

AN ACT concerning criminal law.

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

Section 5. The Code of Criminal Procedure of 1963 is amended by changing Sections 104-15, 104-17, 104-18, 104-20, 104-21, 104-23, and 104-31 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

outpatient basis.

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

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

- (1) a certified copy of the order to undergo treatment;
- (2) the county and municipality in which the offense was committed;
- (3) the county and municipality in which the arrest took place;
- (4) a copy of the arrest report, criminal charges, arrest record, jail record, and the report prepared under Section 104-15; and
- (5) all additional matters which the Court directs the clerk to transmit.

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

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

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

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

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

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

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

Sec. 104-18. Progress Reports.)

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

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

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

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

(b) The progress report shall contain:

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

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

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

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

1, 2014.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 104-21. Medication.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 104-31. No defendant placed in a setting of the Department of Human Services pursuant to the provisions of Sections 104-17, 104-25, or 104-26 shall be permitted outside the facility's housing unit unless escorted or accompanied by personnel of the Department of Human Services or authorized by court order. Any defendant ~~placed in a secure setting pursuant to this Section,~~ transported to court hearings or other necessary appointments off facility grounds by personnel of the Department of Human Services, may be 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. These security measures shall not constitute restraint as defined in the Mental Health and Developmental Disabilities Code. Nor shall any defendant be permitted any off-grounds privileges, either with or without escort by personnel of the Department of Human Services or ~~any~~ any unsupervised on-ground privileges, ~~or placement in a non-secure setting~~ unless such off-grounds or unsupervised on-grounds privileges, ~~or placement in a non-secure setting~~ have been approved by specific court order,

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

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

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

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

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

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

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

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

Court shall enter its findings.

If the defendant is found to be in need of mental health services on an inpatient care basis, the Court shall order the defendant to the Department of Human Services. The defendant shall be placed in a secure setting ~~unless the Court determines that there are compelling reasons why such placement is not necessary~~. Such defendants placed in a secure setting shall not be permitted outside the facility's housing unit unless escorted or accompanied by personnel of the Department of Human Services or with the prior approval of the Court for unsupervised on-grounds privileges as provided herein. Any defendant placed in a secure setting pursuant to this Section, transported to court hearings or other necessary appointments off facility grounds by personnel of the Department of Human Services, shall be 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. These security measures shall not constitute restraint as defined in the Mental Health and Developmental Disabilities Code. If the defendant is found to be in need of mental health services, but not on an inpatient care basis, the Court shall conditionally release the defendant, under such conditions as set forth in this Section as will reasonably assure the defendant's satisfactory progress and participation in treatment or rehabilitation and the safety of the defendant and others. If the Court finds the

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

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

(A) (Blank).

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

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

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

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

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

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

his or her designee or the supervisor of a program of treatment or habilitation or his or her designee.

"Designee" may include a physician, clinical psychologist, social worker, nurse, or clinical professional counselor.

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

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

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

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

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

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

(d) When the facility director determines that:

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

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

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

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

Upon finding by the Court, the Court shall enter its

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

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

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

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

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

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

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

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

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

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

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

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

(8) the defendant's past criminal history;

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

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

family to participate or be involved;

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

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

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

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

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

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

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

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

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

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

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

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

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