary appointments
3 off facility grounds by personnel of the Department of Human
4 Services, shall be placed in security devices or otherwise
5 secured during the period of transportation to assure secure
6 transport of the defendant and the safety of Department of
7 Human Services personnel and others. These security measures
8 shall not constitute restraint as defined in the Mental Health
9 and Developmental Disabilities Code. If the defendant is found
10 to be in need of mental health services, but not on an
11 inpatient care basis, the Court shall conditionally release the
12 defendant, under such conditions as set forth in this Section
13 as will reasonably assure the defendant's satisfactory
14 progress and participation in treatment or rehabilitation and
15 the safety of the defendant and others. If the Court finds the
16 person not in need of mental health services, then the Court
17 shall order the defendant discharged from custody.

18 (a-1) ~~(1)~~ Definitions. ~~+~~ For the purposes of this Section:

19 (A) (Blank).

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

33 (D) "Conditional Release" means: the release from
34 either the custody of the Department of Human Services or

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

1 five years. However, the defendant, the person or facility
2 rendering the treatment, therapy, program or outpatient
3 care, the Department, or the State's Attorney may petition
4 the Court for an extension of the conditional release
5 period for an additional 5 years. Upon receipt of such a
6 petition, the Court shall hold a hearing consistent with
7 the provisions of subsections ~~this paragraph~~ (a), (a-0.2),
8 (a-0.4), (a-0.6), and (a-0.8), this subsection (a-1), and
9 subsection ~~paragraph~~ (f) of this Section, shall determine
10 whether the defendant should continue to be subject to the
11 terms of conditional release, and shall enter an order
12 either extending the defendant's period of conditional
13 release for an additional 5 year period or discharging the
14 defendant. Additional 5-year periods of conditional
15 release may be ordered following a hearing as provided in
16 this Section. However, in no event shall the defendant's
17 period of conditional release continue beyond the maximum
18 period of commitment ordered by the Court pursuant to
19 paragraph (b-5) ~~(b)~~ of this Section. These provisions for
20 extension of conditional release shall only apply to
21 defendants conditionally released on or after August 8,
22 2003 ~~the effective date of this amendatory Act of the 93rd~~
23 ~~General Assembly~~. However the extension provisions of
24 Public Act 83-1449 apply only to defendants charged with a
25 forcible felony.

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

34 (b) If the Court finds the defendant in need of mental

1 health services on an inpatient basis, the admission,
2 detention, care, treatment or habilitation, treatment plans,
3 review proceedings, including review of treatment and
4 treatment plans, and discharge of the defendant after such
5 order shall be under the Mental Health and Developmental
6 Disabilities Code, except that the initial order for admission
7 of a defendant acquitted of a felony by reason of insanity
8 shall be for an indefinite period of time.

9 (b-5) The ~~Such~~ period of commitment shall not exceed the
10 maximum length of time that the defendant would have been
11 required to serve, less credit for good behavior as provided in
12 Section 5-4-1 of the Unified Code of Corrections, before
13 becoming eligible for release had he been convicted of and
14 received the maximum sentence for the most serious crime for
15 which he has been acquitted by reason of insanity. The Court
16 shall determine the maximum period of commitment by an
17 appropriate order.

18 (b-10) During ~~the~~ ~~this~~ period of commitment ~~time~~, the
19 defendant shall not be permitted to be in the community in any
20 manner, including but not limited to off-grounds privileges,
21 with or without escort by personnel of the Department of Human
22 Services, unsupervised on-grounds privileges, discharge or
23 conditional or temporary release, except by a plan as provided
24 in this Section. In no event shall a defendant's continued
25 unauthorized absence be a basis for discharge.

26 (b-15) Not more than 30 days after admission and every 60
27 days thereafter so long as the initial order remains in effect,
28 the facility director shall file a treatment plan report in
29 writing with the court and forward a copy of the treatment plan
30 report to the clerk of the court, the State's Attorney, and the
31 defendant's attorney, if the defendant is represented by
32 counsel, or to a person authorized by the defendant under the
33 Mental Health and Developmental Disabilities Confidentiality
34 Act to be sent a copy of the report. The report shall include

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

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

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

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

1 (d) When the facility director determines that:

2 (1) the defendant is no longer in need of mental health
3 services on an inpatient basis; and

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

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

10 the facility director shall give written notice to the Court,
11 State's Attorney and defense attorney. Such notice shall set
12 forth in detail the basis for the recommendation of the
13 facility director, and specify clearly the recommendations, if
14 any, of the facility director, concerning conditional release.
15 Any recommendation for conditional release shall include an
16 evaluation of the defendant's need for psychotropic
17 medication, what provisions should be made, if any, to ensure
18 that the defendant will continue to receive psychotropic
19 medication following discharge, and what provisions should be
20 made to assure the safety of the defendant and others in the
21 event the defendant is no longer receiving psychotropic
22 medication. 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); or

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

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

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

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

32 Upon finding by the Court, the Court shall enter its
33 findings and such appropriate order as provided in subsections
34 subsection (a), (a-0.2), (a-0.4), (a-0.6), (a-0.8), and (a-1)

1 of this Section.

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

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

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

30 (1) whether the defendant appreciates the harm caused
31 by the defendant to others and the community by his or her
32 prior conduct that resulted in the finding of not guilty by
33 reason of insanity;

34 (2) Whether the person appreciates the criminality of

1 conduct similar ~~similar~~ to the conduct for which he or she
2 was originally charged in this matter;

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

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

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

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

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

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

14 (9) any specialized physical or medical needs of the
15 defendant;

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

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

21 (12) any other factor or factors the Court deems
22 appropriate.

23 (h) Before the court orders that the defendant be
24 discharged or conditionally released, it shall order the
25 facility director to establish a discharge plan that includes a
26 plan for the defendant's shelter, support, and medication. If
27 appropriate, the court shall order that the facility director
28 establish a program to train the defendant in self-medication
29 under standards established by the Department of Human
30 Services. If the Court finds, consistent with the provisions of
31 this Section, that the defendant is no longer in need of mental
32 health services it shall order the facility director to
33 discharge the defendant. If the Court finds, consistent with
34 the provisions of this Section, that the defendant is in need

1 of mental health services, and no longer in need of inpatient
2 care, it shall order the facility director to release the
3 defendant under such conditions as the Court deems appropriate
4 and as provided by this Section. Such conditional release shall
5 be imposed for a period of 5 years as provided in paragraph ~~(1)~~
6 (D) of subsection (a-1) ~~(a)~~ and shall be subject to later
7 modification by the Court as provided by this Section. If the
8 Court finds consistent with the provisions in this Section that
9 the defendant is in need of mental health services on an
10 inpatient basis, it shall order the facility director not to
11 discharge or release the defendant in accordance with
12 subsections paragraph (b), (b-5), (b-10), and (b-15) of this
13 Section.

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

1 Department of Human Services, he or she shall be placed in a
2 secure setting unless the Court determines that there are
3 compelling reasons that such placement is not necessary. If the
4 Court finds that the defendant continues to be in need of
5 mental health services but not on an inpatient basis, it may
6 modify the conditions of the original release in order to
7 reasonably assure the defendant's satisfactory progress in
8 treatment and his or her safety and the safety of others in
9 accordance with the standards established in paragraph ~~(1)~~ (D)
10 of subsection (a-1) ~~(a)~~. Nothing in this Section shall limit a
11 Court's contempt powers or any other powers of a Court.

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

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

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

23 (m) The Clerk of the Court shall, after the entry of an
24 order of transfer to a non-secure setting of the Department of
25 Human Services or discharge or conditional release, transmit a
26 certified copy of the order to the Department of Human
27 Services, and the sheriff of the county from which the
28 defendant was admitted. The Clerk of the Court shall also
29 transmit a certified copy of the order of discharge or
30 conditional release to the Illinois Department of State Police,
31 to the proper law enforcement agency for the municipality where
32 the offense took place, and to the sheriff of the county into
33 which the defendant is conditionally discharged. The Illinois
34 Department of State Police shall maintain a centralized record

1 of discharged or conditionally released defendants while they
2 are under court supervision for access and use of appropriate
3 law enforcement agencies.

4 (n) Within 60 days after the effective date of this
5 amendatory Act of the 94th General Assembly, the Department of
6 Human Services and the Department of Corrections shall enter
7 into an interagency agreement for the sharing of resources to
8 effectuate the services required for the evaluation,
9 treatment, and report writing required by the Department of
10 Corrections pursuant to this Section. The cost of these
11 services shall be provided by the Department of Human Services.

12 (Source: P.A. 93-78, eff. 1-1-04; 93-473, eff. 8-8-03; revised
13 1-22-04.)

14 Section 95. No acceleration or delay. Where this Act makes
15 changes in a statute that is represented in this Act by text
16 that is not yet or no longer in effect (for example, a Section
17 represented by multiple versions), the use of that text does
18 not accelerate or delay the taking effect of (i) the changes
19 made by this Act or (ii) provisions derived from any other
20 Public Act.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law, except that Sections 15 and 20 take effect
23 January 1, 2007."