

1 AN ACT in relation to defendants found not guilty by
2 reason of insanity.

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

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

7 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

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

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

26 The Department shall provide the Court with a report of
27 its evaluation within 30 days of the date of this order. The
28 Court shall hold a hearing as provided under the Mental
29 Health and Developmental Disabilities Code to determine if
30 the individual is: (a) subject to involuntary admission; (b)
31 in need of mental health services on an inpatient basis; (c)

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

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

33 (1) Definitions: For the purposes of this Section:

34 (A) "Subject to involuntary admission" means: a

1 defendant has been found not guilty by reason of
2 insanity; and

3 (i) who is mentally ill and who because of his
4 mental illness is reasonably expected to inflict
5 serious physical harm upon himself or another in the
6 near future; or

7 (ii) who is mentally ill and who because of
8 his illness is unable to provide for his basic
9 physical needs so as to guard himself from serious
10 harm.

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

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

26 (D) "Conditional Release" means: the release from
27 either the custody of the Department of Human Services or
28 the custody of the Court of a person who has been found
29 not guilty by reason of insanity under such conditions as
30 the Court may impose which reasonably assure the
31 defendant's satisfactory progress in treatment or
32 habilitation and the safety of the defendant and others.
33 The Court shall consider such terms and conditions which
34 may include, but need not be limited to, outpatient care,

1 alcoholic and drug rehabilitation programs, community
2 adjustment programs, individual, group, family, and
3 chemotherapy, periodic checks with the legal authorities
4 and/or the Department of Human Services. The Court may
5 order the Department of Human Services to provide care to
6 any person conditionally released under this Section.
7 The Department may contract with any public or private
8 agency in order to discharge any responsibilities imposed
9 under this Section. The contracting process shall
10 require services to be identified in a treatment plan,
11 the resource requirements to provide those services, the
12 parties responsible for providing those resources, and
13 the process for securing future treatment and supportive
14 service and resource needs. The Department shall monitor
15 the provision of services to persons conditionally
16 released under this Section and provide periodic reports
17 to the Court concerning the services and the condition of
18 the defendant. Whenever a person is conditionally
19 released pursuant to this Section, the State's Attorney
20 for the county in which the hearing is held shall
21 designate in writing the name, telephone number, and
22 address of a person employed by him or her who shall be
23 notified in the event that either the reporting agency or
24 the Department decide that the conditional release of the
25 defendant should be revoked or modified pursuant to
26 subsection (i) of this Section ~~The person or facility~~
27 ~~rendering the outpatient care shall be required to~~
28 ~~periodically report to the Court on the progress of the~~
29 defendant. Such conditional release shall be for a period
30 of five years. However, unless the defendant, the person
31 or facility rendering the treatment, therapy, program or
32 outpatient care, the Department or the State's Attorney
33 may petition ~~petitions~~ the Court for an extension of the
34 conditional release period for an additional 5 ~~three~~

1 years. Upon receipt of such a petition, the Court shall
2 hold a hearing consistent with the provisions of this
3 paragraph (a) and paragraph (f) of this Section, shall
4 determine whether the defendant should continue to be
5 subject to the terms of conditional release, and shall
6 enter an order either extending the defendant's period of
7 conditional release for an a-single additional 5 three
8 year period or discharging the defendant. Additional 5
9 year periods of conditional release may be ordered
10 following a hearing as provided in this Section.
11 However, in no event shall the defendant's period of
12 conditional release continue beyond the maximum period of
13 commitment ordered by the Court pursuant to paragraph (b)
14 of this Section exceed-eight-years. These provisions for
15 extension of conditional release shall only apply to
16 defendants conditionally released on or after the
17 effective date of this amendatory Act of the 92nd General
18 Assembly July-17-1979. However the extension provisions
19 of Public Act 83-1449 apply only to defendants charged
20 with a forcible felony.

21 (E) "Facility director" means the chief officer of
22 a mental health or developmental disabilities facility or
23 his or her designee or the supervisor of a program of
24 treatment or habilitation or his or her designee.
25 "Designee" may include a physician, clinical
26 psychologist, social worker, or nurse.

27 (b) If the Court finds the defendant subject to
28 involuntary admission or in need of mental health services on
29 an inpatient basis, the admission, detention, care, treatment
30 or habilitation, treatment plans, review proceedings,
31 including review of treatment and treatment plans, and
32 discharge of the defendant after such order shall be under
33 the Mental Health and Developmental Disabilities Code, except
34 that the initial order for admission of a defendant acquitted

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

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

13 (c) Every defendant acquitted of a felony by reason of
14 insanity and subsequently found to be subject to involuntary
15 admission or in need of mental health services shall be
16 represented by counsel in all proceedings under this Section
17 and under the Mental Health and Developmental Disabilities
18 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
22 statement of legal services rendered by the private
23 attorney appointed pursuant to paragraph (1) of this
24 subsection, the Court shall determine a reasonable fee
25 for such services. If the defendant is unable to pay the
26 fee, the Court shall enter an order upon the State to pay
27 the entire fee or such amount as the defendant is unable
28 to pay from funds appropriated by the General Assembly
29 for that purpose.

30 (d) When the facility director determines that:

31 (1) the defendant is no longer subject to
32 involuntary admission or in need of mental health
33 services on an inpatient basis; and

34 (2) the defendant may be conditionally released

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

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

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

- 21 (i) subject to involuntary admission; or
- 22 (ii) in need of mental health services in the form
23 of inpatient care; or
- 24 (iii) in need of mental health services but not
25 subject to involuntary admission or inpatient care; or
- 26 (iv) no longer in need of mental health services;
27 or
- 28 (v) no longer requires placement in a secure
29 setting.

30 Upon finding by the Court, the Court shall enter its
31 findings and such appropriate order as provided in subsection
32 (a) of this Section.

33 (e) A defendant admitted pursuant to this Section, or
34 any person on his behalf, may file a petition for treatment

1 plan review, transfer to a non-secure setting within the
2 Department of Human Services or discharge or conditional
3 release under the standards of this Section in the Court
4 which rendered the verdict. Upon receipt of a petition for
5 treatment plan review, transfer to a non-secure setting or
6 discharge or conditional release, the Court shall set a
7 hearing to be held within 120 days. Thereafter, no new
8 petition may be filed for 120 days without leave of the
9 Court.

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

20 (g) The findings of the Court shall be established by
21 clear and convincing evidence. The burden of proof and the
22 burden of going forth with the evidence rest with the
23 defendant or any person on the defendant's behalf when a
24 hearing is held to review the determination of the facility
25 director that the defendant should be transferred to a
26 non-secure setting, discharged, or conditionally released or
27 when a hearing is held to review a petition filed by or on
28 behalf of the defendant. The evidence shall be presented in
29 open Court with the right of confrontation and
30 cross-examination.

31 (h) Before the Court orders that the defendant be
32 discharged or conditionally released, it shall order the
33 facility director to establish a discharge plan that includes
34 a plan for the defendant's shelter, support, and medication.

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

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

1 be held consistent with the provisions of paragraph (f) and
2 (g) of this Section. At such hearing, if the Court finds that
3 the defendant is subject to involuntary admission or in need
4 of mental health services on an inpatient basis, it shall
5 enter an order remanding him or her to the Department of
6 Human Services or other facility. If the defendant is
7 remanded to the Department of Human Services, he or she shall
8 be placed in a secure setting unless the Court determines
9 that there are compelling reasons that such placement is not
10 necessary. If the Court finds that the defendant continues
11 to be in need of mental health services but not on an
12 inpatient basis, it may modify the conditions of the original
13 release in order to reasonably assure the defendant's
14 satisfactory progress in treatment and his or her safety and
15 the safety of others in accordance with the standards
16 established in paragraph (1) (D) of subsection (a). ~~In--no~~
17 ~~event--shall--such--conditional--release--be--longer--than--eight~~
18 ~~years~~. Nothing in this Section shall limit a Court's contempt
19 powers or any other powers of a Court.

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

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

26 (l) This amendatory Act shall apply to all persons who
27 have been found not guilty by reason of insanity and who are
28 presently committed to the Department of Mental Health and
29 Developmental Disabilities (now the Department of Human
30 Services).

31 (m) The Clerk of the Court shall, after the entry of an
32 order of transfer to a non-secure setting of the Department
33 of Human Services or discharge or conditional release,
34 transmit a certified copy of the order to the Department of

1 Human Services, and the sheriff of the county from which the
2 defendant was admitted. ~~In--cases-where-the-arrest-of-the~~
3 ~~defendant-or-the-commission-of-the-offense-took-place-in--any~~
4 ~~municipality--with--a-population-of-more-than-25,000-persons,~~
5 The Clerk of the Court shall also transmit a certified copy
6 of the order of discharge or conditional release to the
7 Illinois Department of State Police, to the proper law
8 enforcement agency for the said municipality where the
9 offense took place and to the sheriff of the county into
10 which the defendant is conditionally discharged. The
11 Illinois Department of State Police shall maintain a
12 centralized record of discharged or conditionally released
13 defendants while they are under court supervision for access
14 and use of appropriate law enforcement agencies provided--the
15 municipality-has-requested-such-notice-in-writing.
16 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
17 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)