

1 AMENDMENT TO SENATE BILL 624

2 AMENDMENT NO. _____. Amend Senate Bill 624, AS AMENDED,
3 by inserting immediately below the last line of Section 25
4 the following:

5 "Section 90. The Unified Code of Corrections is amended
6 by 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.

1 Upon completion of the placement process the sheriff shall
2 be notified and shall transport the defendant to the
3 designated facility.

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

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

1 the Court shall conditionally release the defendant, under
2 such conditions as set forth in this Section as will
3 reasonably assure the defendant's satisfactory progress in
4 treatment or rehabilitation and the safety of the defendant
5 or others. If the Court finds the person not in need of
6 mental health services, then the Court shall order the
7 defendant discharged from custody.

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

9 (A) "Subject to involuntary admission" means: a
10 defendant has been found not guilty by reason of
11 insanity; and

12 (i) who is mentally ill and who because of his
13 mental illness is reasonably expected to inflict
14 serious physical harm upon himself or another in the
15 near future; or

16 (ii) who is mentally ill and who because of
17 his illness is unable to provide for his basic
18 physical needs so as to guard himself from serious
19 harm.

20 (B) "In need of mental health services on an
21 inpatient basis" means: a defendant who has been found
22 not guilty by reason of insanity who is not subject to
23 involuntary admission but who is reasonably expected to
24 inflict serious physical harm upon himself or another and
25 who would benefit from inpatient care or is in need of
26 inpatient care.

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

1 (D) "Conditional Release" means: the release from
2 either the custody of the Department of Human Services or
3 the custody of the Court of a person who has been found
4 not guilty by reason of insanity under such conditions as
5 the Court may impose which reasonably assure the
6 defendant's satisfactory progress in treatment or
7 habilitation and the safety of the defendant and others.
8 The Court shall consider such terms and conditions which
9 may include, but need not be limited to, outpatient care,
10 alcoholic and drug rehabilitation programs, community
11 adjustment programs, individual, group, family, and
12 chemotherapy, periodic checks with the legal authorities
13 and/or the Department of Human Services. The Court may
14 order the Department of Human Services to provide care to
15 any person conditionally released under this Section.
16 The Department may contract with any public or private
17 agency in order to discharge any responsibilities imposed
18 under this Section. The contracting process shall
19 require services to be identified in a treatment plan,
20 the resource requirements to provide those services, the
21 parties responsible for providing those resources, and
22 the process for securing future treatment and supportive
23 service and resource needs. The Department shall monitor
24 the provision of services to persons conditionally
25 released under this Section and provide periodic reports
26 to the Court concerning the services and the condition of
27 the defendant. Whenever a person is conditionally
28 released pursuant to this Section, the State's Attorney
29 for the county in which the hearing is held shall
30 designate in writing the name, telephone number, and
31 address of a person employed by him or her who shall be
32 notified in the event that either the reporting agency or
33 the Department decide that the conditional release of the
34 defendant should be revoked or modified pursuant to

1 subsection (i) of this Section The--person--or--faeility
2 rendering--the--outpatient--care--shall--be--required--to
3 periodically--report--to-the-Court-on-the-progress-of-the
4 defendant. Such conditional release shall be for a period
5 of five years. However, unless the defendant, the person
6 or facility rendering the treatment, therapy, program or
7 outpatient care, the Department or the State's Attorney
8 may petition petitions the Court for an extension of the
9 conditional release period for an additional 5 three
10 years. Upon receipt of such a petition, the Court shall
11 hold a hearing consistent with the provisions of this
12 paragraph (a) and paragraph (f) of this Section, shall
13 determine whether the defendant should continue to be
14 subject to the terms of conditional release, and shall
15 enter an order either extending the defendant's period of
16 conditional release for an a-single additional 5 three
17 year period or discharging the defendant. Additional 5
18 year periods of conditional release may be ordered
19 following a hearing as provided in this Section.
20 However, in no event shall the defendant's period of
21 conditional release continue beyond the maximum period of
22 commitment ordered by the Court pursuant to paragraph (b)
23 of this Section exceed-eight-years. These provisions for
24 extension of conditional release shall only apply to
25 defendants conditionally released on or after the
26 effective date of this amendatory Act of the 92nd General
27 Assembly July--17-1979. However the extension provisions
28 of Public Act 83-1449 apply only to defendants charged
29 with a forcible felony.

30 (E) "Facility director" means the chief officer of
31 a mental health or developmental disabilities facility or
32 his or her designee or the supervisor of a program of
33 treatment or habilitation or his or her designee.
34 "Designee" may include a physician, clinical

1 psychologist, social worker, or nurse.

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

1 include an opinion as to whether the defendant is currently
2 subject to involuntary admission, in need of mental health
3 services on an inpatient basis, or in need of mental health
4 services on an outpatient basis. The report shall also
5 summarize the basis for those findings and provide a current
6 summary of the following items from the treatment plan: (1)
7 an assessment of the defendant's treatment needs, (2) a
8 description of the services recommended for treatment, (3)
9 the goals of each type of element of service, (4) an
10 anticipated timetable for the accomplishment of the goals,
11 and (5) a designation of the qualified professional
12 responsible for the implementation of the plan. The report
13 may also include unsupervised on-grounds privileges,
14 off-grounds privileges (with or without escort by personnel
15 of the Department of Human Services), home visits and
16 participation in work programs, but only where such
17 privileges have been approved by specific court order, which
18 order may include such conditions on the defendant as the
19 Court may deem appropriate and necessary to reasonably assure
20 the defendant's satisfactory progress in treatment and the
21 safety of the defendant and others.

22 (c) Every defendant acquitted of a felony by reason of
23 insanity and subsequently found to be subject to involuntary
24 admission or in need of mental health services shall be
25 represented by counsel in all proceedings under this Section
26 and under the Mental Health and Developmental Disabilities
27 Code.

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

30 (2) Upon filing with the Court of a verified
31 statement of legal services rendered by the private
32 attorney appointed pursuant to paragraph (1) of this
33 subsection, the Court shall determine a reasonable fee
34 for such services. If the defendant is unable to pay the

1 fee, the Court shall enter an order upon the State to pay
2 the entire fee or such amount as the defendant is unable
3 to pay from funds appropriated by the General Assembly
4 for that purpose.

5 (d) When the facility director determines that:

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

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

13 (3) the defendant no longer requires placement in a
14 secure setting;

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

30 (i) subject to involuntary admission; or

31 (ii) in need of mental health services in the form
32 of inpatient care; or

33 (iii) in need of mental health services but not
34 subject to involuntary admission or inpatient care; or

1 (iv) no longer in need of mental health services;
2 or
3 (v) no longer requires placement in a secure
4 setting.

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

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

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

29 (g) The findings of the Court shall be established by
30 clear and convincing evidence. The burden of proof and the
31 burden of going forth with the evidence rest with the
32 defendant or any person on the defendant's behalf when a
33 hearing is held to review the determination of the facility
34 director that the defendant should be transferred to a

1 non-secure setting, discharged, or conditionally released or
2 when a hearing is held to review a petition filed by or on
3 behalf of the defendant. The evidence shall be presented in
4 open Court with the right of confrontation and
5 cross-examination.

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
9 a plan for the defendant's shelter, support, and medication.
10 If appropriate, the Court shall order that the facility
11 director establish a program to train the defendant in
12 self-medication under standards established by the Department
13 of Human Services. If the Court finds that the defendant is
14 no longer in need of mental health services it shall order
15 the facility director to discharge the defendant. If the
16 Court finds that the defendant is in need of mental health
17 services, and no longer in need of inpatient care, it shall
18 order the facility director to release the defendant under
19 such conditions as the Court deems appropriate and as
20 provided by this Section. Such conditional release shall be
21 imposed for a period of five years and shall be subject to
22 later modification by the Court as provided by this Section.
23 If the Court finds that the defendant is subject to
24 involuntary admission or in need of mental health services on
25 an inpatient basis, it shall order the facility director not
26 to discharge or release the defendant in accordance with
27 paragraph (b) of this Section.

28 (i) If within the period of the defendant's conditional
29 release, the State's Attorney determines that the defendant
30 has not fulfilled the conditions of his or her release, the
31 State's Attorney may petition the Court to revoke or modify
32 the conditional release of the defendant. Upon the filing of
33 such petition the defendant may be remanded to the custody of
34 the Department, or to any other mental health facility

1 designated by the Department, pending the resolution of the
2 petition. Nothing in this Section shall prevent the
3 emergency admission of a defendant pursuant to Article VI of
4 Chapter III of the Mental Health and Developmental
5 Disabilities Code or the voluntary admission of the defendant
6 pursuant to Article IV of Chapter III of the Mental Health
7 and Developmental Disabilities Code. If the Court determines,
8 after hearing evidence, that the defendant has not fulfilled
9 the conditions of release, the Court shall order a hearing to
10 be held consistent with the provisions of paragraph (f) and
11 (g) of this Section. At such hearing, if the Court finds that
12 the defendant is subject to involuntary admission or in need
13 of mental health services on an inpatient basis, it shall
14 enter an order remanding him or her to the Department of
15 Human Services or other facility. If the defendant is
16 remanded to the Department of Human Services, he or she shall
17 be placed in a secure setting unless the Court determines
18 that there are compelling reasons that such placement is not
19 necessary. If the Court finds that the defendant continues
20 to be in need of mental health services but not on an
21 inpatient basis, it may modify the conditions of the original
22 release in order to reasonably assure the defendant's
23 satisfactory progress in treatment and his or her safety and
24 the safety of others in accordance with the standards
25 established in paragraph (1) (D) of subsection (a). ~~In no~~
26 ~~event shall such conditional release be longer than eight~~
27 ~~years.~~ Nothing in this Section shall limit a Court's contempt
28 powers or any other powers of a Court.

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

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

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

6 (m) The Clerk of the Court shall, after the entry of an
7 order of transfer to a non-secure setting of the Department
8 of Human Services or discharge or conditional release,
9 transmit a certified copy of the order to the Department of
10 Human Services, and the sheriff of the county from which the
11 defendant was admitted. ~~In cases where the arrest of the~~
12 ~~defendant or the commission of the offense took place in any~~
13 ~~municipality with a population of more than 25,000 persons,~~
14 The Clerk of the Court shall also transmit a certified copy
15 of the order of discharge or conditional release to the
16 Illinois Department of State Police, to the proper law
17 enforcement agency for the said municipality where the
18 offense took place and to the sheriff of the county into
19 which the defendant is conditionally discharged. The
20 Illinois Department of State Police shall maintain a
21 centralized record of discharged or conditionally released
22 defendants while they are under court supervision for access
23 and use of appropriate law enforcement agencies provided the
24 municipality has requested such notice in writing.

25 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
26 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)".