

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.