AN ACT concerning military affairs.

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

Section 1. The Illinois Administrative Procedure Act is amended by changing Section 1-20 as follows:

(5 ILCS 100/1-20) (from Ch. 127, par. 1001-20)

Sec. 1-20. "Agency" means each officer, board, commission, and agency created by the Constitution, whether in the legislative, or judicial branch executive, of government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, and body politic and corporate of the State; each administrative unit or corporate outgrowth of the State government that is created by or pursuant to statute, other than units of local government and their officers, school districts, and boards of election commissioners; and each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. "Agency", however, does not include the following:

(1) The House of Representatives and Senate and their respective standing and service committees, including without limitation the Board of the Office of the Architect of the Capitol and the Architect of the Capitol established

under the Legislative Commission Reorganization Act of 1984.

- (2) The Governor.
- (3) The justices and judges of the Supreme and Appellate Courts.
 - (4) The Legislative Ethics Commission.
- (5) The Illinois State Guard with respect to regulations adopted under the Illinois State Guard Act.

(Source: P.A. 95-331, eff. 8-21-07.)

Section 3. The State Employee Indemnification Act is amended by changing Section 1 as follows:

(5 ILCS 350/1) (from Ch. 127, par. 1301)

Sec. 1. Definitions. For the purpose of this Act:

(a) The term "State" means the State of Illinois, the General Assembly, the court, or any State office, department, division, bureau, board, commission, or committee, the governing boards of the public institutions of higher education created by the State, the Illinois National Guard, the Illinois State Guard, the Comprehensive Health Insurance Board, any poison control center designated under the Poison Control System Act that receives State funding, or any other agency or instrumentality of the State. It does not mean any local public entity as that term is defined in Section 1-206 of the Local Governmental and Governmental Employees Tort Immunity Act or a

pension fund.

The term "employee" means: any present or former elected or appointed officer, trustee or employee of the State, or of a pension fund; any present or former commissioner or employee of the Executive Ethics Commission or of the Legislative Ethics Commission; any present Executive, Legislative, or Auditor General's General; any present or former employee of an Office of an Executive, Legislative, or Auditor General's Inspector General; any present or former member of the Illinois National Guard while on active duty; any present or former member of the Illinois State Guard while on State active duty; individuals or organizations who contract with the Department of Corrections, the Department of Juvenile Justice, the Comprehensive Health Insurance Board, or the Department of Veterans' Affairs to provide services; individuals or organizations who contract with the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) to provide services including but not limited to treatment and other services for sexually violent persons; individuals or organizations who contract with the Department of Military Affairs for youth programs; individuals or organizations who contract to perform carnival and amusement ride safety inspections for the Department of Labor; individuals who contract with the Office of the State's Attorneys Appellate Prosecutor to provide legal services, but only when performing

scope of the Office's prosecutorial duties within the activities; individual representatives of or designated organizations authorized to represent the Office of State Long-Term Ombudsman for the Department on Aging; individual representatives of or organizations designated by the Department on Aging in the performance of their duties as adult protective services agencies or regional administrative agencies under the Adult Protective Services Act; individuals or organizations appointed as members of a review team or the Advisory Council under the Adult Protective Services Act; individuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing; individuals who serve on any public entity (whether created by law or administrative action) described in paragraph of this Section; individuals or not for organizations who, either as volunteers, where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State; individuals who serve as foster parents for the Department of Children and Family Services when caring for a Department ward; individuals who serve as members of an independent team of experts under Brian's Law; and individuals who serve as arbitrators pursuant to Part 10A of Article II of the Code of Civil Procedure and the rules of the Supreme Court implementing Part 10A, each as now or hereafter amended; the term "employee" does not mean an independent

contractor except as provided in this Section. The term includes an individual appointed as an inspector by the Director of State Police when performing duties within the scope of the activities of a Metropolitan Enforcement Group or a law enforcement organization established under the Intergovernmental Cooperation Act. An individual who renders professional advice and consultation to the State through an organization which qualifies as an "employee" under the Act is also an employee. The term includes the estate or personal representative of an employee.

(c) The term "pension fund" means a retirement system or pension fund created under the Illinois Pension Code.

(Source: P.A. 98-49, eff. 7-1-13; 98-83, eff. 7-15-13; 98-732, eff. 7-16-14; 98-756, eff. 7-16-14.)

Section 5. The Military Code of Illinois is amended by changing Section 21 as follows:

(20 ILCS 1805/21) (from Ch. 129, par. 220.21)

Sec. 21. The Assistant Adjutant General for Army shall be the chief administrative assistant to The Adjutant General for Army matters and the Assistant Adjutant General for Air shall be the chief administrative assistant to The Adjutant General for Air matters and both shall perform such duties as may be directed by The Adjutant General. In the event of the death or disability of The Adjutant General or any other occurrence that

creates a vacancy in the office, his absence from the State, the Commander-in-Chief shall designate either the Assistant Adjutant General for Army or the Assistant Adjutant General for Air as the Acting Adjutant General to perform the duties of the office until an Adjutant General is appointed of The Adjutant General.

(Source: P.A. 80-176.)

Section 10. The Illinois Code of Military Justice is amended by adding Section 76b as follows:

(20 ILCS 1807/76b new)

Sec. 76b. Article 76b. Lack of mental capacity or mental responsibility; commitment of accused for examination and treatment.

- (a) Persons incompetent to stand trial.
- (1) (A) In general, no person may be brought to trial by court-martial if that person is presently suffering from a mental disease or defect rendering that person mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against them or to conduct or cooperate intelligently in the defense of the case.
- (B) A person is presumed to have the capacity to stand trial unless the contrary is established.
 - (C) Determination of capacity of an accused to stand

trial shall be made in accordance with Rule 909 (c), (d), and (e) of the Rules for Courts-Martial as described in the Manual for Courts-Martial, United States (2012 Edition), or as provided in any subsequent rule adopted in accordance with applicable law and regulation by the President of the United States, except that references in those rules to "the Attorney General" mean the Department of Human Services.

(2) An inquiry into the mental capacity or mental responsibility of the accused shall be conducted as provided in Rule 706 of the Rules for Courts-Martial as described in the Manual for Courts-Martial, United States (2012 Edition), or as provided in any subsequent rule adopted in accordance with applicable law and regulation by the President of the United States.

If the accused's incapacity is mental, the convening authority may order him or her to be placed for treatment in the custody of the Department of Human Services or the convening authority may order him or her to be 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 accused. If the accused is placed in the custody of the Department of Human Services, the accused may be placed in a secure setting. During the period of time required to determine the appropriate placement, the accused shall remain confined.

If, upon the completion of the placement process, the Department of Human Services determines that the accused is currently fit to stand trial, the Department shall immediately notify the convening authority 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 accused to the designated facility. The placement may be ordered on either an inpatient or an outpatient basis.

In addition to other matters, the inquiry shall determine whether there is a substantial probability that the accused will attain mental responsibility to stand trial within one year if he or she is provided with a course of treatment.

(A) In the case of a general court-martial, if the official responsible for determining capacity to stand trial finds that there is not a substantial probability that the accused will attain mental responsibility within one year if he or she is provided with a course of treatment, the case shall proceed as provided in Section 104-23 of the Code of Criminal Procedure of 1963. In a special court-martial, the case shall proceed after the expiration of the maximum period of confinement authorized for the offense or offenses

charged.

- (B) If the official responsible for determining capacity to stand trial finds that there is a probability that the accused will attain mental responsibility within one year if he or she is provided with a course of treatment, or if the official is unable to determine whether a substantial probability exists, the accused shall be ordered to undergo treatment for the purpose of rendering him or her fit in accordance with subsections (b) or (c) of Section 104-17 of the Code of Criminal Procedure of 1963.
 - (1) Any references to "the court" in Sections

 104-23 and 104-17 of the Code of Criminal Procedure

 of 1963 mean the general court-martial convening
 authority.
 - (2) The general court-martial convening authority shall, as necessary, transmit the information as provided in subsection (d) of Section 104-17 of the Code of Criminal Procedure of 1963.
- (b) Persons found not guilty by reason of lack of mental responsibility.
 - (1) The accused is presumed to have been mentally responsible at the time of the alleged offense. This presumption continues until the accused establishes, by clear and convincing evidence, that he or she was not

mentally responsible at the time of the alleged offense. A mental condition not amounting to a lack of mental responsibility under Article 50a of this Code is not an affirmative defense.

- (2) If a question is raised concerning the mental responsibility of the accused, the military judge shall rule whether to direct an inquiry under Rule 706 of the Rules for Court-Martial as described in the Manual for Courts-Martial, United States (2012 Edition), or under any subsequent rule adopted in accordance with applicable law and regulation by the President of the United States. The issue of mental responsibility shall not be considered an interlocutory question.
- (3) If a person is found not guilty only by reason of lack of mental responsibility, the case shall proceed in accordance with State law pertaining to persons acquitted by reason of insanity as provided in Section 5-2-4 of the Unified Code of Corrections. References within that Section to "the court" or "clerk of the court" mean the general court-martial convening authority.
- (4) After a finding or verdict of not guilty only by reason of lack of mental responsibility, the accused shall be ordered to the Department of Human Services for an evaluation as to whether he or she 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 accused shall be placed in a secure setting. A copy of the law enforcement reports, criminal charges, arrest record, jail record, record of trial, and any victim impact statement shall be sent with the order for evaluation. After the evaluation and during the period of time required to determine the appropriate placement, the accused shall remain in confinement. Individualized placement evaluations performed by the Department of Human Services shall be used to 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 accused to the designated facility.

Section 15. The State Guard Act is amended by changing and renumbering Section 0.01 and by adding Sections 1-1, 1-5, 1-10, 2-5, 3-5, 3-10, 4-5, 4-10, 5-5, 5-10, 5-15, and 6-5 and the headings of Part I, Part II, Part III, Part IV, Part V, and Part VI as follows:

(20 ILCS 1815/Pt. I heading new)

PART I

GENERAL PROVISIONS

(20 ILCS 1815/0.01) (from Ch. 129, par. 228h)

Sec. $\underline{1-1}$ 0.01. Short title. This Act may be cited as the Illinois State Guard Act.

(Source: P.A. 86-1324.)

(20 ILCS 1815/1-5 new)

Sec. 1-5. Establishment and purpose.

- (a) This Act establishes the Illinois State Guard ("the State Guard"). The State Guard is the State's non-federally recognized military force which may be composed of members of the Unorganized Militia who are 18 through 45 years of age, and those persons who are 45 through 65 years of age as determined necessary by the Governor.
- (b) The Governor is the Commander-in-Chief of the State Guard. The Adjutant General is the Commander of the State Guard. As directed by the Adjutant General, the Department of Military Affairs shall administer the State Guard.
- (c) The purpose of the State Guard is to provide the State a capable military force when all or part of the Illinois National Guard is not available for State service due to its possible or actual mobilization into federal service by the President of the United States.

(20 ILCS 1815/1-10 new)

Sec. 1-10. Activation of the State Guard.

- (a) Whenever the Commander-in-Chief deems it necessary or advisable for the purpose of executing the laws of the State or to prevent an actual or threatened violation of law; when the nation is at war and a requisition or order has been made, or is likely to be made, by the President of the United States calling the National Guard, or parts thereof, into the National service; or for any other emergency, he or she may issue a proclamation calling for volunteers to serve in the State Guard. Persons who answer the call and who are appointed or enlisted in the State Guard shall serve in State Active Duty status.
- (b) The proclamation shall state the number of volunteers needed and the period of State Active Duty during which they are called to serve. The Commander-in-Chief may terminate or extend any such proclamation at any time he or she determines appropriate and in the best interests of the State.
- (c) When mobilized and deployed to support civil authorities, the State Guard may be directed by civil authorities as to work to be done or the result to be attained, but not as to the method to be employed. At all times, State Guard units and members shall remain under the command and control of the Commander-in-Chief, the Adjutant General, and such subordinate commanders as the Adjutant General may appoint.

PART II

ORGANIZATION OF THE STATE GUARD

(20 ILCS 1815/2-5 new)

Sec. 2-5. Organization.

- (a) As authorized by the Commander-in-Chief, the Adjutant General may by order establish units of the State Army and Air Guard that are similar in nature and in general conformity to those of the United States Army and Air Force and may assign State Guard personnel to each unit. Upon expiration or termination of the proclamation issued in accordance with Section 1-10 of this Act, the Commander-in-Chief may discharge such units and personnel assigned thereto.
- (b) The State Guard shall consist of 2 components: the State Army Guard and the State Air Guard. The Adjutant General may appoint the Assistant Adjutant General for Army as the Commander of the State Army Guard and the Assistant Adjutant General for Air as the Commander of the State Air Guard, respectively. The Adjutant General may also appoint such other subordinate commanders and staff of the State Guard as he or she determines appropriate.

(20 ILCS 1815/Pt. III heading new)

PART III

PERSONNEL AND PAY

(20 ILCS 1815/3-5 new)

Sec. 3-5. Personnel.

- (a) The State Guard shall be comprised of commissioned officers, warrant officers, and enlisted personnel in grades conforming to those of the United States Army and Air Force.

 The Adjutant General shall establish by regulation the qualifications for appointment, enlistment, service, and promotion in the State Guard including, but not limited to, minimum and maximum age, education, physical condition, and personal conduct.
- (b) The Governor shall appoint all commissioned and warrant officers of the State Guard in a manner similar to appointments made in the Illinois National Guard. Officers shall take the following oath as a condition of appointment: "I do solemnly swear (or affirm) that I will bear true allegiance to the Constitution of the United States and to the Constitution of the State of Illinois, and to the laws thereof, and that I will faithfully obey the orders of the Commander-in-Chief and the officers appointed above me, and the rules and regulations of the Illinois State Guard. (So help me God.) "Appointments in the State Guard shall be for an indefinite term and subject to death, resignation, discharge, retirement, or termination in accordance with State law and regulation.
- (c) Persons accepted for enlistment in the State Guard shall, as a condition of enlistment, take the same oath as officers. The Adjutant General shall prescribe by regulation

the form of enlistment contracts. Original terms of enlistment shall be limited to 2 years. Re-enlistment terms shall be limited to one year.

- (d) In accordance with regulations prescribed by the Adjutant General, upon an officer's separation from the State Guard, the Adjutant General shall characterize the officer's service as honorable, general (under honorable conditions), or under conditions other than honorable using criteria that are in general conformity with those regulations or instructions of the United States Army and Air Force that are applicable to the National Guard, unless the officer was separated with a punitive discharge under the Illinois Code of Military Justice.
- (e) The Adjutant General may mobilize on State Active Duty members of the Illinois National Guard as he or she determines necessary to administer, train, or command the State Guard.

(20 ILCS 1815/3-10 new)

Sec. 3-10. Pay and allowances.

- (a) The State is responsible for all pay and allowances of members of the State Guard.
- (b) Members of the State Guard serving on State Active Duty shall receive the same pay as provided to members of the Illinois National Guard of like grade and longevity under Sections 48 and 49 of the Military Code of Illinois.
- (c) Members of the State Guard serving on State Active Duty shall be considered State employees for civil liability and

civil representation purposes to the same degree and extent as members of the Illinois National Guard under Section 1 of the State Employee Indemnification Act.

(d) Members of the State Guard criminally prosecuted by civil authorities of the United States, any State, Commonwealth, Territory, or District of the United States, including the State of Illinois or any political subdivision thereof, shall be entitled to representation and indemnification to the same extent as members of the Illinois National Guard under Section 90 of the Military Code of Illinois.

(20 ILCS 1815/Pt. IV heading new)

PART IV

EQUIPPING AND UNIFORMS

(20 ILCS 1815/4-5 new)

Sec. 4-5. Equipping.

- (a) As permitted by federal law and regulation, the State Guard may use the federal military property and personnel of the Illinois National Guard and shall reimburse the appropriate federal authority for such use from State funds.
- (b) The State Guard may use federal property of the Illinois National Guard only to the extent that its members are trained to use it properly and safely and, if necessary, under the training and supervision of members of the Illinois

National Guard detailed by the Adjutant General.

- (c) In accordance with the Illinois Procurement Code, the State may, at its expense and subject to the availability of State funds, procure and provide such other materials, as needed, for the State Guard.
- (d) State Guard commanders shall be held responsible and accountable for all military property issued to them in a manner similar to that enforced against commanders of the Illinois National Guard under property accountability regulations or instructions of the United States Army and Air Force.
- (e) In accordance with regulations prescribed by the Adjutant General, members of the State Guard shall be held responsible and may be held financially liable for any damage, destruction, or loss, including loss of accountability, of military property under their control in a manner similar to that enforced against members of the Illinois National Guard under applicable regulations or instructions of the United States Army and Air Force.

(20 ILCS 1815/4-10 new)

Sec. 4-10. Uniforms.

(a) Uniforms for the State Guard shall be in general conformity with those of the Illinois National Guard, except that members of the State Guard shall wear the designation "IL" on their class A/service dress and the designation "Illinois"

State Army Guard", "Illinois State Air Guard", or "Illinois" on their class C/utility uniforms.

- (b) Officers shall pay for their uniforms. Enlisted members shall be issued uniforms in accordance with regulations prescribed by the Adjutant General and subject to the availability of State funds.
- (c) Officer and enlisted rank insignia shall be in conformity with those of the Illinois National Guard.

(20 ILCS 1815/Pt. V heading new)

PART V

DISCIPLINE

(20 ILCS 1815/5-5 new)

Sec. 5-5. Military justice. While serving on State Active

Duty, members of the State Guard shall be subject to the

provisions of the Illinois Code of Military Justice.

(20 ILCS 1815/5-10 new)

Sec. 5-10. Terminating appointments. The Adjutant General may prescribe, by regulation, administrative procedures for terminating the appointment of any commissioned or warrant officer for cause that are similar to those procedures which apply to members of the Illinois National Guard, except that any administrative procedures prescribed by the Adjutant General under this Section shall provide that no officer is

entitled to present his or her case to a board of officers unless the officer has at least 6 years of total military service in the State Guard at the time the termination action was initiated. Such administrative procedures shall require the Adjutant General to characterize the officer's service as honorable, general (under honorable conditions), or under other than honorable conditions; however, in no case may the Adjutant General characterize an officer's service as other than honorable unless the officer is afforded the right to present his or her case to a board of officers.

(20 ILCS 1815/5-15 new)

Sec. 5-15. Involuntary separation. The Adjutant General may prescribe, by regulation, administrative procedures to involuntarily separate any enlisted member from the State Guard for cause that are similar to those procedures which apply to members of the Illinois National Guard, except that any administrative procedures prescribed by the Adjutant General under this Section shall provide that no enlisted person is entitled to present his or her case to a board of officers unless the enlisted person has at least 6 years of total military service in the State Guard at the time the separation action was initiated. Such administrative procedures shall require the Adjutant General to characterize the enlisted member's service as honorable, general (under honorable conditions), or under other than honorable conditions;

however, in no case may the Adjutant General characterize an enlisted member's service as other than honorable unless the enlisted member is afforded the right to present his or her case to a board of officers.

(20 ILCS 1815/Pt. VI heading new)

PART VI

REGULATIONS

(20 ILCS 1815/6-5 new)

Sec. 6-5. Regulations. Regulations authorized under this Act shall not be subject to the Illinois Administrative Procedure Act and shall become effective upon approval by the Adjutant General.

- (20 ILCS 1815/1 rep.)
- (20 ILCS 1815/2 rep.)
- (20 ILCS 1815/3 rep.)
- (20 ILCS 1815/4 rep.)
- (20 ILCS 1815/5 rep.)
- (20 ILCS 1815/6 rep.)
- (20 ILCS 1815/7 rep.)
- (20 ILCS 1815/8 rep.)
- (20 ILCS 1815/9 rep.)
- (20 ILCS 1815/10 rep.)
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- (20 ILCS 1815/71 rep.)
- (20 ILCS 1815/72 rep.)
- (20 ILCS 1815/73 rep.)
- (20 ILCS 1815/74 rep.)
- (20 ILCS 1815/75 rep.)
- (20 ILCS 1815/76 rep.)
- (20 ILCS 1815/77 rep.)
- (20 ILCS 1815/78 rep.)
- (20 ILCS 1815/79 rep.)
- (20 ILCS 1815/80 rep.)
- (20 ILCS 1815/81 rep.)
- (20 ILCS 1815/82 rep.)

Section 20. The State Guard Act is amended by repealing Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, and 82.

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Section 99. Effective date. This Act takes effect upon becoming law.

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Statutes amended in order of appearance

5 ILCS 100/1-20 from Ch. 127, par. 1001-20 5 ILCS 350/1 from Ch. 127, par. 1301 20 ILCS 1805/21 from Ch. 129, par. 220.21

20 ILCS 1807/76b new

20 ILCS 1815/Pt. I heading

new

20 ILCS 1815/0.01 from Ch. 129, par. 228h

20 ILCS 1815/1-5 new

20 ILCS 1815/1-10 new

20 ILCS 1815/Pt. II

heading new

20 ILCS 1815/2-5 new

20 ILCS 1815/Pt. III

heading new

20 ILCS 1815/3-5 new

20 ILCS 1815/3-10 new

20 ILCS 1815/Pt. IV

heading new

20 ILCS 1815/4-5 new

20 ILCS 1815/4-10 new

20 ILCS 1815/Pt. V heading

new

20 ILCS 1815/5-5 new

- 20 ILCS 1815/5-10 new
- 20 ILCS 1815/5-15 new
- 20 ILCS 1815/Pt. VI

heading new

- 20 ILCS 1815/6-5 new
- 20 ILCS 1815/1 rep.
- 20 ILCS 1815/2 rep.
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- 20 ILCS 1815/11 rep.
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- 20 ILCS 1815/74 rep.
- 20 ILCS 1815/75 rep.
- 20 ILCS 1815/76 rep.
- 20 ILCS 1815/77 rep.
- 20 ILCS 1815/78 rep.
- 20 ILCS 1815/79 rep.
- 20 ILCS 1815/80 rep.
- 20 ILCS 1815/81 rep.
- 20 ILCS 1815/82 rep.