

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
4 Illinois, 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 Department shall monitor the
10 provision of services to persons conditionally released
11 under this Section and provide periodic reports to the
12 Court concerning the services and the condition of the
13 defendant. Whenever a person is conditionally released
14 pursuant to this Section, the State's Attorney for the
15 county in which the hearing is held shall designate in
16 writing the name, telephone number, and address of a
17 person employed by him or her who shall be notified in
18 the event that either the reporting agency or the
19 Department decide that the conditional release of the
20 defendant should be revoked or modified pursuant to
21 subsection (i) of this Section ~~The--person--or--facility~~
22 ~~rendering--the--outpatient--care--shall--be--required--to~~
23 ~~periodically--report--to--the--Court--on--the--progress--of--the~~
24 defendant. Such conditional release shall be for a period
25 of five years. However, unless the defendant, the person
26 or facility rendering the treatment, therapy, program or
27 outpatient care, the Department or the State's Attorney
28 may petition ~~petitions~~ the Court for an extension of the
29 conditional release period for an additional 5 ~~three~~
30 years. Upon receipt of such a petition, the Court shall
31 hold a hearing consistent with the provisions of this
32 paragraph (a) and paragraph (f) of this Section, shall
33 determine whether the defendant should continue to be
34 subject to the terms of conditional release, and shall

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

16 (E) "Facility director" means the chief officer of
17 a mental health or developmental disabilities facility or
18 his or her designee or the supervisor of a program of
19 treatment or habilitation or his or her designee.
20 "Designee" may include a physician, clinical
21 psychologist, social worker, or nurse.

22 (b) If the Court finds the defendant subject to
23 involuntary admission or in need of mental health services on
24 an inpatient basis, the admission, detention, care, treatment
25 or habilitation, treatment plans, review proceedings,
26 including review of treatment and treatment plans, and
27 discharge of the defendant after such order shall be under
28 the Mental Health and Developmental Disabilities Code, except
29 that the initial order for admission of a defendant acquitted
30 of a felony by reason of insanity shall be for an indefinite
31 period of time. Such period of commitment shall not exceed
32 the maximum length of time that the defendant would have been
33 required to serve, less credit for good behavior, before
34 becoming eligible for release had he been convicted of and

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

1 of the Department of Human Services), home visits and
2 participation in work programs, but only where such
3 privileges have been approved by specific court order, which
4 order may include such conditions on the defendant as the
5 Court may deem appropriate and necessary to reasonably assure
6 the defendant's satisfactory progress in treatment and the
7 safety of the defendant and others.

8 (c) Every defendant acquitted of a felony by reason of
9 insanity and subsequently found to be subject to involuntary
10 admission or in need of mental health services shall be
11 represented by counsel in all proceedings under this Section
12 and under the Mental Health and Developmental Disabilities
13 Code.

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

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

25 (d) When the facility director determines that:

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

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

33 (3) the defendant no longer requires placement in a
34 secure setting;

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

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

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

28 (e) A defendant admitted pursuant to this Section, or
29 any person on his behalf, may file a petition for treatment
30 plan review, transfer to a non-secure setting within the
31 Department of Human Services or discharge or conditional
32 release under the standards of this Section in the Court
33 which rendered the verdict. Upon receipt of a petition for
34 treatment plan review, transfer to a non-secure setting or

1 discharge or conditional release, the Court shall set a
2 hearing to be held within 120 days. Thereafter, no new
3 petition may be filed for 120 days without leave of the
4 Court.

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

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

26 (h) Before the court orders that the defendant be
27 discharged or conditionally released, it shall order the
28 facility director to establish a discharge plan that includes
29 a plan for the defendant's shelter, support, and medication.
30 If appropriate, the court shall order that the facility
31 director establish a program to train the defendant in
32 self-medication under standards established by the Department
33 of Human Services. If the Court finds that the defendant is
34 no longer in need of mental health services it shall order

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

14 (i) If within the period of the defendant's conditional
15 release, the State's Attorney determines that the defendant
16 has not fulfilled the conditions of his or her release, the
17 State's Attorney may petition the Court to revoke or modify
18 the conditional release of the defendant. Upon the filing of
19 such petition the defendant may be remanded to the custody of
20 the Department, or to any other mental health facility
21 designated by the Department, pending the resolution of the
22 petition. Nothing in this Section shall prevent the
23 emergency admission of a defendant pursuant to Article VI of
24 Chapter III of the Mental Health and Developmental
25 Disabilities Code or the voluntary admission of the defendant
26 pursuant to Article IV of Chapter III of the Mental Health
27 and Developmental Disabilities Code. If the Court determines,
28 after hearing evidence, that the defendant has not fulfilled
29 the conditions of release, the Court shall order a hearing to
30 be held consistent with the provisions of paragraph (f) and
31 (g) of this Section. At such hearing, if the Court finds that
32 the defendant is subject to involuntary admission or in need
33 of mental health services on an inpatient basis, it shall
34 enter an order remanding him or her to the Department of

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

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

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

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

26 (m) The Clerk of the Court shall, after the entry of an
27 order of transfer to a non-secure setting of the Department
28 of Human Services or discharge or conditional release,
29 transmit a certified copy of the order to the Department of
30 Human Services, and the sheriff of the county from which the
31 defendant was admitted. ~~In cases where the arrest of the~~
32 ~~defendant or the commission of the offense took place in any~~
33 ~~municipality with a population of more than 25,000 persons,~~
34 The Clerk of the Court shall also transmit a certified copy

1 of the order of discharge or conditional release to the
2 Illinois Department of State Police, to the proper law
3 enforcement agency for the said municipality where the
4 offense took place and to the sheriff of the county into
5 which the defendant is conditionally discharged. The
6 Illinois Department of State Police shall maintain a
7 centralized record of discharged or conditionally released
8 defendants while they are under court supervision for access
9 and use of appropriate law enforcement agencies provided the
10 municipality has requested such notice in writing.

11 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
12 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)