



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB4807

Introduced 1/12/2010, by Rep. Randy Ramey, Jr.

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-2-4

from Ch. 38, par. 1005-2-4

Amends the Unified Code of Corrections. Provides that after a defendant is found not guilty by reason of insanity, any victim impact statement prepared under the Rights of Crime Victims and Witnesses Act shall be sent to the Department of Human Services. Provides that individualized placement evaluations by the Department of Human Services determine the most appropriate setting for forensic treatment based upon a number of factors including mental health diagnosis, proximity to surviving victims, security need, age, gender, and proximity to family. Effective immediately.

LRB096 16403 RLC 31669 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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

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

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

9 (a) After a finding or verdict of not guilty by reason of  
10 insanity under Sections 104-25, 115-3 or 115-4 of the Code of  
11 Criminal Procedure of 1963, the defendant shall be ordered to  
12 the Department of Human Services for an evaluation as to  
13 whether he is in need of mental health services. The order  
14 shall specify whether the evaluation shall be conducted on an  
15 inpatient or outpatient basis. If the evaluation is to be  
16 conducted on an inpatient basis, the defendant shall be placed  
17 in a secure setting unless the Court determines that there are  
18 compelling reasons why such placement is not necessary. With  
19 the court order for evaluation shall be sent a copy of the  
20 arrest report, criminal charges, arrest record, jail record,  
21 ~~and~~ any report prepared under Section 115-6 of the Code of  
22 Criminal Procedure of 1963, and any victim impact statement  
23 prepared under Section 6 of the Rights of Crime Victims and

1 Witnesses Act. After the evaluation and during the period of  
2 time required to determine the appropriate placement, the  
3 defendant shall remain in jail. Individualized placement  
4 evaluations by the Department of Human Services determine the  
5 most appropriate setting for forensic treatment based upon a  
6 number of factors including mental health diagnosis, proximity  
7 to surviving victims, security need, age, gender, and proximity  
8 to family. Upon completion of the placement process the sheriff  
9 shall be notified and shall transport the defendant to the  
10 designated facility.

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

19 If the defendant is found to be in need of mental health  
20 services on an inpatient care basis, the Court shall order the  
21 defendant to the Department of Human Services. The defendant  
22 shall be placed in a secure setting unless the Court determines  
23 that there are compelling reasons why such placement is not  
24 necessary. Such defendants placed in a secure setting shall not  
25 be permitted outside the facility's housing unit unless  
26 escorted or accompanied by personnel of the Department of Human

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

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

21 (A) (Blank).

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

1 care or is in need of inpatient care.

2 (C) "In need of mental health services on an outpatient  
3 basis" means: a defendant who has been found not guilty by  
4 reason of insanity who is not in need of mental health  
5 services on an inpatient basis, but is in need of  
6 outpatient care, drug and/or alcohol rehabilitation  
7 programs, community adjustment programs, individual,  
8 group, or family therapy, or chemotherapy.

9 (D) "Conditional Release" means: the release from  
10 either the custody of the Department of Human Services or  
11 the custody of the Court of a person who has been found not  
12 guilty by reason of insanity under such conditions as the  
13 Court may impose which reasonably assure the defendant's  
14 satisfactory progress in treatment or habilitation and the  
15 safety of the defendant and others. The Court shall  
16 consider such terms and conditions which may include, but  
17 need not be limited to, outpatient care, alcoholic and drug  
18 rehabilitation programs, community adjustment programs,  
19 individual, group, family, and chemotherapy, random  
20 testing to ensure the defendant's timely and continuous  
21 taking of any medicines prescribed to control or manage his  
22 or her conduct or mental state, and periodic checks with  
23 the legal authorities and/or the Department of Human  
24 Services. The Court may order as a condition of conditional  
25 release that the defendant not contact the victim of the  
26 offense that resulted in the finding or verdict of not

1 guilty by reason of insanity or any other person. The Court  
2 may order the Department of Human Services to provide care  
3 to any person conditionally released under this Section.  
4 The Department may contract with any public or private  
5 agency in order to discharge any responsibilities imposed  
6 under this Section. The Department shall monitor the  
7 provision of services to persons conditionally released  
8 under this Section and provide periodic reports to the  
9 Court concerning the services and the condition of the  
10 defendant. Whenever a person is conditionally released  
11 pursuant to this Section, the State's Attorney for the  
12 county in which the hearing is held shall designate in  
13 writing the name, telephone number, and address of a person  
14 employed by him or her who shall be notified in the event  
15 that either the reporting agency or the Department decides  
16 that the conditional release of the defendant should be  
17 revoked or modified pursuant to subsection (i) of this  
18 Section. Such conditional release shall be for a period of  
19 five years. However, the defendant, the person or facility  
20 rendering the treatment, therapy, program or outpatient  
21 care, the Department, or the State's Attorney may petition  
22 the Court for an extension of the conditional release  
23 period for an additional 5 years. Upon receipt of such a  
24 petition, the Court shall hold a hearing consistent with  
25 the provisions of paragraph (a), this paragraph (a-1), and  
26 paragraph (f) of this Section, shall determine whether the

1 defendant should continue to be subject to the terms of  
2 conditional release, and shall enter an order either  
3 extending the defendant's period of conditional release  
4 for an additional 5 year period or discharging the  
5 defendant. Additional 5-year periods of conditional  
6 release may be ordered following a hearing as provided in  
7 this Section. However, in no event shall the defendant's  
8 period of conditional release continue beyond the maximum  
9 period of commitment ordered by the Court pursuant to  
10 paragraph (b) of this Section. These provisions for  
11 extension of conditional release shall only apply to  
12 defendants conditionally released on or after August 8,  
13 2003. However the extension provisions of Public Act  
14 83-1449 apply only to defendants charged with a forcible  
15 felony.

16 (E) "Facility director" means the chief officer of a  
17 mental health or developmental disabilities facility or  
18 his or her designee or the supervisor of a program of  
19 treatment or habilitation or his or her designee.  
20 "Designee" may include a physician, clinical psychologist,  
21 social worker, nurse, or clinical professional counselor.

22 (b) If the Court finds the defendant in need of mental  
23 health services on an inpatient basis, the admission,  
24 detention, care, treatment or habilitation, treatment plans,  
25 review proceedings, including review of treatment and  
26 treatment plans, and discharge of the defendant after such

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



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

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

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

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

11          (d) When the facility director determines that:

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

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

18           (3) the defendant no longer requires placement in a  
19 secure setting;

20 the facility director shall give written notice to the Court,  
21 State's Attorney and defense attorney. Such notice shall set  
22 forth in detail the basis for the recommendation of the  
23 facility director, and specify clearly the recommendations, if  
24 any, of the facility director, concerning conditional release.  
25 Any recommendation for conditional release shall include an  
26 evaluation of the defendant's need for psychotropic

1 medication, what provisions should be made, if any, to ensure  
2 that the defendant will continue to receive psychotropic  
3 medication following discharge, and what provisions should be  
4 made to assure the safety of the defendant and others in the  
5 event the defendant is no longer receiving psychotropic  
6 medication. Within 30 days of the notification by the facility  
7 director, the Court shall set a hearing and make a finding as  
8 to whether the defendant is:

9 (i) (blank); or

10 (ii) in need of mental health services in the form of  
11 inpatient care; or

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

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

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

16 Upon finding by the Court, the Court shall enter its  
17 findings and such appropriate order as provided in subsections  
18 (a) and (a-1) of this Section.

19 (e) A defendant admitted pursuant to this Section, or any  
20 person on his behalf, may file a petition for treatment plan  
21 review, transfer to a non-secure setting within the Department  
22 of Human Services or discharge or conditional release under the  
23 standards of this Section in the Court which rendered the  
24 verdict. Upon receipt of a petition for treatment plan review,  
25 transfer to a non-secure setting or discharge or conditional  
26 release, the Court shall set a hearing to be held within 120

1 days. Thereafter, no new petition may be filed for 180 days  
2 without leave of the Court.

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

13 (g) The findings of the Court shall be established by clear  
14 and convincing evidence. The burden of proof and the burden of  
15 going forth with the evidence rest with the defendant or any  
16 person on the defendant's behalf when a hearing is held to  
17 review a petition filed by or on behalf of the defendant. The  
18 evidence shall be presented in open Court with the right of  
19 confrontation and cross-examination. Such evidence may  
20 include, but is not limited to:

21 (1) whether the defendant appreciates the harm caused  
22 by the defendant to others and the community by his or her  
23 prior conduct that resulted in the finding of not guilty by  
24 reason of insanity;

25 (2) Whether the person appreciates the criminality of  
26 conduct similar to the conduct for which he or she was

1 originally charged in this matter;

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

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

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

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

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

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

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

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

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

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

22 (h) Before the court orders that the defendant be  
23 discharged or conditionally released, it shall order the  
24 facility director to establish a discharge plan that includes a  
25 plan for the defendant's shelter, support, and medication. If  
26 appropriate, the court shall order that the facility director

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

20 (i) If within the period of the defendant's conditional  
21 release the State's Attorney determines that the defendant has  
22 not fulfilled the conditions of his or her release, the State's  
23 Attorney may petition the Court to revoke or modify the  
24 conditional release of the defendant. Upon the filing of such  
25 petition the defendant may be remanded to the custody of the  
26 Department, or to any other mental health facility designated

1 by the Department, pending the resolution of the petition.  
2 Nothing in this Section shall prevent the emergency admission  
3 of a defendant pursuant to Article VI of Chapter III of the  
4 Mental Health and Developmental Disabilities Code or the  
5 voluntary admission of the defendant pursuant to Article IV of  
6 Chapter III of the Mental Health and Developmental Disabilities  
7 Code. If the Court determines, after hearing evidence, that the  
8 defendant has not fulfilled the conditions of release, the  
9 Court shall order a hearing to be held consistent with the  
10 provisions of paragraph (f) and (g) of this Section. At such  
11 hearing, if the Court finds that the defendant is in need of  
12 mental health services on an inpatient basis, it shall enter an  
13 order remanding him or her to the Department of Human Services  
14 or other facility. If the defendant is remanded to the  
15 Department of Human Services, he or she shall be placed in a  
16 secure setting unless the Court determines that there are  
17 compelling reasons that such placement is not necessary. If the  
18 Court finds that the defendant continues to be in need of  
19 mental health services but not on an inpatient basis, it may  
20 modify the conditions of the original release in order to  
21 reasonably assure the defendant's satisfactory progress in  
22 treatment and his or her safety and the safety of others in  
23 accordance with the standards established in paragraph (D) of  
24 subsection (a-1). Nothing in this Section shall limit a Court's  
25 contempt powers or any other powers of a Court.

26 (j) An order of admission under this Section does not

1 affect the remedy of habeas corpus.

2 (k) In the event of a conflict between this Section and the  
3 Mental Health and Developmental Disabilities Code or the Mental  
4 Health and Developmental Disabilities Confidentiality Act, the  
5 provisions of this Section shall govern.

6 (l) This amendatory Act shall apply to all persons who have  
7 been found not guilty by reason of insanity and who are  
8 presently committed to the Department of Mental Health and  
9 Developmental Disabilities (now the Department of Human  
10 Services).

11 (m) The Clerk of the Court shall, after the entry of an  
12 order of transfer to a non-secure setting of the Department of  
13 Human Services or discharge or conditional release, transmit a  
14 certified copy of the order to the Department of Human  
15 Services, and the sheriff of the county from which the  
16 defendant was admitted. The Clerk of the Court shall also  
17 transmit a certified copy of the order of discharge or  
18 conditional release to the Illinois Department of State Police,  
19 to the proper law enforcement agency for the municipality where  
20 the offense took place, and to the sheriff of the county into  
21 which the defendant is conditionally discharged. The Illinois  
22 Department of State Police shall maintain a centralized record  
23 of discharged or conditionally released defendants while they  
24 are under court supervision for access and use of appropriate  
25 law enforcement agencies.

26 (Source: P.A. 95-296, eff. 8-20-07; 95-331, eff. 8-21-07.)



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