



## 98TH GENERAL ASSEMBLY

### State of Illinois

### 2013 and 2014

### SB2801

Introduced 1/30/2014, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-17	from Ch. 38, par. 104-17
725 ILCS 5/104-18	from Ch. 38, par. 104-18
725 ILCS 5/104-20	from Ch. 38, par. 104-20
725 ILCS 5/104-21	from Ch. 38, par. 104-21
725 ILCS 5/104-23	from Ch. 38, par. 104-23
725 ILCS 5/104-31	from Ch. 38, par. 104-31
730 ILCS 5/5-2-4	from Ch. 38, par. 1005-2-4

Amends the Code of Criminal Procedure of 1963 and the Unified Code of Corrections. If a defendant found unfit to stand trial or acquitted by reason of insanity is placed in the custody of the Department of Human Services, removes the ability of the court to order placement in a non-secure setting within the Department if compelling reasons exist. Any defendant sent to the Department shall be held in a secure setting. For an unfit defendant charged with a misdemeanor, changes the period of time in which the defendant, with treatment, may be expected to attain fitness for purposes of fitness determinations from one year to no longer than the length of sentence if convicted of the most serious offense. If an unfit defendant refuses psychotropic medication, allows the medication to be administered over the defendant's objections as provided in the Mental Health and Developmental Disabilities Code. Allows any unfit defendant in the Department of Human Services custody (rather than only those ordered into a secure setting by the court) to be transported to court hearings or other necessary appointments off facility grounds by personnel of the Department, placed in security devices or otherwise secured during the period of transportation to assure secure transport of the defendant and the safety of Department of Human Services personnel and others. Effective immediately.

LRB098 17630 MRW 52743 b

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, 104-18, 104-20, 104-21,  
6 104-23, and 104-31 as follows:

7 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

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

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

1 in jail. If upon the completion of the placement process the  
2 Department of Human Services determines that the defendant is  
3 currently fit to stand trial, it shall immediately notify the  
4 court and shall submit a written report within 7 days. In that  
5 circumstance the placement shall be held pending a court  
6 hearing on the Department's report. Otherwise, upon completion  
7 of the placement process, the sheriff shall be notified and  
8 shall transport the defendant to the designated facility. The  
9 placement may be ordered either on an inpatient or an  
10 outpatient basis.

11 (c) If the defendant's disability is physical, the court  
12 may order him placed under the supervision of the Department of  
13 Human Services which shall place and maintain the defendant in  
14 a suitable treatment facility or program, or the court may  
15 order him placed in an appropriate public or private facility  
16 or treatment program which has agreed to provide treatment to  
17 the defendant. The placement may be ordered either on an  
18 inpatient or an outpatient basis.

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

- 22 (1) a certified copy of the order to undergo treatment;  
23 (2) the county and municipality in which the offense  
24 was committed;  
25 (3) the county and municipality in which the arrest  
26 took place;

1           (4) a copy of the arrest report, criminal charges,  
2           arrest record, jail record, and the report prepared under  
3           Section 104-15; and

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

6           (e) Within 30 days of entry of an order to undergo  
7           treatment, the person supervising the defendant's treatment  
8           shall file with the court, the State, and the defense a report  
9           assessing the facility's or program's capacity to provide  
10          appropriate treatment for the defendant and indicating his  
11          opinion as to the probability of the defendant's attaining  
12          fitness within a period of time ~~one year~~ from the date of the  
13          finding of unfitness. For a defendant charged with a felony,  
14          the period of time shall be one year. For a defendant charged  
15          with a misdemeanor, the period of time shall be no longer than  
16          the sentence if convicted of the most serious offense. If the  
17          report indicates that there is a substantial probability that  
18          the defendant will attain fitness within the time period, the  
19          treatment supervisor shall also file a treatment plan which  
20          shall include:

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

22                 (2) A description of treatment goals with respect to  
23                 rendering the defendant fit, a specification of the  
24                 proposed treatment modalities, and an estimated timetable  
25                 for attainment of the goals;

26                 (3) An identification of the person in charge of

1 supervising the defendant's treatment.

2 (Source: P.A. 95-296, eff. 8-20-07; 96-310, eff. 8-11-09.)

3 (725 ILCS 5/104-18) (from Ch. 38, par. 104-18)

4 Sec. 104-18. Progress Reports.)

5 (a) The treatment supervisor shall submit a written  
6 progress report to the court, the State, and the defense:

7 (1) At least 7 days prior to the date for any hearing  
8 on the issue of the defendant's fitness;

9 (2) Whenever he believes that the defendant has  
10 attained fitness;

11 (3) Whenever he believes that there is not a  
12 substantial probability that the defendant will attain  
13 fitness, with treatment, within the time period set in  
14 subsection (e) of Section 104-17 of this Code ~~one year~~ from  
15 the date of the original finding of unfitness.

16 (b) The progress report shall contain:

17 (1) The clinical findings of the treatment supervisor  
18 and the facts upon which the findings are based;

19 (2) The opinion of the treatment supervisor as to  
20 whether the defendant has attained fitness or as to whether  
21 the defendant is making progress, under treatment, toward  
22 attaining fitness within the time period set in subsection  
23 (e) of Section 104-17 of this Code ~~one year~~ from the date  
24 of the original finding of unfitness;

25 (3) If the defendant is receiving medication,

1 information from the prescribing physician indicating the  
2 type, the dosage and the effect of the medication on the  
3 defendant's appearance, actions and demeanor.

4 (c) Whenever the court is sent a report from the supervisor  
5 of the defendant's treatment under paragraph (2) of subsection  
6 (a) of this Section, the treatment provider shall arrange with  
7 the court for the return of the defendant to the county jail  
8 before the time frame specified in subsection (a) of Section  
9 104-20. This subsection (c) is inoperative on and after January  
10 1, 2014.

11 (Source: P.A. 97-1020, eff. 8-17-12.)

12 (725 ILCS 5/104-20) (from Ch. 38, par. 104-20)

13 Sec. 104-20. Ninety-Day Hearings; Continuing Treatment.)

14 (a) Upon entry or continuation of any order to undergo  
15 treatment, the court shall set a date for hearing to reexamine  
16 the issue of the defendant's fitness not more than 90 days  
17 thereafter. In addition, whenever the court receives a report  
18 from the supervisor of the defendant's treatment pursuant to  
19 subparagraph (2) or (3) of paragraph (a) of Section 104-18, the  
20 court shall forthwith set the matter for a first hearing within  
21 14 days unless good cause is demonstrated why the hearing  
22 cannot be held. On the date set or upon conclusion of the  
23 matter then pending before it, the court, sitting without a  
24 jury, shall conduct a hearing, unless waived by the defense,  
25 and shall determine:

1 (1) Whether the defendant is fit to stand trial or to  
2 plead; and if not,

3 (2) Whether the defendant is making progress under  
4 treatment toward attainment of fitness within the time  
5 period set in subsection (e) of Section 104-17 of this Code  
6 ~~one year~~ from the date of the original finding of  
7 unfitness.

8 (b) If the court finds the defendant to be fit pursuant to  
9 this Section, the court shall set the matter for trial;  
10 provided that if the defendant is in need of continued care or  
11 treatment and the supervisor of the defendant's treatment  
12 agrees to continue to provide it, the court may enter any order  
13 it deems appropriate for the continued care or treatment of the  
14 defendant by the facility or program pending the conclusion of  
15 the criminal proceedings.

16 (c) If the court finds that the defendant is still unfit  
17 but that he is making progress toward attaining fitness, the  
18 court may continue or modify its original treatment order  
19 entered pursuant to Section 104-17.

20 (d) If the court finds that the defendant is still unfit  
21 and that he is not making progress toward attaining fitness  
22 such that there is not a substantial probability that he will  
23 attain fitness within the time period set in subsection (e) of  
24 Section 104-17 of this Code ~~one year~~ from the date of the  
25 original finding of unfitness, the court shall proceed pursuant  
26 to Section 104-23. However, if the defendant is in need of

1 continued care and treatment and the supervisor of the  
2 defendant's treatment agrees to continue to provide it, the  
3 court may enter any order it deems appropriate for the  
4 continued care or treatment by the facility or program pending  
5 the conclusion of the criminal proceedings.

6 (Source: P.A. 97-37, eff. 6-28-11.)

7 (725 ILCS 5/104-21) (from Ch. 38, par. 104-21)

8 Sec. 104-21. Medication.

9 (a) A defendant who is receiving psychotropic drugs shall  
10 not be presumed to be unfit to stand trial solely by virtue of  
11 the receipt of those drugs or medications.

12 (b) Whenever a defendant who is receiving medication under  
13 medical direction is transferred between a place of custody and  
14 a treatment facility or program, a written report from the  
15 prescribing physician shall accompany the defendant. The  
16 report shall state the type and dosage of the defendant's  
17 medication and the duration of the prescription. The chief  
18 officer of the place of custody or the treatment supervisor at  
19 the facility or program shall insure that such medication is  
20 provided according to the directions of the prescribing  
21 physician or until superseded by order of a physician who has  
22 examined the defendant.

23 (c) If a defendant refuses psychotropic medication, it may  
24 be administered over the defendant's objections in accord with  
25 the Mental Health and Developmental Disabilities Code. If court



1 authorized medications are sought, the petition, prepared in  
2 accord with Section 2-107.1 of the Mental Health and  
3 Developmental Disabilities Code may be filed in the county  
4 where the defendant is located or with the court having  
5 jurisdiction over the defendant.

6 (Source: P.A. 89-428, eff. 12-13-95; 89-689, eff. 12-31-96.)

7 (725 ILCS 5/104-23) (from Ch. 38, par. 104-23)

8 Sec. 104-23. Unfit defendants. Cases involving an unfit  
9 defendant who demands a discharge hearing or a defendant who  
10 cannot become fit to stand trial and for whom no special  
11 provisions or assistance can compensate for his disability and  
12 render him fit shall proceed in the following manner:

13 (a) Upon a determination that there is not a substantial  
14 probability that the defendant will attain fitness within the  
15 time period set in subsection (e) of Section 104-17 of this  
16 Code ~~one year~~ from the original finding of unfitness, a  
17 defendant or the attorney for the defendant may move for a  
18 discharge hearing pursuant to the provisions of Section 104-25.  
19 The discharge hearing shall be held within 120 days of the  
20 filing of a motion for a discharge hearing, unless the delay is  
21 occasioned by the defendant.

22 (b) If at any time the court determines that there is not a  
23 substantial probability that the defendant will become fit to  
24 stand trial or to plead within the time period set in  
25 subsection (e) of Section 104-17 of this Code ~~one year~~ from the

1 date of the original finding of unfitness, or if at the end of  
2 the time period set in subsection (e) of Section 104-17 of this  
3 Code ~~one year~~ from that date the court finds the defendant  
4 still unfit and for whom no special provisions or assistance  
5 can compensate for his disabilities and render him fit, the  
6 State shall request the court:

7 (1) To set the matter for hearing pursuant to Section  
8 104-25 unless a hearing has already been held pursuant to  
9 paragraph (a) of this Section; or

10 (2) To release the defendant from custody and to  
11 dismiss with prejudice the charges against him; or

12 (3) To remand the defendant to the custody of the  
13 Department of Human Services and order a hearing to be  
14 conducted pursuant to the provisions of the Mental Health  
15 and Developmental Disabilities Code, as now or hereafter  
16 amended. The Department of Human Services shall have 7 days  
17 from the date it receives the defendant to prepare and file  
18 the necessary petition and certificates that are required  
19 for commitment under the Mental Health and Developmental  
20 Disabilities Code. If the defendant is committed to the  
21 Department of Human Services pursuant to such hearing, the  
22 court having jurisdiction over the criminal matter shall  
23 dismiss the charges against the defendant, with the leave  
24 to reinstate. In such cases the Department of Human  
25 Services shall notify the court, the State's attorney and  
26 the defense attorney upon the discharge of the defendant. A

1 former defendant so committed shall be treated in the same  
2 manner as any other civilly committed patient for all  
3 purposes including admission, selection of the place of  
4 treatment and the treatment modalities, entitlement to  
5 rights and privileges, transfer, and discharge. A  
6 defendant who is not committed shall be remanded to the  
7 court having jurisdiction of the criminal matter for  
8 disposition pursuant to subparagraph (1) or (2) of  
9 paragraph (b) of this Section.

10 (c) If the defendant is restored to fitness and the  
11 original charges against him are reinstated, the speedy trial  
12 provisions of Section 103-5 shall commence to run.

13 (Source: P.A. 89-439, eff. 6-1-96; 89-507, eff. 7-1-97.)

14 (725 ILCS 5/104-31) (from Ch. 38, par. 104-31)

15 Sec. 104-31. No defendant placed in a setting of the  
16 Department of Human Services pursuant to the provisions of  
17 Sections 104-17, 104-25, or 104-26 shall be permitted outside  
18 the facility's housing unit unless escorted or accompanied by  
19 personnel of the Department of Human Services or authorized by  
20 court order. Any defendant ~~placed in a secure setting pursuant~~  
21 ~~to this Section,~~ transported to court hearings or other  
22 necessary appointments off facility grounds by personnel of the  
23 Department of Human Services, may be placed in security devices  
24 or otherwise secured during the period of transportation to  
25 assure secure transport of the defendant and the safety of

1 Department of Human Services personnel and others. These  
2 security measures shall not constitute restraint as defined in  
3 the Mental Health and Developmental Disabilities Code. Nor  
4 shall any defendant be permitted any off-grounds privileges,  
5 either with or without escort by personnel of the Department of  
6 Human Services or ~~7~~ any unsupervised on-ground privileges, ~~or~~  
7 ~~placement in a non secure setting~~ unless such off-grounds or  
8 unsupervised on-grounds privileges, ~~or placement in a~~  
9 ~~non secure setting~~ have been approved by specific court order,  
10 which order may include such conditions on the defendant as the  
11 court may deem appropriate and necessary to reasonably assure  
12 the defendant's satisfactory progress in treatment and the  
13 safety of the defendant or others. Whenever the court receives  
14 a report from the supervisor of the defendant's treatment  
15 recommending the defendant for any off-grounds or unsupervised  
16 on-grounds privileges, ~~or placement in a non secure setting,~~  
17 the court shall set the matter for a first hearing within 21  
18 days unless good cause is demonstrated why the hearing cannot  
19 be held. The changes made to this Section by this amendatory  
20 Act of the 96th General Assembly are declarative of existing  
21 law and shall not be construed as a new enactment.

22 (Source: P.A. 95-296, eff. 8-20-07; 96-1069, eff. 7-16-10.)

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 any report prepared under Section 115-6 of the Code of Criminal  
17 Procedure of 1963, and any victim impact statement prepared  
18 under Section 6 of the Rights of Crime Victims and Witnesses  
19 Act. After the evaluation and during the period of time  
20 required to determine the appropriate placement, the defendant  
21 shall remain in jail. Individualized placement evaluations by  
22 the Department of Human Services determine the most appropriate  
23 setting for forensic treatment based upon a number of factors  
24 including mental health diagnosis, proximity to surviving  
25 victims, security need, age, gender, and proximity to family.  
26 Upon completion of the placement process the sheriff shall be

1 notified and shall transport the defendant to the designated  
2 facility.

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

11 If the defendant is found to be in need of mental health  
12 services on an inpatient care basis, the Court shall order the  
13 defendant to the Department of Human Services. The defendant  
14 shall be placed in a secure setting ~~unless the Court determines~~  
15 ~~that there are compelling reasons why such placement is not~~  
16 ~~necessary~~. Such defendants placed in a secure setting shall not  
17 be permitted outside the facility's housing unit unless  
18 escorted or accompanied by personnel of the Department of Human  
19 Services or with the prior approval of the Court for  
20 unsupervised on-grounds privileges as provided herein. Any  
21 defendant placed in a secure setting pursuant to this Section,  
22 transported to court hearings or other necessary appointments  
23 off facility grounds by personnel of the Department of Human  
24 Services, shall be placed in security devices or otherwise  
25 secured during the period of transportation to assure secure  
26 transport of the defendant and the safety of Department of

1 Human Services personnel and others. These security measures  
2 shall not constitute restraint as defined in the Mental Health  
3 and Developmental Disabilities Code. If the defendant is found  
4 to be in need of mental health services, but not on an  
5 inpatient care basis, the Court shall conditionally release the  
6 defendant, under such conditions as set forth in this Section  
7 as will reasonably assure the defendant's satisfactory  
8 progress and participation in treatment or rehabilitation and  
9 the safety of the defendant and others. If the Court finds the  
10 person not in need of mental health services, then the Court  
11 shall order the defendant discharged from custody.

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

13 (A) (Blank).

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

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

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



1 Court concerning the services and the condition of the  
2 defendant. Whenever a person is conditionally released  
3 pursuant to this Section, the State's Attorney for the  
4 county in which the hearing is held shall designate in  
5 writing the name, telephone number, and address of a person  
6 employed by him or her who shall be notified in the event  
7 that either the reporting agency or the Department decides  
8 that the conditional release of the defendant should be  
9 revoked or modified pursuant to subsection (i) of this  
10 Section. Such conditional release shall be for a period of  
11 five years. However, the defendant, the person or facility  
12 rendering the treatment, therapy, program or outpatient  
13 care, the Department, or the State's Attorney may petition  
14 the Court for an extension of the conditional release  
15 period for an additional 5 years. Upon receipt of such a  
16 petition, the Court shall hold a hearing consistent with  
17 the provisions of paragraph (a), this paragraph (a-1), and  
18 paragraph (f) of this Section, shall determine whether the  
19 defendant should continue to be subject to the terms of  
20 conditional release, and shall enter an order either  
21 extending the defendant's period of conditional release  
22 for an additional 5 year period or discharging the  
23 defendant. Additional 5-year periods of conditional  
24 release may be ordered following a hearing as provided in  
25 this Section. However, in no event shall the defendant's  
26 period of conditional release continue beyond the maximum

1 period of commitment ordered by the Court pursuant to  
2 paragraph (b) of this Section. These provisions for  
3 extension of conditional release shall only apply to  
4 defendants conditionally released on or after August 8,  
5 2003. However the extension provisions of Public Act  
6 83-1449 apply only to defendants charged with a forcible  
7 felony.

8 (E) "Facility director" means the chief officer of a  
9 mental health or developmental disabilities facility or  
10 his or her designee or the supervisor of a program of  
11 treatment or habilitation or his or her designee.  
12 "Designee" may include a physician, clinical psychologist,  
13 social worker, nurse, or clinical professional counselor.

14 (b) If the Court finds the defendant in need of mental  
15 health services on an inpatient basis, the admission,  
16 detention, care, treatment or habilitation, treatment plans,  
17 review proceedings, including review of treatment and  
18 treatment plans, and discharge of the defendant after such  
19 order shall be under the Mental Health and Developmental  
20 Disabilities Code, except that the initial order for admission  
21 of a defendant acquitted of a felony by reason of insanity  
22 shall be for an indefinite period of time. Such period of  
23 commitment shall not exceed the maximum length of time that the  
24 defendant would have been required to serve, less credit for  
25 good behavior as provided in Section 5-4-1 of the Unified Code  
26 of Corrections, before becoming eligible for release had he

1 been convicted of and received the maximum sentence for the  
2 most serious crime for which he has been acquitted by reason of  
3 insanity. The Court shall determine the maximum period of  
4 commitment by an appropriate order. During this period of time,  
5 the defendant shall not be permitted to be in the community in  
6 any manner, including but not limited to off-grounds  
7 privileges, with or without escort by personnel of the  
8 Department of Human Services, unsupervised on-grounds  
9 privileges, discharge or conditional or temporary release,  
10 except by a plan as provided in this Section. In no event shall  
11 a defendant's continued unauthorized absence be a basis for  
12 discharge. Not more than 30 days after admission and every 60  
13 days thereafter so long as the initial order remains in effect,  
14 the facility director shall file a treatment plan report in  
15 writing with the court and forward a copy of the treatment plan  
16 report to the clerk of the court, the State's Attorney, and the  
17 defendant's attorney, if the defendant is represented by  
18 counsel, or to a person authorized by the defendant under the  
19 Mental Health and Developmental Disabilities Confidentiality  
20 Act to be sent a copy of the report. The report shall include  
21 an opinion as to whether the defendant is currently in need of  
22 mental health services on an inpatient basis or in need of  
23 mental health services on an outpatient basis. The report shall  
24 also summarize the basis for those findings and provide a  
25 current summary of the following items from the treatment plan:  
26 (1) an assessment of the defendant's treatment needs, (2) a

1 description of the services recommended for treatment, (3) the  
2 goals of each type of element of service, (4) an anticipated  
3 timetable for the accomplishment of the goals, and (5) a  
4 designation of the qualified professional responsible for the  
5 implementation of the plan. The report may also include  
6 unsupervised on-grounds privileges, off-grounds privileges  
7 (with or without escort by personnel of the Department of Human  
8 Services), home visits and participation in work programs, but  
9 only where such privileges have been approved by specific court  
10 order, which order may include such conditions on the defendant  
11 as the Court may deem appropriate and necessary to reasonably  
12 assure the defendant's satisfactory progress in treatment and  
13 the safety of the defendant and others.

14 (c) Every defendant acquitted of a felony by reason of  
15 insanity and subsequently found to be in need of mental health  
16 services shall be represented by counsel in all proceedings  
17 under this Section and under the Mental Health and  
18 Developmental Disabilities Code.

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

21 (2) Upon filing with the Court of a verified statement  
22 of legal services rendered by the private attorney  
23 appointed pursuant to paragraph (1) of this subsection, the  
24 Court shall determine a reasonable fee for such services.  
25 If the defendant is unable to pay the fee, the Court shall  
26 enter an order upon the State to pay the entire fee or such

1 amount as the defendant is unable to pay from funds  
2 appropriated by the General Assembly for that purpose.

3 (d) When the facility director determines that:

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

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

10 (3) (blank); ~~the defendant no longer requires~~  
11 ~~placement in a secure setting;~~

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

- 1 (i) (blank); or  
2 (ii) in need of mental health services in the form of  
3 inpatient care; or  
4 (iii) in need of mental health services but not subject  
5 to inpatient care; or  
6 (iv) no longer in need of mental health services; or  
7 (v) (blank). ~~no longer requires placement in a secure~~  
8 ~~setting.~~

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

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

22 (f) The Court shall direct that notice of the time and  
23 place of the hearing be served upon the defendant, the facility  
24 director, the State's Attorney, and the defendant's attorney.  
25 If requested by either the State or the defense or if the Court  
26 feels it is appropriate, an impartial examination of the

1 defendant by a psychiatrist or clinical psychologist as defined  
2 in Section 1-103 of the Mental Health and Developmental  
3 Disabilities Code who is not in the employ of the Department of  
4 Human Services shall be ordered, and the report considered at  
5 the time of the hearing.

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

14 (1) whether the defendant appreciates the harm caused  
15 by the defendant to others and the community by his or her  
16 prior conduct that resulted in the finding of not guilty by  
17 reason of insanity;

18 (2) Whether the person appreciates the criminality of  
19 conduct similar to the conduct for which he or she was  
20 originally charged in this matter;

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

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

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

26 (6) the length of time it would take for the

1 defendant's mental health to deteriorate if the defendant  
2 stopped taking prescribed medication;

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

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

6 (9) any specialized physical or medical needs of the  
7 defendant;

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

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

13 (12) any other factor or factors the Court deems  
14 appropriate.

15 (h) Before the court orders that the defendant be  
16 discharged or conditionally released, it shall order the  
17 facility director to establish a discharge plan that includes a  
18 plan for the defendant's shelter, support, and medication. If  
19 appropriate, the court shall order that the facility director  
20 establish a program to train the defendant in self-medication  
21 under standards established by the Department of Human  
22 Services. If the Court finds, consistent with the provisions of  
23 this Section, that the defendant is no longer in need of mental  
24 health services it shall order the facility director to  
25 discharge the defendant. If the Court finds, consistent with  
26 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 (D)  
6 of subsection (a-1) and shall be subject to later modification  
7 by the Court as provided by this Section. If the Court finds  
8 consistent with the provisions in this Section that the  
9 defendant is in need of mental health services on an inpatient  
10 basis, it shall order the facility director not to discharge or  
11 release the defendant in accordance with paragraph (b) of this  
12 Section.

13 (i) If within the period of the defendant's conditional  
14 release the State's Attorney determines that the defendant has  
15 not fulfilled the conditions of his or her release, the State's  
16 Attorney may petition the Court to revoke or modify the  
17 conditional release of the defendant. Upon the filing of such  
18 petition the defendant may be remanded to the custody of the  
19 Department, or to any other mental health facility designated  
20 by the Department, pending the resolution of the petition.  
21 Nothing in this Section shall prevent the emergency admission  
22 of a defendant pursuant to Article VI of Chapter III of the  
23 Mental Health and Developmental Disabilities Code or the  
24 voluntary admission of the defendant pursuant to Article IV of  
25 Chapter III of the Mental Health and Developmental Disabilities  
26 Code. If the Court determines, after hearing evidence, that the

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

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

21 (k) In the event of a conflict between this Section and the  
22 Mental Health and Developmental Disabilities Code or the Mental  
23 Health and Developmental Disabilities Confidentiality Act, the  
24 provisions of this Section shall govern.

25 (l) This amendatory Act shall apply to all persons who have  
26 been found not guilty by reason of insanity and who are

1 presently committed to the Department of Mental Health and  
2 Developmental Disabilities (now the Department of Human  
3 Services).

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

21 (Source: P.A. 95-296, eff. 8-20-07; 95-331, eff. 8-21-07;  
22 96-1138, eff. 7-21-10.)

23 Section 99. Effective date. This Act takes effect upon  
24 becoming law.