

1 AN ACT concerning criminal law.

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

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Sections 104-17 and 104-31 as follows:

6 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

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

12 (b) If the defendant's disability is mental, the court may  
13 order him placed for treatment in the custody of the Department  
14 of Human Services, or the court may order him placed in the  
15 custody of any other appropriate public or private mental  
16 health facility or treatment program which has agreed to  
17 provide treatment to the defendant. If the defendant is placed  
18 in the custody of the Department of Human Services, the  
19 defendant shall be placed in a secure setting unless the court  
20 determines that there are compelling reasons why such placement  
21 is not necessary. During the period of time required to  
22 determine the appropriate placement the defendant shall remain  
23 in jail. Upon completion of the placement process, the sheriff

1 shall be notified and shall transport the defendant to the  
2 designated facility. The placement may be ordered either on an  
3 inpatient or an outpatient basis.

4 (c) If the defendant's disability is physical, the court  
5 may order him placed under the supervision of the Department of  
6 Human Services which shall place and maintain the defendant in  
7 a suitable treatment facility or program, or the court may  
8 order him placed in an appropriate public or private facility  
9 or treatment program which has agreed to provide treatment to  
10 the defendant. The placement may be ordered either on an  
11 inpatient or an outpatient basis.

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

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

16 (2) the county and municipality in which the offense  
17 was committed;

18 (3) the county and municipality in which the arrest  
19 took place; ~~and~~

20 (4) a copy of the arrest report, criminal charges,  
21 arrest record, jail record, and the report prepared under  
22 Section 104-15; and

23 (5) ~~(4)~~ all additional matters which the Court directs  
24 the clerk to transmit.

25 (e) Within 30 days of entry of an order to undergo  
26 treatment, the person supervising the defendant's treatment

1 shall file with the court, the State, and the defense a report  
2 assessing the facility's or program's capacity to provide  
3 appropriate treatment for the defendant and indicating his  
4 opinion as to the probability of the defendant's attaining  
5 fitness within a period of one year from the date of the  
6 finding of unfitness. If the report indicates that there is a  
7 substantial probability that the defendant will attain fitness  
8 within the time period, the treatment supervisor shall also  
9 file a treatment plan which shall include:

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

11 (2) A description of treatment goals with respect to  
12 rendering the defendant fit, a specification of the  
13 proposed treatment modalities, and an estimated timetable  
14 for attainment of the goals;

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

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

18 (725 ILCS 5/104-31) (from Ch. 38, par. 104-31)

19 Sec. 104-31. No defendant placed in a secure setting of the  
20 Department of Human Services pursuant to the provisions of  
21 Sections 104-17, 104-25, or 104-26 shall be permitted outside  
22 the facility's housing unit unless escorted or accompanied by  
23 personnel of the Department of Human Services. Any defendant  
24 placed in a secure setting pursuant to this Section,  
25 transported to court hearings or other necessary appointments

1 off facility grounds by personnel of the Department of Human  
2 Services, may be placed in security devices or otherwise  
3 secured during the period of transportation to assure secure  
4 transport of the defendant and the safety of Department of  
5 Human Services personnel and others. These security measures  
6 shall not constitute restraint as defined in the Mental Health  
7 and Developmental Disabilities Code. Nor shall such defendant  
8 be permitted any off-grounds privileges, either with or without  
9 escort by personnel of the Department of Human Services, or any  
10 unsupervised on-ground privileges, unless such off-grounds or  
11 unsupervised on-grounds privileges have been approved by  
12 specific court order, which order may include such conditions  
13 on the defendant as the court may deem appropriate and  
14 necessary to reasonably assure the defendant's satisfactory  
15 progress in treatment and the safety of the defendant or  
16 others. Whenever the court receives a report from the  
17 supervisor of the defendant's treatment recommending the  
18 defendant for any off-grounds or unsupervised on-grounds  
19 privileges, or placement in a non-secure setting, the court  
20 shall set the matter for a first hearing within 21 days unless  
21 good cause is demonstrated why the hearing cannot be held.

22 (Source: P.A. 89-507, eff. 7-1-97; 90-105, eff. 7-11-97.)

23 Section 10. The Unified Code of Corrections is amended by  
24 changing Section 5-2-4 as follows:

1 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

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

4 (a) After a finding or verdict of not guilty by reason of  
5 insanity under Sections 104-25, 115-3 or 115-4 of The Code of  
6 Criminal Procedure of 1963, the defendant shall be ordered to  
7 the Department of Human Services for an evaluation as to  
8 whether he is in need of mental health services. The order  
9 shall specify whether the evaluation shall be conducted on an  
10 inpatient or outpatient basis. If the evaluation is to be  
11 conducted on an inpatient basis, the defendant shall be placed  
12 in a secure setting unless the Court determines that there are  
13 compelling reasons why such placement is not necessary. With  
14 the court order for evaluation shall be sent a copy of the  
15 arrest report, criminal charges, arrest record, jail record,  
16 and any report prepared under Section 115-6 of the Code of  
17 Criminal Procedure of 1963. After the evaluation and during the  
18 period of time required to determine the appropriate placement,  
19 the defendant shall remain in jail. Upon completion of the  
20 placement process the sheriff shall be notified and shall  
21 transport the defendant to the designated facility.

22 The Department shall provide the Court with a report of its  
23 evaluation within 30 days of the date of this order. The Court  
24 shall hold a hearing as provided under the Mental Health and  
25 Developmental Disabilities Code to determine if the individual  
26 is: (a) in need of mental health services on an inpatient

1 basis; (b) in need of mental health services on an outpatient  
2 basis; (c) a person not in need of mental health services. The  
3 Court shall enter its findings.

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

1 progress and participation in treatment or rehabilitation and  
2 the safety of the defendant and others. If the Court finds the  
3 person not in need of mental health services, then the Court  
4 shall order the defendant discharged from custody.

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

6 (A) (Blank).

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

13 (C) "In need of mental health services on an outpatient  
14 basis" means: a defendant who has been found not guilty by  
15 reason of insanity who is not in need of mental health  
16 services on an inpatient basis, but is in need of  
17 outpatient care, drug and/or alcohol rehabilitation  
18 programs, community adjustment programs, individual,  
19 group, or family therapy, or chemotherapy.

20 (D) "Conditional Release" means: the release from  
21 either the custody of the Department of Human Services or  
22 the custody of the Court of a person who has been found not  
23 guilty by reason of insanity under such conditions as the  
24 Court may impose which reasonably assure the defendant's  
25 satisfactory progress in treatment or habilitation and the  
26 safety of the defendant and others. The Court shall

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



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

1 forcible felony.

2 (E) "Facility director" means the chief officer of a  
3 mental health or developmental disabilities facility or  
4 his or her designee or the supervisor of a program of  
5 treatment or habilitation or his or her designee.

6 "Designee" may include a physician, clinical psychologist,  
7 social worker, nurse, or clinical professional counselor.

8 (b) If the Court finds the defendant in need of mental  
9 health services on an inpatient basis, the admission,  
10 detention, care, treatment or habilitation, treatment plans,  
11 review proceedings, including review of treatment and  
12 treatment plans, and discharge of the defendant after such  
13 order shall be under the Mental Health and Developmental  
14 Disabilities Code, except that the initial order for admission  
15 of a defendant acquitted of a felony by reason of insanity  
16 shall be for an indefinite period of time. Such period of  
17 commitment shall not exceed the maximum length of time that the  
18 defendant would have been required to serve, less credit for  
19 good behavior as provided in Section 5-4-1 of the Unified Code  
20 of Corrections, before becoming eligible for release had he  
21 been convicted of and received the maximum sentence for the  
22 most serious crime for which he has been acquitted by reason of  
23 insanity. The Court shall determine the maximum period of  
24 commitment by an appropriate order. During this period of time,  
25 the defendant shall not be permitted to be in the community in  
26 any manner, including but not limited to off-grounds

1 privileges, with or without escort by personnel of the  
2 Department of Human Services, unsupervised on-grounds  
3 privileges, discharge or conditional or temporary release,  
4 except by a plan as provided in this Section. In no event shall  
5 a defendant's continued unauthorized absence be a basis for  
6 discharge. Not more than 30 days after admission and every 60  
7 days thereafter so long as the initial order remains in effect,  
8 the facility director shall file a treatment plan report in  
9 writing with the court and forward a copy of the treatment plan  
10 report to the clerk of the court, the State's Attorney, and the  
11 defendant's attorney, if the defendant is represented by  
12 counsel, or to a person authorized by the defendant under the  
13 Mental Health and Developmental Disabilities Confidentiality  
14 Act to be sent a copy of the report. The report shall include  
15 an opinion as to whether the defendant is currently in need of  
16 mental health services on an inpatient basis or in need of  
17 mental health services on an outpatient basis. The report shall  
18 also summarize the basis for those findings and provide a  
19 current summary of the following items from the treatment plan:  
20 (1) an assessment of the defendant's treatment needs, (2) a  
21 description of the services recommended for treatment, (3) the  
22 goals of each type of element of service, (4) an anticipated  
23 timetable for the accomplishment of the goals, and (5) a  
24 designation of the qualified professional responsible for the  
25 implementation of the plan. The report may also include  
26 unsupervised on-grounds privileges, off-grounds privileges

1 (with or without escort by personnel of the Department of Human  
2 Services), home visits and participation in work programs, but  
3 only where such privileges have been approved by specific court  
4 order, which order may include such conditions on the defendant  
5 as the Court may deem appropriate and necessary to reasonably  
6 assure the defendant's satisfactory progress in treatment and  
7 the safety of the defendant and others.

8 (c) Every defendant acquitted of a felony by reason of  
9 insanity and subsequently found to be in need of mental health  
10 services shall be represented by counsel in all proceedings  
11 under this Section and under the Mental Health and  
12 Developmental Disabilities Code.

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

15 (2) Upon filing with the Court of a verified statement  
16 of legal services rendered by the private attorney  
17 appointed pursuant to paragraph (1) of this subsection, the  
18 Court shall determine a reasonable fee for such services.  
19 If the defendant is unable to pay the fee, the Court shall  
20 enter an order upon the State to pay the entire fee or such  
21 amount as the defendant is unable to pay from funds  
22 appropriated by the General Assembly for that purpose.

23 (d) When the facility director determines that:

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

26 (2) the defendant may be conditionally released

1 because he or she is still in need of mental health  
2 services or that the defendant may be discharged as not in  
3 need of any mental health services; or

4 (3) the defendant no longer requires placement in a  
5 secure setting;

6 the facility director shall give written notice to the Court,  
7 State's Attorney and defense attorney. Such notice shall set  
8 forth in detail the basis for the recommendation of the  
9 facility director, and specify clearly the recommendations, if  
10 any, of the facility director, concerning conditional release.  
11 Any recommendation for conditional release shall include an  
12 evaluation of the defendant's need for psychotropic  
13 medication, what provisions should be made, if any, to ensure  
14 that the defendant will continue to receive psychotropic  
15 medication following discharge, and what provisions should be  
16 made to assure the safety of the defendant and others in the  
17 event the defendant is no longer receiving psychotropic  
18 medication. Within 30 days of the notification by the facility  
19 director, the Court shall set a hearing and make a finding as  
20 to whether the defendant is:

21 (i) (blank); or

22 (ii) in need of mental health services in the form of  
23 inpatient care; or

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

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

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

2 Upon finding by the Court, the Court shall enter its  
3 findings and such appropriate order as provided in subsections  
4 ~~subsection~~ (a) and (a-1) of this Section.

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

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

25 (g) The findings of the Court shall be established by clear  
26 and convincing evidence. The burden of proof and the burden of

1 going forth with the evidence rest with the defendant or any  
2 person on the defendant's behalf when a hearing is held to  
3 review a petition filed by or on behalf of the defendant. The  
4 evidence shall be presented in open Court with the right of  
5 confrontation and cross-examination. Such evidence may  
6 include, but is not limited to:

7 (1) whether the defendant appreciates the harm caused  
8 by the defendant to others and the community by his or her  
9 prior conduct that resulted in the finding of not guilty by  
10 reason of insanity;

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

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

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

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

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

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

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

25 (9) any specialized physical or medical needs of the  
26 defendant;

1           (10) any family participation or involvement expected  
2           upon release and what is the willingness and ability of the  
3           family to participate or be involved;

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

6           (12) any other factor or factors the Court deems  
7           appropriate.

8           (h) Before the court orders that the defendant be  
9           discharged or conditionally released, it shall order the  
10          facility director to establish a discharge plan that includes a  
11          plan for the defendant's shelter, support, and medication. If  
12          appropriate, the court shall order that the facility director  
13          establish a program to train the defendant in self-medication  
14          under standards established by the Department of Human  
15          Services. If the Court finds, consistent with the provisions of  
16          this Section, that the defendant is no longer in need of mental  
17          health services it shall order the facility director to  
18          discharge the defendant. If the Court finds, consistent with  
19          the provisions of this Section, that the defendant is in need  
20          of mental health services, and no longer in need of inpatient  
21          care, it shall order the facility director to release the  
22          defendant under such conditions as the Court deems appropriate  
23          and as provided by this Section. Such conditional release shall  
24          be imposed for a period of 5 years as provided in paragraph ~~(1)~~  
25          (D) of subsection (a-1) ~~(a)~~ and shall be subject to later  
26          modification by the Court as provided by this Section. If the



1 Court finds consistent with the provisions in this Section that  
2 the defendant is in need of mental health services on an  
3 inpatient basis, it shall order the facility director not to  
4 discharge or release the defendant in accordance with paragraph  
5 (b) of this Section.

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

1 Services, and the sheriff of the county from which the  
2 defendant was admitted. The Clerk of the Court shall also  
3 transmit a certified copy of the order of discharge or  
4 conditional release to the Illinois Department of State Police,  
5 to the proper law enforcement agency for the municipality where  
6 the offense took place, and to the sheriff of the county into  
7 which the defendant is conditionally discharged. The Illinois  
8 Department of State Police shall maintain a centralized record  
9 of discharged or conditionally released defendants while they  
10 are under court supervision for access and use of appropriate  
11 law enforcement agencies.

12 (Source: P.A. 93-78, eff. 1-1-04; 93-473, eff. 8-8-03; revised  
13 9-15-06.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.