

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 104-15, 104-17, 104-18, 104-20,  
6 104-21, 104-23, and 104-31 as follows:

7 (725 ILCS 5/104-15) (from Ch. 38, par. 104-15)

8 Sec. 104-15. Report.➤ (a) The person or persons conducting  
9 an examination of the defendant, pursuant to paragraph (a) or  
10 (b) of Section 104-13 shall submit a written report to the  
11 court, the State, and the defense within 30 days of the date of  
12 the order. The report shall include:

13 (1) A diagnosis and an explanation as to how it was reached  
14 and the facts upon which it is based;

15 (2) A description of the defendant's mental or physical  
16 disability, if any; its severity; and an opinion as to whether  
17 and to what extent it impairs the defendant's ability to  
18 understand the nature and purpose of the proceedings against  
19 him or to assist in his defense, or both.

20 (b) If the report indicates that the defendant is not fit  
21 to stand trial or to plead because of a disability, the report  
22 shall include an opinion as to the likelihood of the defendant  
23 attaining fitness within one year if provided with a course of

1 treatment. If the person or persons preparing the report are  
2 unable to form such an opinion, the report shall state the  
3 reasons therefor. The report may include a general description  
4 of the type of treatment needed and of the least physically  
5 restrictive form of treatment therapeutically appropriate.

6 (c) The report shall indicate what information, if any,  
7 contained therein may be harmful to the mental condition of the  
8 defendant if made known to him.

9 (d) In addition to the report, a person retained or  
10 appointed by the State or the defense to conduct an examination  
11 shall, upon written request, make his or her notes, other  
12 evaluations reviewed or relied upon by the testifying witness,  
13 and any videotaped interviews available to another examiner of  
14 the defendant. All forensic interviews conducted by a person  
15 retained or appointed by the State or the defense shall be  
16 videotaped unless doing so would be impractical. In the event  
17 that the interview is not videotaped, the examiner may still  
18 testify as to the person's fitness and the court may only  
19 consider the lack of compliance in according the weight and not  
20 the admissibility of the expert testimony. An examiner may use  
21 these materials as part of his or her diagnosis and explanation  
22 but shall not otherwise disclose the contents, including at a  
23 hearing before the court, except as otherwise provided in  
24 Section 104-14 of this Code.

25 (Source: P.A. 81-1217.)

1 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

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

7 (b) If the defendant's disability is mental, the court may  
8 order him placed for treatment in the custody of the Department  
9 of Human Services, or the court may order him placed in the  
10 custody of any other appropriate public or private mental  
11 health facility or treatment program which has agreed to  
12 provide treatment to the defendant. If the defendant is placed  
13 in the custody of the Department of Human Services, the  
14 defendant shall be placed in a secure setting ~~unless the court~~  
15 ~~determines that there are compelling reasons why such placement~~  
16 ~~is not necessary~~. During the period of time required to  
17 determine the appropriate placement the defendant shall remain  
18 in jail. If upon the completion of the placement process the  
19 Department of Human Services determines that the defendant is  
20 currently fit to stand trial, it shall immediately notify the  
21 court and shall submit a written report within 7 days. In that  
22 circumstance the placement shall be held pending a court  
23 hearing on the Department's report. Otherwise, upon completion  
24 of the placement process, the sheriff shall be notified and  
25 shall transport the defendant to the designated facility. The  
26 placement may be ordered either on an inpatient or an

1 outpatient basis.

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

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

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

14 (2) the county and municipality in which the offense  
15 was committed;

16 (3) the county and municipality in which the arrest  
17 took place;

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

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

23 (e) Within 30 days of entry of an order to undergo  
24 treatment, the person supervising the defendant's treatment  
25 shall file with the court, the State, and the defense a report  
26 assessing the facility's or program's capacity to provide

1 appropriate treatment for the defendant and indicating his  
2 opinion as to the probability of the defendant's attaining  
3 fitness within a period of time ~~one year~~ from the date of the  
4 finding of unfitness. For a defendant charged with a felony,  
5 the period of time shall be one year. For a defendant charged  
6 with a misdemeanor, the period of time shall be no longer than  
7 the sentence if convicted of the most serious offense. If the  
8 report indicates that there is a substantial probability that  
9 the defendant will attain fitness within the time period, the  
10 treatment supervisor shall also file a treatment plan which  
11 shall include:

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

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

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

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

20 (725 ILCS 5/104-18) (from Ch. 38, par. 104-18)

21 Sec. 104-18. Progress Reports.)

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

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

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

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

8 (b) The progress report shall contain:

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

11           (2) The opinion of the treatment supervisor as to  
12 whether the defendant has attained fitness or as to whether  
13 the defendant is making progress, under treatment, toward  
14 attaining fitness within the time period set in subsection  
15 (e) of Section 104-17 of this Code ~~one year~~ from the date  
16 of the original finding of unfitness;

17           (3) If the defendant is receiving medication,  
18 information from the prescribing physician indicating the  
19 type, the dosage and the effect of the medication on the  
20 defendant's appearance, actions and demeanor.

21 (c) Whenever the court is sent a report from the supervisor  
22 of the defendant's treatment under paragraph (2) of subsection  
23 (a) of this Section, the treatment provider shall arrange with  
24 the court for the return of the defendant to the county jail  
25 before the time frame specified in subsection (a) of Section  
26 104-20. This subsection (c) is inoperative on and after January

1 1, 2014.

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

3 (725 ILCS 5/104-20) (from Ch. 38, par. 104-20)

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

5 (a) Upon entry or continuation of any order to undergo  
6 treatment, the court shall set a date for hearing to reexamine  
7 the issue of the defendant's fitness not more than 90 days  
8 thereafter. In addition, whenever the court receives a report  
9 from the supervisor of the defendant's treatment pursuant to  
10 subparagraph (2) or (3) of paragraph (a) of Section 104-18, the  
11 court shall forthwith set the matter for a first hearing within  
12 14 days unless good cause is demonstrated why the hearing  
13 cannot be held. On the date set or upon conclusion of the  
14 matter then pending before it, the court, sitting without a  
15 jury, shall conduct a hearing, unless waived by the defense,  
16 and shall determine:

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

19 (2) Whether the defendant is making progress under  
20 treatment toward attainment of fitness within the time  
21 period set in subsection (e) of Section 104-17 of this Code  
22 ~~one year~~ from the date of the original finding of  
23 unfitness.

24 (b) If the court finds the defendant to be fit pursuant to  
25 this Section, the court shall set the matter for trial;

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

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

11 (d) If the court finds that the defendant is still unfit  
12 and that he is not making progress toward attaining fitness  
13 such that there is not a substantial probability that he will  
14 attain fitness within the time period set in subsection (e) of  
15 Section 104-17 of this Code ~~one year~~ from the date of the  
16 original finding of unfitness, the court shall proceed pursuant  
17 to Section 104-23. However, if the defendant is in need of  
18 continued care and treatment and the supervisor of the  
19 defendant's treatment agrees to continue to provide it, the  
20 court may enter any order it deems appropriate for the  
21 continued care or treatment by the facility or program pending  
22 the conclusion of the criminal proceedings.

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

24 (725 ILCS 5/104-21) (from Ch. 38, par. 104-21)

25 Sec. 104-21. Medication.



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

4 (b) Whenever a defendant who is receiving medication under  
5 medical direction is transferred between a place of custody and  
6 a treatment facility or program, a written report from the  
7 prescribing physician shall accompany the defendant. The  
8 report shall state the type and dosage of the defendant's  
9 medication and the duration of the prescription. The chief  
10 officer of the place of custody or the treatment supervisor at  
11 the facility or program shall insure that such medication is  
12 provided according to the directions of the prescribing  
13 physician or until superseded by order of a physician who has  
14 examined the defendant.

15 (c) If a defendant refuses psychotropic medication, it may  
16 be administered over the defendant's objections in accord with  
17 the Mental Health and Developmental Disabilities Code. If court  
18 authorized medications are sought, the petition, prepared in  
19 accord with Section 2-107.1 of the Mental Health and  
20 Developmental Disabilities Code may be filed in the county  
21 where the defendant is located or with the court having  
22 jurisdiction over the defendant.

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

24 (725 ILCS 5/104-23) (from Ch. 38, par. 104-23)

25 Sec. 104-23. Unfit defendants. Cases involving an unfit

1 defendant who demands a discharge hearing or a defendant who  
2 cannot become fit to stand trial and for whom no special  
3 provisions or assistance can compensate for his disability and  
4 render him fit shall proceed in the following manner:

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

14 (b) If at any time the court determines that there is not a  
15 substantial probability that the defendant will become fit to  
16 stand trial or to plead within the time period set in  
17 subsection (e) of Section 104-17 of this Code ~~one year~~ from the  
18 date of the original finding of unfitness, or if at the end of  
19 the time period set in subsection (e) of Section 104-17 of this  
20 Code ~~one year~~ from that date the court finds the defendant  
21 still unfit and for whom no special provisions or assistance  
22 can compensate for his disabilities and render him fit, the  
23 State shall request the court:

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

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

3           (3) To remand the defendant to the custody of the  
4 Department of Human Services and order a hearing to be  
5 conducted pursuant to the provisions of the Mental Health  
6 and Developmental Disabilities Code, as now or hereafter  
7 amended. The Department of Human Services shall have 7 days  
8 from the date it receives the defendant to prepare and file  
9 the necessary petition and certificates that are required  
10 for commitment under the Mental Health and Developmental  
11 Disabilities Code. If the defendant is committed to the  
12 Department of Human Services pursuant to such hearing, the  
13 court having jurisdiction over the criminal matter shall  
14 dismiss the charges against the defendant, with the leave  
15 to reinstate. In such cases the Department of Human  
16 Services shall notify the court, the State's attorney and  
17 the defense attorney upon the discharge of the defendant. A  
18 former defendant so committed shall be treated in the same  
19 manner as any other civilly committed patient for all  
20 purposes including admission, selection of the place of  
21 treatment and the treatment modalities, entitlement to  
22 rights and privileges, transfer, and discharge. A  
23 defendant who is not committed shall be remanded to the  
24 court having jurisdiction of the criminal matter for  
25 disposition pursuant to subparagraph (1) or (2) of  
26 paragraph (b) of this Section.

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

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

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

6 Sec. 104-31. No defendant placed in a setting of the  
7 Department of Human Services pursuant to the provisions of  
8 Sections 104-17, 104-25, or 104-26 shall be permitted outside  
9 the facility's housing unit unless escorted or accompanied by  
10 personnel of the Department of Human Services or authorized by  
11 court order. Any defendant ~~placed in a secure setting pursuant~~  
12 ~~to this Section,~~ transported to court hearings or other  
13 necessary appointments off facility grounds by personnel of the  
14 Department of Human Services, may be placed in security devices  
15 or otherwise secured during the period of transportation to  
16 assure secure transport of the defendant and the safety of  
17 Department of Human Services personnel and others. These  
18 security measures shall not constitute restraint as defined in  
19 the Mental Health and Developmental Disabilities Code. Nor  
20 shall any defendant be permitted any off-grounds privileges,  
21 either with or without escort by personnel of the Department of  
22 Human Services or ~~any~~ unsupervised on-ground privileges, ~~or~~  
23 ~~placement in a non-secure setting~~ unless such off-grounds or  
24 unsupervised on-grounds privileges, ~~or placement in a~~  
25 ~~non-secure setting~~ have been approved by specific court order,

1 which order may include such conditions on the defendant as the  
2 court may deem appropriate and necessary to reasonably assure  
3 the defendant's satisfactory progress in treatment and the  
4 safety of the defendant or others. Whenever the court receives  
5 a report from the supervisor of the defendant's treatment  
6 recommending the defendant for any off-grounds or unsupervised  
7 on-grounds privileges, ~~or placement in a non secure setting,~~  
8 the court shall set the matter for a first hearing within 21  
9 days unless good cause is demonstrated why the hearing cannot  
10 be held. The changes made to this Section by this amendatory  
11 Act of the 96th General Assembly are declarative of existing  
12 law and shall not be construed as a new enactment.

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

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

16 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

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

19 (a) After a finding or verdict of not guilty by reason of  
20 insanity under Sections 104-25, 115-3 or 115-4 of the Code of  
21 Criminal Procedure of 1963, the defendant shall be ordered to  
22 the Department of Human Services for an evaluation as to  
23 whether he is in need of mental health services. The order  
24 shall specify whether the evaluation shall be conducted on an

1 inpatient or outpatient basis. If the evaluation is to be  
2 conducted on an inpatient basis, the defendant shall be placed  
3 in a secure setting ~~unless the Court determines that there are~~  
4 ~~compelling reasons why such placement is not necessary.~~ With  
5 the court order for evaluation shall be sent a copy of the  
6 arrest report, criminal charges, arrest record, jail record,  
7 any report prepared under Section 115-6 of the Code of Criminal  
8 Procedure of 1963, and any victim impact statement prepared  
9 under Section 6 of the Rights of Crime Victims and Witnesses  
10 Act. After the evaluation and during the period of time  
11 required to determine the appropriate placement, the defendant  
12 shall remain in jail. Individualized placement evaluations by  
13 the Department of Human Services determine the most appropriate  
14 setting for forensic treatment based upon a number of factors  
15 including mental health diagnosis, proximity to surviving  
16 victims, security need, age, gender, and proximity to family.  
17 Upon completion of the placement process the sheriff shall be  
18 notified and shall transport the defendant to the designated  
19 facility.

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

1 Court shall enter its findings.

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

1 person not in need of mental health services, then the Court  
2 shall order the defendant discharged from custody.

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

4 (A) (Blank).

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

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

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



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

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

25 (E) "Facility director" means the chief officer of a  
26 mental health or developmental disabilities facility or

1 his or her designee or the supervisor of a program of  
2 treatment or habilitation or his or her designee.  
3 "Designee" may include a physician, clinical psychologist,  
4 social worker, nurse, or clinical professional counselor.

5 (b) If the Court finds the defendant in need of mental  
6 health services on an inpatient basis, the admission,  
7 detention, care, treatment or habilitation, treatment plans,  
8 review proceedings, including review of treatment and  
9 treatment plans, and discharge of the defendant after such  
10 order shall be under the Mental Health and Developmental  
11 Disabilities Code, except that the initial order for admission  
12 of a defendant acquitted of a felony by reason of insanity  
13 shall be for an indefinite period of time. Such period of  
14 commitment shall not exceed the maximum length of time that the  
15 defendant would have been required to serve, less credit for  
16 good behavior as provided in Section 5-4-1 of the Unified Code  
17 of Corrections, before becoming eligible for release had he  
18 been convicted of and received the maximum sentence for the  
19 most serious crime for which he has been acquitted by reason of  
20 insanity. The Court shall determine the maximum period of  
21 commitment by an appropriate order. During this period of time,  
22 the defendant shall not be permitted to be in the community in  
23 any manner, including but not limited to off-grounds  
24 privileges, with or without escort by personnel of the  
25 Department of Human Services, unsupervised on-grounds  
26 privileges, discharge or conditional or temporary release,

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

1 order, which order may include such conditions on the defendant  
2 as the Court may deem appropriate and necessary to reasonably  
3 assure the defendant's satisfactory progress in treatment and  
4 the safety of the defendant and others.

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

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

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

20 (d) When the facility director determines that:

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

23 (2) the defendant may be conditionally released  
24 because he or she is still in need of mental health  
25 services or that the defendant may be discharged as not in  
26 need of any mental health services; or

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

- 18               (i) (blank); or  
19               (ii) in need of mental health services in the form of  
20               inpatient care; or  
21               (iii) in need of mental health services but not subject  
22               to inpatient care; or  
23               (iv) no longer in need of mental health services; or  
24               (v) (blank). ~~no longer requires placement in a secure~~  
25               ~~setting.~~

26          Upon finding by the Court, the Court shall enter its

1 findings and such appropriate order as provided in subsections  
2 (a) and (a-1) of this Section.

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

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

23 (g) The findings of the Court shall be established by clear  
24 and convincing evidence. The burden of proof and the burden of  
25 going forth with the evidence rest with the defendant or any  
26 person on the defendant's behalf when a hearing is held to

1 review a petition filed by or on behalf of the defendant. The  
2 evidence shall be presented in open Court with the right of  
3 confrontation and cross-examination. Such evidence may  
4 include, but is not limited to:

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

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

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

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

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

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

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

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

23 (9) any specialized physical or medical needs of the  
24 defendant;

25 (10) any family participation or involvement expected  
26 upon release and what is the willingness and ability of the



1 family to participate or be involved;

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

4 (12) any other factor or factors the Court deems  
5 appropriate.

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

1 basis, it shall order the facility director not to discharge or  
2 release the defendant in accordance with paragraph (b) of this  
3 Section.

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

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

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

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

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

21 ~~(m) The Clerk of the Court shall, after the entry of an~~  
22 ~~order of transfer to a non-secure setting of the Department of~~  
23 ~~Human Services or discharge or conditional release, transmit a~~  
24 ~~certified copy of the order to the Department of Human~~  
25 ~~Services, and the sheriff of the county from which the~~  
26 ~~defendant was admitted. The Clerk of the Court shall also~~

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

12 (Source: P.A. 95-296, eff. 8-20-07; 95-331, eff. 8-21-07;  
13 96-1138, eff. 7-21-10.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law, except that the changes to Section 104-15 of the  
16 Code of Criminal Procedure of 1963 take effect on January 1,  
17 2015.