

1 AN ACT in relation to criminal law.

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

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

6 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

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

9 (a) After a finding or verdict of not guilty by reason
10 of insanity under Sections 104-25, 115-3 or 115-4 of The Code
11 of Criminal Procedure of 1963, the defendant shall be ordered
12 to the Department of Human Services for an evaluation as to
13 whether he is subject to involuntary admission or in need of
14 mental health services. The order shall specify whether the
15 evaluation shall be conducted on an inpatient or outpatient
16 basis. If the evaluation is to be conducted on an inpatient
17 basis, the defendant shall be placed in a secure setting
18 unless the Court determines that there are compelling reasons
19 why such placement is not necessary. If the defendant's
20 conduct that was charged involved a first degree murder, a
21 second degree murder, or an offense resulting in serious
22 bodily injury to another or an attempt to commit any of these
23 offenses, then the court shall order inpatient treatment.

24 After the evaluation and during the period of time required
25 to determine the appropriate placement if necessary, the
26 defendant shall remain in jail. Upon completion of the
27 placement process the sheriff shall be notified and shall
28 transport the defendant to the designated facility.

29 The Department shall provide the Court with a report of
30 its evaluation within 30 days of the date of this order. The
31 Court shall hold a hearing as provided under the Mental

1 Health and Developmental Disabilities Code to determine if
2 the individual is: (a) subject to involuntary admission; (b)
3 in need of mental health services on an inpatient basis; (c)
4 in need of mental health services on an outpatient basis; (d)
5 a person not in need of mental health services. The Court
6 shall enter its findings.

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

1 shall order the defendant discharged from custody.

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

3 (A) "Subject to involuntary admission" means: a
4 defendant has been found not guilty by reason of
5 insanity; and

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

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

14 (B) "In need of mental health services on an
15 inpatient basis" means: a defendant who has been found
16 not guilty by reason of insanity who is not subject to
17 involuntary admission but who is reasonably expected to
18 inflict serious physical harm upon himself or another and
19 who would benefit from inpatient care or is in need of
20 inpatient care. It also includes a person whose conduct
21 for which a disposition under this Section was ordered
22 involved a first degree murder, a second degree murder,
23 or an offense resulting in serious bodily injury to
24 another or was a forcible felony or an attempt to commit
25 any of these offenses.

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

34 (D) "Conditional Release" means: the release from

1 either the custody of the Department of Human Services or
2 the custody of the Court of a person who has been found
3 not guilty by reason of insanity under such conditions as
4 the Court may impose which reasonably assure the
5 defendant's satisfactory progress in treatment or
6 habilitation and the safety of the defendant and others.
7 The Court shall consider such terms and conditions which
8 may include, but need not be limited to, outpatient care,
9 alcoholic and drug rehabilitation programs, community
10 adjustment programs, individual, group, family, and
11 chemotherapy, random testing to insure the defendant's
12 timely and continuous taking of any medicines prescribed
13 to control or manage his or her conduct or mental state,
14 periodic checks with the legal authorities and/or the
15 Department of Human Services. The report of the
16 evaluation as to whether the defendant is subject to
17 involuntary admission or in need of mental health
18 services, including any conditions or recommendations,
19 shall be in writing and submitted to the court and the
20 State at least 30 days prior to any hearing to insure
21 proper input from the State's Attorney on record in the
22 case and consideration by the court. The person or
23 facility rendering the outpatient care shall be required
24 to periodically report in writing to the Court on the
25 progress of the defendant with a copy provided to the
26 State's Attorney on record in the case. Such conditional
27 release shall be for a specific period of time, subject
28 to the ability of any party to obtain a continuation of
29 the conditional release of--five--years,--unless--the
30 defendant,--the--person--or--facility--rendering--the
31 treatment,--therapy,--program--or--outpatient--care,--or--the
32 State's--Attorney--petitions--the--Court--for--an--extension--of
33 the--conditional--release--period--for--an--additional--three
34 years. Upon receipt of such a petition for a conditional

1 release or continuation of conditional release, the Court
2 shall hold a hearing consistent with the provisions of
3 this paragraph (a) and paragraph (f) of this Section,
4 shall determine whether the defendant should be granted
5 or continue to be subject to the terms of conditional
6 release, and shall enter an order either granting or
7 extending the defendant's period of conditional release
8 ~~for a single additional three-year period or discharging~~
9 ~~the defendant.~~ ~~In no event shall the defendant's period~~
10 ~~of conditional release exceed eight years.~~ These
11 provisions for extension of conditional release shall
12 only apply to defendants conditionally released on or
13 after July 1, 1979. Except for defendants charged with
14 other than first degree murder, second degree murder, an
15 offense resulting in a serious bodily injury to another,
16 or a forcible felony or attempt to commit any of these
17 offenses, a period of conditional release may not extend
18 beyond 8 years without another hearing being held to
19 grant the defendant unconditional release or if there are
20 compelling reasons the court may extend the conditional
21 release for 3-year increments before the next hearing
22 having to be held. Compelling reasons include, but are
23 not limited to, prior violations by a defendant of the
24 terms of a conditional release. ~~However the extension~~
25 ~~provisions of Public Act 83-1449 apply only to defendants~~
26 ~~charged with a forcible felony.~~

27 (E) "Facility director" means the chief officer of
28 a mental health or developmental disabilities facility or
29 his or her designee or the supervisor of a program of
30 treatment or habilitation or his or her designee.
31 "Designee" may include a physician, clinical
32 psychologist, social worker, or nurse.

33 (b) If the Court finds the defendant subject to
34 involuntary admission or in need of mental health services on

1 an inpatient basis, the admission, detention, care, treatment
2 or habilitation, treatment plans, review proceedings,
3 including review of treatment and treatment plans, and
4 discharge of the defendant after such order shall be under
5 the Mental Health and Developmental Disabilities Code, except
6 that the initial order for admission of a defendant acquitted
7 of a felony by reason of insanity shall be for an indefinite
8 period of time. Such period of commitment shall not exceed
9 the maximum length of time that the defendant would have been
10 required to serve, less credit for good behavior except in
11 the case of an original charge of first degree murder, second
12 degree murder, an offense involving serious bodily injury to
13 another or a forcible felony, or an attempt to commit any of
14 these offenses, before becoming eligible for release had he
15 been convicted of and received the maximum sentence for the
16 most serious crime for which he has been acquitted by reason
17 of insanity. The Court shall determine the maximum period of
18 commitment by an appropriate order. During this period of
19 time, the defendant shall not be permitted to be in the
20 community in any manner, including but not limited to
21 off-grounds privileges, with or without escort by personnel
22 of the Department of Human Services, unsupervised on-grounds
23 privileges, discharge or conditional or temporary release,
24 except by a plan as provided in this Section. In no event
25 shall a defendant's continued unauthorized absence be a basis
26 for discharge. Not more than 30 days after admission and
27 every 120 ~~60~~ days thereafter so long as the initial order
28 remains in effect, the facility director shall file a
29 treatment plan report in writing with the court and forward a
30 copy of the treatment plan report to the clerk of the court,
31 the State's Attorney, and the defendant's attorney, if the
32 defendant is represented by counsel, in the case of an
33 original charge of first degree murder, second degree murder,
34 an offense involving infliction of serious bodily injury, a

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

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

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

34 (2) Upon filing with the Court of a verified

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

9 (d) (Blank). When the facility director determines that:

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

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

17 (3) the defendant no longer requires placement in a
 18 secure setting;

19 the facility director shall give written notice to the Court,
 20 State's Attorney and defense attorney. Such notice shall set
 21 forth in detail the basis for the recommendation of the
 22 facility director, and specify clearly the recommendations,
 23 if any, of the facility director, concerning conditional
 24 release. Within 30 days of the notification by the facility
 25 director, the Court shall set a hearing and make a finding as
 26 to whether the defendant is:

27 (i) subject to involuntary admission; or

28 (ii) in need of mental health services in the form
 29 of inpatient care; or

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

32 (iv) no longer in need of mental health services;

33 or

34 (v) no longer requires placement in a secure

1 setting.

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

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

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

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

1 open Court with the right of confrontation and
2 cross-examination. If the defendant has been charged with
3 first degree murder, second degree murder, an offense
4 resulting in infliction of serious bodily injury, or a
5 forcible felony or an attempt to commit any of these
6 offenses, it is appropriate to present evidence as to whether
7 the defendant now fully understands that the conduct is
8 legally wrong and should not be engaged in. It is also
9 appropriate in those cases to present evidence as to whether
10 the defendant is likely or not likely going to take any
11 prescribed medicine for his or her protection and the
12 protection of others and how quickly and effectively
13 protections can be put in place to insure his or her safety
14 and that of others if the defendant does not take medicine as
15 prescribed.

16 (h) If the Court finds consistent with the provisions in
17 this Section that the defendant is no longer in need of
18 mental health services it shall order the facility director
19 to discharge the defendant. If the Court finds consistent
20 with the provisions in this Section that the defendant is in
21 need of mental health services, and no longer in need of
22 inpatient care, it shall order the facility director to
23 release the defendant under such conditions as the Court
24 deems appropriate and as provided by this Section. Such
25 ~~conditional--release--shall--be--imposed--for--a--period--of--five~~
26 ~~years--and--shall--be--subject---to--later--modification--by--the~~
27 ~~Court--as--provided--by--this--Section.~~ If the Court finds
28 consistent with the provisions in this Section that the
29 defendant is subject to involuntary admission or in need of
30 mental health services on an inpatient basis, it shall order
31 the facility director not to discharge or release the
32 defendant in accordance with paragraph (b) of this Section.

33 (i) If within the period of the defendant's conditional
34 release, the Court determines, after hearing evidence, that

1 the defendant has not fulfilled the conditions of release,
2 the Court shall order a hearing to be held consistent with
3 the provisions of paragraph (f) and (g) of this Section. At
4 such hearing, if the Court finds that the defendant has
5 violated his or her conditional discharge, is otherwise
6 subject to involuntary admission or in need of mental health
7 services on an inpatient basis, it shall enter an order
8 remanding him or her to the Department of Human Services or
9 other facility. If the defendant is remanded to the
10 Department of Human Services, he or she shall be placed in a
11 secure setting unless the Court determines that there are
12 compelling reasons that such placement is not necessary.
13 Notwithstanding any other provision or this Section, a
14 defendant whose conditional discharge is revoked due to
15 violation of its conditions may not be credited for any prior
16 time served as involuntary admission or on conditional
17 discharge for purpose of satisfying the maximum time for
18 involuntary admission under this Act. ~~If the Court finds that~~
19 ~~the defendant continues to be in need of mental health~~
20 ~~services but not on an inpatient basis, it may modify the~~
21 ~~conditions of the original release in order to reasonably~~
22 ~~assure the defendant's satisfactory progress in treatment and~~
23 ~~his or her safety and the safety of others. In no event shall~~
24 ~~such conditional release be longer than eight years.~~ Nothing
25 in this Section shall limit a Court's contempt powers or any
26 other powers of a Court.

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

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

33 (l) This amendatory Act shall apply to all persons who
34 have been found not guilty by reason of insanity and who are

1 presently committed to the Department of Mental Health and
2 Developmental Disabilities (now the Department of Human
3 Services).

4 (m) The Clerk of the Court shall, after the entry of an
5 order of transfer to a non-secure setting of the Department
6 of Human Services or discharge or conditional release,
7 transmit a certified copy of the order to the Department of
8 Human Services, and the sheriff of the county from which the
9 defendant was admitted. In cases where the arrest of the
10 defendant or the commission of the offense took place in any
11 municipality with a population of more than 25,000 persons,
12 the Clerk of the Court shall also transmit a certified copy
13 of the order of discharge or conditional release to the
14 proper law enforcement agency for said municipality provided
15 the municipality has requested such notice in writing.

16 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
17 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)