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Section I.

This section provides the following: An introduction to the Forensic Handbook, an overview of the Forensic Services, Forensic Facility contact persons, a map of the state of Illinois identifying the DHS Forensic Treatment Facilities and geographic demarcations for referrals, and contact information for referral coordinators.

INTRODUCTION

The contents of this handbook are a compilation of the various statutes and requirements affecting the individual who is involved with both the criminal justice and mental health systems. As laws and requirements change, this handbook will be updated. If there are questions or issues on such matters, you should first contact the regional contact person. Please feel free to contact the central office at any time.

This publication will also be located on the Department of Human Services website at <http://www.dhs.state.il.us/mhdd/mh/> and updates will be available online.

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PROGRAM OVERVIEW

Forensic Services oversees and coordinates all forensic mental health services for the Department of Human Services - Division of Mental Health. A primary responsibility of Forensic services is coordinating the inpatient and outpatient placements of adults and juveniles remanded by Illinois County Courts to the Department of Human Services under Statutes finding them Unfit to Stand Trial (UST) (725 ILCS, 104 -16) and Not Guilty by Reason of Insanity (NGRI) (730 ILCS, 5/5-2-4). Placement evaluation responsibilities include: (1) on site evaluation of individuals held in County Jails or Juvenile Detention Centers, and (2) outpatient placement evaluations of individuals who are remanded to DHS-DMH under fitness and insanity statutes but not in custody of county jails or detention centers. Placement evaluations determine the most appropriate inpatient or outpatient setting for forensic treatment based on a number of factors including age, gender, mental health diagnosis, and security need. Unless a person is specifically ordered to receive services in an outpatient setting, court ordered referrals under state forensic statutes call for placement in a secure inpatient setting. The secure state operated inpatient facilities that service the forensic UST and NGRI population include the following.

Alton MHC - Adult Males and Females with Mental Illness and Mental Retardation - Medium Security

Chester MHC - Adult Males with Mental Illness and/or Mental Retardation - Maximum Security

Choate MHC - Adult Males with Mental Retardation - Medium Security within the restriction of operating a secure program, Choate is operated as an ICF/DD (intermediate care facility/developmentally disabled).

Elgin MHC - Adult Males and Females with Mental Illness - Medium Security

McFarland MHC - Adult Males and Females with Mental Illness & Juvenile Males with Mental Illness or Co-Diagnosed With Mental Illness and Mental Retardation

Forensic Facility Security Level Information:

The Department of Human Services - Forensic Services essentially has three general levels of custody for forensic inpatients. (1) Non-secure units - This is represented by the general unit structure in facilities. Even though the doors may be kept locked and residents need an approved grounds pass before they may leave unescorted, the units are not regarded as secure. Civil inpatients are most often housed on non-secure units. Non-secure housing can only be used for forensic patients with prior approval by the courts. (2) Secure units - All areas of the State are served by a unit which fits this category. Fenced recreation areas, security screens, controlled access, and limitations on allowed personal items serve to differentiate these units from other units in the Department. (3) Chester Mental Health Center - Chester Mental Health Center is exclusively a maximum security facility and is the highest level of security available in the Department. The maximum security program at Chester has substantially restricted movement, specialized physical plant and monitoring, and nearly continuous observation. It allows a more physically dangerous or assaultive patient to be treated as well as those who present substantial escape potential.

Again, the Illinois Legislature has mandated by statute that all defendants found Unfit to Stand Trial (UST) or those defendants found Not Guilty by Reason of Insanity (NGRI) are to be housed in a secure setting of the Department unless the criminal court orders otherwise. The court must also give prior approval before such defendants are granted any privileges such as being unescorted while on facility grounds and when being taken in the community. As a result

of this, the overwhelming majority of such persons are housed either at the maximum security Chester Mental Health Center or in a medium security unit at Alton, Choate, Elgin, or McFarland MHCs.

In response to a Federal Court decision {Johnson v. Brelje, 523 F. Supp. 723 (N.Dist. Ill., 1981), 525 F. Supp. 183 (N.Dist. Ill., 1981), affirmed 701 F. 2d 1201 (7th Cir. 1983)}, the Illinois Legislature also mandated that before a UST or NGRI defendant is actually placed into a secure setting of the Department, the Department must conduct an evaluation of the defendant while in the jail. Upon determining the appropriate placement for a defendant, the Department notifies the sheriff who then transports the defendant to the designated facility. Where the court has not authorized placement in a non-secure setting, based on the clinical results of the placement evaluation, the defendants are placed into one of the moderately secure settings listed previously. However, based upon the individual's evaluation, a male defendant that demonstrates extreme dangerousness and/or an escape potential may be placed at the Chester Mental Health Center.

Additional Major Areas of Forensic Program Responsibility:

- A. Review, evaluation, and admission approval for Behavior Management Referrals to Chester MHC from non-secure state facilities. Behavior management referrals result from combative and high elopement risk civil and forensic patients who cannot be managed in non-secure or medium security state operated mental health inpatient facilities.
- B. Placement review of Dixon- Department of Corrections inmates subject to civil commitment upon release from prison.
- C. Monitoring and Tracking conditionally released NGRI clients receiving services in outpatient settings.
- D. Administrative Oversight for the Sexually Violent Persons - Treatment and Detention Facility in Joliet, Illinois

FORENSIC FACILITY CONTACT PERSONS & ILLINOIS COUNTY MAP WITH FORENSIC PROGRAM LOCATIONS

Alton Mental Health Center

4500 College Avenue

Alton, IL 62002-5099

Phone: 618/474-3200

TDD: 618/465-2500

Fax: 618/465-4800

Contact: Kent Casper, Forensic Coordinator and Director of Utilization Review

Chester Mental Health Center

P.O. Box 31

Chester, IL 62233-0031

Phone: 618/826-4571

TDD: 618/826-4192

Fax: 618/826-3229

Contact: Brian Thomas, Hospital Administrator

Clyde L. Choate Mental Health and Developmental Center

1000 North Main Street

Anna, IL 62906

Phone: 618/833-5161

TTY: 618/833-4052

Fax: 618/833-4191

Contact: Michael Jasmon, Unit Director - DD Forensic Unit

Elgin Mental Health Center

750 South State Street

Elgin, IL 60123-7692

Phone: 847/742-1040 x 3120

TDD: 847/742-1073

Fax: 847/429-4946

Contact: Dennis Headley, Associate Director, Forensic Treatment Program

Andrew McFarland Mental Health Center

901 Southwind Road

Springfield, IL 62703

Phone: 217/786-6900

TDD: 217/786-7241

Fax: 217/786-7167

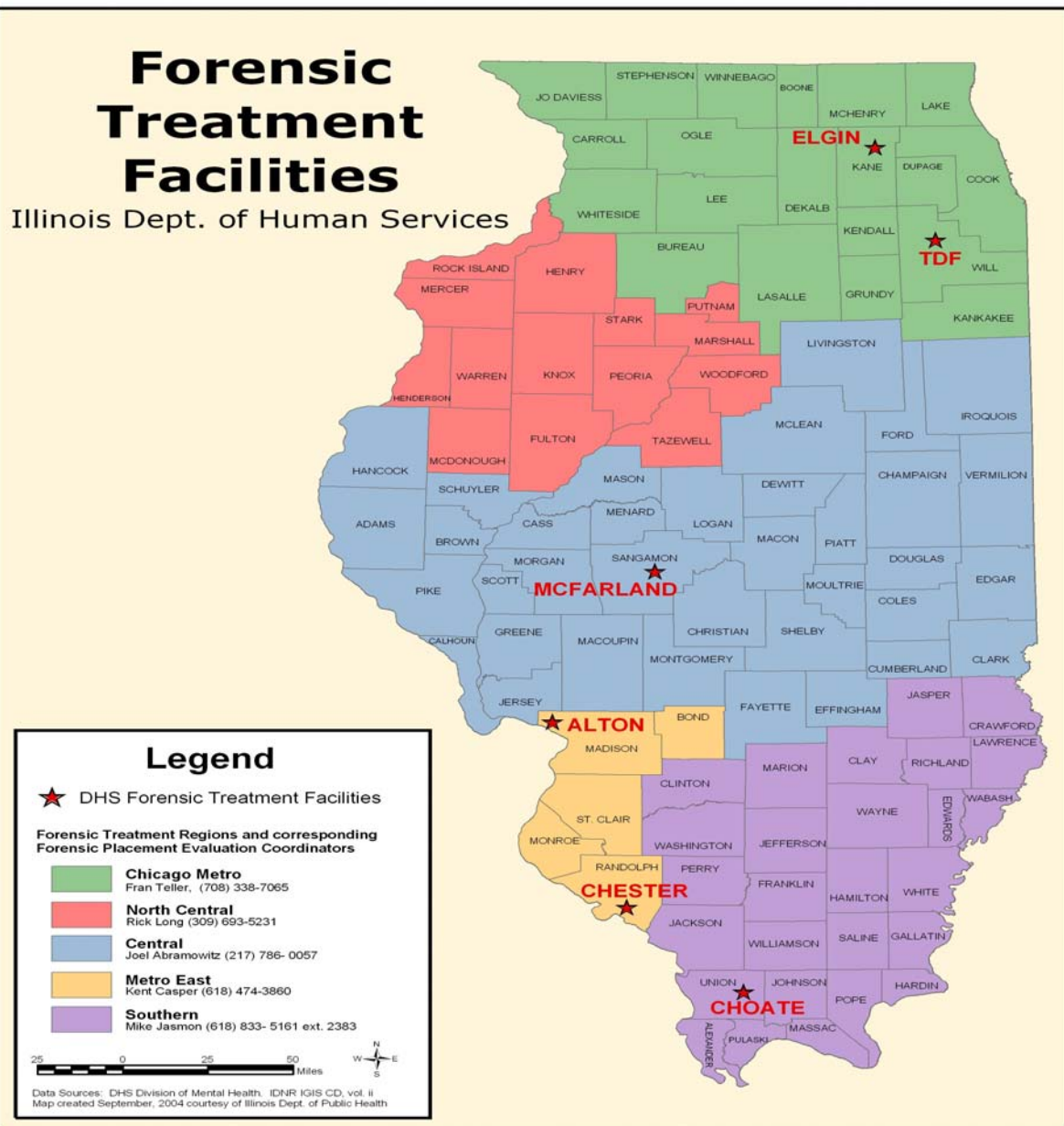
Contacts: Joel Abramowitz, Forensic Coordinator and Director of Lincoln Hall (adults)

Joe Croegaert, Acting Clinical Director Kennedy Hall (juveniles)

PLEASE SEE MAP FOR GEOGRAPHIC LOCATION OF FACILITIES ON FOLLOWING

Forensic Treatment Facilities

Illinois Dept. of Human Services



Section II.

This section covers different aspects of legal proceedings, and the treatment process for individuals found Unfit to Stand Trial. Included in this section are the following:

A. Two flow charts for the legal proceedings for UST. The first flow chart follows the procedure for raising the issue of fitness. The second flowchart describes the State's options for a person who is not able to be restored to fitness after a discharge hearing.

B. The Statute for Unfit to Stand Trial.

C. Sample Orders

1. Sample Court Order completed by the Court finding an individual Unfit to Stand Trial and remanding him to the State of Illinois Department of Human Services.

2. Sample Court Order completed by the Court after a ruling in a discharge hearing which remands the individual who has not been restored to fitness to custody of Department of Human Services for treatment for an extended period.

3. Sample Court Order determining that an individual has been restored to fitness.

D. An explanation of the reports that are required in the Fitness Proceedings.

E. Sample Reports

1. Sample Evaluation for Fitness to Stand Trial report completed by the expert evaluator assigned by the court to determine a recommendation whether the individual is Unfit for Trial.

2. Template of 30 Day Report.

3. Sample of 30-Day Treatment Report to the Court.

4. Template of 90-Day Progress Report

5. Three samples of Progress Report each indicating one of the following: unfit, fit, and unlikely to be fit. A Progress Report is completed every 90 days, or 7 days prior to the date of any hearing on the issue of a defendant's fitness.

ARTICLE 104. FITNESS FOR TRIAL, TO PLEAD OR TO BE SENTENCED

(Underscores added for emphasis.)

(725 ILCS 5/104-10)

Section 104-10. Presumption of Fitness. Fitness Standard.

A defendant is presumed to be fit to stand trial or to plead, and be sentenced. A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense.

(725 ILCS 5/104-11)

Section 104-11. Raising Issue; Burden; Fitness Motions.

(a) The issue of the defendant's fitness for trial, to plead, or to be sentenced may be raised by the defense, the State or the Court at any appropriate time before a plea is entered or before, during, or after trial. When a bona fide doubt of the defendant's fitness is raised, the court shall order a determination of the issue before proceeding further.

(b) Upon request of the defendant that a qualified expert be appointed to examine him or her to determine prior to trial if a bona fide doubt as to his or her fitness to stand trial may be raised, the court, in its discretion, may order an appropriate examination. However, no order entered pursuant to this subsection shall prevent further proceedings in the case. An expert so appointed shall examine the defendant and make a report as provided in Section 104-15. Upon the filing with the court of a verified statement of services rendered, the court shall enter an order on the county board to pay such expert a reasonable fee stated in the order.

(c) When a bona fide doubt of the defendant's fitness has been raised, the burden of proving that the defendant is fit by a preponderance of the evidence and the burden of going forward with the evidence are on the State. However, the court may call its own witnesses and conduct its own inquiry.

(d) Following a finding of unfitness, the court may hear and rule on any pretrial motion or motions if the defendant's presence is not essential to a fair determination of the issues. A motion may be reheard upon a showing that evidence is available which was not available, due to the defendant's unfitness, when the motion was first decided.

(725 ILCS 5/104-12)

Section 104-12. Right to Jury.

The issue of the defendant's fitness may be determined in the first instance by the court or by a jury. The defense or the State may demand a jury or the court on its own motion may order a jury. However, when the issue is raised after trial has begun or after conviction but before sentencing, or when the issue is to be determined under Section 104-20 or 104-27, the issue shall be determined by the court.

(725 ILCS 5/104-13)

Section 104-13. Fitness examination.

(a) When the issue of fitness involves the defendant's mental condition, the court shall order an examination of the defendant by one or more licensed physicians, clinical psychologists, or psychiatrists chosen by the court. No physician, clinical psychologist or psychiatrist employed by the Department of Human Services shall be ordered to perform, in his official capacity, an examination under this Section.

(b) If the issue of fitness involves the defendant's physical condition, the court shall appoint one or more physicians and in addition, such other experts as it may deem appropriate to examine the defendant and to report to the court regarding the defendant's condition.

(c) An examination ordered under this section shall be given at the place designated by the person who will conduct the examination, except that if the defendant is being held in custody, the examination shall take place at such location as the court directs. No examinations under this Section shall be ordered to take place at facilities operated by the Department of Human Services. If the defendant fails to keep appointments without reasonable cause or if the person conducting the examination reports to the court that diagnosis requires hospitalization or extended observation, the court may order the defendant admitted to an appropriate facility for an examination, other than a screening examination, for not more than 7 days. The court may, upon a showing of good cause, grant an additional 7 days to complete the examination.

(d) Release on bail or on recognizance shall not be revoked and an application thereof shall not be denied on the grounds that an examination has been ordered.

(e) Upon request by the defense and if the defendant is indigent, the court may appoint, in addition to the expert or experts chosen pursuant to subsection (a) of the Section, a qualified expert selected by the defendant to examine him and to make a report as provided in Section 104-15. Upon filing with the court of a verified statement of services rendered, the court shall enter an order on the county board to pay such expert a reasonable fee stated in the order.

(725 ILCS 5/104-14)

Section 104-14. Use of Statements Made During Examination or Treatment.

(a) Statements made by the defendant and information gathered in the course of any examination or treatment ordered under Section 104-13, 104-17 or 104-20 shall not be admissible against the defendant unless he raises the defense of insanity or the defense of drugged or intoxicated condition, in which case that shall be admissible only on the issue of whether he was insane, drugged, or intoxicated. The refusal of the defendant to cooperate in such examinations shall not preclude the raising of the aforesaid defenses but shall preclude the defendant from offering expert evidence or testimony tending to support such defenses if the expert evidence or testimony is based upon the expert's examination of the defendant.

(b) Except as provided in paragraph (a) of this Section, no statement made by the defendant in the course of any examination or treatment ordered under Section 104-13, 104-17 or 104-20 which relates to the crime charged or to other criminal acts shall be disclosed by persons conducting the examination or the treatment, except to members of the examining or treating team, without the informed written consent of the defendant, who is competent at the time of giving such consent.

(c) The court shall advise the defendant of the limitations on the use of any statements made or information gathered in the course of the fitness examination or subsequent treatment as provided in this Section. It shall also advise him that he may refuse to cooperate with the person conducting the examination, but that his refusal may be admissible into evidence on the issue of his mental or physical condition.

(725 ILCS 5/104-15)

Section 104-15. Report.

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

- (1) A diagnosis and an explanation as to how it was reached and the facts upon which it is based;
- (2) A description of the defendant's mental or physical disability, if any; its severity; and an opinion as to whether and to what extent it impairs the defendant's ability to understand the nature and purpose of the proceedings against him or to assist in his defense, or both.

(b) If the report indicates that the defendant is not fit to stand trial or to plead because of a disability, the report shall include an opinion as to the likelihood of the defendant attaining fitness within one year if provided with a course of treatment. If the person or persons preparing the report are unable to form such an opinion, the report shall state the reasons therefor. The report may include a general description of the type of treatment needed and of the least physically restrictive form of treatment therapeutically appropriate.

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

725 ILCS 5/104-16)

Section 104-16. Fitness Hearing.

(a) The court shall conduct a hearing to determine the issue of the defendant's fitness within 45 days of receipt of the final written report of the person or persons conducting the examination or upon conclusion of the matter then pending before it, subject to continuances allowed pursuant to Section 114-4 of this Act.

(b) Subject to the rules of evidence, matters admissible on the issue of the defendant's fitness include, but are not limited to, the following:

(1) The defendant's knowledge and understanding of the charge, the proceedings, the consequences of a plea, judgment or sentence, and the functions of the participants in the trial process;

(2) The defendant's ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged, and to communicate with counsel;

(3) The defendant's social behavior and abilities; orientation as to time and place; recognition of persons, places and things; and performance of motor processes.

(c) The defendant has the right to be present at every hearing on the issue of his fitness. The defendant's presence may be waived only if there is filed with the court a certificate stating that the defendant is physically unable to be present and the reasons therefor. The certificate shall be signed by a licensed physician who, within 7 days, has examined the defendant.

(d) On the basis of the evidence before it, the court or jury shall determine whether the defendant is unfit to stand trial or the plead. If it finds that the defendant is unfit, the court or the jury shall determine whether there is substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year. If the court or the jury finds that there is not a substantial probability, the court shall proceed as provided in Section 104-23. If such probability is found or if the court or the jury is unable to determine whether a substantial probability exists, the court shall order the defendant to undergo treatment for the purpose of rendering him fit. In the event that a defendant is ordered to undergo treatment when there has been no determination as to the probability of his attaining fitness, the court shall conduct a hearing as soon as possible following the receipt of the report filed pursuant to paragraph (d) of Section 104-17, unless the hearing is waived by the defense, and shall make a determination as to whether a substantial probability exists.

(e) An order finding the defendant unfit is a final order for purposes of appeal by the State or the defendant.

(725 ILCS 5/104-17)

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

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

(b) If the defendant's disability is mental, the court may order him placed for treatment in the custody of the Department of Human Services, or the court may order him placed in the custody of any other appropriate public or private mental health facility or treatment program which has agreed to provide treatment to the defendant. If the defendant is placed in the custody of the Department of Human Services, the defendant shall be placed in a secure setting unless the court determines that there are compelling reasons why such placement is not necessary. During the period of time required to determine the appropriate placement the defendant shall remain in jail. Upon completion of the placement process, the sheriff shall be notified and shall transport the defendant to the designated facility. The placement may be ordered either on an inpatient or an outpatient basis.

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

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

- (1) a certified copy of the order to undergo treatment;
- (2) the county and municipality in which the offense was committed.
- (3) the county and municipality in which the arrest took place; and
- (4) all additional matters which the Court directs the clerk to transmit.

(e) Within 30 days of entry of an order to undergo treatment, the person supervising the defendant's treatment shall file with the court, the State, and the defense a report assessing the facility's or program's capacity to provide appropriate treatment for the defendant and indicating his opinion as to the probability of the defendant's attaining fitness within a period of one year from the date of the finding of unfitness. If the report indicates that there is a substantial probability that the defendant will attain fitness within the time period, the treatment supervisor shall also file a treatment plan which shall include:

- (1) A diagnosis of the defendant's disability;
- (2) A description of treatment goals with respect to rendering the defendant fit, a specification of the proposed treatment modalities, and an estimated timetable for attainment of the goals;
- (3) An identification of the person in charge of supervising the defendant's treatment.

(725 ILCS 5/104-18)

Section 104-18. Progress Reports.

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

- (1) At least 7 days prior to the date for any hearing on the issue of the defendant's fitness;
- (2) Whenever he believes that the defendant has attained fitness;
- (3) Whenever he believes that there is not a substantial probability that the defendant will attain fitness, with treatment, within one year from the date of the original finding of unfitness.

(b) The progress report shall contain:

- (1) The clinical findings of the treatment supervisor and the facts upon which the findings are based;
- (2) The opinion of the treatment supervisor as to whether the defendant has attained fitness or as to whether the defendant is making progress, under treatment, toward attaining fitness within one year from the date of the original finding of unfitness;
- (3) If the defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the defendant's appearance, actions and demeanor.

(725 ILCS 5/104-19)

Section 104-19. Records.

Any report filed of record with the court concerning diagnosis, treatment or treatment plans made pursuant to this Article shall not be placed in the defendant's court record but shall be maintained separately by the clerk of the court and shall be available only to the court or an appellate court, the State and the defense, a facility or program which is providing treatment to the defendant pursuant to an order of the court or such other persons as the court may direct.

(725 ILCS 5/104-20)

Section 104-20. Ninety-Day Hearings; Continuing Treatment.

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

- (1) Whether the defendant is fit to stand trial or to plead; and if not,
- (2) Whether the defendant is making progress under treatment toward attainment of fitness within one year from the date of the original finding of unfitness.

(b) If the court finds the defendant to be fit pursuant to this Section, the court shall set the matter for trial; provided that if the defendant is in need of continued care or treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the court may enter any order it deems appropriate for the continued care or treatment of the defendant by the facility or program pending the conclusion of the criminal proceedings.

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

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

(725 ILCS 5/104-21)

Section 104-21. Medication

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

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

(725 ILCS 5/104-22)

Section 104-22. Trial with special provisions and assistance

(a) On motion of the defendant, the State or on the court's own motion, the court shall determine whether special provisions or assistance will render the defendant fit to stand trial as defined in Section 104-10.

(b) Such special provisions or assistance may include but are not limited to:

(1) Appointment of qualified translators who shall simultaneously translate all testimony at trial into language understood by the defendant.

(2) Appointment of experts qualified to assist a defendant who because of a disability is unable to understand the proceedings or communicate with his or her attorney.

(c) The case may proceed to trial only if the court determines that such provisions or assistance compensate for a defendant's disabilities so as to render the defendant fit as defined in Section 104-10. In such cases the court shall state for the record the following:

(1) The qualifications and experience of the experts or other persons appointed to provide special assistance to the defendant;

(2) The court's reasons for selecting or appointing the particular experts or other persons to provide the special assistance to the defendant;

(3) How the appointment of the particular expert or other persons will serve the goal of rendering the defendant fit in view of the appointee's qualifications and experience, taken in conjunction with the particular disabilities of the defendant; and

(4) Any other factors considered by the court in appointing that individual.

(725 ILCS 5/104-23)

Section 104-23. Unfit defendants.

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

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

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

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

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

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

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

(725 ILCS 5/104-24)

Section 104-24. Time Credit.

Time spent in custody pursuant to orders issued under Section 104-17 or 104-20 or pursuant to a commitment to the Department of Human Services following a finding of unfitness or incompetency under prior law, shall be credited against any sentence imposed on the defendant in the pending criminal case or in any other case arising out of the same conduct.

(725 ILCS 5/104-25)

Section 104-25. Discharge hearing.

(a) As provided for in paragraph (a) of Section 104-23 and subparagraph (1) of paragraph (b) of Section 104-23 a hearing to determine the sufficiency of the evidence shall be held. Such hearing shall be conducted by the court without a jury. The State and the defendant may introduce evidence relevant to the question of defendant's guilt of the crime charged.

The court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, court and business records, and public documents.

(b) If the evidence does not prove the defendant guilty beyond a reasonable doubt, the court shall enter a judgment of acquittal; however nothing herein shall prevent the State from requesting the court to commit the defendant to the Department of Human Services under the provisions of the Mental Health and Developmental Disabilities Code.

(c) If the defendant is found not guilty by reason of insanity, the court shall enter a judgment of acquittal and the proceedings after acquittal by reason of insanity under Section 5-2-4 of the Unified Code of Corrections shall apply.

(d) If the discharge hearing does not result in an acquittal of the charge the defendant may be remanded for further treatment and the one year time limit set forth in Section 104-23 shall be extended as follows:

- (1) If the most serious charge upon which the State sustained its burden of proof was a Class 1 or Class X felony, the treatment period may be extended up to a maximum treatment period of 2 years; if a Class 2, 3, or 4 felony, the treatment period may be extended up to a maximum of 15 months;
- (2) If the State sustained its burden of proof on a charge of first degree murder, the treatment period may be extended up to a maximum treatment period of 5 years.

(e) Transcripts of testimony taken at a discharge hearing may be admitted in evidence at a subsequent trial of the case, subject to the rules of evidence, if the witness who gave such testimony is legally unavailable at the time of the subsequent trial.

(f) If the court fails to enter an order of acquittal the defendant may appeal from such judgment in the same manner provided for an appeal from a conviction in a criminal case.

(g) At the expiration of an extended period of treatment ordered pursuant to this Section:

- (1) Upon a finding that the defendant is fit or can be rendered fit consistent with Section 104-22, the court may proceed with trial.
- (2) If the defendant continues to be unfit to stand trial, the court shall determine whether he or she is subject to involuntary admission under the Mental Health and Developmental Disabilities Code or constitutes a serious threat to the public safety. If so found, the defendant shall be remanded to the Department of Human Services for further treatment and shall be treated in the same manner as a civilly committed patient for all purposes, except that the original court having jurisdiction over the defendant shall be required to approve any conditional release or discharge of the defendant, for the period of commitment equal to the maximum sentence to which the defendant would have been subject had he or she been convicted in a criminal proceeding. During this period of commitment, the original court having jurisdiction over the defendant shall hold hearings under clause (i) of this paragraph (2). However, if the defendant is remanded to the Department of Human Services, the defendant shall be placed in a secure setting unless the court determines that there are compelling reasons why such placement is not necessary.

If the defendant does not have a current treatment plan, then within 3 days of admission under this subdivision (g)(2), a treatment plan shall be prepared for each defendant and entered into his or her record. The plan shall include (i) an assessment of the defendant's treatment needs, (ii) a description of the services recommended for treatment, (iii) the goals of each type of element of service, (iv) an anticipated timetable for the accomplishment of the goals, and (v) a designation of the qualified professional responsible for the implementation of the plan. The plan shall be reviewed and updated as the clinical condition warrants, but not less than every 30 days.

Every 90 days after the initial admission under this subdivision (g)(2), the facility director shall file a typed treatment plan report with the original court having jurisdiction over the defendant. The report shall include an opinion as to whether the defendant is fit to stand trial and whether the defendant is currently subject to involuntary admission, in need of mental health services on an inpatient basis, or in need of mental health services on an outpatient basis. The report shall also summarize the basis for those findings and provide a current summary of the 5 items required in a treatment plan. A copy of the report shall be forwarded to the clerk of the court, the State's Attorney, and the defendant's attorney if the defendant is represented by counsel.

The court on its own motion may order a hearing to review the treatment plan. The defendant or the State's Attorney may request a treatment plan review every 90 days and the court shall review the current treatment plan to determine whether the plan complies with the requirements of this Section. The court may order an independent examination on its own initiative and shall order such an evaluation if either the recipient or the State's Attorney so requests and has demonstrated to the court that the plan cannot be effectively reviewed by the court without such an examination. Under no circumstances shall the court be required to order an independent examination pursuant to this Section more than once each year. The examination shall be conducted by a psychiatrist or clinical psychologist as defined in Section 1-103 of the Mental Health and Developmental Disabilities Code who is not in the employ of the Department of Human Services.

If, during the period within which the defendant is confined in a secure setting, the court enters an order that requires the defendant to appear, the court shall timely transmit a copy of the order or writ to the director of the particular Department of Human Services facility where the defendant resides authorizing the transportation of the defendant to the court for the purpose of the hearing.

(i) 180 days after a defendant is remanded to the Department of Human Services, under paragraph (2), and every 180 days thereafter for so long as the defendant is confined under the order entered thereunder, the court shall set a hearing and shall direct that notice of the time and place of the hearing be served upon the defendant, the facility director, the State's Attorney, and the defendant's attorney. If requested by either the State or the defense or if the court determines that it is appropriate, an impartial examination of the defendant by a psychiatrist or clinical psychologist as defined in Section 1-103 of the Mental Health and Developmental Disabilities Code who is not in the employ of the Department of Human Services shall be ordered, and the report considered at the time of the hearing. If the defendant is not currently represented by counsel the court shall appoint the public defender to represent the defendant at the hearing. The court shall make a finding as to whether the defendant is:

- (A) subject to involuntary admission; or
- (B) in need of mental health services in the form of inpatient care; or
- (C) in need of mental health services but not subject to involuntary admission nor inpatient care.

The findings of the court shall be established by clear and convincing evidence and the burden of proof and the burden of going forward with the evidence shall rest with the State's Attorney. Upon finding by the court, the court shall enter its findings and an appropriate order.

(ii) The terms "subject to involuntary admission", "in need of mental health services in the form of inpatient care" and "in need of mental health services but not subject to involuntary admission nor inpatient care" shall have the meanings ascribed to them in clause (d)(3) of Section 5-2-4 of the Unified Code of Corrections.

(3) If the defendant is not committed pursuant to this Section, he or she shall be released.

(4) In no event may the treatment period be extended to exceed the maximum sentence to which a defendant would have been subject had he or she been convicted in a criminal proceeding. For purposes of this Section, the maximum sentence shall be determined by Section 5-8-1 of the "Unified Code of Corrections", excluding any sentence of natural life.

(725 ILCS 5/104-26)

Section 104-26. Disposition of Defendants Suffering Disabilities

(a) A defendant convicted following a trial conducted under the provision of Section 104-22 shall not be sentenced before a written pre-sentence report of investigation is presented to and considered by the court. The pre-sentence report shall be prepared pursuant to Sections 5-3-2, 5-3-3 and 5-3-4 of the Unified Code of Corrections, as now or hereafter amended, and shall include a physical and mental examination unless the court finds that the reports of prior physical and mental examinations conducted pursuant to this Article are adequate and recent enough so that additional examinations would be unnecessary.

(b) A defendant convicted following a trial under Section 104-22 shall not be subject to the death penalty.

(c) A defendant convicted following a trial under Section 104-22 shall not be sentenced according to the procedures and dispositions authorized under the Unified Code of Corrections, as now or hereafter amended, subject to the following provisions:

(1) The court shall not impose a sentence of imprisonment upon the offender if the court believes that because of his disability a sentence of imprisonment would not serve the ends of justice and the interests of society and the offender or that because of his disability a sentence of imprisonment would subject the offender to excessive hardship. In addition to any other conditions of a sentence of conditional discharge or probation the court may require that the offender undergo treatment appropriate to his mental or physical condition.

(2) After imposing a sentence of imprisonment upon an offender who has a mental disability, the court may remand him to the custody of the Department of Human Services and order a hearing to be conducted pursuant to the provisions of the Mental Health and Developmental Disabilities Code, as now or hereafter amended. If the offender is committed following such hearing, he shall be treated in the same manner as any other civilly committed patient for all purposes except as provided in this Section. If the defendant is not committed pursuant to such hearing, he shall be remanded to the sentencing court for disposition according to the sentence imposed.

(3) If the court imposes a sentence of imprisonment upon an offender who has a mental disability but does not proceed under subparagraph (2) of paragraph (c) of this Section, it shall order the Department of Corrections to proceed pursuant to Section 3-8-5 of the Unified Code of Corrections, as now or hereafter amended.

(4) If the court imposes a sentence of imprisonment upon an offender who has a physical disability, it may authorize the Department of Corrections to place the offender in a public or private facility which is able to provide care or treatment for the offender's disability and which agrees to do so.

(5) When an offender is placed with the Department of Human Services or another facility pursuant to subparagraph (2) or (4) of this paragraph (c), the Department or private facility shall not discharge or allow the offender to be at large in the community without prior approval of the court. If the defendant is placed in the custody of the Department of Human Services, the defendant shall be placed in a secure setting unless the court determines that there are compelling reasons why such placement is not necessary. The offender shall accrue good time and shall be eligible for parole in the same manner as if he were serving his sentence within the Department of Corrections. When the offender no longer requires hospitalization, care, or treatment, the Department of Human Services or the facility shall transfer him, if his sentence has not expired, to the Department of Corrections. If an offender is transferred to the Department of Corrections, the Department of Human Services shall transfer to the Department of Corrections all related records pertaining to length of custody and treatment services provided during the time the offender was held.

(6) The Department of Corrections shall notify the Department of Human Services or a facility in which an offender has been placed pursuant to subparagraph (2) or (4) of paragraph (c) of this Section of the expiration of his sentence. Thereafter, an offender in the Department of Human Services shall continue to be treated pursuant to his commitment order and shall be considered a civilly committed patient for all purposes including discharge. An offender who is in a facility pursuant to subparagraph (4) of paragraph (c) of this Section shall be informed by the facility of the expiration of his sentence, and shall either consent to the continuation of his care or treatment by the facility or shall be discharged.

(725 ILCS 5/104-27)

Section 104-27. Defendants Found Unfit Prior to this Article; Reports: Appointment of Counsel.

(a) Within 180 days after the effective date of this Article, the Department of Mental Health and Developmental Disabilities (predecessor of the Department of Human Services) shall compile a report on each defendant under its custody who was found unfit or incompetent to stand trial or to be sentenced prior to the effective date of this Article. Each report shall include the defendant's name, indictment and warrant numbers, the county of his commitment, the length of time he has been hospitalized, the date of his last fitness hearing, and a report on his present status as provided in Section 104-18.

(b) The reports shall be forwarded to the Supreme Court which shall distribute copies thereof to the chief judge of the court in which the criminal charges were originally filed, to the state's attorney and the public defender of the same county, and to the defendant's attorney of record, if any. Notice that the report has been delivered shall be given to the defendant.

(c) Upon receipt of the report, the chief judge shall appoint the public defender or other counsel for each defendant who is not represented by counsel and who is indigent pursuant to Section 113-3 of this Act, as now or hereafter amended. The court shall provide the defendant's counsel with a copy of the report.

(725 ILCS 5/104-28).

Section 104-28. Disposition of Defendants Found Unfit Prior to this Article.

(a) Upon reviewing the report, the court shall determine whether the defendant has been in the custody of the Department of Mental Health and Developmental Disabilities (now the Department of Human Services) for a period of time equal to the length of time that the defendant would have been required to serve, less good time, before becoming eligible for parole or mandatory supervised release had he been convicted of the most serious offense charged and had he received the maximum sentence therefor. If the court so finds, it shall dismiss the charges against the defendant, with leave to reinstate. If the defendant has not been committed pursuant to the Mental Health and Developmental Disabilities Code, the court shall order him discharged or shall order a hearing to be conducted forthwith pursuant to the

provisions of the Code. If the defendant was committed pursuant to the Code, he shall continue to be treated pursuant to his commitment order and shall be considered a civilly committed patient for all purposes including discharge.

(b) If the court finds that a defendant has been in the custody of the Department of Mental Health and Developmental Disabilities (now the Department of Human Services) for a period less than that specified in paragraph (a) of this Section, the court shall conduct a hearing pursuant to Section 104-20 forthwith to redetermine the issue of the defendant's fitness to stand trial or to plead. If the defendant is fit, the matter shall be set for trial. If the court finds that the defendant is unfit, it shall proceed pursuant to Section 104-20 or 104-23, provided that a defendant who is still unfit and who has been in the custody of the Department of Mental Health and Developmental Disabilities (now the Department of Human Services) for a period of more than one year from the date of the finding of unfitness shall be immediately subject to the provisions of Section 104-23.

(725 ILCS 5/104-29)

Section 104-29. Conflicts with Mental Health and Developmental Disabilities Code.

In the event of any conflict between this Article and the Mental Health and Developmental Disabilities Code, the provisions of this Article shall govern.

(725 ILCS 5/104-30)

Section 104-30. Notice to Law Enforcement Agencies Regarding Release of Defendants.

(a) Prior to the release by the Department of Human Services of any person admitted pursuant to any provision of this Article, the Department of Human Services shall give written notice to the Sheriff of the county from which the defendant was admitted. In cases where the arrest of the defendant or the commission of the offense took place in any municipality with a population of more than 25,000 persons, the Department of Human Services shall also give written notice to the proper law enforcement agency for said municipality, provided the municipality has requested such notice in writing.

(b) Where a defendant in the custody of the Department of Human Services under any provision of this Article is released pursuant to an order of court, the clerk of the circuit court shall, after entry of the order, transmit a certified copy of the order of release to the Department of Human Services, and the Sheriff of the county from which the defendant was admitted. In cases where the arrest of the defendant or the commission of the offense took place in any municipality with a population of more than 25,000 persons, the Clerk of the circuit court shall also send a certified copy of the order of release to the proper law enforcement agency for said municipality provided the municipality has requested such notice in writing.

(725 ILCS 5/104-31)

Section 104-31. Defendant in secure setting. Escort by personnel.

No defendant placed in a secure setting of the Department of Human Services pursuant to the provisions of Sections 104-17, 104-25 or 104-26 shall be permitted outside the facility's housing unit unless escorted or accompanied by personnel of the Department of Human Services. Any defendant placed in a secure setting pursuant to this Section, transported to court hearings or other necessary appointments off facility grounds by personnel of the Department of Human Services, may be placed in security devices or otherwise secured during the period of transportation to assure secure transport of the defendant and the safety of Department of Human Services personnel and others. These security measures shall not constitute restraint as defined in the Mental Health and Developmental Disabilities Code. Nor shall such defendant be permitted any off-grounds privileges, either with or without escort by personnel of the Department of Human Services, or any unsupervised on-ground privileges, unless such off-grounds or unsupervised on-grounds privileges have been approved by specific Court Order, which order may include such conditions on the defendant as

the court may deem appropriate and necessary to reasonably assure the defendant's satisfactory progress in treatment and the safety of the defendant or others.

STATE OF ILLINOIS)
)
COUNTY OF)

IN THE CIRCUIT COURT OF _____ COUNTY
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)

-vs-

)
)
)
)

Indictment No.
Information No.

ORDER

This cause having been heard pursuant to a petition filed alleging that the above named defendant is unfit to (plead)(stand trial) and how in this cause is charged with the offense of _____, and, further, the (Court) (jury), having heard the evidence adduced concerning said petition, and having returned a (finding)(verdict) that the defendant is not fit to (plead)(stand trial) on the charge of _____, and a hearing having been conducted in accordance with the procedures set forth in Illinois Compiled Statutes, Chapter 725, par. 104-16, and having returned (findings) (verdicts) that the defendant is now not fit to (plead) (stand trial) because of a (mental)(physical) condition, and there (is)(cannot be determined whether there exists) a substantial probability that the defendant, if provided with a course of treatment, will attain fitness in one year.

IT IS HEREBY ORDERED AND ADJUDGED:

1. That the defendant shall be placed in the custody of the State of Illinois Department of Human Services on an (in-patient) (out-patient) basis; and
2. Said Department shall provide appropriate treatment for the defendant; and
3. Said Department shall, within thirty (30) days, indicate an opinion as to the probability of the defendant's attaining fitness within a period of one (1) year from date; and
4. If there is such probability that the defendant will attain fitness within one year, the Department shall also file a treatment plan which shall include:
 - a. A diagnosis of the defendant's disability;
 - b. A description of treatment goals with respect to rendering the defendant fit, a specification of the proposed treatment modalities, and an estimated time table for attainment of the goals;
 - c. The name and position of the person in charge of or who is supervising the defendant's treatment.
5. If the Department believes that either the defendant has attained fitness or there is not a substantial probability that the defendant will attain fitness with treatment within one year from the date hereof, it shall so notify the Court and a hearing to determine fitness shall be set forthwith.

6. That the above-entitled matter shall be set on the ____ day of _____, 200__ (a date not more than 90 days from the date hereof), for a hearing to re-examine the issue of defendant's fitness, and the Department of Human Services shall submit a written report to the Court at least seven (7) days prior to the above hearing date.

7. A discharge hearing pursuant to 725 ILCS 5/104-25 has been requested and therefore a hearing is set for the ____ day of _____, 200__.

A verified copy of this Order shall be delivered to the Department of Human Services of the State of Illinois and shall be attached to the defendant's record upon remand to the Department facility. A copy of this Order shall be delivered to the Sheriff of _____ County.

ENTER:

DATED: _____

JUDGE

STATE OF ILLINOIS)
)
COUNTY OF)

IN THE CIRCUIT COURT OF _____ COUNTY
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)
)
-vs-) Indictment No.
) Information No.
)

ORDER

This cause coming on to be heard upon the request by the (Defendant) (State) for a discharge hearing and the Court having heard all the evidence admissible pursuant to Section 104-25 of the Code of Criminal Procedure of 1963 and being fully informed finds that the hearing did not result in an acquittal of the charge against the defendant.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the defendant is remanded to the custody of the Department of Human Services for further treatment for an extended period as follows:
 - a. ____ years (up to five (5) years if the State sustained burden of proof on an charge of murder)
 - b. ____ years (up to two (2) years if the State sustained burden of proof on Class X or Class 1)
 - c. ____ years (up to 15 months if the State sustained burden of proof on Class 2, 3 or 4)
2. That the Department of Human Services submit reports to the Court regarding defendant's fitness for trial at least every 90 days or whenever the defendant regains fitness prior to the expiration of the above extended term.

ENTER:

DATED: _____

JUDGE

STATE OF ILLINOIS)
)
COUNTY OF)

IN THE CIRCUIT COURT OF _____ COUNTY
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)
)
 -VS-)
)
)

Indictment No.
Information No.

ORDER FOR RESTORATION

This cause having been heard pursuant to a petition filed by _____, Public Defender of _____ County, through _____, Assistant Public Defender, on behalf of _____, defendant-petitioner in this case who is charged with the offense of _____, said petitioner alleging that petitioner is now fit to stand trial;

And the _____, having heard the evidence adduced in support of said petition, and having returned a verdict/finding the petitioner is now fit to stand trial.

IT IS NOW FURTHER ORDERED AND ADJUDGED THAT, Judgment be entered on the verdict/finding that:

1. Petitioner is now fit to stand trial;
2. Petitioner is to be released from the jurisdiction of the Department of Human Services and/or the Common Jail of _____ County, remanded to stand trial or be released by operation of law.
3. A certified copy of this Order be delivered to the Department of Human Services of the State of Illinois and a copy of this Order be delivered to the Sheriff of _____ County.

ENTER:

JUDGE

DATED: _____

REPORTS INVOLVED IN FITNESS PROCEEDINGS

I. Fitness Evaluation Report

- A. The person conducting an examination of the defendant shall submit a written report to the court, the State and the Defense within 30 days of the order. The report shall include the following.
1. A diagnosis of and an explanation as to how it was reached and the facts upon which it is based.
 2. A description of the defendant's mental or physical disability, if any; its severity; and an opinion as to whether and to what extent it impairs the defendant's ability to understand the nature and purpose of the proceedings against him or to assist in his defense, or both.
 3. If the report indicated that the defendant is not fit to stand trial or to plead because of a disability, the report shall include an opinion as to the likelihood of the defendant attaining fitness within one year if provided with a course of treatment. If the person or persons preparing the report are unable to form such an opinion, the report shall state the reasons. The report may include a general description of the type of treatment needed and of the least physically restrictive form of treatment therapeutically appropriate.
 4. The report shall indicate what information, if any, contained therein may be harmful to the mental condition of the defendant if made known to him.

II. Admission Report (30 Day Report)

- A.. Within 30 days of an order to undergo treatment, the person supervising the defendant's treatment shall file a report with the Court, the State and the Defense. This report must include the following:
1. Assessment of the facility's capacity to provide appropriate treatment.
 2. An opinion as to the probability of the defendant's attaining fitness within one year from the original finding of unfitness.
- B. If there is a substantial probability that the defendant will attain fitness within one year, a treatment plan must also be filed by the Facility Director. This treatment must include the following:
1. Diagnosis of defendant's disability.
 2. Description of treatment goals with respect to rendering defendant fit, a specification of the proposed treatment modalities and an estimated timetable for attainment of the goals.
 3. Name of the person in charge of supervising the defendant's treatment.

III. 90 Day Progress Report

- A. Clinical findings of the treatment supervisor and the facts upon which the findings are based.
- B. Opinion of the treatment supervisor as to whether the defendant is making progress toward attaining fitness within one year from the original finding of unfitness.

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

**EVALUATION REPORT COMPLETED BY THE EXPERT EVALUATOR
ASSIGNED BY THE COURT**

Name: Doe. Chart #:
Indictment #
Information
Date of Report:
Court Date:
Session Length:.

Psychological Summary

Identifying Information:

Mr. Doe is a 25-year-old single Caucasian male of estimated low average intellectual functioning. He was referred to Forensic Clinical Services to evaluate his fitness to stand trial and his mental state (sanity) at the time of the alleged offense. He is currently housed in Division VIII-RTU-C2 (a mental health dormitory) of Cook County Jail on felony charges of Aggravated Battery to a Police Officer. Prior to initiating the examination, the non-confidential nature of the evaluation process was carefully explained and after one repetition he thereafter acknowledged his understanding as well as his desire to continue. He was cooperative and appeared to be somewhat reliable historian

Records Reviewed:

As part of this evaluation, the following records were reviewed:

- 1) Referral order from court.
- 2) Police reports pertaining to the alleged offense.
- 3) Defendant's Criminal History Report.
- 4) Copy of Court Transcript from Court proceedings involving Mr. Doe.

The following records have been requested but not yet received:

- 1) Pharmacy Profile from Cermak Health Services.
- 2) Mental Health Records from Cermak Health Services and Illinois Masonic Hospital.
- 3) Psycho-social History Interview between a social worker at Forensic Clinical Services and the defendant's brother.

Family and Developmental History:

Mr. Doe reported that he grew up in Chicago, IL and was raised by his biological mother. He indicated that his father passed away in an alcohol related death when the defendant was only around one year of age. The defendant reported having a "happy" childhood and denied any history of being abused or of traumatic experiences. At the time of his arrest he was living with his mother. He has no children and no significant other. He reported that he not had contact with his family since his arrest but has "good" relationships with them when-he- is-in the -community.

Educational and Vocational History:

Mr. Doe reported graduating from High School and averaging "B" grades. He reported placement in any special educational program from grades eight through twelve due to being a slow learner. He reported being suspended once in high school after a physical altercation with a peer but denied truancy or other behavioral problems. Upon examination today he displayed overall low average skills in a variety of intellectual tasks (i.e. reading, writing, mathematics, and vocabulary).

Mr. Doe reported receiving social security money since age 18, likely due to his mental illness. He has a limited vocational history consisting of working at White Castle for around a year at age 16 and at a fruit market (stacking produce) at age 17 for around a year. He expressed no desire to seek future employment.

Legal History:

Mr. Doe reported that his first arrest was at about age ten for shoplifting. He also reportedly was arrested as a juvenile for cannabis possession but he denied ever spending time in the Juvenile Home. He denied any street gang affiliation and had no reported or observed gang tattoos. His criminal history report lists the following arrests as an adult: 1) Possession of Cannabis dated June 24, 1999; he was sentenced to four months of court supervision. 2) Aggravated Assault on May 7, 1999; the case was stricken from docket with leave to reinstate. He also admitted to being taken to a psychiatric hospital by the police after a physical altercation with his sister around four years ago.

Medical History:

Mr. Doe denied any history of severe medical problems (including head trauma resulting in a loss of consciousness) and he denied any current medical treatment.

Mental Health and Substance Abuse History:

Mr. Doe reported that his first contact with mental health treatment was around age 13 while attending school at Forest Academy. He recalled being prescribed Wellbutrin, an antidepressant, but he was unable to provide any other details. He also recalled meeting with a counselor around age 18. When asked why he was seeing a counselor he responded, "I guess mentally ill. He would take me to Taco Bell." He reported a total of two psychiatric hospitalizations, most recently at Illinois Masonic around 2000. He stated that "My sister poked me in the nose so I decided to walk to the hospital." He indicated that he only spent two days there and was not prescribed any medications (the other hospitalization was reportedly a year before at Ravenswood Hospital under similar circumstances). He denied any additional mental health treatment until his arrival at Cook County Jail on the instant offense. He reported that he is receiving psychotropic medications at the jail, but was unable to say which ones or how many except that one might be Zoloft (an antidepressant). He reported that he has been medication compliant and there were no reported or observed side effects.

When asked about suicide attempts Mr. Doe indicated that about a year ago he "Put a knife to my neck and pushed but I didn't get cut." When asked why he had done this he replied, "I don't know why, I was just angry." He also recalled intentionally cutting his finger with a knife around age 19 "To see if I would bleed, I thought I would bleed but it didn't bleed. I've seen people with earrings in their tongue; they're mentally ill for having earrings in their tongue." Mr. Doe reported smoking marijuana approximately two times per month and recalled first using marijuana at age six. He stated that he tried acid one time in high school and has snorted cocaine twice. He admitted drinking up to two 24-ounce beers "on occasions." He denied ever receiving substance abuse treatment. He indicated that his father had both drug and alcohol problems and that his mother has been treated for mental illness before (details unknown).

Mental Status Examination:

Upon examination today, Mr. Doe was alert, cooperative, and fully oriented to person, place, and time (he knew the exact date, the day of the week, city, approximate time of day, and with a cue the name of the president). He denied any suicidal or homicidal ideation. He initially denied any history of perceptual disturbances but later in the evaluation reported auditory hallucinations (that comment on what is going on around him or tell him what to do). His speech was rather concrete; tangential at times, and had poverty of content. He exhibited bizarre logic (i.e. regarding the comment about tongue rings and later he indicated that he felt the victim wanted to harm him because "he was smoking a cigar."). He also made comments that assumed that this examiner knew more about him than was the case (i.e. when I asked him when he first smoked marijuana his initial response was "Since I knew Milo" without explaining who Milo was or when he met Milo). He reported that he believes that a peer at the jail can hear his thoughts. His mood was described as "pretty good" but his affect was nearly flat. His mental illness appears to be negatively affecting his ability to engage in goal directed behavior (i.e. he has no desire to seek employment, reported that he has no friends, and described a typical day in the community as "I go to sleep on the couch." When asked what else he does he replied, "Measure my apartment with my 36 inch ruler." And when asked what else he this time responded, "Eat food. Eat pizza.") He reported no difficulties with his sleep or appetite and he appeared to be somewhat disheveled (i.e. his beard was only partially shaven). His short and long term memory appeared to be grossly intact. His insight was poor and his judgment and impulse control both appeared to be impaired.

Recounting of Arrest Incident:

When asked to recount the events preceding the arrest incident, the defendant reported the following: "The police handcuffed me." When asked why he replied, "Because I was fighting with them." When asked to talk about what was happening before the police arrived he responded, "I was asking for change." When asked why he said, "I wanted something to drink." When asked why he fought the police he stated, "'Cause the police tried to grab me." When asked why they grabbed him he answered, "To prove that they're not scared of me." He denied using any drugs or alcohol around the time of the arrest incident and indicated that he had not been involved in mental health treatment for over three years at the time. When asked about symptoms he was experiencing at the time he initially denied any, but later reported hearing his own voice telling him to "Punch the officer." When asked why he thought he might be hearing that he said, "Because maybe I knew the officer was going to punch me because he didn't look like Mr. Friendly." He answered affirmatively when asked if he thought that the police officer was going to harm him: When asked what he thought that the police would do to him he replied, "Punch me in the-rib cage;-ten times in the rib cage." When asked why he stated, "Because he had a cigar in his mouth." When asked what the cigar had to do with the officer wanting to punch him he reported, "Because it probably hurt his eyes." It was unclear if the defendant was still referring to the arrest incident or to an event that occurred at the police station later that day (he appeared to be mixing events up temporally).

Overall it does appear that the defendant was psychotic at the time of the arrest incident but his poverty of speech makes it difficult to pinpoint whether or not this was to such an extent that he was unable to appreciate the criminality of his behavior at the time of the alleged offense. He likely was paranoid at the time and his mental illness may have caused him to have erroneously believed that he was in danger and had to defend himself. If this was the case he would meet criteria for being legally insane at the time. Mental health records from Cermak Health Services and Illinois Masonic have been requested as well as a social history interview between the defendant's brother and a social worker at Forensic Clinical Services. Once I have had the opportunity to review this information I should be in a better position to address the issue of sanity.

Issues Related to Fitness:

Mr. Doe made several errors when asked questions about courtroom procedure and the role responsibilities of key courtroom personnel. For example he did not know that there was an attorney against him, he was confused about the job of the Judge, he did not know the difference between a bench trial versus a jury trial, he indicated that he would interrupt a witness if they were lying about him, and he exhibited a minimal understanding of a plea

bargain. Even after being educated on these topics he still struggled after a brief delay. For example when he was asked what the job of a Judge was (after a previous explanation) he replied, "Try to prove that you're not guilty." When asked to differentiate between a bench trial and a jury trial he responded, "Bench trial there's 12 witnesses; Jury trial there isn't 12 witnesses." When asked what rights a person gives up when they plea bargain he answered, "Evidence." When asked what happens if a defendant turns down a plea bargain offer he stated, "Then they're proven innocent."

Mr. Doe's thoughts are also confused at this time which limits his ability to work collaboratively with defendant counsel, to follow courtroom -proceedings, and to speak intelligently about--the arrest incident. His thinking is also illogical and this makes it difficult for him to make rational and informed decisions regarding his defense (i.e. he stated that he believes that he will be incarcerated for 69 days and when asked why he replied, "Because my sister was locked up for about 69 days." He was referring to a case that had nothing to do with his current case). He requires additional mental health treatment so that his illness moves further into remission as well as education regarding the legal system in order to be restored to fitness.

Diagnostic Impressions:

Mr. Doe appears to suffer from Schizophrenia. His symptoms are partially in remission at this time. He likely has mild substance abuse issues as well.

Axis I: 295.90 Schizophrenia, Undifferentiated Type
305.20 Cannabis Abuse
305.00 Alcohol Abuse.

Axis II: Diagnosis Deferred.

Disposition:

Case completed; return to court.

Conclusions:

Based upon the results of my examination and to a reasonable degree of psychological and scientific certainty, it is my opinion that Mr. Doe is currently UNFIT TO STAND TRIAL. He appears to be suffering from Schizophrenia and currently has the following symptoms: Disorganized, slowed, and concrete thinking, bizarre logic/associations, thought broadcasting, possible auditory hallucinations and paranoia, poor insight, and impaired judgment. He has a limited awareness of courtroom procedure and key courtroom personnel (i.e. he believed that the Judge was on his side and that if someone turns down a plea bargain offer they are proven innocent). Even after being educated about his deficits he was unable to retain much of the information after just a brief delay. Furthermore his disorganized thoughts, bizarre logic, and impaired judgment impede his ability to work collaboratively with defense counsel, speak intelligently about the arrest incident, and make rational and informed decisions regarding his defense.

The most appropriate place for Mr. Doe to be restored to fitness would be a secure forensic ward of a psychiatric hospital. With appropriate mental health treatment and education regarding the legal system it is likely that he could be restored to fitness within the statutory time period.

MY OPINION ON SANITY IS DEFERRED. Although the defendant appears to have been suffering from a mental illness at the time of the arrest incident, the extent of his symptoms are unknown at this time. It may very well be that he was very paranoid at the time and his disorganized thoughts led him to believe that he was in danger at the time he reportedly struck the officers. If this is so, he would meet criteria for being legally insane at the time. I have requested mental health records from Cermak Health Services and Illinois Masonic Hospital as well as a

social history interview between a social worker at Forensic Clinical Services and the defendant's brother. Once I have had the opportunity to review this information I should be able to render an opinion to a reasonable degree of scientific and psychological certainty.

Thank you for the opportunity to evaluate Mr. Doe. Please contact me at Forensic Clinical Services if I may be of any further service to the Court.

Licensed Clinical Psychologist
Forensic Clinical Services

**Illinois Department of Human Services
Mental Health Center - Forensic Treatment Program
30-Day Treatment Report to the Court (Template)
Date of Evaluation:**

I. Identifying Information

Patient's Name:

Admission Date:

Date of Birth:

Unit: Forensic Treatment Program

Court Order Date:

DHS-MH ID#:

Docket #

Charges:

II. This facility has/does not have the capacity to provide appropriate treatment for the patient.

III. There is/is not a substantial probability that the patient will attain Fitness for Trial within one year from the date of Unfitness finding.

IV. Treatment Plan

1. Diagnoses - (including DSM-IV codes numbers):

2. Treatment goals with respect to rendering the patient Fit for Trial, including treatment modalities and estimated timetable for attainment of goals:

a. Problem Impeding Fitness:

b. Treatment modality provided by:

c. Goal to be reached:

d. Estimated timetable:

Psychiatrist

Social Worker

**Illinois Department of Human Services
Mental Health Center - Forensic Treatment Program
30-Day Treatment Report to the Court
Date of Evaluation:**

I. Identifying Information

Patient's Name:	Admission Date:
Gender: Male	Unit: Forensic Treatment Program
Date of Birth:	DHS-MH ID#:
Court Order Date:	Charges: Residential Burglary/ Violation of Probation (Domestic Battery)
Docket #	

Additional Information: Mr. Doe denies any previous inpatient or outpatient psychiatric treatment. He has a prior arrest for Domestic Battery and numerous curfew violations.

II. This facility has the capacity to provide appropriate treatment for the patient.

III. There is a substantial probability that the patient will attain Fitness for Trial within one year from the date of Unfitness finding.

IV. Treatment Plan

1. Diagnosis - (DSM-IV Codes and Narrative):

Axis I:	296.90	Mood disorder NOS, with psychotic features
	305.00	Alcohol abuse
Axis II:		Deferred

2. Treatment goals with respect to rendering the patient Fit for Trial, including treatment modalities and estimated timetable for attainment of goals:

a. Problem Impeding Fitness:

Psychosis characterized by illogical and grandiose thinking.

Treatment modality:

Pharmacotherapy provided by _____, M.D., psychiatrist.

Individual counseling provided by _____ LCSW, social worker.

Goal to be reached:

Reduction or elimination of psychotic symptoms.

Estimated timetable:

Two months

b. Problem Impeding Fitness:

Unfit to Stand Trial

The patient lacks sufficient knowledge and understanding of the charges against him, the nature of courtroom proceedings, and the roles of various courtroom personnel. He is also currently unable to adequately assist counsel in his defense.

Treatment modality:

Individual Fitness counseling, Fitness Restoration Group, and pharmacotherapy.

Goal to be reached:

The patient will be found Fit to Stand Trial.

Estimated timetable:

Three months.

Social Worker II

Psychiatrist

**ILLINOIS DEPARTMENT OF HUMAN SERVICES
ELGIN MENTAL HEALTH CENTER
FORENSIC TREATMENT PROGRAM
90- Day Treatment Plan Report (Template)**

I. IDENTIFYING INFORMATION

Patient Name:

Date of Evaluation:

DMHDD ID#:

Date of Birth:

Sex:

Unit:

Admit Date:

Docket #

II. RESPONSE TO TREATMENT AND PRESENT LEVEL OF FUNCTIONING

Hospital Course:

Mental Status:

III. DIAGNOSIS:

IV. THE ISSUE OF FITNESS

V. RESPONSIBLE STAFF

Psychiatrist

Social Worker

(Unfit Example)

ILLINOIS DEPARTMENT OF HUMAN SERVICES
ELGIN MENTAL HEALTH CENTER
FORENSIC TREATMENT PROGRAM
750 South State Street
Elgin, Illinois 60123
(847) 742-1040

90-Day Treatment Report to the Court
Date of Evaluation:

I. IDENTIFYING INFORMATION

Patient Name:

Date of Evaluation:

DMHDD ID#:

Date of Birth:

Sex: M

Unit:

Elgin MHC

Admit Date:

Charge: Violation of an Order of Protection

Docket #

Mr.____ is a 34 year old single white man who was admitted to Elgin Mental Health Center (date) from Lake County as Unfit to Stand Trial on charges of Violation of an Order of Protection.

II. RESPONSE TO TREATMENT AND PRESENT LEVEL OF FUNCTIONING

Upon admission, Mr.____ was alert and oriented to person, place and time. He demonstrated no abnormal movements. His mood was calm, not depressed. His affect was appropriate. His speech was coherent with looseness of association, clang associations, tangential and circumstantial speech, and flight of ideas. The speech content had a paranoid quality. He denied auditory or visual hallucinations. He denied homicidal, suicidal, self or other assaultive thoughts, feelings or behavior. Short-term memory was deficient and concentration was significantly impaired.

Mr.____ has been cooperative with unit rules and regulations. He has been compliant with taking his prescribed psychotropic medications. He has been attending Fitness Restoration Group and individual counseling to understand the court terminology, court process, his charges, possible outcomes of the trial and be able to assist in his own defense.

Currently, Mr.____ is alert and oriented to person, place, time and situation. He has good eye contact. He presents no abnormal movements or mannerisms. His speech is normal in rate, rhythm and volume. He still demonstrates looseness of association and tangential speech patterns. He is cooperative with a "bright" mood. He denies auditory or visual hallucinations. He denies homicidal, suicidal, self or other assaultive thoughts, feelings or behavior. Memory is grossly intact. Concentration is mildly impaired.

III. DIAGNOSES

AXIS I: 295.30 Schizophrenia, Paranoid Type
305.00 Alcohol Abuse by history

AXIS II: None

AXIS III: None

The following psychotropic medications are prescribe:
Olanzapine, an anti-psychotic, 10 mg by mouth twice daily to reduce psychotic symptoms.

Psychotropic medication is given to induce and maintain remission of the symptoms of mental illness leading to restoration of coherent thinking and predictable conduct.

IV. THE ISSUE OF FITNESS

Mr. ____ has an understanding of the court terminology, court process, his charges and possible outcomes of the trial but lacks the ability to assist in his own defense due to looseness of association and tangential speech. The patient continues to be involved in programming aimed at attaining fitness within the one year requirement. We consider this patient psychologically UNFIT TO STAND TRIAL.

V. RESPONSIBLE STAFF

Summarized by: _____
LCSW Social Worker III

MD Psychiatrist

(Fit Example)

**ILLINOIS DEPARTMENT OF HUMAN SERVICES
ELGIN MENTAL HEALTH CENTER
FORENSIC TREATMENT PROGRAM
750 South State Street
Elgin, Illinois 60123
(847) 742-1040
90-Day Treatment Report to the Court
Date of Evaluation:**

A. IDENTIFYING INFORMATION

Patient Name:

Date of Evaluation:

DMHDD ID#:

Date of Birth:

Sex: M

Charge: FIRST DEGREE MURDER

Docket #

B. RESPONSE TO TREATMENT AND PRESENT LEVEL OF FUNCTIONING

Mr. is, in his treatment team's opinion, Fit to Stand Trial. He was initially found unfit to stand trial by the Cook County Circuit Court due to the following psychotic symptoms: paranoid delusions and mental confusion. In conjunction with such symptoms Mr. also experienced substantial weight loss and demonstrated poor personal hygiene.

Since his acute de-compensation in mid-July Mr. Has made steady improvement in his ability to function and manage his anxiety and depression. It is suspected that his acute de-compensation was due to the sudden realization of the magnitude of his legal situation and his following depression after this realization. He has been compliant with his prescribed medications. There have been no incidents of restraints. He willingly attends individual counseling and other treatment groups offered in the unit.

The treatment team, in his individual counseling sessions, has focused on discussing his current legal situation. The treatment team has also arranged visits from the local church, one of his previous outpatient psychiatrist and the EMHC's Consumer Specialist to support the patient and help him adjust to his situation. These interventions appear to have helped the patient adjust to and accept his situation, including the need to complete the court process.

Currently, Mr. is alert and oriented to person, place, time and situation. His mood is neither elevated or clinically depressed, however, he is saddened about the events surrounding his situation. He denies thoughts or feelings of harming himself or others and evidences no behavior toward such ends. His thought process is logical, sequential, rational and goal oriented. He denies auditory and visual hallucinations. He is not voicing any delusions about his life or the court process. However, due to his mental illness he will also have a tendency to be guarded and paranoid. Memory and concentration are grossly intact.

C. DIAGNOSIS

AXIS I: 295.30 Schizophrenia, Paranoid Type

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Depressive Disorder, Not Otherwise Specified

AXIS II: NONE

AXIS III: NONE

The following psychotropic medications are prescribed.

Olanzapine, an anti-psychotic, 20 mg orally, every day at 8 pm.

Bupropion, an anti-depressant 100 mg orally every day at 8 pm.

Psychotropic medication is given to induce and maintain remission of the symptoms of mental illness leading to restoration of coherent thinking and predictable conduct.

D. THE ISSUE OF FITNESS

Mr. , in his treatment team's opinion, is Fit to Stand Trial. In verbal interviews he was correctly able to define the court process, the roles of court personnel, his charge and its possible consequences. In multiple individual counseling sessions he has demonstrated the ability to rationally discuss his situation in a manner where he has maintained an appropriate level of emotional control and without psychiatrically de-compensating. He is no longer voicing any paranoid delusions about the court process. His thought process is rational. He currently has the ability to rationally and consistently assist with his defense. Mr. does have some anxiety about returning to jail and participating in the trial process, however, his level of anxiety does not interfere with his ability to function and it is considered an appropriate level of anxiety given his situation. He is, from his own perspective, able to remember some of the events that led to his arrest and to communicate them in a coherent manner. We consider the patient FIT TO STAND TRIAL WITH MEDICATION.

E. RESPONSIBLE STAFF

Summarized by: _____

Social Worker II

MD Psychiatrist

(Unlikely To Attain Fitness Example)

**ILLINOIS DEPARTMENT OF HUMAN SERVICES
ELGIN MENTAL HEALTH CENTER
FORENSIC TREATMENT PROGRAM
750 South State Street
Elgin, Illinois 60123
(847) 742-1040
90-Day Treatment Report to the Court
Date of Evaluation:**

I. IDENTIFYING INFORMATION

Patient Name:

Date of Evaluation:

DMHDD ID#:

Date of Birth:

Sex:

Unit:

Admit Date:

Docket #

Current Legal Charge(s): Aggravated Battery to a Peace Officer, Resisting/Obstructing a Peace Officer, and Criminal Trespass to Real Property.

Mr. Doe is a 46 year old single African- American man from Winnebago County, IL. He was admitted to Elgin Mental Health Center (EMHC) after adjudication as Unfit to Stand Trial (UST) on 11/25/2003. (Evaluators name) evaluated Mr. Doe on *date*. Dr. Johnson found that Mr. Doe would have difficulty providing an adequate level of assistance to his lawyer in his own defense. The patient was considered to have an active psychosis which included paranoid delusions which could likely prevent him from being able to make informed court related decisions in his own self interest.

II. RESPONSE TO TREATMENT AND PRESENT LEVEL OF FUNCTIONING

Hospital Course:

On admission Mr. Doe was considered oriented to person, date and place. He was not considered oriented to situation. He appeared agitated and restless. The patient reported being depressed although his presentation was more indicative of an elevated mood. Affect was labile and inappropriate to situation. Thought processes and content were disorganized. Speech was rambling, tangential, and loosely connected. A flight of ideas was present in his communication. The patient was experiencing auditory hallucinations and delusional thoughts with paranoid ideas. Insight and judgement were considered poor. Memory for short and long term recall was poor. Staff was unable to estimate level of intellectual functioning due to the level of current patient disorganization. Suicidal or homicidal ideas, plan or intent were denied and did not appear in evidence.

In treatment, Mr. Doe has been cooperative with recommended medication adjustments. His medication was changed several times due to his poor response. He has been on psychotropic medications such as Risperidone, Haloperidol 10 mg. a day, Haloperidol Decanoate 100 mg. injection once a month, Quetiapine 800 mg. a day, Ziprasidone 80 mg. a day and lately Olanzapine 20 mg. a day. He appears less agitated and restless overall. He takes extra medication periodically to control agitation. He becomes upset and frustrated when confronted with unit rules about minimum standards for behavior. Mr. Doe is restricted to the unit several times each month for minor rule infractions. His ability to comprehend and retain understanding of staff expectations appears impaired. The patient attends rehabilitative programming off unit with staff supervision.

The patient frequently approaches the nursing station with physical complaints and multiple requests. His ability to follow through with staff counseling suggestions is poor. He becomes argumentative and walks away mumbling to himself. He has not been violent or threatening to either patients or staff. He attends all recommended groups and activities. He is excluded from some groups because his rambling and tangential comments can be disruptive. He appears to have minimal to no insight regarding how his behavior is perceived by others.

Mr. Doe has been cooperative with discharge planning efforts. His previous counselor, has advised EMHC that the patient needs a higher level of community structure than *named facility* can give as an outpatient provider. *Named facility* has suggested EMHC contact *another named facility* and refer Mr. to their Adapt Program. *Named facility* has suggested that Mr. Doe would likely end up homeless if he were released to the community without some type of structured and supervised living program. The patient's family has been contacted and they appear to agree with *named facility's* view on this issue. No family member has indicated willingness to assist the patient if he were to be released from custody. Mr. Doe had a placement evaluation interview with, *named facility* on *date*. He is regarded as a good candidate for this program. When Mr. Doe November 15, 2004 is released from custody, the *facility* could provide housing, psychiatric follow up and other rehabilitative services. The treatment team at EMHC feels that *facility* could likely provide an appropriate level of care for Mr. Doe when he does return to the community.

Mental Status:

Mr. Doe is dressed in a blue sport shirt and black slacks. His shirt is tucked neatly in. His clothing appears in good repair. His hygiene and grooming appear fair. His speech volume is very low and difficult to hear. He is mumbling, apparently to himself. He may be responding to auditory hallucinations. His speech content is illogical, tangential and rambling. He is difficult to redirect back to the topic. He has several unrelated personal need requests he apparently wants to address with the interviewer. Mr. Doe is oriented to person, place and time. He is partially oriented to situation. When asked about his mood the patient replied he is "drowsy, excited, happy that God is with me". He denies auditory hallucinations or delusional ideas. He denies any paranoid ideas. His affect is restricted. Judgement and insight appear poor. Contact with reality is marginal. Memory appears unimpaired. Intellectual functioning is estimated to be in the low average range. Mr. Doe denies any suicidal or homicidal ideas, plans or intent, and has exhibited no behaviors toward such ends.

III. Diagnoses

AXIS I: 295.30	Schizophrenia, Paranoid Type,
305.00	Alcohol Abuse,
305.20	Cannabis Abuse,
304.60	Cocaine Abuse

AXIS: II: None

AXIS III: None

The following psychotropic medication are prescribed:

1. Olanzapine; an anti-psychotic, 10 mg: two times per day
2. Divalproex; a mood stabilizer used to augment the anti- psychotic, 1000mg, two times per day.

IV. THE ISSUE OF FITNESS

Mr. Doe is attending this evaluation voluntarily and indicates he understands a court report will be written. Mr. Doe states that he is charged with: one out for you to talk for you to the judge." It is evident he did not understand that this applied to the time of arrest incident rather than in court. I asked him also why he didn't call the police when he felt threatened and he said, "I don't know why, even to this day." "assaulting an officer and resisting

arrest". He knew the name of his public defender and indicated he could reach his public defender by sending a letter to Winnebago County.

Mr. Doe reported the role of the judge in court is to "keep things on the level, he sentences, he listens". He said the public defender "tries to help prove you're not guilty". The patient said the assistant state's attorney "tries to go against you, say you did it, that you did the crime". Mr Doe appears to have a partial understanding of basic court roles at a level similar to previous reports.

Mr. Doe reports that the term "guilty" means "you did it" and "not guilty" means "you didn't do the charge". He said a witness is "a person seen you do something". Testimony is "talking about something, between the attorney and the judge, they call in the other attorney". Cross-examine is the "state's attorney and public defender talking, and the judge is there. The state's attorney get's his questions, the public defender gets to ask the judge, cross examines". The patient defined evidence as "like a piece of paper or a watch". When asked what the purpose of evidence was, Mr. Doe said to "let the police know, it was left at a crime". The patient said a "bench trial" is "a trial of 12 peers, the judge asks the defendant things". When asked what a "jury trial" is, Mr. Doe responded: "it's the same, more freedom of movement around the activities, off grounds". A verdict was defined as "a statement made by the jury". He said a "plea bargain" is where "you plea guilty to a lessor charge". The patient said this could result in "less time" or "they might let you go". Mr. Doe appeared to know that a felony is more serious than a misdemeanor. He appeared to understand that a sentence is given by the judge.

Mr. Doe continues to have a limited understanding of court terms and basic court room procedures. Partially correct responses could not be elaborated upon in a coherent manner. Responses appeared superficial and vague. When asked follow up questions, the patient's answers appeared to progressively deteriorate. His interview answers became rambling and tangential. Mr. Doe currently does not appear able to provide meaningful assistance to legal counsel in his own defense. He appears to have an inadequate understanding of basic court room terms and procedures. The clinical team believes the patient has made an earnest effort to attain fitness but is unable to do so. It is the clinical opinion of the treatment team at EMHC that Mr. Doe is **Unlikely to Attain Fitness to Stand Trial** within the mandated statutory time period with further treatment.

V. RESPONSIBLE STAFF

Summarized By: _____
Social Worker II (Date)

MD, Psychiatrist (Date)

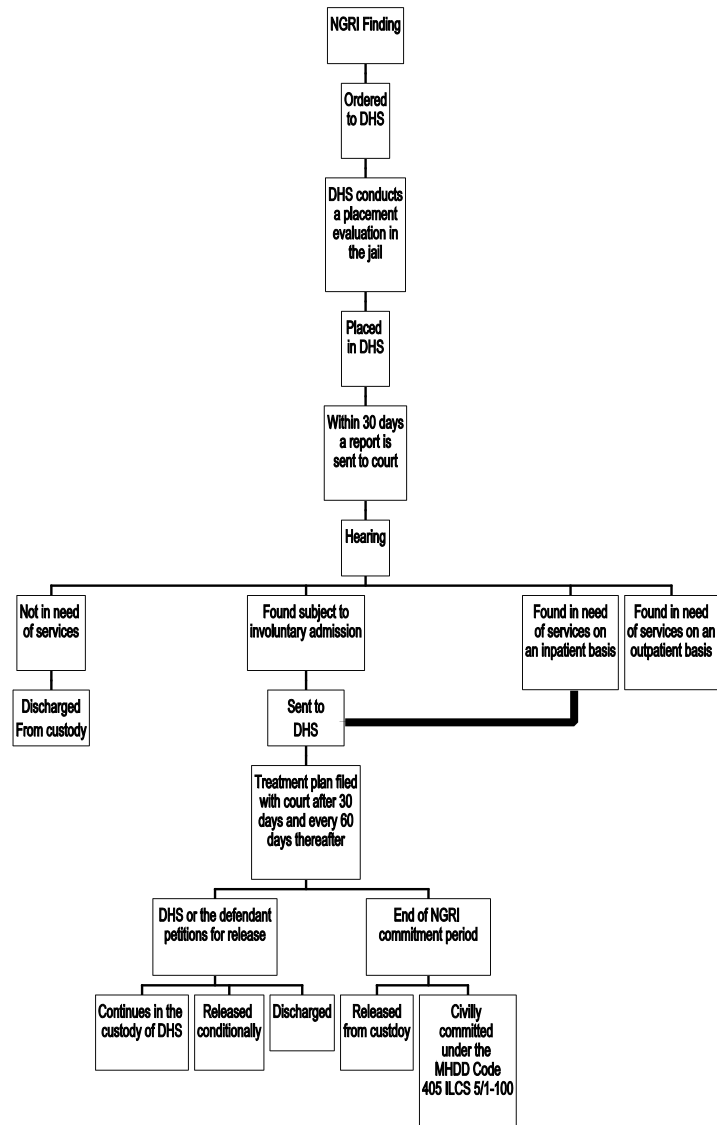
Section III.

This section covers different aspects of legal proceedings, and the treatment process for individuals found Not Guilty by Reason of Insanity. Included in this section are the following:

- A. A flow chart for the legal proceedings for NGRI. The flow chart follows the procedure for NGRI finding.
- B. The statute for Not Guilty by Reason of Insanity.
- C. Sample Orders:
 - 1. Sample Court Order completed by the court finding an individual found Not Guilty by Reason of Insanity and in Need of Mental Health Services on an Inpatient Basis, and ordered to the State of Illinois Department of Human Services.
 - 2. Sample Court Order completed by the court after a request has been filed by DHS requesting court approval for privileges.
 - 3. Sample Court Order completed by the court after a request has been filed by DHS requesting Conditional Release.
- D. An overview of the reports that are required in the NGRI Proceedings.
- E. Sample Cover Letters and Reports:
 - 1. Sample Evaluation for Insanity completed by the expert evaluator assigned by the Court.
 - 2. Template of 30 Day Report.
 - 3. A copy of a Forensic Evaluation Report completed by the person supervising the inpatient treatment.
 - 4. Sample cover letter to the court accompanying the Treatment Plan Report.
 - 5. Template of 60 Day Report.
 - 6. Sample Treatment Plan Report that summarizes the following: an assessment of the defendant's treatment needs, a description of the services recommended for treatment, the goals of each type of element of service, an anticipated timetable for the accomplishment of the goals, and the designation of the qualified professional responsible for the implementation of the treatment plan. A Treatment Plan Report is required every 60-days.
- F. A review of Facility Initiated Privileges with the following:
 - 1. A cover letter for Privilege Request.
 - 2. Template for Privilege Requests and Conditional Release.

3. Sample Treatment Plan with recommendation for: Unsupervised On-Ground Pass Privileges, Supervised Off Grounds Pass Privileges.
 4. Sample Report of a recommendation for Transfer to a Non-Secure Setting, Discharge or Conditional Release. Any recommendation for conditional release shall include an evaluation of the defendant's need for psychotropic medications, what provisions should be made, if any, to ensure that the defendant will continue to receive psychotropic medications following discharge, and what provisions will be made to assure the safety of the defendant and others in the event the defendant is no longer receiving psychotropic medications.
- G. Recipient Initiated Privilege Request, the Henderson Information includes the following: general information, reference to relevant statute, specific instructions, commonly asked questions, cover letter to the Clerk, cover letter to the Judge, and petition for transfer, conditional release or discharge.
- H. This subsection outlines the Community Agencies Responsibilities for patients who are conditionally release in a letter to the Local Provider, and provides; a template and a sample of both a letterhead and status report.
1. Letterhead template from the Community Agency
 2. Sample of Cover letter from the Community Agency
 3. Status Report template
 4. Sample of Status Report
 5. Template for Requests to the Courts Involving Recommendations on Conditional Release and Thiem (Discharge)

NOT GUILTY BY REASON OF INSANITY



730 Illinois Compiled Statutes 5/5-2-4

NOT GUILTY BY REASON OF INSANITY
(Highlights added for emphasis.)

Section 6-2. Insanity.

(a) A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.

(b) The terms "mental disease or mental defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) A person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill.

(d) For purposes of this Section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior.

(e) When the defense of insanity has been presented during the trial, the burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of each of the offenses charged, and, in a jury trial where the insanity defense has been presented, the jury must be instructed that it may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

(Amended by P.A. 90-593, effective June 19, 1998.)

(730 ILCS 5/5-2-3)

Section 5-2-3. FITNESS TO BE EXECUTED

(Repealed by P.A. 88-350, effective January 1, 1994)

(730 ILCS 5/5-2-4)

(provisions effective 8-8-03, indicated by *bold italics*)

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

(a) After a finding or verdict of not guilty by reason of insanity under Sections 104-25, 115-3 or 115-4 of The Code of Criminal Procedure of 1963, the defendant shall be ordered to the Department of Human Services for an evaluation as to whether he is in need of mental health services. The order shall specify whether the evaluation shall be conducted on an inpatient or outpatient basis. If the evaluation is to be conducted on an inpatient basis, the defendant shall be placed in a secure setting unless the Court determines that there are compelling reasons why such placement is not necessary. After the evaluation and during the period of time required to determine the appropriate placement, the defendant shall remain in jail. Upon completion of the placement process the sheriff shall be notified and shall transport the defendant to the designated facility.

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

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

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

(A) **(Blank)**.

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

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

(D) "Conditional Release" means: the release from either the custody of the Department of Human Services or the custody of the Court of a person who has been found not guilty by reason of insanity under such conditions as the Court may impose which reasonably assure the defendant's satisfactory progress in treatment or habilitation and the safety of the defendant and others. The Court shall consider such terms and conditions which may include, but need not be limited to, outpatient care, alcoholic and drug rehabilitation programs, community adjustment programs, individual, group, family, and chemotherapy, **random testing to ensure the defendant's timely and continuous taking of any medicines prescribed to control or manage his or her conduct or mental state, and** periodic checks with the legal authorities and/or the Department of Human Services. **The Court may order as a condition of conditional release that the defendant not contact the victim of the offense that resulted in the finding or verdict of not guilty by reason of insanity or any other person. The Court may order the Department of Human Services to provide care to any person conditionally released under this Section. The Department may contract with any public or private agency in order to discharge any responsibilities imposed under this Section. The Department shall monitor the provision of services to persons conditionally released under this Section and provide periodic reports to the Court concerning the services and the condition of the defendant. Whenever a person is conditionally released pursuant to this Section, the State's Attorney for the county in which the hearing is held shall designate in writing the name, telephone number, and address of a person employed by him or her who shall be notified in the event that either the reporting agency or the Department decides that the conditional release of the defendant should be revoked or modified pursuant to subsection (i) of this Section.** Such conditional release shall be for a period of five years. **However,** the defendant, the person or facility rendering the treatment, therapy, program or outpatient care, **the Department,** or the State's Attorney **may petition** the Court for an extension of the conditional release period for an

additional 5 years. Upon receipt of such a petition, the Court shall hold a hearing consistent with the provisions of this paragraph (a) and paragraph (f) of this Section, shall determine whether the defendant should continue to be subject to the terms of conditional release, and shall enter an order either extending the defendant's period of conditional release for *an* additional 5 year period or discharging the defendant. ***Additional 5-year periods of conditional release may be ordered following a hearing as provided in this Section. However, in no event shall the defendant's period of conditional release continue beyond the maximum period of commitment ordered by the Court pursuant to paragraph (b) of this Section.*** These provisions for extension of conditional release shall only apply to defendants conditionally released on or after *the effective date of this amendatory Act of the 93rd General Assembly*. However the extension provisions of Public Act 83-1449 apply only to defendants charged with a forcible felony.

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

(b) If the Court finds the defendant in need of mental health services on an inpatient basis, the admission, detention, care, treatment or habilitation, treatment plans, review proceedings, including review of treatment and treatment plans, and discharge of the defendant after such order shall be under the Mental Health and Developmental Disabilities Code, except that the initial order for admission of a defendant acquitted of a felony by reason of insanity shall be for an indefinite period of time. Such period of commitment shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior ***as provided in Section 5-4-1 of the Unified Code of Corrections***, before becoming eligible for release had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity. The Court shall determine the maximum period of commitment by an appropriate order. During this period of time, the defendant shall not be permitted to be in the community in any manner, including but not limited to off-grounds privileges, with or without escort by personnel of the Department of Human Services, unsupervised on-grounds privileges, discharge or conditional or temporary release, except by a plan as provided in this Section. In no event shall a defendant's continued unauthorized absence be a basis for discharge. Not more than 30 days after admission and every 60 days thereafter so long as the initial order remains in effect, the facility director shall file a treatment plan report ***in writing*** with the court and forward a copy of the treatment plan report to the clerk of the court, the State's Attorney, and the defendant's attorney, if the defendant is represented by counsel, or to a person authorized by the defendant under the Mental Health and Developmental Disabilities Confidentiality Act to be sent a copy of the report. The report shall include an opinion as to whether the defendant is currently in need of mental health services on an inpatient basis; or in need of mental health services on an outpatient basis. The report shall also summarize the basis for those findings and provide a current summary of the following items from the treatment plan: (1) an assessment of the defendant's treatment needs, (2) a description of the services recommended for treatment, (3) the goals of each type of element of service, (4) an anticipated timetable for the accomplishment of the goals, and (5) a designation of the qualified professional responsible for the implementation of the plan. The report may also include unsupervised on-grounds privileges, off-grounds privileges (with or without escort by personnel of the Department of Human Services), home visits and participation in work programs, but only where such privileges have been approved by specific Court Order, which order may include such conditions on the defendant as the Court may deem appropriate and necessary to reasonably assure the defendant's satisfactory progress in treatment and the safety of the defendant and others.

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

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

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

(d) When the facility director determines that:

- (1) the defendant is no longer in need of mental health services on an inpatient basis; and
- (2) the defendant may be conditionally released because he or she is still in need of mental health services or that the defendant may be discharged as not in need of any mental health services; or
- (3) the defendant no longer requires placement in a secure setting;

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

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

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

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

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

(g) The findings of the Court shall be established by clear and convincing evidence. The burden of proof and the burden of going forth with the evidence rest with the defendant or any person on the defendant's behalf when a hearing is held to review a petition filed by or on behalf of the defendant. The evidence shall be presented in open Court with the right of confrontation and cross-examination. ***Such evidence may include, but is not limited to:***

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

- (2) Whether the person appreciates the criminality of conduct similar to the conduct for which he or she was originally charged in this matter;*
- (3) the current state of the defendant's illness;*
- (4) what, if any, medications the defendant is taking to control his or her mental illness;*
- (5) what, if any, adverse physical side effects the medication has on the defendant;*
- (6) the length of time it would take for the defendant's mental health to deteriorate if the defendant stopped taking prescribed medication;*
- (7) the defendant's history or potential for alcohol and drug abuse;*
- (8) the defendant's past criminal history;*
- (9) any specialized physical or medical needs of the defendant;*
- (10) any family participation or involvement expected upon release and what is the willingness and ability of the family to participate or be involved;*
- (11) the defendant's potential to be a danger to himself, herself, or others; and*
- (12) any other factor or factors the Court deems appropriate.*

(h) If the Court finds, *consistent with the provisions of this Section*, that the defendant is no longer in need of mental health services it shall order the facility director to discharge the defendant. If the Court finds, *consistent with the provisions of this Section*, that the defendant is in need of mental health services, and no longer in need of inpatient care, it shall order the facility director to release the defendant under such conditions as the Court deems appropriate and as provided by this Section. Such conditional release shall be imposed for a period of 5 years *as provided in paragraph (1) (D) of subsection (a)* and shall be subject to later modification by the Court as provided by this Section. If the Court finds *consistent with the provisions in this Section* that the defendant is in need of mental health services on an inpatient basis, it shall order the facility director not to discharge or release the defendant in accordance with paragraph (b) of this Section.

(i) If within the period of the defendant's conditional release *the State's Attorney determines that the defendant has not fulfilled the conditions of his or her release, the State's Attorney may petition the Court to revoke or modify the conditional release of the defendant. Upon the filing of such petition the defendant may be remanded to the custody of the Department, or to any other mental health facility designated by the Department, pending the resolution of the petition. Nothing in this Section shall prevent the emergency admission of a defendant pursuant to Article VI of Chapter III of the Mental Health and Developmental Disabilities Code or the voluntary admission of the defendant pursuant to Article IV of Chapter III of the Mental Health and Developmental Disabilities Code.* If the Court determines, after hearing evidence, that the defendant has not fulfilled the conditions of release, the Court shall order a hearing to be held consistent with the provisions of paragraph (f) and (g) of this Section. At such hearing, if the Court finds that the defendant is in need of mental health services on an inpatient basis, it shall enter an order remanding him or her to the Department of Human Services or other facility. If the defendant is remanded to the Department of Human Services, he or she shall be placed in a secure setting unless the Court determines that there are compelling reasons that such placement is not necessary. If the Court finds that the defendant continues to be in need of mental health services but not on an inpatient basis, it may modify the conditions of the original release in order to reasonably assure the defendant's satisfactory progress in treatment and his or her safety and the safety of others *in accordance with the standards established in paragraph (1) (D) of subsection (a)*. Nothing in this Section shall limit a Court's contempt powers or any other powers of a Court.

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

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

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

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

(Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98; 91-536, eff. 1-1-00; 91-770, eff. 1-1-01; P.A. 93-473, eff. 8-8-03.)

(730 ILCS 5/5-2-4)

(provisions effective 1-1-04, indicated by ***bold italics*** -- there is some overlap with provisions effective 8-8-03 indicated by **highlight**)

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

(a) After a finding or verdict of not guilty by reason of insanity under Sections 104-25, 115-3 or 115-4 of The Code of Criminal Procedure of 1963, the defendant shall be ordered to the Department of Human Services for an evaluation as to whether he is in need of mental health services. The order shall specify whether the evaluation shall be conducted on an inpatient or outpatient basis. If the evaluation is to be conducted on an inpatient basis, the defendant shall be placed in a secure setting unless the Court determines that there are compelling reasons why such placement is not necessary. After the evaluation and during the period of time required to determine the appropriate placement, the defendant shall remain in jail. Upon completion of the placement process the sheriff shall be notified and shall transport the defendant to the designated facility.

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

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

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

(A) **(Blank).**

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

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

(D) "Conditional Release" means: the release from either the custody of the Department of Human Services or the custody of the Court of a person who has been found not guilty by reason of insanity under such conditions as the Court may impose which reasonably assure the defendant's satisfactory progress in treatment or habilitation and the safety of the defendant and others. The Court shall consider such terms and conditions which may include, but need not be limited to, outpatient care, alcoholic and drug rehabilitation programs, community adjustment programs, individual, group, family, and chemotherapy, **random testing to ensure the defendant's timely and continuous taking of any medicines prescribed to control or manage his or her conduct or mental state, and** periodic checks with the legal authorities and/or the Department of Human Services. **The Court may order as a condition of conditional release that the defendant not contact the victim of the offense that resulted in the finding or verdict of not guilty by reason of insanity or any other person. The Court may order the Department of Human Services to provide care to any person conditionally released under this Section. The Department may contract with any public or private agency in order to discharge any responsibilities imposed under this Section. The Department shall monitor the provision of services to persons conditionally released under this Section and provide periodic reports to the Court concerning the services and the condition of the defendant. Whenever a person is conditionally released pursuant to this Section, the State's Attorney for the county in which the hearing is held shall designate in writing the name, telephone number, and address of a person employed by him or her who shall be notified in the event that either the reporting agency or the Department decides that the conditional release of the defendant should be revoked or modified pursuant to subsection (i) of this Section.** Such conditional release shall be for a period of five years. **However,** the defendant, the person or facility rendering the treatment, therapy, program or outpatient care, **the Department,** or the State's Attorney **may petition** the Court for an extension of the conditional release period for an additional **5** years. Upon receipt of such a petition, the Court shall hold a hearing consistent with the provisions of this paragraph (a) and paragraph (f) of this Section, shall determine whether the defendant should continue to be subject to the terms of conditional release, and shall enter an order either extending the defendant's period of conditional release for **an** additional **5** year period or discharging the defendant. **Additional 5-year periods of conditional release may be ordered following a hearing as provided in this Section. However,** in no event shall the defendant's period of conditional release **continue beyond the maximum period of commitment ordered by the Court pursuant to paragraph (b) of this Section.** These provisions for extension of conditional release shall only apply to defendants conditionally released on or after **the effective date of this amendatory Act of the 93rd General Assembly.** However the extension provisions of Public Act 83-1449 apply only to defendants charged with a forcible felony.

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

(b) If the Court finds the defendant in need of mental health services on an inpatient basis, the admission, detention, care, treatment or habilitation, treatment plans, review proceedings, including review of treatment and treatment plans, and discharge of the defendant after such order shall be under the Mental Health and Developmental Disabilities Code, except that the initial order for admission of a defendant acquitted of a felony by reason of insanity shall be for an indefinite period of time. Such period of commitment shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior **as provided in Section 5-4-1 of the Unified Code of Corrections**, before becoming eligible for release had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity. The Court shall determine the maximum period of commitment by an appropriate order. During this period of time, the defendant shall not be permitted to be in the community in any manner, including but not limited to off-grounds privileges, with or without escort by personnel of the Department of Human Services, unsupervised on-grounds privileges, discharge or conditional or temporary release, except by a plan as provided in this Section. In no event shall a defendant's continued unauthorized absence be a basis for discharge. Not more than 30 days after admission and every 60 days thereafter so long as the initial order remains in effect, the facility director shall file a treatment plan report **in writing** with the court and forward a copy of the treatment plan report to the clerk of the court, the State's Attorney, and the defendant's attorney, if the defendant is represented by counsel, or to a person authorized by the defendant under the Mental Health and Developmental Disabilities Confidentiality Act to be sent a copy of the report. The report shall include an opinion as to whether the defendant is currently in need of mental health services on an inpatient basis; or in need of mental health services on an outpatient basis. The report shall also summarize the basis for those findings and provide a current summary of the following items from the treatment plan: (1) an assessment of the defendant's treatment needs, (2) a description of the services recommended for treatment, (3) the goals of each type of element of service, (4) an anticipated timetable for the accomplishment of the goals, and (5) a designation of the qualified professional responsible for the implementation of the plan. The report may also include unsupervised on-grounds privileges, off-grounds privileges (with or without escort by personnel of the Department of Human Services), home visits and participation in work programs, but only where such privileges have been approved by specific Court Order, which order may include such conditions on the defendant as the Court may deem appropriate and necessary to reasonably assure the defendant's satisfactory progress in treatment and the safety of the defendant and others.

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

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

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

(d) When the facility director determines that:

- (1) the defendant is no longer in need of mental health services on an inpatient basis; and
- (2) the defendant may be conditionally released because he or she is still in need of mental health services or that the defendant may be discharged as not in need of any mental health services; or
- (3) the defendant no longer requires placement in a secure setting;

the facility director shall give written notice to the Court, State's Attorney and defense attorney. Such notice shall set forth in detail the basis for the recommendation of the facility director, and specify clearly the recommendations, if any, of the facility director, concerning conditional release. ***Any recommendation for conditional release shall include an evaluation of the defendant's need for psychotropic medication, what***

provisions should be made, if any, to ensure that the defendant will continue to receive psychotropic medication following discharge, and what provisions should be made to assure the safety of the defendant and others in the event the defendant is no longer receiving psychotropic medication. Within 30 days of the notification by the facility director, the Court shall set a hearing and make a finding as to whether the defendant is:

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

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

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

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

(g) The findings of the Court shall be established by clear and convincing evidence. The burden of proof and the burden of going forth with the evidence rest with the defendant or any person on the defendant's behalf when a hearing is held to review a petition filed by or on behalf of the defendant. The evidence shall be presented in open Court with the right of confrontation and cross-examination. Such evidence may include, but is not limited to:

- (1) whether the defendant appreciates the harm caused by the defendant to others and the community by his or her prior conduct that resulted in the finding of not guilty by reason of insanity;
- (2) Whether the person appreciates the criminality of conduct similar to the conduct for which he or she was originally charged in this matter;
- (3) the current state of the defendant's illness;
- (4) what, if any, medications the defendant is taking to control his or her mental illness;
- (5) what, if any, adverse physical side effects the medication has on the defendant;
- (6) the length of time it would take for the defendant's mental health to deteriorate if the defendant stopped taking prescribed medication;
- (7) the defendant's history or potential for alcohol and drug abuse;
- (8) the defendant's past criminal history;
- (9) any specialized physical or medical needs of the defendant;
- (10) any family participation or involvement expected upon release and what is the willingness and ability of the family to participate or be involved;

- (11) the defendant's potential to be a danger to himself, herself, or others; and
- (12) any other factor or factors the Court deems appropriate.

(h) *Before the court orders that the defendant be discharged or conditionally released, it shall order the facility director to establish a discharge plan that includes a plan for the defendant's shelter, support, and medication. If appropriate, the court shall order that the facility director establish a program to train the defendant in self-medication under standards established by the Department of Human Services.* If the Court finds, **consistent with the provisions of this Section**, that the defendant is no longer in need of mental health services it shall order the facility director to discharge the defendant. If the Court finds, **consistent with the provisions of this Section**, that the defendant is in need of mental health services, and no longer in need of inpatient care, it shall order the facility director to release the defendant under such conditions as the Court deems appropriate and as provided by this Section. Such conditional release shall be imposed for a period of **5** years **as provided in paragraph (1) (D) of subsection (a)** and shall be subject to later modification by the Court as provided by this Section. If the Court finds **consistent with the provisions in this Section** that the defendant is in need of mental health services on an inpatient basis, it shall order the facility director not to discharge or release the defendant in accordance with paragraph (b) of this Section.

(i) If within the period of the defendant's conditional release **the State's Attorney determines that the defendant has not fulfilled the conditions of his or her release, the State's Attorney may petition the Court to revoke or modify the conditional release of the defendant. Upon the filing of such petition the defendant may be remanded to the custody of the Department, or to any other mental health facility designated by the Department, pending the resolution of the petition. Nothing in this Section shall prevent the emergency admission of a defendant pursuant to Article VI of Chapter III of the Mental Health and Developmental Disabilities Code or the voluntary admission of the defendant pursuant to Article IV of Chapter III of the Mental Health and Developmental Disabilities Code.** If the Court determines, after hearing evidence, that the defendant has not fulfilled the conditions of release, the Court shall order a hearing to be held consistent with the provisions of paragraph (f) and (g) of this Section. At such hearing, if the Court finds that the defendant is in need of mental health services on an inpatient basis, it shall enter an order remanding him or her to the Department of Human Services or other facility. If the defendant is remanded to the Department of Human Services, he or she shall be placed in a secure setting unless the Court determines that there are compelling reasons that such placement is not necessary. If the Court finds that the defendant continues to be in need of mental health services but not on an inpatient basis, it may modify the conditions of the original release in order to reasonably assure the defendant's satisfactory progress in treatment and his or her safety and the safety of others **in accordance with the standards established in paragraph (1) (D) of subsection (a).** Nothing in this Section shall limit a Court's contempt powers or any other powers of a Court.

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

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

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

(m) The Clerk of the Court shall, after the entry of an order of transfer to a non-secure setting of the Department of Human Services or discharge or conditional release, transmit a certified copy of the order to the Department of Human Services, and the sheriff of the county from which the defendant was admitted. The Clerk of the Court shall also transmit a certified copy of the order of discharge or conditional release to the *Illinois Department of State Police, to the proper law enforcement agency for the municipality where the*

offense took place, and to the sheriff of the county into which the defendant is conditionally discharged. The Illinois Department of State Police shall maintain a centralized record of discharged or conditionally released defendants while they are under court supervision for access and use of appropriate law enforcement agencies (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98; 91-536, eff. 1-1-00; 91-770, eff. 1-1-01; P.A. 93-473, eff. 8-8-03; P.A. 93-78, eff. 1-1-04.)

(730 ILCS 5/5-2-5)

Section 5-2-5. Expert witness. Defendant's fitness, insanity or mental illness.

In any issue of determination of fitness of a defendant to plead, to stand trial, to be sentenced or to be executed, or in any issue related to insanity or to mental illness, a clinical psychologist as defined in paragraph (a) of Section 102-21 of the Code of Criminal Procedure of 1963 shall be deemed qualified to testify as an expert witness in the form of his opinion about the issue of fitness or insanity or mental illness and shall not be restricted to testifying with regard to test results only.

IN THE CIRCUIT COURT OF _____ JUDICIAL CIRCUIT

-VS-

NO.

ENTER: _____ 20_____

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IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT

_____ COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)

vs.

)

)

)

ORDER

This cause having been heard pursuant to a request filed by the Department of Human Services pursuant to Section 5/5-2-4(b) of the Unified Code of Corrections (or Section 5/104-31 of the Code of Criminal Procedure of 1963) requesting court approval for privileges for the above named respondent and the court being fully advised in the premises.

IT IS HEREBY ORDERED:

- ☐ The request is denied.
- ☐ The DHS is authorized to issue pass privileges allowing respondent to be on the facility grounds without supervision at the discretion of the Department of Human Services.
- ☐ The DHS is authorized to issue pass privileges allowing respondent to be off facility grounds with supervision at the discretion of the Department of Human Services.
- ☐ The DHS is authorized to issue pass privileges allowing respondent to be off facility grounds without supervision at the discretion of the Department of Human Services.
- ☐ The DHS is authorized to place respondent in a non-secure setting at the discretion of the Department of Human Services.
- ☐ _____

DATE: _____ ENTERED: _____

STATE OF ILLINOIS

COUNTY OF _____
IN THE CIRCUIT COURT OF _____ COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS

-VS-

CASE # _____

ORDER

This case coming on to be heard pursuant to 730 ILCS 5/5-2-4-(d), after a determination of the Department of Human Services, Mental Health Division (DHS) that the defendant is no longer subject to involuntary admission or in need of inpatient treatment, but is in need of mental health services on an outpatient basis.

The Court hereby finds:

The defendant is in need of mental health services on an **OUTPATIENT** basis.

WHEREFORE, the Court Orders the release of the defendant from the DHS under the following conditions:

1. The defendant shall reside at a placement approved by the DHS.
2. The defendant shall participate in and abide by all outpatient treatment requirements of the Outpatient Program.
3. The Court shall receive periodic reports from the outpatient treatment program of the defendant's cooperation in treatment at least every 90 (every) days.
4. This conditional release shall be for a period of 5 (five) years from the date of this order.
5. Additional conditions (if any) are as follows:
 - a) The DHS is authorized to issue _____ pass privileges to _____ for the purpose of discharge planning.
 - b) The DHS is to report the discharge plan to this court prior to releasing the respondent.

DATE: _____

ENTER: _____

Judge

Judge's No.

REPORTS INVOLVED IN NGRI PROCEEDINGS

I. NGRI Evaluation Report

The person conducting the examination of the defendant shall submit a written report to the court, the state and defense within 30 days of the court order. This report shall include the following:

- a. A diagnosis of, and an explanation as to how it was reached, and the facts upon which it is based (FCS Report).
- b. A description of and an opinion as to whether, and to what extent, the mental disease or mental defect impair the individual's capacity to appreciate the criminality of their conduct at the commission of the criminal offense, and is therefore legally insane.
- c. The report shall indicate whether the patient meets the criteria for inpatient care based on (a) Subject to Involuntary Admission or (b) In Need of Mental Health Services on an Inpatient Basis, or (c) whether the patient meets the criteria In Need of Mental Health Services on an Outpatient Basis.
- d. The report may also indicate whether the patient was unable to understand his rights under Miranda.

II Admission Report (30 Day Report)

Within 30 days of an order to evaluate a patient adjudicated NGRI by the court, the person supervising the individual's treatment shall file a report with the court, the state, and defense. This report must include the following:

1. The assessment and finding of the patient's current mental status and the recommendation as to (a) In Need of Mental Health Services on an Inpatient Basis or (b) In Need of Mental Health Services on an Outpatient Basis, or (c) a person not in need of mental health services.
2. When the assessment and findings recommend to the court In Need of Mental Health Services on an Outpatient Basis, the report shall also include a discharge plan.

III 60 Day Progress Report

1. An assessment of the patient's treatment needs which will include:
 - a. Diagnosis

- b. A continuing care plan
- 2. A description of the services recommended for treatment.
 - a. Current medications
 - b. Psychosocial interventions.
- 3. Goals of each treatment and anticipated timeframes for accomplishment of the goals
 - a. The supervisor of each treatment goal
 - b. A specific date for anticipated timeframes for accomplishment of each goal.
- 4. Clinical Update.
 - a. Significant changes and rationale for changes since last treatment plan report to the court.
 - b. Areas in which patient has shown progress.
- 5. Privilege Status
 - a. What privileges, if any, were granted.
 - b. Whether the patient continues to require treatment in a secure setting.
- 6. Designated Qualified Professionals responsible for the implementation of the Plan.1-99- 3938

FORENSIC CLINICAL SERVICES
**EVALUATION REPORT COMPLETED BY THE EXPERT EVALUATOR
ASSIGNED BY THE COURT**

NAME:

DATE:

CHART NO:

IDENTIFYING INFORMATION:

This is a 25- years-old man charged with attempt murder, seen for evaluation at Forensic Clinical Services on December 09, 2000 and evaluated regarding the issues sanity and Miranda.

RECORDS REVIEWED:

Police reports and statements of the defendant were reviewed as well as medication profile form Cermak Health Services, a social history and the report from Elgin Mental Health Center. In addition, the reports Dr. Henson and Dr. Doran were also reviewed.

CLINICAL EVALUATION:

The defendant was warned of the non-confidential nature of the evaluation. He indicates he is on Division 8 and still on medication which, is Zoloft, Geodon and Benadryl. He denies side effects from the medication.

When asked about prior treatment, he said that his mother told him that he saw a psychologist when he was in grad school because of periods of depression.

He was asked about current treatment at the jail and he indicated, when asked, that he was first at Division 5 and stayed there from the time of his arrest until December. He said he then went to 2 Wes, then 2 South and then Division 8 where he is now. When asked why he was transferred to RTU, he said he was hearing people constantly degrading him. He described these as voices but he says he hears them in his head and not with his ears. He said he had been on no medication until he saw the doctor in December.

In April, prior to the arrest incident, he was beaten up by, gang members as a method of leaving the gang. They also threatened that if told anyone, his family and child would be harmed. He said he wanted to protect his family. After he was beaten up, he said that their voices kept playing over and over in his head like a tape recorder. He said he told his brother what happened shortly after that incident and his brother called someone he knew and said, "They'll get theirs." He said that after the arrest incident he stayed inside and did not come out unless he had to. He was talking to himself and thinking how he had to get out of the neighborhood. He said, however, that he was trying to go to school full time and it was difficult for him to leave. In June someone from a gang that he knew said they heard that the gang was still after him. He said he went and hid around a lot, indicating the he would drive around hide various places, and only his family knew where he was. He did not hang around with anyone. In July he went to a gun show and saw a rifle for a hundred dollars that police officer was selling so he bought it. He said he bought it for home protection along with ammunition. In describing the incident he said, "It's my fault for joining in a gang." He said that on night of the incident he went to concert with friends and he was always watching his back, he was worried and he felt he was being watched and hunted down like an animal. He sat in the dark a lot at home, looked out the window all the time and he knew someone was out there. He said he didn't tell anyone else about this because he

thought they would think that he was “nuts.” He then mentioned that in high school he was always picked on by strangers and they would turn against him. He said at the time of the arrest incident he felt someone was eyeballing him all the time. He said that he looked up the street and there was a girl there and she looked right at him. He also indicated that prior to this he was drinking with friends and this all occurred after these friends left. He said he went into the gangway and saw three guys and he kept thinking, “They’re going to get you now, you’re dead now.” He went back in the house and then he heard the gate open and footsteps and talking in low voice. He said he was just terrified and didn’t know what to do. He grabbed the rifle and loaded it. His mother was sleeping then, He said he kept getting crazy thoughts like “why me.” He said he heard voice saying, “You are dead now and swearing at me.” He said, however, that he heard these things in his head. He describes the whole incident like being a nightmare and he said he saw these men make moves in which they were strategically placed and he described this as being spread out. One had his head covered with a shirt and he saw a gun. He said they kept looking straight at the house and at him and he thought, “This is it, you’re going to kill me.” He said they moved toward the house and he started shooting at them.

When the police arrived he said he didn’t even know it. He heard people talking and he sat in the dark and he said he felt he didn’t want to do anything anymore, he had just given up and didn’t care felt they come and do anything they wanted. He said when the police came they were babbling about something. I asked him why he gave a statement as he did and he said, “They threatened to beat me up and they surrounded me.” He said, “I couldn’t stop shaking.” He doesn’t even know if his rights were given. However, they are present on the statement form. I asked what rights person has when they are arrested and he was able to quote them verbatim, indicating the right to remain silent and anything that he would say could be used against him and had the right to an attorney. He then said, “If you don’t have one, the court will appoint one.” I asked him what all of this meant and he said, “It means you don’t have to talk to anyone except your lawyer.” I asked him about being unable to afford a lawyer what would happen and he said, “You have to save some money to get one.” He then said, “You could save some money or they can pick one out for you to talk for you to the judge.” It is evident he did not understand that this applied to the time of arrest incident rather than in court. I asked him also why he didn’t call the police when he felt threatened and he said, “I don’t know why, even to this day.”

He was asked about a history of alcohol use and indicated that he had a couple of beers before the arrest incident and his usual consumption was six-pack of 16 ounce beers or sometime he would drink as many as 12 beers. He had difficulty sleeping prior to the arrest incident. He then said, “The communist enemies were trying get me.” I asked him what he meant by that and he said, “It was the way I felt, it was like that,” He also remembered when talked to his brother about being beaten up he said, “Those bastard things got me.”

Information in the social history indicates that his mother was at home at the time of the incident and described him as looking scared. It is noted that his mother said when he was asked by, the police, why he was shooting he said, “I don’t know, I was scared. Someone wants to get in my yard. His mother said he was intoxicated after drinking with neighbors. She described him frequently as being depressed and agitated and talking to himself, but denies delusions and hallucinations. She did say that he believed people in jail were making faces at him and there was a decrease in his functioning after his father died in 1999. She also said he had been drinking heavily for the last six years.

Police report indicate in his statement that he did this “because he was trying to defend his property.”

Records from Elgin Mental Health Center at the time of admission, after he had seen Dr. Seltzberg indicted “hallucinations, paranoid delusions and at times a belief that the TV was talking to him.”

MENTAL STATUS EXAMINATION:

He is oriented, generally coherent and he is cooperative. He shows evidence of blunted affect and sad affect at times, but tends to be somewhat self-derogatory and gives a history of what appears to be combination of paranoid beliefs as well as possibly factual persecution by others. There is the presence of symptoms in the past such as intrusive thoughts about the incident of him being beaten up this could be compatible with PTSD. His family describes an ongoing depressive symptomatology and whether or not his experience of voices were hallucinations or not is questionable. Ideas of reference and delusions of reference were present. These were reported by not in his current interview.

He appears to have major depression with psychotic features, which is, now in remission with medication and he has PTSD. There is history of alcohol dependence with some other substance abuse. The current interview as well as the interview with Dr. Gore indicates that he currently does not understand that he could have an attorney present during questioning if he cannot afford one. He tends to confuse this with getting any attorney in court since that is actually mentioned in the recitation of rights in the witness statement. It says, "And if I cannot afford to hire a lawyer one will be appointed by the court to represent me before any questioning." He seems confused about this issue now, though it is evident that because of his psychosis he would have had difficulty understanding what was being said to him, even though intellectually he has the potential to be able to understand his rights. It is further my opinion that he was acting to some extent on a delusional belief and was fearful of his life at the time.

DIAGNOSIS:

Axis I:	309.81	PTSD
	296.2	Major Depression with Psychosis, now in remission with medication
	303.90	Alcohol Dependence
	305.90	Poly-substance Abuse

CONCLUSION:

This defendant is currently in fair contact with reality and shows evidence of a history of major mood disorder with Psychosis. This is now in remission with medication. It is my opinion that at the time of the alleged offense, the defendant would have been **LEGALLY INSANE** in that at that time he lacked the substantial capacity to appreciate the criminality of his act due to major depression with psychotic features.

It is further my opinion that at the time of questioning by the police, he would have been **UNABLE TO UNDERSTAND HIS RIGHTS UNDER MIRANDA** because of his psychotic illness and mood disturbance.

John Phelps M.D.
Staff Psychiatrist

30 Day Report (Template)

ILLINOIS DEPARTMENT OF HUMAN SERVICES

**ELGIN MENTAL HEALTH CENTER
FORENSIC TREATMENT PROGRAM
FORENSIC EVALUATION
AND RECOMMENDATION FOR MENTAL HEALTH SERVICES ON AN INPATIENT BASIS**

Re: Docket #

Date

The referring Court has requested an opinion concerning (Patient's name) treatment needs.

I. IDENTIFYING INFORMATION:

Facts that identify patient (e.g., age, race, marital status, crime, date found NGRI)

II. SOURCES OF INFORMATION:

Sources of information that may be reviewed for purpose of this report are:

- Current and past medical record
- Personal interview with patient
- Chicago Metro Forensic Evaluation, dated
- Forensic Clinical Services Psychiatric Summary, by MD, dated
- Chicago Police Department report, pertaining to the instant crime
- Illinois Criminal Rap Sheet

III. PERTINENT HISTORY:

IV. ISSUES RELEVANT TO THE NGRI CRIME:

V. HOSPITAL COURSE:

VI. CURRENT MENTAL STATUS:

- Result of mental status assessment.
- Diagnoses (i.e., Axis I, II, and III).
- Assessment of patient's clinical stability.

VII. RISK EVALUATION:

- Include factors that increase the patient's potential for risk
- Include factors that should decrease the patient's potential for risk

VIII. SUMMARY:

IX. RECOMMENDATION: The Clinical Treatment Team of _____ MHC is of the opinion that _____ is (choose one) in need of mental health services on an inpatient basis/in need of mental health services on an outpatient basis/ a person not in need of mental health services.

Signatures

**ILLINOIS DEPARTMENT OF HUMAN SERVICES
ELGIN MENTAL HEALTH CENTER
FORENSIC TREATMENT PROGRAM**

**FORENSIC EVALUATION
AND RECOMMENDATION FOR MENTAL HEALTH SERVICES ON AN INPATIENT BASIS**

30 Day Sample Report

Re: Docket #

Date

The referring Court has requested an opinion concerning (Patients name) treatment needs.

I. IDENTIFYING INFORMATION:

Mr. Doe is a 50 year old (DOB 5/18/1954), never married, African-American man who was admitted to the Forensic Treatment Program (FTP) at Elgin Mental Health Center (EMHC) on (date). He was adjudicated Not Guilty by Reason of Insanity (NGRI) on (date) in Cook County for the crime of First Degree Murder.

According to the police report, police arrived to a scene of an argument where they found the victim severely beaten. Witnesses, including his mother, stated that Mr. Doe was seen early with the victim. The victim died at the hospital due to his injuries. Mr. Doe was arrested almost a year later, on (date), after physical evidence and statements linked him to the homicide.

II. SOURCES OF INFORMATION:

The following were reviewed for purpose of this evaluation:

- A. Current and past EMHC/FTP medical record
- B. Personal interview with Mr Doe and telephone interview with his mother
- C. Chicago Metro Forensic Evaluation, dated
- D. Forensic Clinical Services Psychiatric Summary, by MD, dated
- E. Chicago Police Department report, pertaining to the instant crime
- F. Illinois Criminal Rap Sheet

III. PERTINENT HISTORY:

Mr. Doe was born in Chicago and raised by his mother and her family. Mr. Doe's father was arrested for attacking his mother while she was in the hospital after giving birth to their son. After that attack, she had an order of protection against him and had little contact with him during Mr. Doe's childhood. Mr. Doe last saw his father while they were both incarcerated at Cook County Jail. According to his mother, there is no known history of mental illness on either his maternal or paternal side of the family. His father has an extensive history of chemical dependence and has been incarcerated due to illicit drug use. Mr. Doe never married and has a three-year-old son. He has contact with his son through visitation. His mother keeps in contact with her grandson and has brought him to visit Mr. Doe since his incarceration.

Mr. Doe completed the 11th grade, but failed to obtain his degree or General Equivalence Degree (GED). He was a member of a gang throughout high school and as a member, Mr. Doe sold crack cocaine to make money in order to support his own drug habit. In the 11th grade, Mr. Doe was caught by school officials smoking marijuana. Both he and his mother reported that the 11th grade was a turbulent time for Mr. Doe as he engaged in fights and gang activity.

Mr. Doe has had two previous Illinois Department of Human Services (DHS) admissions. Prior to his arrest, Mr. Doe was hospitalized at Tinley Park from 7/27/00 to 9/18/00. After his arrest he was sent to EMHC as Unfit to Stand Trial and hospitalized for six months. When he was discharged from both facilities he was linked to Roseland Mental Health Center for outpatient psychiatric treatment. Mr. Doe began smoking cigarettes at

age seven. He admits to experimenting with alcohol and marijuana at age twelve. He began smoking marijuana laced with cocaine and heroin on a daily basis at 13 or 14 years old. He had been using alcohol and marijuana on a daily basis at the time of his NGRI crime. According to his rap sheet, Mr. Doe has two arrests: 4/11/98 for Possession of Cannabis, and 5/9/200 for Criminal Damage to Property less than \$300.00. The following year he was arrested and charged with First Degree Murder.

IV. ISSUES RELEVANT TO THE NGRI CRIME:

Mr. Doe was charged on 4/30/01 for the murder of his elderly neighbor and roommate. He was charged ten months after the crime was committed based on DNA evidence. DNA evidence revealed that the blood stains found on Mr. Doe's shoes and clothing were the blood of the victim. On 6/21/00, the victim was seriously injured during an altercation in his apartment. The victim died at St. Mary's hospital on 7/10/00 due to his injuries. According to the police report, an upstairs tenant called police after hearing an altercation on the first floor of the victim's two-flat apartment. The upstairs tenant attempted to gain access to the victim's apartment after he cried out for assistance, but the doors were locked. Police were called and found the victim bleeding on the floor. The police report states that a "large pool of blood" was observed inside the doorway to the victim's apartment and that "blood splatter" was found on various walls within the apartment. The report indicated signs of a struggle in his apartment as police found a broken chair, bottle, lamp and vacuum cleaner with the victim's blood. Both the witness and Mr. Jones saw Mr. Doe with the victim prior to the beating. Mr. Doe denies committing the crime. When asked about the crime Mr. Doe replied, "I can't tell because I wasn't there". He stated that he was "downtown in a park by Roosevelt University and that he was asleep". When asked further questions about his substance abuse and the days surrounding the crime Mr. Doe replied, "I can't remember that was three years ago". According to the police reports, was unable to recall events surrounding the time of the murder.

Prior to his NGRI crime, Mr. Doe was not receiving any mental health services. His mother states that she had kicked him out of the house approximately in May of 2000 due to his disobedient behavior. According to his mother, "I could look into his eyes and there was a distant look, he was rebellious, disobedient, whole other person... he was talking to himself and heard voices that told him things to do". In spite of requesting that the victim not take him into his home, Mr. Doe lived with the victim up until his death. On one occasion, the victim reported to Mr. Doe's mother that he "tore up the yard because the flowers were attacking him". After the crime was committed, Mr. Doe's mother took him for a psychiatric evaluation. As a result, he was hospitalized at Tinley Park Mental Health Center from 7/27/00 to 9/18/00 and started on psychotropic medication. At the time of the crime the following risk factors were present: substance use, drug induced psychosis, poor impulse control, lack of professional support.

V. HOSPITAL COURSE:

Mr. Doe was admitted to the Forensic Treatment Program for an NGRI evaluation on 7/29/2004, having spent over two years in the Cook County Correctional Complex. Initial psychiatric interview revealed Mr. Doe was prescribed a low dosage of Geodon (Ziprasidone) 20 mg twice a day. He had no active or passive suicidal or homicidal thoughts, plans, or intent. It was determined that he had severe alcohol and drug dependence. His mental status revealed that he was alert, and oriented times three. There was no evidence of agitation. His mood appeared cheerful and his speech was spontaneous. There was no evidence of active delusions or hallucinations. Mr. Doe's psychotropic medications were discontinued shortly after his admission in order to observe his clinical condition. During this observation period, he has not evidenced any psychosis or mood instability. Educational testing scores revealed reading and spelling scores at a high school level and math scores are at a 5th grade level.

Mr. Doe has exhibited stalking behavior as he has been observed following some female staff around the unit. He has engaged in verbal altercations with some of the evening staff. He has accused staff of calling his name or cursing at him when no one has been observed carrying out these accusations. During the day, he has been observed awake either sitting by himself, watching staff, or talking with his peers. He requires prompting to complete his activities of daily living. Sleep and appetite patterns are normal. There are no medical problems.

The Clinical Team has identified treatment problem areas of: a) psychosis and mood disturbance, b) substance use, c) relapse prevention, and d) continuing care planning.

Current Medication:

Lithium Carbonate 300mg three times a day
Risperidone 1 mg twice a day

VI. CURRENT MENTAL STATUS:

Mr. Doe is alert and oriented in all spheres and situation. He has fair hygiene and grooming. Mr. Doe has no problems in his gait or posture. He is cooperative with good eye contact. He does not exhibit any psychomotor slowing or agitation, Extra Pyramidal Symptoms or Tardive Dyskinesia. His mood is euthymic(neither elevated nor depressed) with congruent and appropriate affect. His speech is of normal tone, rhythm, volume, and is goal directed. No formal thought disorder is present. He denies any suicidal or homicidal ideation. He also denies any auditory or visual hallucinations. There are no delusional thoughts present at this time.

Diagnoses:

Axis I: 292.12 Substance induced psychosis by history
304.80 Poly-substance Dependence

Axis II: 301.7 Antisocial Personality Disorder

Axis III: None

VII. RISK EVALUATION:

The following factors increase Mr. Doe's potential for risk:

- A. Drug Induced Mood Disorder and Psychosis
- B. Substance use
- C. Impulsive, Personality Disorder (Antisocial Personality Disorder)
- D. Lack of professional support

The following factors should decrease Mr. Doe's potential for risk:

1. Durable remission of mood and psychotic symptoms:
Mr. Doe resumed taking medication a month after his admission for active symptoms of mental illness. Medication has been prescribed to eliminate psychotic symptoms and to calm his mood. His mental state and behavior will be monitored over time for any signs of de-compensation. This may require further medication adjustment.
2. Development of a personal plan of recovery from alcohol dependence:

Mr. Doe has an extensive drug and alcohol history that dates back to age 12. He had been using alcohol and marijuana laced with cocaine and heroin on a daily basis prior to the crime. When appropriate he will be transferred to our substance unit for an anticipated period of three to six months and a personal plan of recovery prepared. He should also complete an outpatient chemical dependence program.

3. Development of a relapse prevention plan:

Mr. Doe's inability to understand and appreciate his behavior and the impact of substance use will require a comprehensive relapse prevention plan. He will complete a relapse prevention while residing on the MISA unit and another plan will be developed at our local outpatient program.

4. Development of a comprehensive continuing care plan:

A continuing care plan sufficient to address outpatient treatment needs, regarding type and amount of structure and supervision required, will be assessed during this hospital course. Upon discharge, he will require placement in a structured, supervised setting to ensure abstinence from drugs and alcohol and to monitor his behavior.

VIII. SUMMARY:

Mr. Doe is a 50-year-old (DOB 5/18/54), never married, African-American man who was admitted to the Forensic Treatment Program (FTP) at Elgin Mental Health Center (EMHC) on 7/29/2004. He was adjudicated Not Guilty by Reason of Insanity (NGRI) on 6/29/04 in Cook County for the crime of First Degree Murder. According to the police report, police were called by to a scene of an argument where they found the victim beat severely. Witnesses, including Mr. Doe's mother, stated that Mr. Doe was seen early with the victim. The victim died at the hospital due to his injuries. Mr. Doe was arrested almost a year later on 4/30/01 after physical evidence and statements linked him to the homicide. Mr. Doe denies that he committed the crime, but effortlessly admits to having a mental illness and the need for psychotropic medication. His medications were discontinued upon his admission and recently (8/31/04) prescribed to control mood disturbance and psychosis. Mr. Doe has an extensive drug and alcohol history and is need of chemical dependence treatment.

IX. RECOMMENDATIONS:

The Clinical Treatment Team of the Forensic Treatment Program at Elgin Mental Health Center is of the opinion that to he is in need of mental health services on an inpatient basis. It is also recommended that Mr. Doe participate in structured group and individual therapy, and intensive substance abuse therapy.

LCSW Social Worker

MD Treating Psychiatrist

ILLINOIS DEPARTMENT OF HUMAN SERVICES

(Facility's Name)

(*Facility's Address*)

Date

The Honorable (*Judges name*)
Judge of the Circuit Court of (*Name of the County*)
Criminal Courts Building
(*Address*)

RE: *Patient's name*
 Docket number

Dear Judge (name):

Pursuant to Your Honor's Order dated (*Date of Court Order*), (*Patient's name*) continues to receive inpatient treatment at Elgin Mental Health Center. It is our opinion that (*Patient's name*) remains In Need of Mental Health Services on an Inpatient Basis. The details of the treatment plan review are enclosed.

If you require additional information, please do not hesitate to contact me at (*telephone number*).

Sincerely,

(*Program Director's name*)
Program Director

Enclosures

cc: Public Defender's Office (*Address*)
 State's Attorney's Office (*Address*)

60- Day Treatment Plan Report (Template)

Illinois Department of Human Services

Name:

Case #:

Date:

I. IDENTIFYING INFORMATION

(Facts that identify the patient : age, race, marital status, crime, date found NGRI, Theim date).

II. BASIS FOR CONTINUED TREATMENT

_____ is (choose one) in need of mental health services on an inpatient basis/ in need of mental health services but not inpatient care/ no longer in need of mental health services/ no longer requires placement in a secure setting. The basis for this finding is as follows:

III. TREATMENT SERVICES

A. Following is an assessment of the patient's treatment needs:

B. Following is a description of the services recommended for treatment:

C. The goals of treatment and an anticipated timetable for the accomplishment of the goals are:

IV. CLINICAL UPDATE

Significant changes and reasons for these changes since the patient's last Treatment Plan Report are as follows:

V. PRIVILEGE STATUS

Following review this month by the treatment team, is/is not being recommended for increased privileges at this time because:

VI. PLACEMENT

Based on the above, _____ continues to require inpatient treatment in a secure setting at _____ Mental Health Center. *Or*, based on the above _____ is recommended for outpatient treatment at _____. A Court Packet requesting Conditional Release will follow.

VII. DESIGNATED QUALIFIED PROFESSIONALS RESPONSIBLE FOR THE IMPLEMENTATION OF THE PLAN *(List treatment team members, Signature required only for psychiatrist)*

Treating Psychiatrist: _____

Nurse Manager: _____

Activity Therapist: _____

Nurse: _____

Social Worker: _____

Psychologist: _____

**ILLINOIS DEPARTMENT OF HUMAN SERVICES
60 DAY TREATMENT PLAN REPORT**

*John Doe
Docket #
Date:*

I. IDENTIFYING INFORMATION

Mr. John Doe is a 51 year old (DOB 11/13/1951) African American male, who was admitted to Elgin Mental Health Center (EMHC), Forensic Treatment Program (FTP) on 08/20/1991 from Cook County Jail where he had been incarcerated since 04/08/1991. He was adjudicated Not Guilty by Reason of Insanity 07/31/1991 on the charge of Aggravated Criminal Sexual Assault on a teenage boy (reportedly he pulled a 15 year old boy into an alley and threatened with a stone if he did not perform oral sex act on him). He has a Thiem date of 4/16/2006.

II. BASIS FOR CONTINUED TREATMENT

The patient in need of mental health services on an inpatient basis. Mr. Doe is reasonably expected to inflict serious harm upon self and others. The basis for this finding is as follows:

1. Disorganized thought processes
2. Impaired Judgment
3. Severe Cognitive Impairment (Impaired memory, difficulty learning and processing information, poor focus and concentration)

II. TREATMENT SERVICES

A. Following is an assessment of the patient's treatment needs:

1. Psychosis
2. Cognitive Impairment (Impaired Memory, Disorientation, Confusion)
3. Medical and Nursing Issues (Dyskinetic Movements and Unsteady Gait).
- 4 Occasional Disruptive Behavior (Due to inability to communicate effectively, accidental brushing or touching peers which causes conflicts).

Following is a description of the services recommended for treatment:

1. Psychotropic Medications to keep signs and symptoms of his psychosis under control.
2. Treatment Groups, such as, Current Events Group, Community Meetings, Living Skills Program and Leisure Activities to improve his memory, attention and concentration.
3. Monitoring seizures, his gait, jerky movements and behaviors which occasionally causes problems with peers.
4. Supportive Milieu, Supportive Individual Counseling, Role Modeling by staff to improve his social skills.

B. The goals of treatment and an anticipated timetable for the accomplishment of the goals are:

1. Mr. Doe will have signs and symptoms of his psychosis under control for optimal level of functioning. (Ongoing)
2. Mr. Doe will show improvement in his cognitive functioning. (goal not met)
3. Mr. Doe will not have any fall incidents due to seizure activities and will not display disruptive behavior (striking others accidentally or intentionally) (12/2003)
4. Maintain appropriate behavior in social setting and increase his social contacts with peers. (12/2003)

IV. CLINICAL UPDATE

Significant changes and reasons for these changes since the patient's last Treatment Plan Report are as follows:

Review of the past thirty days shows Mr. Doe has demonstrated improvement in his behavior. He is less irritated and has maintained self control. He has not been impulsive with peers. His psychiatric condition is being controlled with the use of psychotropic medications. He is slowly but progressively making improvement in his mood and behavior. Generally he is not a behavior or a management problem and he has been able to talk to staff when in distress. Mr. Doe is involved in Leisure Activities, Community Meetings, Current Events Group and Living Skills Program (LSP) incentive program. His interaction with staff and peers has been appropriate. Mr. Doe is unable to participate in discussion groups due to his loose association and speech impediment however he structures his own leisure time. He continues to require assistance, supervision and verbal prompting with his Activities of Daily Living. He follows staff directions and complete small tasks.

Medically, Mr. Doe continues to have problems with his gait and dyskinetic movements and this sometimes creates problems with peers because he accidentally brushes or touches them. His gait remains unsteady and he is monitored to prevent falls.

Mr. Doe continues to demonstrate appropriate behavior with no incidents of aggression since the last episode (6/23/2003). He is less irritated and has maintained self control. He has not been impulsive with peers. His psychiatric condition is being controlled with the use of psychotropic medications. He is slowly but progressively making improvement in his mood and behavior. Generally he is not a behavior or a management problem and he has been able to talk to staff when in distress. Mr. Doe is involved in Leisure Activities, Community Meetings, Current Events Group and Living Skills Program (LSP) incentive program. His interaction with staff and peers has been appropriate. Mr. Doe is unable to participate in discussion groups due to his loose association and speech impediment however he structures his own leisure time. He continues to require assistance, supervision and verbal prompting with his Activities of Daily Living. He follows staff directions and complete small tasks.

Medically, Mr. Doe continues to have problems with his gait and dyskinetic movements and this sometimes creates problems with peers because he accidentally brushes or touches them. His gait remains unsteady and he is monitored to prevent falls.

Although improved and he is not a management problem on the unit, he is not behaviorally stable, he still has yet to demonstrate consistent control of his impulsive behavior. He does not fully cooperate with the recommended

treatment perhaps due to his cognitive impairment and difficulty comprehending. His psychiatric condition is being controlled with the use of psychotropic medications. Mr. Doe is involved in leisure activities, community meetings,

current events group and Living Skills Program (LSP) incentive program. Besides attending groups he spends much of his time watching television. Mr. Doe has difficulty participating in discussion groups due to his speech impediment and difficulty communicating.

Although he remains fairly independent he needs assistance, supervision and verbal prompting with his Activities of Daily Living. He follows unit rules and routines. His self care and hygiene is adequate and he appears clean well groomed.

Medically, Mr. Doe continues to have problems with his gait and dyskinetic movements and this sometimes creates problems with peers because he accidentally brushes or touches them. His gait remains unsteady. He has had no falls since the last incidents (7/11/2003 and 7/16/2003). He is being monitored to prevent falls.

V. PRIVILEGE STATUS

Following review this period by the treatment team, the patient *is not* being recommended for increased privileges at this time because:

Mr. Doe is noted to have episodes of psychiatric instability. He will have to demonstrate consistent improvement in his behavior, prior to considering a Court Packet requesting Conditional Release to a skilled nursing home with twenty-four-hour services.

VI. PLACEMENT

On 3/14/2003, Mr. Doe was interviewed by the staff of Hickory Hills Nursing Pavilion (skilled nursing home with twenty four hour services). He has been provisionally accepted by Hickory Hills. His family lives close by in Blue Island, IL. A Court Packet requesting Conditional Release to a skilled nursing home will be formulated once he demonstrates consistent clinical stability.

VII. DESIGNATED QUALIFIED PROFESSIONALS RESPONSIBLE FOR THE IMPLEMENTATION OF THE PLAN

Treating Psychiatrist: _____

(Names of all clinicians _____

providing care per treatment plan. _____

Signature required only for psychiatrist.) _____

Overview of Facility Initiated Privileges

Forensic recipients in Department of Human Services facilities may be granted privileges as approved by the court. "Privileges" refers to the ability to be on the facility grounds without supervision, off the facility grounds with or without supervision, or be in a non-secure setting. Additionally, each facility has procedures for supervised use of buildings, and fenced areas for programming and recreation. These do not require a Court Order or a pass.

Forensic recipients have the opportunity to independently petition the court for transfer to a non-secure setting within the Department, conditional release, or discharge. Each facility has a Petition Assistant available to assist recipients by providing forms, names, addresses and docket numbers. These petitions should be handled by the court in accord with the appropriate section. Information about privilege requests initiated by recipients begins on page 19.

When the Treatment Team determines a forensic recipient meets the criteria for one or more privileges, conditional release or discharge, the Treatment Team shall develop a written proposal to be submitted to the court for approval.

Proposals should address at least the following points:

- a. Identifying information including reason for admission;
- b. Social, criminal, and treatment histories;
- c. Circumstances of offense(s) and recipient's psychiatric and medical condition at time of offense(s);
- d. Condition at time of admission (psychiatric & medical);
- e. Treatment(s) provided and medications provided and compliance with each;
- f. Assessment of escape risk and rationale for privilege request including documentation of any escape threats or attempts.
- g. Assessment of imminent dangerousness and rationale for privilege request including opinion, if possible, as to the specific risk to previous victim(s) and others.
- h. Privilege(s) requested, clinical benefits, treatment expectations for use of the privilege(s).
- i. If conditional discharge is requested, the following additional concerns must be addressed:
 - 1) The likelihood the recipient may be expected to be dangerous in the near future, and the conditions under which this may occur.
 - 2) Discussion of how the recipient is able to provide for his/her basic needs.
 - 3) Recommendations for mental health services on an out-patient basis.
 - 4) Conditions which the Department recommends the court incorporate into the Court Order for conditional discharge.

Included are a copy of a sample order, a cover letter and sample recommendation for privileges that is sent to the court. Upon receipt of approval or a hearing date, the facility director will so communicate to the team via a copy of the Court's Order and, as appropriate, convey any special instructions.

Once the court has approved the facility's request for privileges, it is the responsibility of the treatment team and of clinical staff to ensure that recipients are properly protected from harm to themselves and prevented from harming others.

Court-ordered privileges will be granted and, as necessary, suspended, based on the treatment team's independent clinical evaluation of the recipient's behavior.

LEVELS OF PRIVILEGES:

CAVEAT: The placement of the different levels of privileges does not indicate a preference or sequential order for seeking privileges. It is merely a categorical listing.

1. SUPERVISED ON-GROUNDS ACTIVITIES

Each facility has procedures for supervised use of buildings, and fenced areas for programming and recreation. This does not require a Court Order or a pass and is not a privilege for the purpose of this discussion, but is included to demonstrate a range of privileges.

2. GROUNDS PASSES

Subject to the terms of the Court Order, the treatment team may award whatever level of privilege that is clinically appropriate. Both (a) and (b) below may be within a secured area or outside of that secured area.

(a) To and From Programs

Recipients with a building pass are expected to go directly to their assigned programs. Staff providing the programs are responsible for calling the units if the recipient does not arrive at his/her program location. Upon the conclusion of the program (or programs if more than one is assigned continuously), the recipient is expected to return immediately to the living unit.

(b) Time-Limited Pass

Recipients with a building pass are permitted to be off the unit for specified time periods. Purposes of this type of privilege typically includes:

- (i) off-unit programs,
- (ii) off-unit leisure or recreational activities, and
- (iii) blocks of time which the recipient may spend by him or herself off the unit.

The recipients are expected to report (face to face) to the unit for all Face Check times.

(c) General Campus Pass

Goals and objectives should be established as a focus for this pass privilege and further should be an integral part of the treatment program. Recipients approved by the court may be permitted off the unit and outside any fenced secure area during daylight hours to walk, visit park areas on-campus, enter the commissary/drop-in center or the like, and generally move freely about the grounds within these general guidelines and any facility specific guidelines. This "free-time" cannot conflict with programs or regular unit activities (medication administration, meals, group sessions, etc.) in which the recipient would normally be expected to participate. Recipients are expected to report to their living unit for all Face Check times. The time period between these Face Checks should not exceed two hours per day and preferably be in one hour increments.

3. OFF-GROUNDS PASSES

a. Supervised: The focus of this pass should be re-entry into the community. Consequently, any staff escorted activity that focuses on enhancement of skills for independent living, visits to placements, etc. is reasonable. The Facility Director or his/her designee is responsible for ensuring that the proper level of supervision is present, and as with on-grounds passes, that the recipient is able behaviorally to accept the responsibility of returning to the community. Unfocused off-grounds passes are discouraged.

b. Unsupervised: This privilege should be limited to recipients who are believed to be nearly ready for conditional release or outright discharge. As with all passes, this level of privilege should be focused and well justified before it is ever utilized. Unsupervised off-ground passes may be utilized for clinic appointments, home visits, linkage to community treatment programs which the recipient will soon be attending, and any other activities that are focused on the recipient's successful re-entry into the community. The use of these passes for purely recreational activities should not be allowed unless there is a justified leisure activity focus within the treatment plan. If the treatment plan specifically justifies unsupervised leisure activity, it should not be utilized frequently.

4. NON-SECURE PLACEMENT

This privilege allows the recipient to reside on a non-secure unit. This does not authorize the recipient to have any type of a on- or off-grounds pass unless there is a Court Order granting such a pass. Additionally, whenever a recipient is authorized for placement on a non-secure setting, plans may be initiated to transfer the recipient to the State-operated mental health facility serving his or her catchment area.

SUSPENSION:

Any privilege, when approved by the Criminal Court of Jurisdiction and granted by the treatment team may be suspended or altered for any of the following reasons:

- a. Clinical de-compensation;
- b. Use of alcohol or non-prescribed substances;
- c. Physically or verbally aggressive behavior;
- d. Violation of facility/living unit rules;
- e. Illegal behavior, such as theft, sexual assault, threatened or attempted suicide, etc.;
- f. Failure to return to the living unit at the proper time;
- g. Verbal statements or demonstrated behavior indicative of intent to elope from the facility;
or
- h. Other reasons considered appropriate by the Facility Director or his/her designee

All passes may be restricted or suspended by the Facility Director or designee where in their sole judgment use of such passes would present an unreasonable risk to the safety, health or welfare of the recipients or the general public. Examples of such situations include, but are not limited to: inclement weather or emergency weather conditions, hazardous materials spill or contamination, civil disturbance, construction or other dangerous conditions existing on facility grounds

Cover Letter for Privilege Request

COMMITTING JUDGE'S NAME AND ADDRESS)

RE: (Patient's Name)
(Docket #)
(Date)

Dear Judge (NAME):

Pursuant to your Order, the above named defendant was remanded to the custody of the Department of Human Services (previously the Department of Mental Health and Developmental Disabilities). At this time, after a course of treatment, the Department is respectfully submitting the attached request for privileges pursuant to the requirements of Section 5/5-2-4(b) of the Unified Code of Corrections (or Section 5/104-31 of the Code of Criminal Procedure of 1963 for individuals found unfit to stand trial). Also attached is a draft order for those privileges.

It is our understanding that pursuant to the decision in Radzewski v. Cawley, 159 Ill. 2d 372 (1994) that a hearing must be scheduled and heard within 120 days.

Upon receiving a writ specifying the date of the hearing on this privilege request, we will bring (Patient's Name) to Court. If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Facility Director

Enclosures

cc: State's Attorney
Defense Attorney

Template for Treatment Report Plan with Privilege Request

(FACILITY'S NAME)

FORENSIC TREATMENT PROGRAM

(ADDRESS OF FACILITY)

RECOMMENDATION FOR (TRANSFER TO A NON-SECURE SETTING,
DISCHARGE, OR CONDITIONAL RELEASE)

RE: (PATIENT'S NAME)

(DATE OF REPORT)

(Docket #)

The Clinical Treatment Team of the Forensic Treatment Program at (Facility's Name) is of the opinion that Mr./Ms. (Patient's Name) is not in need of mental health services on an inpatient basis, and (no longer requires placement in a secure setting, may be discharged as not in need of any mental health services, or may be conditionally released because he or she is still in need of mental health services).

“The findings of the Court shall be established by clear and convincing evidence. The burden of proof and the burden of going forth with the evidence rest with the defendant or any person on the defendant's behalf when a hearing is held to review the determination of the facility director that the defendant should be transferred to a non-secure setting, discharged, or conditionally released.”

“Any recommendation for conditional release shall include an evaluation of the defendant's need for psychotropic medication, what provisions should be made, if any, to insure that the defendant will continue to receive psychotropic medication following discharge and what provisions should be made to assure the safety of the defendant and others in the event the defendant is no longer receiving psychotropic medication.”

“Before the Court Orders that the defendant be discharged or conditionally released, it shall order the facility director to establish a discharge plan that includes a plan for the defendant's shelter, support, and medication. If appropriate, the Court shall order that the facility director establish a program to train the defendant in self-medication under standards established by the Department of Human Services.”

* excerpts from 730 ILCS 5/5-2-4

Clearly state the purpose of the report.

Document the reason(s) for what is requested.

Discuss use of prior privilege(s).

Brief summary of aftercare plan (i.e., if Conditional Release).

I. IDENTIFYING INFORMATION

Mr./Ms. (Patient's Name) is ...

Facts that identify patient (e.g., age, race, marital status, date found NGRI, crime, Thiem date, etc.).

II. PERTINENT HISTORY

Risk factors that led up to the NGRI crime (e.g., psychosis, mood instability, substance abuse, noncompliance with treatment, lack of social support, etc.).

III. ISSUES RELEVANT TO THE NGRI CRIME

Risk factors present at the time of the NGRI crime (e.g., command hallucinations, paranoid delusions, intoxication, etc.).

IV. HOSPITAL COURSE

Risk factors identified upon admission.

How risk factors were addressed through treatment (e.g., psychotropic medications, counseling services, substance abuse groups, etc.).

Results of mental status assessment.

Diagnoses (i.e., Axis I, II, and III).

V. SECTION 5-2-4(g) ISSUES

All of the following must be addressed in addition to any specific requirements set by the court:

The patient does/does not appreciate the harm he/she caused to others and the community by his conduct which resulted in the NGRI finding as evidenced by...

The patient does/does not appreciate the criminality of this type of conduct as evidenced by...

The current state of the patient's illness is...

The patient is taking the following medication(s) for the purpose(s) stated:

The patient has reported no side effects from these medications. The patient reports the following side effects from these medications...These side effects are addressed as follows:

If patient were to stop taking his/her prescribed medications it would take approximately ____ (days/weeks/months) for his/her mental health to deteriorate. Identify either here and/or Section VI what steps should be taken upon the patient's failure to continue taking medication.

The patient's alcohol and/or drug abuse history has been previously described in Section II. His/her present potential for substance abuse is...

The patient's past criminal history has been described in Section II./The patient has no prior criminal history.

The patient has the following specialized physical or medical needs:

The patient's family is/is not willing and able to participate or be involved with the patient upon his/her release in the following manner (if expected to participate)/because (if not expected to participate):

Current risk assessment for the patient's potential for danger to him/herself or others is...[Include how any negative findings set forth above are being addressed. e.g., "Mr. Smith has not been violent while at EMHC. He does not, as a consequence of his Alzheimer's dementia, appreciate the harm he caused or the criminality of his conduct which resulted in his NGRI finding. This is a static condition which is not expected to improve. With continued abstention from alcohol, continued medication compliance, and living in the structured environment identified below in our Aftercare and Risk Management Plan we believe Mr. Smith's present potential for danger is low."]

VI. AFTERCARE AND RISK MANAGEMENT PLAN

Comprehensive plan that focuses on management of risk factors.

Living arrangement.

Mental health/substance abuse services. Specifically address the issue of psychotropic medications, provisions to ensure continuation of medication upon release and steps to be taken to assure safety of the patient and others should medications cease. Should include statement about patient's ability to self-medicate and what, if any, training has occurred.

Supervision/monitoring.

Other supportive services.

VII. SUMMARY

Reemphasize the argument that the patient is ready for transfer to a non-secure setting, discharge, or conditional release (i.e., reduction in risk of dangerous behavior).

VIII. RECOMMENDATIONS

The Clinical Treatment Team of the Forensic Treatment Program at (Facility's Name) recommends that the Court:

- 1.
- 2.
- 3.

Specific recommendations for Court to consider.

(Psychiatrist's name)
Treating Psychiatrist

(Nurse Manager's name)
Nurse Manager

(Other signatures)

SAMPLE

RECOMMENDATION FOR: UNSUPERVISED ON-GROUNDS PASS PRIVILEGES SUPERVISED OFF-GROUNDS PASS PRIVILEGES

RE: JOHN DOE
Docket #
Date of the Report

The Clinical Team of the Forensic Treatment Program (FTP) at _____ Mental Health Center (___MHC) is of the opinion that Mr. John R. Doe has made significant progress in treatment, and has demonstrated responsibility by following the rules of the unit. Mr. Doe has not exhibited any threatening or aggressive behaviors, and is cooperative and compliant with treatment including medication. At this time, the treatment team is recommending that the Court authorize the Department of Human Services to issue unsupervised on-grounds and supervised off-grounds pass privileges to Mr. Doe.

I. IDENTIFYING INFORMATION:

Mr. John R. Doe is a 36 year old never married male, initially admitted to ___MHC on 12/20/92 as Unfit to Stand Trial on a charge of First Degree Murder. He was stabilized on medication and was discharged back to _____ County as Fit for Trial on 3/24/93. Mr. Doe was adjudicated Not Guilty by Reason of Insanity (NGRI) on 10/03/93, and was subsequently readmitted to ___MHC on 10/24/93. He has been hospitalized continuously at ___MHC since that date, and has a Thiem Date of 4/22/2022.

II. PERTINENT HISTORY:

Mr. Doe was born in Chicago, Illinois on 5/13/61 to John S. and Joan Doe. he reports having one older sister, one younger brother, and two half-brothers and a half-sister from his father and mother's previous marriages. Mr. Doe reports a lengthy history of witnessing physical and mental abuse by his father directed towards his mother. He reports his father as attacking his mother and frequently knocking her to the floor. Mr. Doe recalls feeling helpless and angry, but too afraid to intervene. He describes his father as being an alcoholic who was violent and who would threaten his family frequently. Mr. Doe completed high school and attended college at Illinois State University before dropping out in his junior year as a result of hearing voices. He was subsequently hospitalized at _____ Mental Health Center for two months in 1983. Around the time of this hospitalization Mr. Doe reports his younger brother committed suicide at the age of 19 after a physical altercation with the father. Mr. Doe was cooperative with outpatient treatment after discharge from _____, but reports making suicide attempts in 1984, 1985, 1987 and 1989, by taking an overdose of medication. Mr. Doe has at least four previous psychiatric admissions dating back to 1977, necessitated by psychotic symptoms including hallucinations and delusions. Prior to the onset of his illness, Mr. Doe describes himself as somewhat timid and naive about the world around him. He reports having been an obedient, quiet young man who rarely, if ever, got into trouble at home or school. He was not associated with gangs, nor does he have a history of drug or alcohol use. He reports having a brief work history and reports spending most of his time studying to be an accountant.

III. ISSUES RELEVANT TO NGRI CRIME:

Mr. Doe was arrested for his current charge on 7/29/92. At the time of the crime, he was pursuing moving out of the family household and into a supervised residential program. He reports having been involved in psychiatric treatment for 15 years, and while he was fully cooperative with counseling he would occasionally stop taking his medication and then restart it again with the encouragement of his mother. Mr. Doe had stopped taking his medication between three to eight days prior to the crime. He reported hearing voices that were much stronger than he had experienced in the past, and reports at the time of the crime he felt a "force" had taken control over him. Mr. Doe believes this "force" directed him to stab his father to death. He adds that he was not angry at his father at the time of the crime, and that his behavior was a direct result of the hallucinations he experienced while not taking medication.

IV. HOSPITAL COURSE:

Mr. Doe was admitted to __MHC on 10/24/93. At the time of admission he was described by the admitting psychiatrist to be alert and oriented. His speech was slightly pressured, but there was no looseness of associations.

Current Level of Functioning:

Since his admission to __MHC Mr. Doe has been clinically and behaviorally stable. He maintains a high level of program participation, including participation in pre-discharge and Focus Groups. He has had no altercations or significant problems with agitation or threatening behaviors. His manner of relating to other people assists him in dealing with underlying psychological deficits and consequent emotional states. He attempts to convey an image of himself as highly accomplished, and he boasts about his extraordinary athletic abilities. His self esteem is fragile as he has extreme difficulty tolerating constructive criticism or feedback about his behaviors or about the way other people experience him. He is attempting to learn that comments about his behavior do not take away from the positive actions he makes.

Since admission Mr. Doe has received treatment for the following:

Psychotic disturbance including symptoms of auditory hallucinations, delusions of grandeur. Mr. Doe receives Risperidone 3 mg. twice daily to maintain remission of these symptoms.

Affective disturbance including symptoms of mania, over abundance of thought hyper verbosity and poor sense of personal boundaries. These symptoms are controlled with Lithium Carbonate 600 mg PO every AM and 900 mg HS.

Vocational Deficits/Community Reintegration Mr. Doe attends computer classes daily, and pre-discharge group to prepare for eventual reintegration into the community.

Current Mental Status:

Mr. Doe is alert, oriented to time, place, person and purpose, his intellect is in the normal range, and his sensorium is clear. Although he has a very clear history of first rank, active symptoms of psychosis, he insists that these symptoms have been in remission for at least the past year. Presently, there is no evidence of a preoccupation with inner stimuli, he denies any hallucinations, does not verbalize delusional thinking, and his thought processes appear generally logical and coherent; however, he continues to demonstrate what appears to be a chronic hypomania, with strong grandiose underpinnings. His speech is pressured, there is an abundance of thought, he is hyper alert and overly eager to please. Judgement is tenuous, but adequate in this structured environment. Insight into his illness is superficial.

Diagnosis:

Axis I: 295.70 Schizoaffective Disorder, Bipolar type

Axis II: None
Axis III: None.

V. SECTION 5-2-4 (g) ISSUES:

1. Mr. Doe understands the harm that he caused by his offense and has expressed remorse.
2. Mr. Doe understands the criminal aspects of his offense and the importance of ongoing treatment. He has not had any incidents of verbal or physical aggression at EMHC.
3. Mr. Doe has been stabilized for an extended period of time and his psychosis and mood disturbance have been in remission. He is considered stable, both clinically and behaviorally, and is now appropriate for unsupervised on-grounds pass privileges and supervised off-grounds pass privileges.
4. Mr. Doe takes the following prescribed medications: risperidone (anti-psychotic) 3 mg. twice daily, and lithium carbonate (mood stabilizer) 600 mg. in the morning and 900 mg at bedtime.
5. Mr. Doe has exhibited no significant side effects to his medication regime.
6. Should Mr. Doe stop taking his psychotropic and mood stabilizing medications, his symptoms would reappear in approximately two to eight weeks.
7. Mr. Doe has no history of alcohol and/or substance abuse.
8. Mr. Doe has no previous criminal history.
9. Mr. Doe has no medical or physical conditions.
10. Mr. Doe will use his court approved privileges, if granted, to aid in his community reintegration and successful transition back into the community.
11. Mr. Doe is considered a low risk of harm to himself and others. Absence from compliance with his treatment planning, including the taking of his medications, will serve as the basis for his relapse prevention.

VI. RISK EVALUATION:

Currently the Treatment Team does not consider Mr. Doe dangerous to himself or others. He has not displayed any physically aggressive behaviors in the past year, and has remained behaviorally stable. He accepts his need for treatment and medication and is motivated to continue with treatment. The treatment team does not consider Mr. Doe to be an Elopement Risk. He has never made any attempts or threats to leave the hospital without authorization. Mr. Doe is fully cooperative with his treatment plan and demonstrates an improved insight into his mental illness and need for treatment. He realizes that at the time of his crime he was psychiatrically unstable.

VII. SUMMARY AND RECOMMENDATIONS:

John Doe is a 36 year old never married male who was adjudicated NGRI on 10/3/93 on a charge of First Degree Murder. He was initially hospitalized at __MHC on 10/24/93 and has been stable throughout his admission. Mr. Doe has been actively involved in treatment. He has developed a therapeutic alliance with staff and is motivated to improve himself through participation in treatment. The Clinical Team of the Forensic Treatment Program at __MHC is now of the opinion that Mr. Doe has made positive improvement in his treatment. The Clinical Team is requesting that the Court authorize the DMHDD to issue Mr. Doe supervised off-grounds and unsupervised on-grounds pass privileges at the discretion of the FTP Clinical Treatment Team. These privileges would allow Mr. Doe to receive maximum therapeutic benefit from treatment opportunities offered by the Forensic Treatment Program, including the Community Leisure Awareness Program, and other recommended therapeutic treatment programming. These privileges could also be utilized in the future to allow him to interview at transitional living facilities.

Social Worker II

Recipient Initiated Privilege Request

Forensic recipients have the opportunity to independently petition the court for transfer to a non-secure setting within the Department, conditional release, or discharge. The Department is obligated by an agreement in Henderson v. Handy 1996 WL 148040 (N.D. Ill.) to provide information to individuals found not guilty by reason of insanity. The Henderson information follows on pages 87-94. Each facility has a Petition Assistant available to assist recipients by providing forms, names, addresses and docket numbers. These Petitions should be handled by the Court in accord with the appropriate section.

GENERAL INFORMATION

The Illinois Criminal Code allows a defendant who is found not guilty by reason of insanity and sent to the Department of Human Services (“Department” or “DHS”), the right to petition the Criminal Court for transfer to a non-secure setting of the Department or for conditional release or discharge from custody of the Department. When you seek to have the court review your petition, you have the burden of proving that you should be transferred to a non-secure setting, conditionally released, or discharged.

This packet contains the necessary information, forms, and instructions for you to petition the Court.

Once you file a petition for transfer to a non-secure setting, conditional release, or discharge, the Court shall hold a hearing within 120 days of receiving your petition. You may file a new petition every 120 days. The Court is required to notify you of the date and time of your hearing. If you are indigent, the Court shall also appoint you an attorney (usually the public defender) to represent you during this hearing. Also, if you request, the Court shall order an impartial examination of your mental condition by a psychiatrist or clinical psychologist who is not employed by the Department of Human Services in a capacity similar to that previously performed by the Department of Mental Health and Developmental Disabilities and who shall submit a report regarding your mental condition to the Court for the hearing.

If the Court determines that you are no longer in need of mental health services, it will order the Department to discharge you from custody. The Court may, however, order the Department to conditionally release you or transfer you to a non-secure setting. If the Court denies your petition for transfer, conditional release or discharge, you may file another petition 120 days after the date the Court received your last petition.

Your facility will have a “Petition Assistant” available who is required to help you in an impartial manner by explaining the instructions and forms and assist you in completing the forms when necessary due to your physical condition. The Petition Assistant’s duties are listed in this packet. Please be aware that the Petition Assistant is a staff person of the Department of Human Services and he/she is available only to act as an impartial person to assist you in getting your petition to the Court. The Petition Assistant cannot ensure or force the Court to hold a hearing regarding your petition.

RELEVANT STATUTES

730 ILCS 5/5-2-4, “Proceedings after acquittal by reason of insanity” which governs your custody with the DHS.

{ Since the statute was previously provided in this handbook, it is not replicated here }

SPECIFIC INSTRUCTIONS

You will need to:

1. Complete the “Petition for Discharge or Conditional Release” form (located in the appendix) as follows;
 - A. Print your name wherever it says “your name” on the Petition;
 - B. Include your case number and judge’s name where indicated at the top of the Petition;
 - C. Sign the Petition; and
 - D. Fill in your name, address, telephone number, and date you completed the Petition at the bottom of the Petition.
2. Complete the “730 ILCS 5/5-2-4 Petition for Transfer, Conditional Release, or Discharge Cover Letter to the Judge” (located in the appendix) as follows:
 - A. Print your name and address at the top of the form cover letter where indicated;
 - B. Fill in the date you completed the cover letter (“today’s date”);
 - C. Fill in the judge’s name; and
 - D. Sign the cover letter.
3. Complete the “730 ILCS 5/5-2-4 Petition for Transfer, Conditional Release, or Discharge Cover Letter to the Clerk of the Circuit Court” (located in the appendix) as follows:
 - A. Print your name and address at the top of the form cover letter where indicated;
 - B. Fill in the date you completed the cover letter (“today’s date”);
 - C. Fill in the clerk’s name; and
 - D. Sign the cover letter.
4. Make two copies of the completed Petition and cover letters and bring them to the Petition Assistant assigned to assist you to be mailed.

If you wish to mail the Petition and cover letters yourself, the Petition Assistant will note that you mailed them yourself and will provide you with the necessary envelopes and postage.

Each facility has at least one Petition Assistant per facility to assist recipients found not guilty by reason of insanity to petition the Court for transfer to a non-secure setting or request conditional release or discharge.

The Petition Assistant is required to provide you with your case number, the name of the Judge who is handling your case, the Judge’s address, the Court’s address (the Judge’s address and the Court’s address may be the same), explain to you where to fill in your name and address and where to sign. In case you are unable to complete the Petition and cover letter, the Petition Assistant will assist in the preparation of the Petition and cover letter under your direction (the Petition Assistant will not write anything that you do not direct him/her to write but he/she will be able to help you complete the petition by properly filling in the required information).

COMMONLY ASKED QUESTIONS

What is the difference between being discharged, conditionally released and transferred to a non-secure setting?

Discharge: In order to be discharged, you must prove to the Court and the Court must find that you are no longer in need of any mental health services.

Conditional Release: If you prove to the Court and the Court finds that you no longer need inpatient services, but you still need mental health services, the Court may conditionally release you. This means that you will be released on the condition that you continue to receive treatment on an outpatient basis and/or fulfill any other restrictions that the Court places on you.

Transfer to a non-secure setting: If you prove to the Court and the Court finds that you are able to be placed in a non-secure setting, you will still remain under DHS custody, but you will no longer need to be in a secure setting.

What should happen after I file the petition?

- a. The Court should set the matter for hearing within 120 days of receiving your petition.
- b. If you are indigent, the Court shall appoint an attorney to represent you for purposes of conducting a hearing regarding your petition.
- c. If you request an independent psychiatric or psychological examination, the Court will order such an examination to be conducted by a psychiatrist or psychologist who does not work for the DHS. NOTE: The psychiatrist or psychologist may work for the state, but he/she will not be employed by the DHS in a position with duties that previously were performed by the Department of Mental Health and Developmental Disabilities.

When should I hear about a hearing?

The Court is required to schedule a hearing within 120 days from the date it receives your petition.

What do I do if a hearing is not scheduled within 120 days?

If you do not hear from the Court within 120 days, you may contact the Guardianship and Advocacy Commission. See the attachment at the end of this packet for the addresses and phone numbers of offices near you.

**Cover Letter to Clerk for Petitions
Brought Pursuant to 730 ILCS 5/5-2-4**

(Your Name, Address and Docket #)

(Today's Date)

Dear Clerk:

Enclosed please find my Petition for Transfer to a Non-Secure Setting, Conditional Release, or Discharge filed pursuant to 730 ILCS 5/5-2-4(e). According to the statute and the Illinois Supreme Court's holding in Radzewski v. Cawley, 159 Ill.2d 372 (1994), the Court shall set this matter for hearing to be held within 120 days of receipt of this Petition.

Please place this matter on the judge's call in order to ensure that a hearing is properly set. Thank you very much.

Sincerely,

(Your Signature)

Enclosures

Cover Letter to Judge for Petitions
Brought Pursuant to 730 ILCS 5/5-2-4

(Your Name, Address and Docket #)

(Today's Date)

Dear Judge:

Enclosed please find my Petition for Transfer to a Non-Secure Setting, Conditional Release, or Discharge filed pursuant to 730 ILCS 5/5-2-4(e). According to the statute and the Illinois Supreme Court's holding in Radzewski v. Cawley, 159 Ill.2d 372 (1994), the Court shall set this matter for hearing to be held within 120 days of receipt of this Petition.

In addition to setting this matter for hearing, I respectfully ask that you appoint counsel and order an independent psychiatric exam pursuant to 730 ILCS 5/5-2-4(c) and (f) respectively, and at the expense of the county. Thank you very much.

Sincerely,

(Your Signature)

Enclosures

People of the State of Illinois,)
 Plaintiff,) No. _____
) (Case number) .
) _____
) The Honorable _____
) _____
) _____
 (Your name)) (Judge's name) _____
) _____
 Defendant.) Circuit Judge Presiding

NOTE: PURSUANT TO 730 ILCS 5/5-2-4 (e) AND THE ILLINOIS SUPREME Court'S HOLDING IN RADAZEWSKI V. CAWLEY, 159 I11.2d 372 (1994), ~HE Court SHALL SET THIS MATTER FOR A HEARING TO BE HELD WITHIN 120 DAYS OF RECEIPT OF THIS PETITION.

(your name)

ILCS 5/5-2-4 (e) to transfer him/her to a non secure setting or discharge or conditionally release him/her from the custody of the Illinois Department of Human Services (DES) (after July 1, 1997 the duties and responsibilities of the Department of Mental Health and Developmental Disabilities were subsumed into DHS), and,

IN SUPPORT THEREOF, states the following:

1. Petitioner was found not guilty by reason of insanity and was committed to the custody of the DHS pursuant to 730 ILCS 5/5-2-4;
2. Petitioner is presently confined at _____ Mental Health Center,
(facility name)
3. Petitioner is:
 - a. not subject to involuntary admission and is no longer in need of mental health services on an inpatient basis; or
 - b. not subject to involuntary admission and is no longer in need of mental health services on either an inpatient or outpatient basis; or
 - c. suitable for treatment in a non-secure setting;
4. Petitioner is indigent; and
5. Petitioner has not filed a Petition pursuant to 730 ILCS 5/5-2-4 (e) within the past 120 days from the date of this Petition.

WHEREFORE, in relief, Petitioner respectfully requests this Court to:

1. Appoint counsel to represent Petitioner pursuant to 730 ILCS 5/5-24(c);
2. Order that an impartial psychiatric or psychological examination of Petitioner be conducted where appropriate pursuant to 730 ILCS 5/5-2-4 (f), and at the expense of the county;
3. Set this matter for hearing within 120 days of receipt of this Petition as required by 730 ILCS 5/5-2-4 (e) and the Illinois Supreme Court's holding in Radazewski v. Cawley, 159 Ill.2d 372 (1994) to determine whether Petitioner may be:
 - a. transferred to a non-secure setting;
 - b. conditionally released from the custody of DHS; or
 - c. unconditionally discharged from the custody of DHS; and ,
4. Notify Petitioner of the date of the hearing and arrange for him to be present at said hearing.
Respectfully submitted,

(Your signature)

Your Name

Your Address

Your Telephone #

Letter to Local Provider Outlining the Court Requirements

Dear Service Provider:

You or your Agency provides services to a client who has been discharged from a Department of Human Services facility as a Court ordered Conditionally Released NGRI, (Not Guilty by Reason of Insanity). Terms of conditional release are set by the Courts and are in effect for a period of five years or the maximum period of commitment, (Theim Date).

Public Act 93-0078 and Public Act 93-0473 require monitoring reports on the provision of services and the condition of a Conditionally Released NGRI defendant to be submitted periodically to the Courts. This report, if submitted in writing, is generally called a Status Report. A Status Report is usually submitted every 90 days, although the Courts have in specific cases, required Status Reports more or less frequently. To ensure that we meet the mandate of the new legislation, providers are requested to forward to the Forensic Community Liaison, a copy of the Status Report sent to the Court. If instead of written Status Reports, the Court has opted to hold in person appearances known as Status Hearings, we request that you forward a copy of the Status Hearing results.

Additionally, these new Public Acts require that the appropriate County States Attorney's Office be notified regarding any requests to revoke or modify the terms of Conditional Release. If such petitions are made, we request copies of them be forwarded along with any subsequent court orders which revoke or modify the terms of the client's conditional release.

To assist Providers of Services to the Conditionally Released NGRI client, the Division of Mental Health's Bureau of Forensic Services has developed a template for common monitoring report requirements. I have enclosed a copy of this template for your use. If you have any questions regarding the template's format or content please call Ray S. Kim, Ph.D., Forensics Services at 847-742-1040 x 3360.

To meet the statutes' requirements and facilitate continuity-of-care, Forensics will continue to contact service provider representatives to check on the client's compliance with their treatment plan. **Providers of Services to Conditionally Released NGRI clients, are encouraged to contact the Forensic Community Liaison, anytime the client is: in non compliance with their treatment plan, pending revocation, hospitalized, arrested, absent without Court approval, being transferred to a different facility or when there are questions or issues regarding the client's conditional release status.**

Thank you for your assistance in this matter. If you have any questions, please contact me.

Sincerely,

Forensic Community Liaison

Division of Mental Health

100 South Grand East, Harris II, 2nd Floor

Springfield, IL 62762

Tel.: 217-558-4181

Fax: 217-782-2406

(COMMUNITY AGENCY LETTERHEAD)

(Date)

The Honorable (*Judge's name*)

Judge of the Circuit Court of (*County's Name*)

County's Address

RE: (*Patient's name*)

(*Docket number*)

Dear Judge (*Judge's Name*):

Pursuant to Your Honor's Order dated (*Date of Court Order*), (*Patient's Name*) continues to receive outpatient treatment at (*Name of Community Agency*). The detail of his progress in treatment are enclosed.

If you require additional information, please do not hesitate to contact me at (*Telephone Number*)

Sincerely,

(Program Director's Name)

Enclosures

cc: Public Defender's Office (County Name and Address)
State's Attorney's Office, (Address)
Criminal Justice Liaison- Division of Mental Health,
100 South Grand East, Harris II, Springfield, Illinois

(Template)

STATUS REPORT

(Patient's Name)

(Docket #)

(Date)

I. IDENTIFYING INFORMATION

Facts that identify patient (e.g., age, race, marital status, crime, date found NGRI, date conditionally released, etc.).

II. CURRENT MENTAL STATUS

Results of mental status assessment.

Current risk assessment.

Diagnoses (i.e., Axis I, II, and III).

Assessment of patient's clinical stability.

III. PSYCHOTROPIC MEDICATIONS

Current medications, dosage, and frequency.

Provisions to ensure that the patient will receive psychotropic medication if recommended.

Provisions to assure the safety of the patient and others in the event the patient is no longer receiving psychotropic medication.

IV. TREATMENT SERVICES

Comprehensive plan that focuses on management of risk factors.

Treatment modalities being used to address risk factors (e.g., psychotropic medications, counseling services, substance abuse groups).

Mental health/substance abuse services.

Supervision/monitoring.

Living arrangement/shelter.

Other supportive services.

V. RESPONSE TO TREATMENT

Patient's compliance with treatment.

Response to treatment.

Significant changes and reasons for these changes (e.g., progress, deterioration).

VI. QUALIFIED PROFESSIONALS RESPONSIBLE FOR TREATMENT

(List treatment team members)

Sample
THE COMMUNITY MENTAL HEALTH CENTER
Behavioral Health Division
123 Wellness Lane
Chicago, Illinois 60100

August 12, 2003

The Honorable Frank A. Justice
Judge of the Circuit Court of Cook County
Criminal Courts Building
2600 S. California Avenue
Chicago, IL 60608

RE: John Doe
88 CR 12345

Dear Judge Justice:

Pursuant to Your Honor's Order dated July 30, 2003, Mr. John Doe continues to receive outpatient treatment at The Community Mental Health Center. The details of his progress in treatment are enclosed.

If you require additional information, please do not hesitate to contact me at 312-555-5555.

Sincerely,

Program Director

Enclosures

cc: Cook County Public Defender's Office, 2650 South California, 7th Floor, Chicago, Illinois 60608
Cook County State's Attorney's Office, 2650 South California, Chicago, Illinois 60608
Criminal Justice Liaison - Division of Mental Health, 100 South Grand East, Harris II, Springfield, Illinois

Sample

STATUS REPORT

John Doe

Docket #

Date

I. IDENTIFYING INFORMATION

Mr. John Doe is a 42-year-old Caucasian male who has never been married. He was adjudicated Not Guilty by Reason of Insanity (NGRI) on a charge of First Degree Murder on (date), and was admitted to Elgin Mental Health Center on (date). He was conditionally released from Elgin Mental Health Center on (date). Since conditionally released, he has been receiving treatment services at The Community Mental Health Center.

II. CURRENT MENTAL STATUS

Mr. Doe was casually dressed for his most recent evaluation. His hygiene and grooming were good. He was attentive and cooperative during the interview. Mr. Doe was verbal, and his motor activity was within normal limits. He was oriented to person, place, time, and situation. His mood was euthymic, and his affect was appropriate. Mr. Doe's contact with reality was adequate. His judgment, impulse control, frustration tolerance, and insight were fair. Mr. Doe's memory was unimpaired, and his intellectual functioning was estimated in the Average range. He denied having any suicidal or homicidal ideation. Based on the results of a risk assessment, Mr. Doe is considered to be a low risk for violent behavior. He has a diagnosis of Bipolar I Disorder, but has been clinically stable while taking his psychotropic medications.

III. PSYCHOTROPIC MEDICATIONS

Mr. Doe is prescribed 500mg of Depakote twice a day. His compliance with medication is closely monitored. Periodic progress reports regarding Mr. Doe's condition are being sent to Court, including any noncompliance with recommendations or deterioration in his clinical condition.

IV. TREATMENT SERVICES

Mr. Doe resides at a licensed, supervised, residential treatment facility which provides him with a structured daily schedule and monitoring of his clinical condition. The Community Mental Health Center provides him with psychiatric services, such as medication management, individual therapy, and intensive case management. Mr. Doe also participates in Chemical Dependence Groups, Alcoholics Anonymous, Narcotics Anonymous, and random substance abuse screens.

V. RESPONSE TO TREATMENT

Mr. Doe has complied with treatment recommendations, followed the rules without incident, and cooperated with staff. He has responded well to treatment, and is considered clinically and behaviorally stable at this time.

VI. QUALIFIED PROFESSIONALS RESPONSIBLE FOR TREATMENT

Template

(COMMUNITY AGENCY LETTERHEAD)

(Date)

The Honorable (Judge's name)

Judge of the Circuit Court of (County's Name)

County's Address

RE: (Patient's name)

(Docket number)

Dear Judge (Judge's name):

On (Date of court order), the Court entered an Order acquitting the above named individual Not Guilty by reason of Insanity, and remanded (him/her) to the Department of Human Services for treatment. (Patient's name) was conditionally released from (Forensic facility) on (Date of discharge), and has been receiving services at (Community agency's name) since (his/her) release.

Option 1

Please note that the period of commitment and commensurate jurisdiction of the Criminal Court under 730 ILCS 5/5-2-4 expires on (Thiem Date). Consequently, we will bring this case into compliance with the Mental Health Code, and will no longer be submitting progress reports to the Criminal Court. A final report has been enclosed, including treatment recommendations for beyond the expiration date of the Criminal Court's jurisdiction over (Patient's name).

Option 2

Please note that the period of commitment and commensurate jurisdiction of the Criminal Court under 730 ILCS 5/5-2-4 expires on (Thiem Date). However, it is our opinion that Civil Commitment is needed for (Patient's name). We will bring this case into compliance with the Mental Health Code, and will no longer be submitting progress reports to the Criminal Court. A final report has been enclosed, including treatment recommendations for beyond the expiration date of the Criminal Court's jurisdiction over (Patient's name).

Option 3

Please note that the term of the current conditional release is expiring on (Conditional Release End Date). It is not recommended that the Court extend the conditional release term. Consequently, we will bring this case into compliance with the Mental Health Code, and will no longer be submitting progress reports to the Criminal Court. A final report has been enclosed, including treatment recommendations beyond the current expiration date of the Criminal Court's terms of Conditional Release for (Patient's name).

Option 4

Please note that the term of the current conditional release is expiring on (Conditional Release End Date). However, it is recommended that the Court extend the conditional release term based on the risk factors

documented in the enclosed report. Under 730 ILCS 5/5-2-4, the conditional release term cannot be extended beyond the Thiem Date of (*Thiem Date*). Please advise.

If you require additional information, please do not hesitate to contact me at (*Telephone number*).

Sincerely,

(*Program Director's name*)

Enclosures

cc: Public Defender's Office (Address)

State's Attorney's Office (Address)

Criminal Justice Liaison - Division of Mental Health, 100 South Grand East, Harris II, Springfield, IL

Template

PROGRESS REPORT

(Patient's name)

(Docket number)

(Date)

I IDENTIFYING INFORMATION

Facts that identify patient (e.g., age, race, marital status, crime, date found NGRI, date conditionally released, etc.).

II CURRENT MENTAL STATUS

Results of mental status assessment.

Current risk assessment.

Diagnoses (i.e., Axis I, II, and III).

Assessment of patient's clinical stability.

III PSYCHOTROPIC MEDICATIONS

Current medications, dosage, and frequency.

Provisions to ensure that the patient will receive psychotropic medication if recommended.

Provisions to assure the safety of the patient and others in the event the patient is no longer receiving psychotropic medication.

IV RECOMMENDED TREATMENT SERVICES *(Option 1, Option 2, Option 3)*

Comprehensive plan that focuses on management of risk factors.

Treatment modalities being used to address risk factors (e.g., psychotropic medications, counseling services, substance abuse groups).

Mental health/substance abuse services.

Supervision/monitoring.

Living arrangement/shelter.

Other supportive services.

IV REASONS FOR EXTENDING CONDITIONAL RELEASE TERM *(Option 4)*

Risk factors that contribute to the treatment team's opinion that the patient's conditional release term should be extended.

Possible negative consequences of not extending the conditional release term.

Benefits of extending the conditional release term.

QUALIFIED PROFESSIONALS RESPONSIBLE FOR TREATMENT

(List treatment team members)

Revocation of an order for Conditional Release

In rare occasions, an individual fails to fulfil the condition of release and upon petition, the Court shall order a hearing. At such a hearing, if the Court determines that the individual is subject to involuntary admission or in need of mental health services on an inpatient basis, it shall enter an order revoking the conditional release and remanding the individual to the Department of Human Services or other facility.

)

)

)

COUNTY DEPARTMENT - CRIMINAL DIVISION

)

)

)

)

ORDER FOR REVOCATION

Defendant, _____, has been found Not Guilty by Reason of Insanity and has been found to be in violation of his/her Conditional Release. It is hereby ordered that Conditional Release be revoked and that he/she be remanded to the Care and Custody of the Illinois Department of Human Services.

Attorney No. : _____

Name : _____

Date : _____

Attorney for : _____

Address : _____

Enter:

City/ State/ Zip : _____

Judge

Judge's No.

Telephone: _____

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Section IV.

This section covers the Forensic Outpatient Procedures dealing with UST or NGRI patients who do not require inpatient hospitalization.

CHICAGO METROPOLITAN FORENSIC SERVICES

1200 South First Avenue

Hines, Illinois 60141

FORENSIC OUTPATIENT PROCEDURES

I. Court Refers Forensic Outpatient

- A. Attorney (i.e., Public Defender/Private Attorney or State's Attorney) contacts Ray S. Kim, Ph.D. at 847-742-1040 x3360 or 708-338-7301 for instructions in referring a defendant (i.e., UST or NGRI) for an outpatient evaluation.
- B. Attorney is instructed to mail or fax pertinent Court materials.
 - 1. Court Order adjudicating legal status (i.e., UST or NGRI), remanding defendant to the Department of Human Services, and requesting an evaluation on an outpatient basis.
 - 2. Psychiatric/Psychological Report evaluating defendant as Unfit to Stand Trial or Not Guilty By Reason of Insanity.
 - 3. Police Report regarding the index offense.
 - 4. Current telephone number and address of defendant.

II. Schedule Appointment with Defendant

- A. Call defendant and schedule an appointment at Madden Mental Health Center, 1200 South First Avenue, Hines, Illinois 60141 or Elgin Mental Health Center, 750 South State Street, Elgin, Illinois 60123.
- B. If the defendant has no telephone, send a letter with appointment information (i.e., date, time, place, etc.) to the defendant, Public Defender/Private Attorney, and State's Attorney.
- C. If the defendant fails appointment, send letter to Court (i.e., Judge, Public Defender/Private Attorney, and State's Attorney) notifying them of the defendant's noncompliance.

III. Evaluate Defendant

- A. Inform defendant of the non-confidential nature of the evaluation.
- B. Interview defendant using the outpatient evaluation outline.
- C. Notify defendant that a community agency will be in contact to schedule an intake appointment (unless defendant is already receiving treatment services).
- D. If defendant is receiving services from a private agency, get release of information form signed.
- E. Encourage compliance with treatment recommendations.
- F. Answer any questions defendant may have.

IV. Link Defendant with Appropriate Community Agency

A. Adult Cases

1. Mentally Ill and/or Substance Abuser.
 - Identify community agency through the Geocode Book.
 - Contact Network Manager if problems identifying appropriate agency.
 - Forensic Psychiatry Program at Loyola University, 2160 South First Avenue, Maywood, Illinois 60153 utilized for fitness restoration services (F. P. Johnson, M.D. at 708-216-3752).
 - Forward Court materials and outpatient evaluation outline to identified agency.
 - Request agency to schedule intake appointment with defendant.
 - Provide consultation services if necessary.
2. Developmentally Disabled.
 - Forward Court materials and outpatient evaluation outline to Jim Forte at 312-814-2788.
 - Mr. Forte identifies community agency and arranges appropriate services.

B. Juvenile Cases

1. Forward Court materials and outpatient evaluation outline to Chief of Juvenile Forensic Services.
2. Chief of Juvenile Forensic Services identifies community agency and arranges appropriate services.

V. Complete Court Report

- A. Verify that defendant attended intake appointment at community agency.
- B. Finalize treatment plan with identified agency (i.e., treatment modalities, treatment supervisor, psychiatrist, counselor, case manager, etc.).
- C. Notify treatment agency that staff must monitor the defendant and send progress reports to the Court (i.e., every 90 days for USTs and as ordered for NGRIs).
- D. Prepare Court report with treatment recommendations.
- E. Court report reviewed by Anderson Freeman, Ph.D. at 708-338-7066.
- F. Once approved, Court report sent to the Judge, Public Defender/Private Attorney, State's Attorney, and treatment agency.

Section V.

This section provides the criteria and procedure to DHS staff for referring a patient who is presenting behavior management problems to Chester Mental Health Center. There is also a copy of the Chester Referral Form.

**ILLINOIS DEPARTMENT OF HUMAN SERVICES
CHICAGO METROPOLITAN FORENSIC SERVICES
1200 South First Avenue
Hines, Illinois 60141**

CHESTER MHC REFERRAL PROCEDURES

- I.** State Facility Refers Management Case for Transfer to Chester MHC
 - A. Director of Forensic Services assigns case to staff
 - B. Staff reviews referral form
 - C. Staff goes to the patient's unit
 - a. Review chart
 - b. Interview staff
 - c. Interview patient
 - d. Complete risk assessment
 - D. Factors to consider
 - a. Why referred to Chester MHC?
 - b. Staff/Patient injury (i.e., severity, frequency, etc.)?
 - c. Restraints (i.e., length, frequency, etc.)?
 - d. Any insight?
 - e. History of violence?
 - f. Patient's clinical condition (e.g., command hallucinations)?
 - g. Exhausted medication options?
 - h. Tried behavioral program?
 - E. Review Management Case
 - a. Director of Forensic Services and staff discuss case and decide whether a transfer to Chester MHC is warranted.
 - b. If transfer to Chester MHC is warranted, then: call Chester MHC and present case.
 - c. If Chester MHC approves transfer, then contact referring facility to make arrangements for transportation.
 - d. If Chester MHC does not approve transfer, then notify the referring facility.
 - e. If transfer to Chester MHC is not warranted, then notify the referring facility.

Form

**REQUEST FOR TRANSFER TO THE
CHESTER MENTAL HEALTH CENTER**

REQUESTING FACILITY: _____ DATE: _____

RECIPIENTS NAME: _____ DOB & AGE: _____

ADMISSION DATE: _____ DMH/DD ID#: _____

UNIT: _____ DOCKET # _____

REFERRING FACILITY DIRECTOR'S APPROVAL(if needed): _____

REFERRING MEDICAL DIRECTOR'S APPROVAL: _____

NAME OF TREATING PSYCHIATRIST: _____ PHONE# _____

NAME OF COORDINATING THERAPIST/CASEWORKER: _____ PHONE # _____

LEGAL STATUS:

CURRENT
DIAGNOSIS: _____

ADMISSION STATUS AND CIRCUMSTANCES:

RATIONALE FOR REQUEST FOR TRANSFER TO CHESTER:

ATTEMPTED INTERVENTIONS:

EXPECTED BENEFIT OF TRANSFER TO CHESTER AND CRITERIA FOR RETURN TO REFERRING FACILITY (SPECIFICALLY WHAT BEHAVIORAL/CLINICAL CHANGES WOULD NEED TO OCCUR PRIOR TO RETURN):

HISTORY OF PSYCHIATRIC TREATMENT (ADMISSION & DISCHARGE DATES AND FACILITIES):

MEDICATION HISTORY:

CURRENT MEDICATION REGIMEN, RATIONALE AND RESPONSE:

IS MEDICATION IN THERAPEUTIC RANGE?: YES NO

ANY ADVERSE EFFECTS?: YES NO

DESCRIBE

MEDICAL HISTORY:

CURRENT MEDICAL
STATUS:

ACCOUNTING OF THE MOST SERIOUS EVENT THAT TRIGGERED THIS REFERRAL: (TO THE
FULLEST EXTENT POSSIBLE , PLEASE PROVIDE AS MUCH COMPLETE, DETAILED, OBJECTIVE
INFORMATION)

Apparent precipitants/antecedents to the act?

What verbal expression and behaviors suggest possible motive(s)/ purpose(s) for the act?

What were the circumstances? (Date, time of day, social environment, physical
setting)

What specific aggressive and other accompanying behaviors were shown?

What were the resulting
injuries/damages?

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

METRO FORENSIC REVIEWERS COMMENTS AND CONCLUSIONS:

REFERRAL PROCEDURES:

ALL REFERRING FACILITIES PLEASE FAX COPY OF COMPLETED REFERRAL FORM TO DR. ANDERSON FREEMAN, DEPUTY DIRECTOR FORENSIC BUREAU.

FAX (708) 338-7327

OFFICE PHONE (708) 338-7043

PAGER (800) 602-4184

IF YOU HAVE DIFFICULTY CONTACTING DR. FREEMAN PLEASE CONTACT ANY AVAILABLE CHICAGO METRO STAFF PERSON FOR ASSISTANCE

DR. FRAN TELLER

708-338-7065

BOB HAVENS, ACSW

847-742-3368

CARLA JOINER-HERROD, ACSW 708-338-7002

DURING NORMAL WEEK DAY HOURS ALL REFERRALS FROM METRO AREA FACILITIES (Chicago Read, Elgin, Madden, & Tinley Park) WILL BE REVIEWED AT THE REFERRING FACILITY SITE BY METRO STAFF WITHIN 48 HOURS, AND APPROVAL FOR TRANSFER WILL BE MADE BY THE CHIEF OF METRO FORENSIC SERVICES.

CHESTER SHOULD BE CONTACTED DIRECTLY FOR EMERGENCY REFERRALS OCCURRING ON WEEKENDS, HOLIDAYS, OR EVENINGS IF THE PATIENT CANNOT BE MANAGED WITH EMERGENCY PSYCHIATRIC PROCEDURES UNTIL METRO STAFF ARE AVAILABLE. CHESTER'S CONTACT NUMBER IS (618) 826-4571, (618) 826-3229/FAX.

SIGNATURE OF REFERRING PERSON

Section VI.

This section consists of the Sexually Violent Persons Commitment Act and the referral form which is submitted by DHS staff when referring NGRI patients with a sex offense to the Treatment and Detention Facility. It is the policy of DHS that all individuals adjudicated NGRI for a sexually violent offense shall be assessed prior to release to determine whether they meet the criteria for commitment under the Sexually Violent Persons Commitment Act.

CRIMINAL PROCEDURE:

(725 ILCS 207/) Sexually Violent Persons Commitment Act:

(725 ILCS 207/1)

Sec. 1. Short title. This Act may be cited as the Sexually Violent Persons Commitment Act.

(Source: P.A. 90-40, eff. 1-1-98.) (725 ILCS 207/5)

Sec. 5. Definitions. As used in this Act, the term:

(a) "Department" means the Department of Human Services.

(b) "Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

(c) "Secretary" means the Secretary of Human Services.

(d) "Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification.

(e) "Sexually violent offense" means any of the following:

(1) Any crime specified in Section 12-13, 12-14,

12-14.1, or 12-16 of the Criminal Code of 1961; or

(1.5) Any former law of this State specified in

Section 11-1 (rape), 11-3 (deviate sexual assault), 11-4 (indecent liberties with a child) or 11-4 (aggravated indecent liberties with a child) of the Criminal Code of 1961; or (2) First degree murder, if it is determined by the agency with jurisdiction to have been sexually motivated; or

(3) Any solicitation, conspiracy or attempt to commit a crime under paragraph (e)(1) or (e)(2) of this Section.

(f) "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of a sexually violent offense by reason of insanity and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

(Source: P.A. 90-40, eff. 1-1-98; 90-793, eff. 8-14-98; 91-875, eff. 6-30-00.)

(725 ILCS 207/10)

Sec. 10. Notice to the Attorney General and State's Attorney.

(a) In this Act, "agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(b) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform the Attorney General and the State's Attorney in a position to file a petition under paragraph (a)(2) of Section 15 of this Act regarding the person as soon as possible beginning 3 months prior to the applicable date of the following:

(1) The anticipated release from imprisonment or the anticipated entry into mandatory supervised release of a person who has been convicted of a sexually violent offense.

(2) The anticipated release from a Department of Corrections correctional facility or juvenile correctional facility of a person adjudicated delinquent under Section 5-20 of the Juvenile Court Act of 1987 (now repealed) or found guilty under Section 5-620 of that Act, on the basis of a sexually violent offense.

(3) The discharge or conditional release of a person who has been found not guilty of a sexually violent offense by reason of insanity under Section 5-2-4 of the Unified Code of Corrections

(c) The agency with jurisdiction shall provide the Attorney General and the State's Attorney with all of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history;

(2) A comprehensive evaluation of the person's mental condition, the basis upon which a determination has been made that the person is subject to commitment under subsection (b) of Section 15 of this Act and a recommendation for action in furtherance of the purposes of this Act. The evaluation shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the . Board; and

(3) If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

(d) Any agency or officer, employee or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this Section.

(Source: P.A. 93-616, eff. 1-1-04.)

(725 ILCS 207/15)

Sec. 15. Sexually violent person petition; contents; filing.

(a) A petition alleging that a person is a sexually violent person may be filed by:

(1) The Attorney General, at the request of the agency with jurisdiction over the person, as defined in subsection (a) of Section 10 of this Act, or on his or her own motion. If the Attorney General, after consulting with and advising the State's Attorney of the county referenced in paragraph (a)(2) of this Section, decides to file a petition under this Section, he or she shall file the petition before the date of the release or discharge of the person or within 30 days of placement onto parole or mandatory supervised release for an offense enumerated in paragraph (e) of Section 5 of this Act.

(2) If the Attorney General does not file a petition under this Section, the State's Attorney of the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity, mental disease, or mental defect may file a petition.

(3) The Attorney General and the State's Attorney referenced in paragraph (a)(2) of this Section jointly.

(b) A petition filed under this Section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(1) The person satisfies any of the following criteria:

(A) The person has been convicted of a sexually violent offense;

(B) The person has been found delinquent for a sexually violent offense; or

(C) The person has been found not guilty of a sexually violent offense by reason of insanity, mental disease, or mental defect.

(2) (Blank).

(3) (Blank).

(4) The person has a mental disorder.

(5) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

(b-5) The petition must be filed:

(1) No more than 90 days before discharge or entry into mandatory supervised release from a Department

of Corrections correctional facility for a sentence that was imposed upon a conviction for a sexually violent offense, or for a sentence that is being served concurrently or consecutively with a sexually violent offense, and no more than 30 days after the person's entry into parole or mandatory supervised release; or

(2) No more than 90 days before discharge or release:

(A) from a Department of Corrections juvenile correctional facility if the person was placed in the facility for being adjudicated delinquent under Section 5-20 of the Juvenile Court Act of 1987 or found guilty under Section 5-620 of that Act on the basis of a sexually violent offense; or

(B) from a commitment order that was entered as a result of a sexually violent offense

(c) A petition filed under this Section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under paragraph (b)(1) of this Section was an act that was sexually motivated as provided under paragraph (e)(2) of Section 5 of this Act, the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(d) A petition under this Section shall be filed in either of the following:

(1) The circuit Court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of insanity, mental disease or mental defect

(2) The circuit Court for the county in which the person is in custody under a sentence, a placement to a Department of Corrections correctional facility or juvenile correctional facility, or a commitment order.

(Source: P.A. 91-227, eff. 1-1-00; 91-357, eff. 7-29-99; 92-16, eff. 6-28-01.)

(725 ILCS 207/20)

Sec. 20. Civil nature of proceedings. The proceedings under this Act shall be civil in nature. The provisions of the Civil Practice Law, and all existing and future amendments of that Law shall apply to all proceedings hereunder except as otherwise provided in this Act.

(Source: P.A. 90-40, eff. 1-1-98.)

(725 ILCS 207/25)

Sec. 25. Rights of persons subject to petition.

(a) Any person who is the subject of a petition filed under Section 15 of this Act shall be served with a copy of the petition in accordance with the Civil Practice Law.

(b) The circuit Court in which a petition under Section 15 of this Act is filed shall conduct all hearings under this Act. The Court shall give the person who is the subject of the petition reasonable notice of the time and place of each such hearing. The Court may designate additional persons to receive these notices.

(c) Except as provided in paragraph (b)(1) of Section 65 and Section 70 of this Act, at any hearing conducted under this Act, the person who is the subject of the petition has the right:

(1) To be present and to be represented by counsel.

If the person is indigent, the Court shall appoint counsel.

(2) To remain silent.

(3) To present and cross-examine witnesses.

(4) To have the hearing recorded by a Court reporter.

(d) The person who is the subject of the petition, the person's attorney, the Attorney General or the State's Attorney may request that a trial under Section 35 of this Act be to a jury. A verdict of a jury under this Act is not valid unless it is unanimous.

(e) Whenever the person who is the subject of the petition is required to submit to an examination under this Act, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records and patient health care records. If the person is indigent, the Court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination. Upon the order of the circuit Court, the county shall pay, as part of the costs of the action, the costs of a Court-appointed expert or professional person to perform an examination and participate in the trial on behalf of an indigent person.

(Source: P.A. 93 -616, eff. 1 -1 -04; 93 -970, eff. 8 -20 -04.)

(725 ILCS 207/30)

Sec. 30. Detention; probable cause hearing; transfer for examination.

(a) Upon the filing of a petition under Section 15 of this Act, the Court shall review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person shall be detained only if there is cause to believe that the person is eligible for commitment under subsection (f) of Section 35 of this Act. A person detained under this Section shall be held in a facility approved by the Department. If the person is serving a sentence of imprisonment, is in a Department of Corrections correctional facility or juvenile correctional facility or is committed to institutional care, and the Court Orders detention under this Section, the Court shall order that the person be transferred to a detention facility approved by the Department. A detention order under this Section remains in effect until the person is discharged after a trial under Section 35 of this Act or until the effective date of a commitment order under Section 40 of this Act, whichever is applicable.

(b) Whenever a petition is filed under Section 15 of this Act, the Court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the Court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. The Court may grant a continuance of the probable cause hearing for no more than 7 additional days upon the motion of the respondent, for good cause. If the person named in the petition has been released, is on parole, is on mandatory supervised release, or otherwise is not in custody, the Court shall hold the probable cause hearing within a reasonable time after the filing of the petition. At the probable cause hearing, the Court shall admit and consider all relevant hearsay evidence.

(c) If the Court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the Court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. If the person who is named in the petition refuses to speak to, communicate with, or otherwise fails to cooperate with the examining evaluator from the Department of Human Services or the Department of Corrections, that person may only introduce evidence and testimony from any expert or professional person who is retained or Court-appointed to conduct an examination of the person that results from a review of the records and may not introduce evidence resulting from an examination of the person. Notwithstanding the provisions of Section 10 of the Mental Health and Developmental Disabilities Confidentiality Act, all evaluations conducted pursuant to this Act and all Illinois Department of Corrections treatment records shall be admissible at all proceedings held pursuant to this Act, including the probable cause hearing and the trial.

If the Court determines that probable cause does not exist to believe that the person is a sexually violent person, the Court shall dismiss the petition.

(d) The Department shall promulgate rules that provide the qualifications for persons conducting evaluations under subsection (c) of this Section.

(e) If the person named in the petition claims or appears to be indigent, the Court shall, prior to the probable

cause hearing under subsection (b) of this Section, appoint counsel.

(Source: P.A. 92 -415, eff. 8 -17 -01; 93 -616, eff. 1 -1 -04; 93 -970, eff. 8 -20 04.)

(725 ILCS 207/35)

Sec. 35. Trial.

(a) A trial to determine whether the person who is the subject of a petition under Section 15 of this Act is a sexually violent person shall commence no later than 120 days after the date of the probable cause hearing under Section 30 of this Act. Delay is considered to be agreed to by the person unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record. Delay occasioned by the person temporarily suspends for the time of the delay the period within which a person must be tried. If the delay occurs within 21 days after the end of the period within which a person must be tried, the Court may continue the cause on application of the State for not more than an additional 21 days beyond the period prescribed. The Court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties, provided that any continuance granted shall be subject to Section 103-5 of the Code of Criminal Procedure of 1963.

(b) At the trial on the petition it shall be competent to introduce evidence of the commission by the respondent of any number of crimes together with whatever punishments, if any, were imposed. The petitioner may present expert testimony from both the Illinois Department of Corrections evaluator and the Department of Human Services psychologist.

(c) The person who is the subject of the petition, the person's attorney, the Attorney General or the State's Attorney may request that a trial under this Section be by a jury. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under Section 30 of this Act. If no request is made, the trial shall be by the Court. The person, the person's attorney or the Attorney General or State's Attorney, whichever is applicable, may withdraw his or her request for a jury trial.

(d) (1) At a trial on a petition under this Act, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt.

(2) If the State alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated as provided in paragraph (e)(2) of Section 5 of this Act, the State is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(e) Evidence that the person who is the subject of a petition under Section 15 of this Act was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(f) If the Court or jury determines that the person who is the subject of a petition under Section 15 is a sexually violent person, the Court shall enter a judgment on that finding and shall commit the person as provided under Section 40 of this Act. If the Court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the Court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

(g) A judgment entered under subsection (f) of this Section on the finding that the person who is the subject of a petition under Section 15 is a sexually violent person is interlocutory to a commitment order under Section 40 and is reviewable on appeal.

(Source: P.A. 91-875, eff. 6-30-00; 92-415, eff. 8-17-01.)

(725 ILCS 207/40)

Sec. 40. Commitment.

(a) If a Court or jury determines that the person who is the subject of a petition under Section 15 of this Act is a sexually violent person, the Court shall order the person to be committed to the custody of the Department for control, care and treatment until such time as the person is no longer a sexually violent person.

(b) (1) The Court shall enter an initial commitment order under this Section pursuant to a hearing held as soon as practicable after the judgment is entered that the person who is the subject of a petition under Section 15 is a sexually violent person. If the Court lacks sufficient information to make the determination required by paragraph (b)(2) of this Section immediately after trial, it may adjourn the hearing and order the Department to conduct a predisposition investigation or a supplementary mental examination, or both, to assist the Court in framing the commitment order. A supplementary mental examination under this Section shall be conducted in accordance with Section 3-804 of the Mental Health and Developmental Disabilities Code.

(2) An order for commitment under this Section shall specify either institutional care in a secure facility, as provided under Section 50 of this Act, or conditional release. In determining whether commitment shall be for institutional care in a secure facility or for conditional release, the Court shall consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment. All treatment, whether in institutional care, in a secure facility, or while on conditional release, shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and conducted by a treatment provider approved by the Board. The Department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the Court's commitment order.

(3) If the Court finds that the person is appropriate for conditional release, the Court shall notify the Department. The Department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The Department may contract with a county health department, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the Court for its approval within 60 days after the Court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan. The conditional release program operated under this Section is not subject to the provisions of the Mental Health and Developmental Disabilities Confidentiality Act.

(4) An order for conditional release places the person in the custody and control of the Department. A person on conditional release is subject to the conditions set by the Court and to the rules of the Department. Before a person is placed on conditional release by the Court under this Section, the Court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this Section does not apply if a municipal police department or county sheriff submits to the Court a written statement waiving the right to be notified. If the Department alleges that a released person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, he or she may be taken into custody under the rules of the Department.

At any time during which the person is on conditional release, if the Department determines that the person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, the Department may request the Attorney General or State's Attorney to request the Court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and transport the person to the county jail. The Department may request, or the Attorney General or State's Attorney may request independently of the Department, that a petition to revoke conditional release be filed. When a petition is filed, the Court may order the Department to issue a notice to the person to be present at the Department or other agency designated by the Court, order a summons to the person to be present, or order a body attachment for all law enforcement officers to take the person into custody and transport him or her to the county jail, hospital, or treatment facility.

The Department shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing Court within 48 hours after the detention. The Court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the Department may detain the person in a jail, in a hospital or treatment facility. The State has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that the conditional release be revoked. If the Court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment under Section 65 of this Act or until again placed on conditional release under Section 60 of this Act.

(5) An order for conditional release places the person in the custody, care, and control of the Department. The Court shall order the person be subject to the following rules of conditional release, in addition to any other conditions ordered, and the person shall be given a certificate setting forth the conditions of conditional release. These conditions shall be that the person.

(A) not violate any criminal statute of any person or agency as directed by the Court and the Department;

(B) report to or appear in person before such person or agency as directed by the Court and the Department;

(C) refrain from possession of a firearm or other dangerous weapon;

(D) not leave the State without the consent of the Court or, in circumstances in which the reason for the absence is of such an emergency nature, that prior consent by the Court is not possible without the prior notification and approval of the Department;

(E) at the direction of the Department, notify third parties of the risks that may be occasioned by his or her criminal record or sexual offending history or characteristics, and permit the supervising officer or agent to make the notification requirement;

(F) attend and fully participate in assessment, treatment, and behavior monitoring including, but not limited to, medical, psychological or psychiatric treatment specific to sexual offending, drug addiction, or alcoholism, to the extent appropriate to the person based upon the recommendation and findings made in the Department evaluation or based upon any subsequent recommendations by the Department;

(G) waive confidentiality allowing the Court and Department access to assessment or treatment results or both;

(H) work regularly at a Department approved occupation or pursue a course of study or vocational training and notify the Department within 72 hours of any change in employment, study, or training;

(I) not be employed or participate in any volunteer activity that involves contact with children, except under circumstances approved in advance and in writing by the Department officer;

(J) submit to the search of his or her person, residence, vehicle, or any personal or real property under his or her control at any time by the Department;

(K) financially support his or her dependents and provide the Department access to any requested financial information;

(L) serve a term of home confinement, the conditions of which shall be that the person:

(i) remain within the interior premises of the place designated for his or her confinement during the hours designated by the Department;

(ii) admit any person or agent designated by the Department into the offender's place of confinement at any time for purposes of verifying the person's compliance with the condition of his or her confinement;

(iii) if deemed necessary by the Department, be placed on an electronic monitoring device;

(M) comply with the terms and conditions of an order of protection issued by the Court pursuant to the Illinois Domestic Violence Act of 1986. A copy of the order of protection shall be transmitted to the Department by the clerk of the Court;

(N) refrain from entering into a designated geographic area except upon terms the Department finds appropriate. The terms may include consideration of the purpose of the entry, the time of day, others accompanying the person, and advance approval by the Department;

(O) refrain from having any contact, including written or oral communications, directly or indirectly, with certain specified persons including, but not limited to, the victim or the victim's family, and report any incidental contact with the victim or the victim's family to the Department within 72 hours; refrain from entering onto the premises of, traveling past, or loitering near the victim's residence, place of employment, or other places frequented by the victim;

(P) refrain from having any contact, including written or oral communications, directly or indirectly, with particular types of persons, including but not limited to members of street gangs, drug users, drug dealers, or prostitutes;

(Q) refrain from all contact, direct or indirect, personally, by telephone, letter, or through another person, with minor children without prior identification and approval of the Department;

(R) refrain from having in his or her body the presence of alcohol or any illicit drug prohibited by the Cannabis Control Act or the Illinois Controlled Substances Act, unless prescribed by a physician, and submit samples of his or her breath, saliva, blood, or urine for tests to determine the presence of alcohol or any illicit drug;

(S) not establish a dating, intimate, or sexual relationship with a person without prior written notification to the Department;

(T) neither possess or have under his or her control any material that is pornographic, sexually oriented, or sexually stimulating, or that depicts or alludes to sexual activity or depicts minors under the age of 18, including but not limited to visual, auditory, telephonic, electronic media, or any matter obtained through access to any computer or material linked to computer access use;

(U) not patronize any business providing sexually stimulating or sexually oriented entertainment nor utilize "900" or adult telephone numbers or any other sex-related telephone numbers;

(V) not reside near, visit, or be in or about parks, schools, day care centers, swimming pools, beaches, heaters, or any other places where minor children congregate without advance approval of the Department and report any incidental contact with minor children to the Department within 72 hours;

(W) not establish any living arrangement or residence without prior approval of the Department;

(X) not publish any materials or print any advertisements without providing a copy of the proposed publications to the Department officer and obtaining permission prior to publication;

(Y) not leave the county except with prior permission of the Department and provide the Department officer or agent with written travel routes to and from work and any other designated destinations;

(Z) not possess or have under his or her control certain specified items of contraband related to the incidence of sexually offending items including video or still camera items or children's toys;

(AA) provide a written daily log of activities as directed by the Department;

(BB) comply with all other special conditions that the Department may impose that restrict the person from high-risk situations and limit access or potential victims.

(6) A person placed on conditional release and who during the term undergoes mandatory drug or alcohol testing or is assigned to be placed on an approved electronic monitoring device may be ordered to pay all costs incidental to the mandatory drug or alcohol testing and all costs incidental to the approved electronic monitoring in accordance with the person's ability to pay those costs. The Department may establish reasonable fees for the cost of maintenance, testing, and incidental expenses related to the mandatory drug or alcohol testing and all costs incidental to approved electronic monitoring.

(Source: P.A. 92-415, eff. 8-17-01; 93-616, eff. 1-1-04.)

(725 ILCS 207/45)

Sec. 45. Deoxyribonucleic acid analysis requirements.

(a)(1) If a person is found to be a sexually violent person under this Act, the Court shall require the person to provide a biological specimen for deoxyribonucleic acid analysis in accordance with Section 5-4-3 of the Unified Code of Corrections.

(2) The results from deoxyribonucleic acid analysis of a specimen under paragraph (a)(1) of this Section may be used only as authorized by Section 5-4-3 of the Unified Code of Corrections.

(b) The rules adopted by the Illinois Department of State Police under Section 5-4-3 of the Unified Code of Corrections are the procedures that must be followed for persons to provide specimens under paragraph (a)(1) of this Section.

(Source: P.A. 90-40, eff. 1-1-98; 91-227, eff. 1-1-00.)

725 ILCS 207/50)

Sec. 50. Secure facility for sexually violent persons.

(a) The Department shall place a person committed to a secure facility under paragraph (b)(2) of Section 40 of this Act at a facility provided by the Department of Corrections under subsection (b) of this Section.

(b) The Department may enter into an agreement with the Department of Corrections for the provision of a secure facility for persons committed under paragraph (b)(2) of Section 40 of this Act to a facility. The Department shall operate the facility provided by the Department of Corrections under this subsection and shall provide by rule for the nature of the facility, the level of care to be provided in the facility, and the custody and discipline of persons placed in the facility. The facility operated under this Section shall not be subject to the provisions of the Mental Health and Developmental Disabilities Code.

(c) For the purposes of Section 3 -6 -4 of the Unified Code of Corrections, a person held in detention in a secure facility or committed as a sexually violent person and held in a secure facility shall be considered a "committed person", as that term is used in Section 3 -6 -4 of the Unified Code of Corrections.

(Source: P.A. 90 -40, eff. 1 -1 -98; 90 -793, eff. 8 -14 -98.)

(725 ILCS 207/55)

Sec. 55. Periodic reexamination; report.

- (a) If a person has been committed under Section 40 of this Act and has not been discharged under Section 65 of this Act, the Department shall submit a written report to the Court on his or her mental condition within 6 months after an initial commitment under Section 40 and then at least once every 12 months thereafter for the purpose of determining whether the person has made sufficient progress to be conditionally released or discharged. At the time of a reexamination under this Section, the person who has been committed may retain or, if he or she is indigent and so requests, the Court may appoint a qualified expert or a professional person to examine him or her.
 - (b) Any examiner conducting an examination under this Section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's health care records and shall provide a copy of the report to the Court that committed the person under Section 40. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board.
 - (c) Notwithstanding subsection (a) of this Section, the Court that committed a person under Section 40 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order. Any examiner conducting an examination under this Section shall prepare a written report of the examination no later than 30 days after the date of the examination.
 - (d) Petitions for discharge after reexamination must follow the procedure outlined in Section 65 of this Act.
- (Source: P.A. 93 -616, eff. 1 -1 -04; 93 -885, eff. 8 -6 -04.)

(725 ILCS 207/60)

Sec. 60. Petition for conditional release.

- (a) Any person who is committed for institutional care in a secure facility or other facility under Section 40 of this Act may petition the committing Court to modify its order by authorizing conditional release if at least 6 months have elapsed since the initial commitment order was entered, the most recent release petition was denied or the most recent order for conditional release was revoked. The director of the facility at which the person is placed may file a petition under this Section on the person's behalf at any time.
- (b) If the person files a timely petition without counsel, the Court shall serve a copy of the petition on the Attorney General or State's Attorney, whichever is applicable and, subject to paragraph (c)(1) of Section 25 of this Act, appoint counsel. If the person petitions through counsel, his or her attorney shall serve the Attorney General or State's Attorney, whichever is applicable.
- (c) Within 20 days after receipt of the petition, the Court shall appoint one or more examiners having the specialized knowledge determined by the Court to be appropriate, who shall examine the mental condition of the person and furnish a written report of the examination to the Court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records and patient health care records. If any such examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release. The State has the right to have the person evaluated by experts chosen by the State. Any examination or evaluation conducted under this Section shall be in conformance with the standards developed under the Sex Offender Management Board Act and conducted by an evaluator approved by the Board. The Court shall set a probable cause hearing as soon as practical after the examiner's report is filed. If the Court determines at the probable cause hearing that cause exists to believe that it is not substantially probable that the person will engage in acts of sexual violence if on release or conditional release, the Court shall set a hearing on the issue.
- (d) The Court, without a jury, shall hear the petition within 30 days after the report of the Court-appointed examiner is filed with the Court, unless the petitioner waives this time limit. The Court shall grant the petition unless the State proves by clear and convincing evidence that the person has not made sufficient progress to be conditionally released. In making a decision under this subsection, the Court must consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of

Section 15 of this Act, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself and what arrangements are available to ensure that the person has access to and will participate in necessary treatment.

(e) Before the Court may enter an order directing conditional release to a less restrictive alternative it must find the following: (1) the person will be treated by a Department approved treatment provider, (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for the treatment and will report progress to the Department on a regular basis, and will report violations immediately to the Department, consistent with treatment and supervision needs of the respondent, (3) housing exists that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the Court, and immediately to report to the Department if the person leaves the housing to which he or she has been assigned without authorization, (4) the person is willing to or has agreed to comply with the treatment provider, the Department, and the Court, and (5) the person has agreed or is willing to agree to comply with the behavioral monitoring requirements imposed by the Court and the Department.

(f) If the Court finds that the person is appropriate for conditional release, the Court shall notify the Department. The Department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The Department may contract with a county health department, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the Court for its approval within 60 days after the Court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan.

(g) The provisions of paragraphs (b)(4), (b)(5), and (b)(6) of Section 40 of this Act apply to an order for conditional release issued under this Section.

(Source: P.A. 92-415, eff. 8-17-01; 93-616, eff. 1-1-04; 93-885, eff. 8-6-04.)

(725 ILCS 207/65)

Sec. 65. Petition for discharge; procedure.

(a)(1) If the Secretary determines at any time that a person committed under this Act is no longer a sexually violent person, the Secretary shall authorize the person to petition the committing Court for discharge. The person shall file the petition with the Court and serve a copy upon the Attorney General or the State's Attorney's office that filed the petition under subsection (a) of Section 15 of this Act, whichever is applicable. The Court, upon receipt of the petition for discharge, shall order a hearing to be held within 45 days after the date of receipt of the petition.

(2) At a hearing under this subsection, the Attorney General or State's Attorney, whichever filed the original petition, shall represent the State and shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board. The committed person or the State may elect to have the hearing before a jury. The State has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(3) If the Court or jury is satisfied that the State has not met its burden of proof under paragraph (a)(2) of this Section, the petitioner shall be discharged from the custody or supervision of the Department. If the Court is satisfied that the State has met its burden of proof under paragraph (a)(2), the Court may proceed under Section 40 of this Act to determine whether to modify the petitioner's existing commitment order.

(b)(1) A person may petition the committing Court for discharge from custody or supervision without the Secretary's approval. At the time of an examination under subsection (a) of Section 55 of this Act, the Secretary shall provide the committed person with a written notice of the person's right to petition the Court for discharge over the Secretary's objection. The notice shall contain a waiver of rights. The Secretary shall forward the notice and waiver form to the Court with the report of the Department's examination under Section 55 of this Act. If the

person does not affirmatively waive the right to petition, the Court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. If a person does not file a petition for discharge, yet fails to waive the right to petition under this Section, then the probable cause hearing consists only of a review of the reexamination reports and arguments on behalf of the parties. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing. The probable cause hearing under this Section must be held within 45 days of the filing of the reexamination report under Section 55 of this Act.

(2) If the Court determines at the probable cause hearing under paragraph (b)(1) of this Section that probable cause exists to believe that the committed person is no longer a sexually violent person, then the Court shall set a hearing on the issue. At a hearing under this Section, the committed person is entitled to be present and to the benefit of the protections afforded to the person under Section 25 of this Act. The committed person or the State may elect to have a hearing under this Section before a jury. A verdict of a jury under this Section is not valid unless it is unanimous. The Attorney General or State's Attorney, whichever filed the original petition, shall represent the State at a hearing under this Section. The State has the right to have the committed person evaluated by experts chosen by the State. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board. At the hearing, the State has the burden of proving by clear and convincing evidence that the committed person is still a sexually violent person.

(3) If the Court or jury is satisfied that the State has not met its burden of proof under paragraph (b)(2) of this Section, the person shall be discharged from the custody or supervision of the Department. If the Court or jury is satisfied that the State has met its burden of proof under paragraph (b)(2) of this Section, the Court may proceed under Section 40 of this Act to determine whether to modify the person's existing commitment order.

(Source: P.A. 92-415, eff. 8-17-01; 93-616, eff. 1-1-04.)

(725 ILCS 207/70)

Sec. 70. Additional discharge petitions. In addition to the procedures under Section 65 of this Act, a committed person may petition the committing Court for discharge at any time, and the Court must set the matter for a probable cause hearing; however, if a person has previously filed a petition for discharge without the Secretary's approval and the Court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the Court shall deny any subsequent petition under this Section without a hearing unless the petition contains facts upon which a Court could find that the condition of the person had so changed that a hearing was warranted. If the Court finds that a hearing is warranted, the Court shall set a probable cause hearing and continue proceedings under paragraph (b)(2) of Section 65, if appropriate. If the person has not previously filed a petition for discharge without the Secretary's approval, the Court shall set a probable cause hearing and continue proceedings under paragraph (b)(2) of Section 65, if appropriate. (Source: P.A. 90-40, eff. 1-1-98; 91-227, eff. 1-1-00.)

(725 ILCS 207/75)

Sec. 75. Notice concerning conditional release, discharge, escape, death, or Court-ordered change in the custody status of a detainee or civilly committed sexually violent person.

(a) As used in this Section, the term:

(1) "Act of sexual violence" means an act or attempted act that is a basis for an allegation made in a petition under paragraph (b)(1) of Section 15 of this Act.

(2) "Member of the family" means spouse, child, sibling, parent, or legal guardian.

(3) "Victim" means a person against whom an act of sexual violence has been committed.

(b) If the Court places a civilly committed sexually violent person on conditional release under Section 40 or 60 of this Act or discharges a person under Section 65, or if a detainee or civilly committed sexually violent person escapes, dies, or is subject to any Court-ordered change in custody status of the detainee or sexually violent person, the Department shall make a reasonable attempt, if he or she can be found, to notify all of the following who have requested notification under this Act or under the Rights of Crime Victims and Witnesses Act:

(1) Whichever of the following persons is appropriate in accordance with the provisions of subsection (a)(3):

(A) The victim of the act of sexual violence.

(B) An adult member of the victim's family, if the victim died as a result of the act of sexual violence.

(C) The victim's parent or legal guardian, if the victim is younger than 18 years old.

(2) The Department of Corrections.

(c) The notice under subsection (b) of this Section shall inform the Department of Corrections and the person notified under paragraph (b)(1) of this Section of the name of the person committed under this Act and the date the person is placed on conditional release, discharged, or if a detainee or civilly committed sexually violent person escapes, dies, or is subject to any Court-ordered change in the custody status of the detainee or sexually violent person. The Department shall send the notice, postmarked at least 7 days before the date the person committed under this Act is placed on conditional release, discharged, or if a detainee or civilly committed sexually violent person escapes, dies, or is subject to any Court-ordered change in the custody status of the detainee or sexually violent person, unless unusual circumstances do not permit advance written notification, to the Department of Corrections and the last-known address of the person notified under paragraph (b)(1) of this Section.

(d) The Department shall design and prepare cards for persons specified in paragraph (b)(1) of this Section to send to the Department. The cards shall have space for these persons to provide their names and addresses, the name of the person committed under this Act and any other information the Department determines is necessary. The Department shall provide the cards, without charge, to the Attorney General and State's Attorneys. The Attorney General and State's Attorneys shall provide the cards, without charge, to persons specified in paragraph (b)(1) of this Section. These persons may send completed cards to the Department. All records or portions of records of the Department that relate to mailing addresses of these persons are not subject to inspection or copying under Section 3 of the Freedom of Information Act.

(Source: P.A. 93-885, eff. 8-6-04.)

(725 ILCS 207/80)

Sec. 80. Applicability. This Act applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on, or after the effective date of this Act.

(Source: P.A. 90-40, eff. 1-1-98.)

(725 ILCS 207/90)

Sec. 90. Committed persons ability to pay for services. Each person committed or detained under this Act who receives services provided directly or funded by the Department and the estate of that person is liable for the payment of sums representing charges for services to the person at a rate to be determined by the Department. Services charges against that person take effect on the date of admission or the effective date of this Section. The Department in its rules may establish a maximum rate for the cost of services. In the case of any person who has received residential services from the Department, whether directly from the Department or through a public or private agency or entity funded by the Department, the liability shall be the same regardless of the source of services. When the person is placed in a facility outside the Department, the facility shall collect reimbursement from the person. The Department may supplement the contribution of the person to private facilities after all

other sources of income have been utilized; however the supplement shall not exceed the allowable rate under Title XVIII or Title XIX of the Federal Social Security Act for those persons eligible for those respective programs. The Department may pay the actual costs of services or maintenance in the facility and may collect reimbursement for the entire amount paid from the person or an amount not to exceed the maximum. Lesser or greater amounts may be accepted by the Department when conditions warrant that action or when offered by persons not liable under this Act. Nothing in this Section shall preclude the Department from applying federal benefits that are specifically provided for the care and treatment of a disabled person toward the cost of care provided by a State facility or private agency. The Department may investigate the financial condition of each person committed under this Act, may make determinations of the ability of each such person to pay sums representing services charges, and for those purposes may set a standard as a basis of judgment of ability to pay. The Department shall by rule make provisions for unusual and exceptional circumstances in the application of that standard. The Department may issue to any person liable under this Act a statement of amount due as treatment charges requiring him or her to pay monthly, quarterly, or otherwise as may be arranged, an amount not exceeding that required under this Act, plus fees to which the Department may be entitled under this Act.

(a) Whenever an individual is covered, in part or in whole, under any type of insurance arrangement, private or public, for services provided by the Department, the proceeds from the insurance shall be considered as part of the individual's ability to pay notwithstanding that the insurance contract was entered into by a person other than the individual or that the premiums for the insurance were paid for by a person other than the individual. Remittances from intermediary agencies under Title XVIII of the Federal Social Security Act for services to committed persons shall be deposited with the State Treasurer and placed in the Mental Health Fund. Payments received from the Department of Public Aid under Title XIX of the Federal Social Security Act for services to those persons shall be deposited with the State Treasurer and shall be placed in the General Revenue Fund.

(b) Any person who has been issued a Notice of Determination of sums due as services charges may petition the Department for a review of that determination. The petition must be in writing and filed with the Department within 90 days from the date of the Notice of Determination. The Department shall provide for a hearing to be held on the charges for the period covered by the petition. The Department may after the hearing, cancel, modify, or increase the former determination to an amount not to exceed the maximum provided for the person by this Act. The Department at its expense shall take testimony and preserve a record of all proceedings at the hearing upon any petition for a release from or modification of the determination. The petition and other documents in the nature of pleadings and motions filed in the case, a transcript of testimony, findings of the Department, and orders of the Secretary constitute the record. The Secretary shall furnish a transcript of the record to any person upon payment of 75¢ per page for each original transcript and 25¢ per page for each copy of the transcript. Any person aggrieved by the decision of the Department upon a hearing may, within 30 days thereafter, file a petition with the Department for review of the decision by the Board of Reimbursement Appeals established in the Mental Health and Developmental Disabilities Code. The Board of Reimbursement Appeals may approve action taken by the Department or may remand the case to the Secretary with recommendation for redetermination of charges.

(c) Upon receiving a petition for review under subsection (b) of this Section, the Department shall thereupon notify the Board of Reimbursement Appeals which shall render its decision thereon within 30 days after the petition is filed and certify such decision to the Department. Concurrence of a majority of the Board is necessary in any such decision. Upon request of the Department, the State's Attorney of the county in which a client who is liable under this Act for payment of sums representing services charges resides, shall institute appropriate legal action against any such client, or within the time provided by law shall file a claim against the estate of the client who fails or refuses to pay those charges. The Court shall order the payment of sums due for services charges for such period or periods of time as the circumstances require. The order may be entered against any defendant and may be based upon the proportionate ability of each defendant to contribute to the payment of sums representing services charges including the actual charges for services in facilities outside the Department where the Department has paid those charges. Orders for the payment of money may be enforced by attachment as for contempt against the persons of the defendants and, in addition, as other judgments for the payment of money, and costs may be adjudged against the defendants and apportioned among them.

(d) The money collected shall be deposited into the Mental Health Fund.
(Source: P.A. 90-793, eff. 8-14-98.)

(725 ILCS 207/99)

Sec. 99. Effective date. This Act takes effect January 1, 1998.
(Source: P.A. 90-40, eff. 1-1-98.)

ILLINOIS DEPARTMENT OF HUMAN SERVICES
SEXUALLY VIOLENT PERSONS REFERRAL FORM

** Referral to be made for patients acquitted Not Guilty by Reason of Insanity for a sex offense prior to any request for off-grounds privilege, conditional release, or absolute discharge (no less than four months prior to their conditional release or discharge). **Current DHS policy only allows for evaluations of NGRI patients with a sex offense.***

Patient's Name: _____ DHS #: _____

Date of Birth: _____ Age: _____ Sex: _____

Race: _____ Primary Language: _____ Docket # _____

Criminal Charge(s): _____

Police Report Summary: _____

Legal Status: _____ Privileges: _____

Admission Date: _____ Thiem Date: _____ LOS: _____

Transfers: _____

Prior Sexual Offenses: _____

Behavior While Hospitalized (e.g., sexually inappropriate behavior): _____

Current Mental Status: _____

Diagnoses:

Axis I: _____

Axis II: _____

Axis III: _____

Risk Assessment:

Danger to Self: Suicidal Ideation __ Self-Injurious Behavior

Severe __ Moderate __ Mild __ None __

Danger to Others: Homicidal Ideation __ Physical Aggression __

Severe __ Moderate __ Mild __ None __

Sexual Dangerousness:

Severe __ Moderate __ Mild __ None __

Other Risk Factors

Elopement __ Setting Fires __ Other __

Comments: _____

Requesting Facility: _____ Psychiatrist: _____

Caseworker: _____ Phone #: _____

Hospital Administrator's Approval: _____ Date: _____

Section VII.

This section contains other forensic related statutes. However, individuals who are covered by these statutes are not treated by the Department of Human Services, Division of Mental Health. Also, it contains case laws that are relevant to the UST and NGRI populations, and Mental Health Law reference information.

GUILTY BUT MENTALLY ILL

(Underscores added for emphasis.)

(720 ILCS 5/6-)

Section 6-2. Insanity.

(a) A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.

(b) The terms "mental disease or mental defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) A person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill.

(d) For purposes of this Section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior.

(e) When the defense of insanity has been presented during the trial, the burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of each of the offenses charged, and, in a jury trial where the insanity defense has been presented, the jury must be instructed that it may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

(Amended by P. A. 90-593, effective June 19, 1998.)

(730 ILCS 5/5-2-6)

Section 5-2-6 - Sentencing and Treatment of Defendant Found Guilty but Mentally Ill.

(a) After a plea or verdict of guilty but mentally ill under Sections 114-2, 115-3 or 115-4 of the Code of Criminal Procedure of 1963, the Court shall order a presentence investigation and report pursuant to Sections 5-3-1 and 5-3-2 of this Act, and shall set a date for a sentencing hearing. The Court may impose any sentence upon the defendant which could be imposed pursuant to law upon a defendant who had been convicted of the same offense without a finding of mental illness.

(b) If the Court imposes a sentence of imprisonment upon a defendant who has been found guilty but mentally ill, the defendant shall be committed to the Department of Corrections, which shall cause periodic inquiry and examination to be made concerning the nature, extent, continuance, and treatment of the defendant's mental illness. The Department of Corrections shall provide such psychiatric, psychological, or other counseling and treatment for the defendant as it determines necessary.

(c) The Department of Corrections may transfer the defendant's custody to the Department of Human Services in accordance with the provisions of Section 3-8-5 of this Act.

(d) (l) The Department of Human Services shall return to the Department of Corrections any person committed to it pursuant to this Section whose sentence has not expired and whom the Department of Human Services deems no longer requires hospitalization for mental treatment, mental retardation, or addiction.

(2)The Department of Corrections shall notify the Secretary of Human Services of the expiration of the sentence of any person transferred to the Department of Human Services under this Section. If the Department of Human Services determines that any such person requires further hospitalization, it shall file an appropriate petition for involuntary commitment pursuant to the Mental Health and Developmental Disabilities Code.

- (e) (1) All persons found guilty but mentally ill, whether by plea or by verdict, who are placed on probation or sentenced to a term of periodic imprisonment or a period of conditional discharge shall be required to submit to a course of mental treatment prescribed by the sentencing Court.
- (2) The course of treatment prescribed but the Court shall reasonably assure the defendant's satisfactory progress in treatment or habilitation and for the safety of the defendant and others. The Court shall consider terms, conditions and supervision which may include, but need not be limited to, notification and discharge of the person to the custody of his family, community adjustment programs, periodic checks with legal authorities and outpatient care and utilization of local mental health or developmental disabilities facilities.
- (3) Failure to continue treatment, except by agreement with the treating person or agency and the Court, shall be a basis for the institution of probation revocation proceedings.
- (4) The period of probation shall be in accordance with Section 5-6-2 of this Act and shall not be shortened without receipt and consideration of such psychiatric or psychological report or reports as the Court may require.

{Amended by P.A. 89-507, effective July 1, 1997.}

CRIMINAL PROCEDURE

(725 ILCS 205/) Sexually Dangerous Persons Act.

(725 ILCS 205/Art. 105 heading)

ARTICLE 105. SEXUALLY DANGEROUS PERSONS

(725 ILCS 205/0.01) (from Ch. 38, par. 105)

Sec. 0.01. Short title. This Act may be cited as the Sexually Dangerous Persons Act.

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

(725 ILCS 205/0.01) (from Ch. 38, par. 105)

Sec. 0.01. Short title. This Act may be cited as the Sexually Dangerous Persons Act.

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

(725 ILCS 205/0.01) (from Ch. 38, par. 105) Sec. 0.01. Short title. This Act may be cited as the Sexually Dangerous Persons Act. (Source: P.A. 86 -1324.)

(725 ILCS 205/1.01) (from Ch. 38, par. 105 -1.01)

Sec. 1.01. As used in this Act:

All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children, are hereby declared sexually dangerous persons.

(Source: Laws 1955, p. 1144.)

(725 ILCS 205/2) (from Ch. 38, par. 105 -2)

Sec. 2. Jurisdiction of proceedings under this Act is vested in the circuit Courts in this State, for the purpose of conducting hearings for commitment and detention of such persons, as hereinafter provided.

(Source: Laws 1965, p. 3462.)

(725 ILCS 205/3) (from Ch. 38, par. 105-3)

Sec. 3. When any person is charged with a criminal offense and it shall appear to the Attorney General or to the State's Attorney of the county wherein such person is so charged, that such person is a sexually dangerous person, within the meaning of this Act, then the Attorney General or State's Attorney of such county may file with the clerk of the Court in the same proceeding wherein such person stands charged with criminal offense, a petition in writing setting forth facts tending to show that the person named is a sexually dangerous person.

(Source: Laws 1955, p. 1144)

(725 ILCS 205/3.01) (from Ch. 38, par. 105 -3.01)

Sec. 3.01. The proceedings under this Act shall be civil in nature, however, the burden of proof required to commit a defendant to confinement as a sexually dangerous person shall be the standard of proof required in a criminal proceedings of proof beyond a reasonable doubt. The provisions of the Civil Practice Law, and all existing and future amendments of that Law and modifications thereof and the Supreme Court Rules now or hereafter adopted in relation to that Law shall apply to all proceedings hereunder except as otherwise provided in this Act.

(Source: P.A. 82 -783.)

(725 ILCS 205/4) (from Ch. 38, par. 105 -4)

Sec. 4. After the filing of the petition, the Court shall appoint two qualified psychiatrists to make a personal examination of such alleged sexually dangerous person, to ascertain whether such person is sexually dangerous, and the psychiatrists shall file with the Court a report in writing of the result of their examination, a copy of which shall be delivered to the respondent.

(Source: Laws 1955, p. 1144.)

(725 ILCS 205/4.01) (from Ch. 38, par. 105 -4.01)

Sec. 4.01. "Qualified psychiatrist" means a reputable physician licensed in Illinois to practice medicine in all its branches, who has specialized in the diagnosis and treatment of mental and nervous disorders for a period of not less than 5 years.

(Source: Laws 1959, p. 1685.)

(725 ILCS 205/4.02) (from Ch. 38, par. 105 -4.02)

Sec. 4.02. In counties of less than 500,000 inhabitants the cost of the psychiatric examination required by Section 4 is a charge against and shall be paid out of the general fund of the county in which the proceeding is brought.

(Source: Laws 1959, p. 1685.)

(725 ILCS 205/5) (from Ch. 38, par. 105 -5)

Sec. 5. The respondent in any proceedings under this Act shall have the right to demand a trial by jury and to be represented by counsel. At the hearing on the petition it shall be competent to introduce evidence of the commission by the respondent of any number of crimes together with whatever punishments, if any, were inflicted.

(Source: Laws 1955, p. 1144.)

(725 ILCS 205/8) (from Ch. 38, par. 105 -8)

Sec. 8. If the respondent is found to be a sexually dangerous person then the Court shall appoint the Director of Corrections guardian of the person found to be sexually dangerous and such person shall stand committed to the custody of such guardian. The Director of Corrections as guardian shall keep safely the person so committed until the person has recovered and is released as hereinafter provided. The Director of Corrections as guardian shall provide care and treatment for the person committed to him designed to effect recovery. Any treatment provided under this Section shall be in conformance with the standards promulgated by the Sex Offender Management Board Act and conducted by a treatment provider approved by the Board. The Director may place that ward in any facility in the Department of Corrections or portion thereof set aside for the care and treatment of sexually dangerous persons. The Department of Corrections may also request another state Department or Agency to examine such person and upon such request, such Department or Agency shall make such examination and the Department of Corrections may, with the consent of the chief executive officer of such other Department or Agency, thereupon place such person in the care and treatment of such other Department or Agency.

(Source: P.A. 92 -786, eff. 8 -6 -02; 93 -616, eff. 1 -1 -04.)

(725 ILCS 205/9) (from Ch. 38, par. 105 -9)

Sec. 9. An application in writing setting forth facts showing that such sexually dangerous person or criminal sexual psychopathic person has recovered may be filed before the committing Court. Upon receipt thereof, the clerk of the Court shall cause a copy of the application to be sent to the Director of the Department of Corrections. The Director shall then cause to be prepared and sent to the Court a socio -psychiatric report concerning the applicant. The report shall be prepared by a social worker and psychologist under the supervision of a licensed psychiatrist assigned to, the institution wherein such applicant is confined. The Court shall set a date for the hearing upon such application and shall consider the report so prepared under the direction of the Director of the Department of Corrections and any other relevant information submitted by or on behalf of such

applicant. If the person is found to be no longer dangerous, the Court shall order that he be discharged. If the Court finds that the person appears no longer to be dangerous but that it is impossible to determine with certainty under conditions of institutional care that such person has fully recovered, the Court shall enter an order permitting such person to go at large subject to such conditions and such supervision by the Director as in the opinion of the Court will adequately protect the public. In the event the person violates any of the conditions of such order, the Court shall revoke such conditional release and recommit the person pursuant to Section 5 -6 -4 of the Unified Code of Corrections under the terms of the original commitment. Upon an order of discharge every outstanding information and indictment, the basis of which was the reason for the present detention, shall be quashed.

(Source: P.A. 92 -786, eff. 8 -6 -02.)

(725 ILCS 205/10) (from Ch. 38, par. 105 -10)

Sec. 10.

Whenever the Director finds that any person committed to him under this Act as now or hereafter amended, appears no longer to be dangerous but that it is impossible to determine with certainty under conditions of institutional care that such person has fully recovered, the Director of the Department of Corrections may petition the committing Court for an order authorizing the conditional release of any person committed to him under this Act and the Court may enter an order permitting such person to go at large subject to such conditions and such supervision by the Director as in the opinion of the Court will adequately protect the public. In the event the person violates any of the conditions of such order, the Court shall revoke such conditional release and re -commit the person pursuant to Section 5 -6 -4 of the Unified Code of Corrections under the terms of the original commitment.

(Source: P. A. 77 -2477.)

(725 ILCS 205/11) (from Ch. 38, par. 105 -11)

Sec. 11. If any provision of this Act, or the application of any provision to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Source: Laws 1955, p. 1144.)

(725 ILCS 205/12) (from Ch. 38, par. 105 -12)

Sec. 12. Persons heretofore committed to the Department of Public Safety are deemed transferred and committed to the custody of the Director of Corrections.

(Source: P. A. 76 -451.)

		PEOPLE of the State of Illinois,
		Appellate Court of Illinois,
	)	First District, First Division Plaintiff-Appellee,
	)	March 31, 1980.
v.)	
	)	No. 78-1795
Bernard THIEM,)	
	)	82 Ill.App.3d 956
Defendant-Appellant.	)	38 Ill.Dec. 416

After defendant had been found not guilty of murder by reason of insanity, the Circuit Court, Cook County, Earl E. Strayhorn, J., entered order finding him in need of mental treatment and committing him to the Department of Mental Health and Developmental Disabilities, and also found defendant incompetent, and defendant appealed. The Appellate Court, Campbell, J., held that: (1) trial court did not exceed its authority in applying amended statute with respect to commitment of persons found not guilty by reason of insanity, rather than law in effect at time of commission of the offense, and such application did not violate prohibition against ex post facto laws; (2) defendant was not denied equal protection because individuals committed after acquittal by reason of insanity are treated differently than those who are civilly committed; (3) commitment order should have specified maximum period of commitment to the Department; and (4) though evidence clearly demonstrated that defendant was in need of mental treatment, record did not provide a basis for determination as to his legal competency.

Marc O. Beem, Mandel Legal Aid Clinic, Chicago, for defendant-appellant.

Bernard Carey, State's Atty., Chicago, (Marcia B. Orr, Iris E. Sholder, Michael M. Lorge, Asst. State's Attys., Chicago, of counsel), for plaintiff-appellee.

CAMPBELL, Justice:

The defendant, Bernard Thiem, was charged by indictment with the murder of Arthur Daniels. (Ill.Rev.Stat. 1973, ch. 38, par. 9-1(a)(2).) Although initially found unfit to stand trial,¹ he was subsequently determined fit for trial, and was found not guilty by reason of insanity after a bench trial. (Ill.Rev.Stat.1977, ch.38, par. 115-3.) Pursuant to section 5-2-4(a) of the Unified Code of Corrections (Ill.Rev.Stat. 1977, ch. 38, par. 1005-2-4(a)), the trial court on March 22, 1978, entered an order finding the defendant in need of mental treatment and consequently committing him to the Department of Mental Health and Developmental Disabilities (hereinafter Department). The trial court also found the defendant incompetent. Ill.Rev.Stat. 1977, ch. 91 ½, par. 9-11.

On appeal, the defendant contends that: (1) the trial court erred in committing him to the Department under the law in existence at the time of his trial rather than under the law in effect at the time of the offense; (2) the judgment of commitment was invalid for lack of sufficient clarity; and (3) the evidence did not support the trial court's finding of legal incompetence.

We affirm in part and reverse and remand in part.

At the trial the parties stipulated that, if called, certain witnesses would testify that on April 15, 1976, while at his place of employment, the defendant walked up to the victim with a pipe in his hand and, without provocation, struck him several times on his head, causing his death. The defense called Dr. Frank Lorimer, a staff psychiatrist for the Psychiatric Institute of the circuit court of Cook County, who testified that he had conducted several examinations of the defendant, including an examination shortly after the murder and an examination approximately one month before the defendant's trial, which consisted of verbal communications and observation. His diagnosis of the defendant was that of a "paranoid state in a person of long term psycho-sexual conflict (homosexuality) and anti-social record." Dr. Lorimer explained that "the paranoid state" is a psychosis or mental illness and that it was his opinion that the defendant was insane on the date of the crime in that he lacked a substantial capacity to appreciate the criminality of his acts as a result

The order entered by the trial court after that determination was appealed to this court and the cause was remanded. (People v. Theim (1977), 51 Ill.App.3d 160, 9 Ill. Dec. 933, 367 N.E. 2d 367.) Although the earlier opinion shows a different spelling of the defendant's name, it does pertain to the present defendant. That portion of the proceedings is not pertinent to this appeal. Dr. Lorimer further testified that the defendant's psychosis, which he concluded was long term in nature, rendered him dangerous to others and in need of mental treatment although in his opinion the prognosis for correcting this condition was dismal.

The trial court found the defendant not guilty of murder by reason of insanity. The court concluded that the defendant had not recovered from his insanity, was in need of mental treatment and was legally incompetent. Therefore, it remanded him to the custody of the Department of Mental Health "for an indefinite time not to exceed the maximum amount of time that the defendant would have been required to serve * * * Defendant is not to be discharged or released for any period of time from the custody of the Department of Mental Health, however, without written notice of the Superintendent of the Department of Mental Health not less than thirty (30) days prior to such release or discharge to both the court and the State's Attorney. If either the court or State's Attorney requests a hearing, it must be held within thirty (30) days of the motion for a hearing."

The quoted portions of the trial court's order resemble the statutory requisites of section 5-2-4(b) and (d)(2) of the Unified Code of Corrections as amended and effective January 1, 1978 (hereinafter Amended Act) (Ill.Rev.Stat.1977, ch. 38, pars. 1005-2-4(b), (d)(2)) upon an acquittal by reason of insanity and the court's determination that the defendant was in need of mental treatment as defined by the Mental Health Code of 1967 (Ill.Rev.Stat.1977, ch. 91 ½, par. 1-1 et seq.). Prior thereto section 5-2-4(b) provided that after an acquittal by reason of insanity the jury, or if a jury was waived, then the court would ascertain if defendant's insanity persisted. If defendant was found to be insane at that time, he would be committed to the Department for a period not to exceed 12 months, and further hospitalization would be under the provisions of the Mental Health Code of 1967. The prior statute did not require that the Department notify the trial court and State's Attorney prior to releasing a defendant previously committed, and it provided that the court would determine if a defendant was competent. Ill.Rev.Stat. 1975, ch. 38, par.1005-2-4.

Initially, we should note that the People have filed a motion seeking to strike portions of the defendant's reply brief for violating Supreme Court Rule 341 which provides that an appellant shall raise issues, which he wishes to be considered on appeal, in his original brief and that any issues raised for the first time in the appellant's reply brief shall be deemed waived on appeal. (Ill.Rev.Stat.1977, ch. 110A, par. 341(e)(7). This Rule, however, does not deny a court of review of the jurisdiction to entertain issues first raised in a reply brief if justice and fairness require their consitation. (Hux v. Raben (1967), 38 Ill.2d223, 230 N.E.2d 831; Brown v. Brown (1978), 62 Ill.App.3d 328, 19 Ill.Dec. 762, 379 N.E.2d 634; Huber Pontiac, Inc. v. Wells (1978), 59 Ill.App.3d 14, 16 Ill.Dec. 518, 375 N.E.2d 149.) In the present case, we find that a just result dictates our consideration of all the issues raised by the appellant. We should note that our decision to entertain the defendant's additional arguments has not acted to prejudice the People's opportunity to present responsive argument in this appeal (Hux v. Raben) in that the People have filed a supplemental brief in which they have responded to the defendant's additional arguments. Accordingly, we deny the People's motion to strike portions of the defendant's reply brief. The defendant contends that the trial court was governed by the law in effect at the time of the commission of the offense and that, in fact, the trial court stated that it was proceedings under the version of section 5-2-4 of the Unified Code of Corrections (Ill.Rev.Stat.1975, ch. 38, par. 1005-2-4) in effective at the time of the commission of the offense. Therefore, the defendant maintains that the trial court's entry of the March 22, 1978 order, which placed restrictions on the defendant's release from the Department, not statutorily authorized when the offense was committed, exceeded the trial court's statutory authority. Additionally, the defendant argues that the order violated the prohibition against ex post facto laws and violated the defendant's equal protection rights.

The retroactive application of criminal statutes is specifically prohibited by the ex post facto provisions of the United States and the Illinois constitution (U.S. Const. Art. I, sec. 9; Ill.Const. (1970), art.1, sec. 16; e.g. People v. Hill (1980), 78 Ill.2d 517, 36 Ill.Dec. 676, 401 N. E.2d 517; People v. Wyckoff (1969), 106 Ill.App.2d 360, 245 N.E.2d 316) and the rules of statutory construction. (Ill.Rev.Stat.1977, ch. 131, par. 4; 34 Ill.L. & Prac. Statutes Section 193 (1958).) A statute is characterized as retroactive if it "takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already past." 34 Ill.L. & Prac. Statutes Sections 193, 154 (1958).

The Illinois Supreme Court in People v. Valdez (1980), 79 Ill.2d 74, 37 Ill.Dec. 297, 402 N.E.2d 187, recently addressed the propriety of applying the Amended Act to instances where the offense, which was the basis for the defendant's acquittal by reason of insanity, was committed prior to the effective date of the Amended Act. Valdez was charged with the April 4, 1977 murders of Lecia Agsaoay and Dr. Jesus Lim but acquitted by reason of insanity on May 3, 1978. As in the case at bar, at the time of the murders, section 5-2-4 of the Unified Code of Corrections (Ill.Rev.Stat. 1975, ch. 38, par. 1005-2-4) was in effect, while at the time of the trial the Amended Act was in effect. (Ill.Rev.Stat. 1977, ch.38, par. 1005-2-4.) The trial court found the defendant in need of mental treatment and remanded him to the Department. Thereafter, in response to a notice of the Department that it was considering granting Valdez "off ground privileges" the States' Attorney, pursuant to the Amended Act, requested a hearing.

The trial court conducted an evidentiary hearing and entered an order denying the requested privileges and further ordered certain changes in the overall treatment program of Valdez. On direct appeal to the Supreme Court, (Ill.Rev.Stat. 1977, ch. 110A, par. 302), the defendant argued that the retroactive application of the Amended Act violated the established rules of statutory construction and equal protection.

In reaching the first issue, the court rejected the defendant's characterization of the statute as retroactive. The court explained that:

"The occurrence which invoked the provisions of the statute was not the commission of the offenses with which defendant was originally charged; the statute was invoked by his acquittal by reason of insanity. Furthermore, the amendment did not affect any right which defendant had acquired as of the effective date of the change (citation) * * *" People v. Valdez.

Under the Supreme Court's holding in Valdez, which controls this case, we must reject the defendant's argument that the trial court exceeded its authority in applying the Amended Act to the defendant. Moreover, we must also reject the defendant's constitutional argument that the retroactive application of the Amended Act violated the prohibition against ex post facto laws.

The defendant's second argument is that the application of the Amended Act to him acted as a violation of his equal protection rights because individuals who were committed to the Department after an acquittal by reason of insanity were treated differently than those who were civilly committed. Specifically, the defendant points out that the Amended Act authorizes a hearing before release from the Department for an individual who has been committed pursuant to an insanity acquittal, while an individual who is civilly committed may be released by the Department without an analogous hearing. The defendant also contends that the statute creates an unreasonable classification because it provides for the above-mentioned judicial review prior to release only until he would have been eligible for parole had he been sentenced to the maximum sentence available under the offense with which he was charged. The court in Valdez faced with identical objections to the application of the amended statute held that the provision did not violate the equal protection clause. Accordingly, we also reject this argument.

The defendant next contends that even if the Amended Act generally could be applied in this type of case, the absence in the present case of a separate hearing on need for mental treatment, as required by statute (Ill.Rev.Stat.1977, ch. 38, pars. 115-3, 1005-2-4(a)), precluded application of the Amended Act. The defendant argues that in light of the existence of more stringent requirements for a defendant's release under the Amended Act, a separate hearing is critical to avoid any confusion by the trier of fact as to the distinct difference between the issue of a defendant's insanity and his present need for mental treatment.

At the defendant's trial the defense attorney inquired of the trial court as to what procedure would be followed with regard to the testimony of the psychiatrist who would offer testimony both as to the insanity of the defendant and as to his present need for mental treatment. The trial court proposed that the psychiatrist should testify as to both issues at the bench trial rather than hold a separate hearing on the latter issue at the close of the trial. The defense counsel made no objection to the trial court's proposal, nor did he present a petition indicating a desire by the defense to bring in any additional witnesses to support the defendant's need for medical treatment. The trial court, as trier of fact, heard the evidence of Dr. Lorimer regarding the defendant's need for mental treatment at the trial and, therefore, was in the unique position to evaluate the defendant's present treatment needs. Consequently, we find that the trial court's failure to hold a separate hearing after the trial, to elicit the testimony of the same witness who testified at the trial, was not an abuse of discretion. Moreover, from our review of the record, we find that the trial court had before it sufficient evidence from which to conclude that the defendant was in need of mental treatment. Compare People v. Butler (1979), 69 Ill.App. 3d 556, 26 Ill.Dec. 78, 387 N.E.2d 908 with People v. Turner (1978), 62 Ill.App.3d 782, 19 Ill.Dec. 713, 379 N.E.2d 377. We therefore, reject the defendant's argument that comments made by the trial court during the trial indicated the trial court's confusion concerning the insanity plea and the defendant's present need for mental treatment.

While the procedural features of the Amended Act were properly applied, we note that the commitment order failed to specify the maximum period of commitment to the Department as required by that section. Section 5-2-4(b) provides in pertinent part:

“* * * that the initial order for admission of a defendant acquitted of a felony by reason of insanity shall be for an indefinite period of time; provided, however, that such period of commitment shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior, before becoming eligible for parole had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity.”

Generally a judgement should be so complete as not to require construction by the court to ascertain its import, and so complete that it will not be necessary for a non-judicial or ministerial officer to supplement the written words to ascertain its meaning. (*People v. Walton* (1969), 118 Ill.App.2d 324, 254 N.E.2d 190.) Accordingly, here, the trial court should determine and fix a definite maximum period of commitment in accordance with the provisions of the Amended Act. We should note, that in determining the maximum sentence which the defendant could have been required to serve, the trial court must give the defendant the right to elect whether he would have wished to be sentenced in accord with the law in existence at the time of the murder or that in existence at the time of the trial. (Ill.Rev.Stat. 1978 Supp., ch. 38, par. 1008-2-4; *People v. Hollins* (1972), 51 Ill.2d 68, 208, N.E.2d 710; *People v. Gunner* (1979), 73 Ill.App.3d 533, 29 Ill.Dec. 608, 392 N.E.2d 165.) Once this determination has been made and the trial court has fixed the maximum period of commitment in accordance with the Amended Act, the commitment order should be amended to reflect this clarification.

Finally, defendant contends that the evidence presented at trial does not support the trial court's finding that he was “not legally competent.” Section 9-11 of the Mental Health Code of 1967 (Ill.Rev.Stat. 1977, ch. 91 ½, par.9-11) provides that commitment after a finding that a defendant is in need of mental treatment is not an adjudication of, and creates no presumption of, legal incompetency and does not deprive the patient of his civil rights. Sanity and competency hearings are separate and distinct matters, sine all the court can do in a competency hearing is make a determination as to whether the defendant is capable of handling his own affairs. (*People ex. Rel. Drury v. Catholic Home Bureau* (1966), 34 Ill.2d 84, 213 N.E.2e 507; *People v. Adams* (1976), 35 Ill.App.3d 810, 343 N.E.2d 659.) The evidence at trial was related to the sole question of defendant's sanity at the time of the commission of the offense and at the time of trial. That evidence clearly demonstrated that defendant was in need of mental treatment; however, the record does not provide a basis for a determination as to his legal competency. Accordingly, we remand this matter to the trial court for a hearing and determination of the defendant's competency

APPELLATE COURT OF ILLINOIS
FIRST DIVISION

December 1, 2000

TIMOTHY LUCAS AND MELVIN	)	Appeal from the
DAWSON,	)	Circuit Court of
Plaintiffs-Appellants	)	Cook County
V.	)	No. 96 CO 141
HOWARD A. PETERS III, Secretary)	
of the Department of Human	)	The Honorable
Services, and NANCY STAPLES	)	James F. Henry,
Facility Director of the Elgin	)	Judge Presiding.
Mental Health Center)	

Defendants-Appellees.

JUSTICE COHEN delivered the opinion of the court:

On April 3, 1995, plaintiff Timothy Lucas was found not guilty by reason of insanity (NGRI). Pursuant to the provisions of the Unified Code of Corrections (730 ILCS 1/1 et seq. (West 1998)) (Code of Corrections) and the Mental Health and Developmental Disabilities Code (405 ILCS 5/1-100 et seq. (West 1998)) (Mental Health Code), he was committed to the custody of the Department of Mental Health and Developmental Disabilities (the DMHDD). The trial court found Lucas to be eligible for placement in a non-secure setting. The DMHDD placed Lucas at the William White Cottage (White) at the Elgin Mental Health Center (Elgin).

In July 1996, Lucas filed an eight-count complaint seeking an injunction requiring that the DMHDD consider placing him in a less restrictive facility than White, based on an individual assessment of his dangerousness and clinical needs.

Lucas later amended his complaint to seek relief both on his own behalf and on behalf of a class comprising himself and others found NGRI (NGRIs) approved for placement at non-secure facilities. The complaint alleged that the DMHDD's alleged policy of placing all NGRIs not needing placement in a secure setting into White without an individualized determination that White was the most clinically appropriate environment for the NGRIs violated provisions of the Mental Health Code and also violated the patients' due process rights under the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV).

Subsequent to the filing of the first amended complaint, there was a state government reorganization. The DMHDD was eliminated and its functions were assumed by the Department of Human Services (Department). Lucas again amended the complaint to substitute the Secretary of the Department, Howard A. Peters III, and the director of the Elgin facility, Nancy Staples, for the DMHDD as defendants. Lucas also added Melvin Dawson as a plaintiff and proposed class representative.

The Department has classified certain of its mental health facilities as "forensic." The patients at the forensic facilities are all NGRIs, criminal defendants found unfit to stand trial (USTs) and patients considered to be

behavior management problems. The mental health institutions are also classified as "secure" or "nonsecure." William White Cottage, a 38-bed facility at Elgin, is the only forensic facility classified as nonsecure. Other nonsecure facilities are located at Madden Mental Health Center (Madden), Tinley Park Mental Health Center (Tinley Park) and Reed Mental Health Center (Reed). There is a maximum security facility in Chester that houses both forensic and civil patients.

After a verdict of NGRI, a defendant subject to involuntary admission or in need of inpatient treatment is transferred to the custody of the Department. 730 ILCS 5/5-2-4(a) (West 1998). The Department then places the NGRI at one of its mental health facilities. Placement must be in a secure facility unless the court finds that there are compelling reasons for placement elsewhere. 730 ILCS 5/5-2-4(a) (West 1998).

NGRIs, whether they are committed or not, remain under the jurisdiction of the criminal court for a period of time equal to the longest possible sentence for the most serious of the crimes with which they were charged. 730 ILCS 5/5-2-4 (West 1998). The end of this period is known as the "Thiem" date. People v. Thiem, 82 Ill. App. 3d 956, 403 N.E.2d 647 (1980). When institutionalized NGRIs reach the Thiem date, the Department either releases them or recommitments them as civil patients, voluntarily or involuntarily as the case may be.

According to the plaintiffs, Madden, Tinley Park and Reed are less restrictive than is White. In its answers, the Department admitted that it "maintains facilities that are substantially less restrictive of physical movement than the William White Cottage, including but not limited to Madden." Patients at the nonforensic facilities are eligible for unsupervised on-grounds passes, which allow the patients to travel around the campus unescorted. At Madden, patients may be allowed to walk around for up to an hour; at Tinley Park, for two hours. At White, the patients are also eligible for unsupervised on-grounds passes; however, the passes only allow the patients to walk between nearby buildings. These walks would only take between 5 and 10 minutes.

The Department generally places civil committees at the nonforensic facility nearest to their homes. The patients living at Madden, Tinley Park and Reed, moreover, are housed in separate pavilions based on the location of their former residence. Each of the pavilions is connected with one or more community health centers that serve that area. These community health centers later provide post-discharge treatment. The NGRIs at White, however, are not housed according to former residence.

According to the complaint, the defendants violated Lucas' and Dawson's rights by assigning them to White without considering whether one of the other nonsecure facilities might be more appropriate. Lucas lived in Oak Park before he was committed. Both Reed and Madden are closer to his family and former residence than is Elgin. Dawson lived in Chicago. Tinley Park is closer to his family and former residence than is Elgin.

The plaintiffs further alleged that the director of the Madden facility determined that Lucas could be treated at Madden instead of at White. However, the director made this determination before he learned that placing Lucas at Madden would violate the DMHDD policy of keeping all NGRIs approved for a nonsecure setting at White. The defendants have admitted that Lucas would have been placed at Madden if he had been civilly committed rather than adjudicated NGRI.

At trial, the plaintiffs called Dr. Ronald Simmons, who at the time was in charge of all forensic operations for the Department, and Dr. Daniel Hardy, an assistant medical director who works primarily in the forensic treatment program at Elgin. Dr. Simmons, during his examination by the plaintiffs, explained to the court the Department's policy of "segregating" NGRIs from civil patients.

"THE WITNESS: Well, the difference is with an NGRI, the case I have in mind is someone who has been acquitted on a charge of murder or of a violent, violent type of crime, I think that we would assume that the risk for them to act out in this manner is higher than another group of patients who do not have a history of murder.

So in terms of risk management, risk toward proclivity toward violent behavior, I would want to treat them apart from other patients.

THE COURT: But both civil and NGRI or UST they are not going to be recommended for nonsecure setting if they're still considered a risk?

THE WITNESS: That's correct.

THE COURT: So once they are at the point where there's been a clinical determination that they are no longer a threat to themselves or others, why is there a differentiation in your mind then between the civil and NGRI patients?

The decision has been made that they are no longer a danger. I don't care what they might have done. That's past history. If they are still a danger, they are not supposed to be in a nonsecure setting in either situation.

THE WITNESS: Correct. Yes. That's correct.

THE COURT: What's the reason for this policy?

THE WITNESS: I don't know.

THE COURT: Who does?

THE WITNESS: I can't answer that.

THE COURT: You have been there since 1982, is that right?

THE WITNESS: Yes.

THE COURT: You haven't an inclination as to what's going on there then?

THE WITNESS: Not at Elgin.

THE COURT: Well, you had supervisory responsibility over Madden, Tinley Park, Reed, Metro Center, and for the last ten years been in charge of the forensic unit throughout the state.

Now this lawsuit has been filed because they claim that the NGRIs are being treated differently than other people that are in the exact same clinical situation. And you don't know why the civil patients-your answer was I don't know.

You have civil patients that would benefit from being at Tinley Park, but are saying that an NGRI who is no longer in a clinical situation, a danger to themselves or anybody else, they wouldn't benefit from the same treatment proposal as a civilly committed person?

THE WITNESS: That's correct, Your Honor.

THE COURT: You feel that way?

THE WITNESS: Yes, and I can explain my answer."

Dr. Simmons went on to explain that at Madden, Tinley Park and Reed, the conditions of the patients are usually more acute and less in remission than those of the patients at White. There is a much higher turnover at Madden, Tinley Park and Reed than at White. At White, Dr. Simmons testified, there is a "stable peer culture," and the patients receive a "longer term type of treatment."

Dr. Hardy testified that civil patients are treated for early stabilization and release, when the goal for NGRIs is longer-term stabilization. He opined that forensic patients have different needs and that the staff at the nonforensic facilities are not equipped to deal with those needs.

"Forensic expertise in my judgment is not something that one picks up at a training course. It requires literally years of experience. I have worked in various capacities at some of the major medical centers in the City of Chicago, public and private, and I can tell you, it is difficult enough to find staff that are even comfortable asking the civil patient about his or her sex life, which is going to be important in the comprehensive treatment of a psychiatric disorder. But if they have that kind of difficulty asking about something that's as common as that, they are having extreme difficulty in asking a patient about his sister that he chopped up and killed or her baby that she smothered to death. It is very difficult to be able to ask those kinds of questions and to work with those kinds of patients in a therapeutic environment without the therapist reacting to the patients in a negative manner. And that takes much more than training, it takes literally years of experience."

There was no evidence presented that the plaintiffs had been committed for crimes of violence.

The trial judge ruled in favor of the defendants, indicating that he did not think it was the court's place to "micromanage" the operations of the Department. The court did not make an explicit ruling on class certification. This appeal followed.

ANALYSIS

Only the plaintiffs' claims in their individual capacities are before us, as the trial court has not yet ruled on class certification.

I. State Law Claims

Both the Code of Corrections and the Mental Health Code apply to the plaintiffs. The disposition of insanity acquittees is addressed in section 5-2-4 of the Code of Corrections. 730 ILCS 5/5-2-4 (West 1998). Section 5-2-4 provides for the involuntary commitment of NGRIs who are deemed in need of it. It dictates that the "admission, detention, care, treatment or habilitation" of these NGRIs shall be under the Mental Health Code. 730 ILCS 5/5-2-4(b) (West 1998). In the event of a conflict between the criminal commitment provisions of the Code of Corrections and the Mental Health Code, the Code of Corrections prevails. 730 ILCS 5/5-2-4(k) (West 1998).

The plaintiffs claim that the Department, by not placing NGRI patients based on individual assessments, abridges rights afforded to committees under the Mental Health Code. We must consider whether the Mental Health Code does indeed grant such rights and, if it does so, whether the Code of Corrections nevertheless trumps the relevant Mental Health Code provisions. As the question of what statutes apply to the plaintiffs is a question of law, our review is *de novo*. People v. Ernst, 311 Ill. App. 3d 672, 675, 725 N.E.2d 59, 63 (2000). The question of whether the defendants have complied with the provisions of the applicable statutes will be a mixed question of fact and law, reviewed under the "clearly erroneous" standard. City of Belvidere v. Illinois State Labor Relations Board, 181 Ill. 2d 191, 205, 692 N.E.2d 295, 303 (1998).

A. Counts I and II

The plaintiffs initially claim that assigning them to White without an individualized determination of their dangerousness or clinical needs violates the Mental Health Code. The Mental Health Code states: "A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan." 405 ILCS 5/2-102(a) (West 1998). In count I, the plaintiffs allege that the Department's practice violates their right to treatment in the least restrictive environment. Count II alleges that the practice violates their right to an individual services plan. Our analysis begins by examining the three primary cases relied upon by the parties.

The plaintiff in Johnson v. Brelje, 521 F. Supp. 723 (N.D. Ill. 1981), had been charged with a crime, but was found unfit to stand trial (UST). At the time, the DMHDD had a policy of placing all male USTs at the maximum security facility in Chester. The plaintiff brought a federal civil rights suit on behalf of himself and a class of similarly situated individuals (class certified at Johnson v. Brelje, 482 F. Supp. 121 (N.D. Ill. 1979)) alleging, among other things, that placing all male USTs at Chester without an individualized determination of their dangerousness or their clinical needs deprived them of entitlements under the Mental Health Code without procedural due process. The case was resolved on cross-motions for summary judgment. The district court found that automatic placement at Chester violated the plaintiffs' procedural due process rights.

The Seventh Circuit Court of Appeals affirmed. The court held that the rights in the Mental Health Code on which the plaintiffs' claim was based did not conflict with the Code of Corrections. Johnson v. Brelje, 701 F.2d 1201, 1206 (7th Cir. 1983). Therefore, the plaintiffs had state-created liberty interests that were entitled to procedural due process under the fourteenth amendment.

In Maust v. Headley, 959 F.2d 644 (7th Cir. 1992), the court rejected a claim that the transfer of a UST to Chester from Elgin violated his rights under the Mental Health Code. According to the plaintiff, putting him in Chester deprived him of his right to treatment in the least restrictive environment and other rights guaranteed by the Mental Health Code. The court acknowledged that the Johnson case would normally support the plaintiff's claim, but noted that the applicable statutes had changed since Johnson was decided. The legislature had added the following amendatory language to the Code of Corrections, which the Maust court found to conflict with the rights asserted under the Mental Health Code:

"The [NGRI] defendant shall be placed in a secure setting unless the Court determines that there are compelling reasons why such placement is not necessary." 730 ILCS 5/5-2-4(a) (West 1998).

In Maust, there was no determination by a court that secure placement was not necessary. In cases of conflict between the Mental Health Code and section 5-2-4 of the Code of Corrections, the Code of Corrections prevails. 730 ILCS 5/5-2-4(k) (West 1998). Because the Code of Corrections mandates a secure setting unless a court determines secure placement is not necessary, the court found that the plaintiffs did not have a right to treatment in the least restrictive environment.

In C.J. v. Department of Mental Health & Developmental Disabilities, 296 Ill. App. 3d 17, 693 N.E.2d 1209 (1998), the plaintiff NGRIs (who had not been found suitable for nonsecure placement) challenged the DMHDD's alleged policy of never giving unsupervised grounds passes to committees at the Elgin secure facility. Applying Maust, this court held that the policy did not violate any right to treatment in the least restrictive environment. Because there had not been a finding of compelling reasons that the plaintiffs in C.J. could be placed in a nonsecure setting, we held that "[the 'secure setting' provided for in section 5-2-4 of the Code of

Corrections is in effect the least restrictive environment permitted for NGRI acquittees under the law, in the absence of compelling reasons for other placement." C.J., 296 Ill. App. 3d at 24, 693 N.E.2d at 1213.

We noted that this result was all the more certain because the Code of Corrections specifically provided with regard to NGRIs in a secure setting:

"During this period of time, the defendant shall not be permitted to be in the community in any manner, including but not limited to off-grounds privileges, with or without escort by personnel of the Department of Human Services, unsupervised on-grounds privileges, discharge of conditional or temporary release, except by a plan as provided in this Section." 730 ILCS 5/5-2-4(b) (West 1998).

Accordingly, the plaintiffs were not entitled to be considered for unsupervised on-grounds passes.

The relevant precedent for the statutory claims here must be Johnson, rather than Maust or C.J.. The crucial factor distinguishing the instant case from C.J. and Maust derives from the court here having found that there are compelling reasons for nonsecure placement of the plaintiffs. Because of this finding, the Code of Corrections does not require that the plaintiffs here be placed in a secure setting or that they be denied unsupervised on-grounds passes. The passages in section 5-2-4 of the Code of Corrections that Maust and C.J. found to conflict with the rights granted in the Mental Health Code do not apply here. As there is no conflict, the relevant Mental Health Code provisions are not preempted. Johnson, rather than Maust, is the case to which we must look.

The district court in Johnson held that the Mental Health Code gave USTs the right to an individual assessment to determine whether they belonged at Chester before being placed there arbitrarily. The Johnson court's discussion pertaining to USTs could just as easily apply to the NGRIs in this case.

"[Unlike convicted criminals, plaintiffs can justifiably expect that their assignment will be based upon an individualized determination of their dangerousness, conducted prior to placement. This expectation is rooted in the provision of the Illinois Mental Health Code that requires patients to be treated in the least restrictive environment possible, according to an individualized service plan." Johnson, 521 F. Supp. at 726.

The testimony in the instant case shows that placement is not based on individualized determinations. It is clear that NGRI status is being used as a proxy for clinically salient characteristics. "Not guilty by reason of insanity" is not a medical diagnosis. The witnesses justified their practice of segregating NGRIs by pointing to the NGRIs' supposed histories of violence. But one does not have to commit a crime of violence to be adjudged NGRI. Not all patients who have committed violent acts are institutionalized as NGRIs rather than as civil patients. In fact, once an NGRI reaches his or her Thiem date, the patient is no longer housed at White and is no longer considered an NGRI. Clearly, the Thiem date is not in itself medically significant. The decision to use NGRI status in this way seems to be merely one of convenience rather than therapy. As the district court in Johnson noted with regard to USTs, "[the assignment [of USTs to Chester] is made on administrative grounds, as there is no individualized finding that a particular UST has need for, or would benefit from, placement in a facility as restrictive as Chester." Johnson, 521 F. Supp. at 727.

Following Johnson, we find that the plaintiffs are entitled to placement based on an individualized assessment.

B. Count III

The Mental Health Code also states that: "[a] person with a known or suspected mental illness or developmental disability shall not be denied mental health or developmental services because of *** criminal record unrelated to present dangerousness." 405 ILCS 5/2-100 (West 1998). In count III, the plaintiffs contend that "geographic placement" is a mental health service that they are being denied because of criminal record (i.e., their status as NGRIs) without regard to present dangerousness. According to the plaintiffs, this "service" includes being placed in the mental health facility nearest their families and former residences and having contact with community mental health organizations that will provide their post-discharge treatment. According to the uncontradicted testimony at trial, however, the NGRIs at White Cottage receive the same attention from community mental health organizations as do civil committees at Madden, Tinley Park or Reed. The only other element of geographic placement is proximity to family and former residence. While not a frivolous concern (see Anthony v. Wilkinson, 637 F.2d 1130, 1141 (7th Cir. 1980)), we think that being housed close to one's family cannot be considered a "mental health service." Such an interpretation simply does not accord with the commonly understood meaning of the words.

The plaintiffs respond that the Mental Health Code defines "treatment" to include "hospitalization." 405 ILCS 5/1-128 (West 1998). From this plaintiffs conclude that "choice of hospital is an element of treatment." We disagree. While the Mental Health Code provides that hospitalization is an element of treatment, it does not provide that hospitalization in any particular location is an element of treatment. Count III fails.

C. Count IV

The Mental Health Code directs that "[the Secretary of Human Services and the facility director of each service provider shall adopt in writing such policies and procedures as are necessary to implement this Chapter. Such policies and procedures may amplify or expand, but shall not restrict or limit, the rights guaranteed to recipients by this Chapter." 405 ILCS 5/2-202 (West 1998). Count IV alleges that the defendants have adopted policies that restrict the plaintiffs' rights under the Mental Health Code as set out in counts I through III.

Count IV, as pled, restates counts I through III. See C.J., 296 Ill. App. 3d at 27, 693 N.E.2d at 1215. Insofar as it is based on counts I and II, it succeeds, and insofar as it is based on count III, it fails.

II. The Constitutional Claims

The remaining counts allege violation of the plaintiffs' procedural and substantive due process rights under the Fourteenth Amendment.

A. Procedural Due Process

The plaintiffs claim that they are being deprived of the right to treatment in the least restrictive environment without procedures necessary to satisfy due process. The procedural protection they request is a decision by a mental health professional that is based on an individualized assessment of their situations. This relief is the same relief they claim as an entitlement under the Mental Health Code.

In Mathews v. Eldridge, 424 U.S. 319, 335, 47 L. Ed. 2d 18, 33, 96 S. Ct. 893, 903 (1976), the Supreme Court set out the method for determining whether due process requires a particular procedural safeguard:

"[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural

safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

The district court in Johnson applied this test to determine whether the automatic assignment of all USTs to Chester deprived them of their state-created interest in treatment in the least restrictive environment without procedural due process. With regard to the interests of the individual patients, the court in Johnson found:

"The Chester facility is a maximum security institution that imposes severe restrictions on the movement and activities of its inhabitants. Also, because of Chester's distant location from Cook County, where most of the patients resided prior to confinement, placement at Chester means being deprived of contact with family and friends. See Anthony v. Wilkerson, 637 F.2d 1130, 1141 (7th Cir. 1980). The UST's interest in not being transferred to Chester without an individualized finding regarding his treatment needs and dangerousness is indeed substantial." Johnson, 521 F. Supp. at 727.

While, admittedly, White is less restrictive and less remote than Chester, the same reasoning applies in this case.

Addressing the probable value of the additional procedure of an individualized assessment, we believe that this safeguard would contribute significantly toward ensuring that a decision to assign a patient to White "is consistent with the patient's individual treatment needs and reflects the patient's need for a secured setting." Johnson, 521 F. Supp. at 728.

Finally, we find that the burden on the state from the additional procedure of an individualized assessment is almost nonexistent. The defendants are already required to evaluate the treatment of each patient every 60 days. 730 ILCS 5/5-2-4(b) (West 1998). The plaintiffs merely request that the defendants include in this evaluation an individualized finding of what facility is most appropriate for them. In Johnson, the court found procedures to be appropriate that were much more extensive than those requested here. Johnson, 521 F. Supp. at 728.

B. Substantive Due Process

The plaintiffs next claim that their assignment to White without individualized determinations infringes their substantive due process rights under Youngberg v. Romeo, 457 U.S. 307, 73 L. Ed. 2d 28, 102 S. Ct. 2452 (1982). In Youngberg, the Court observed that persons confined in state institutions retain an interest in freedom from bodily restraint. Youngberg, 457 U.S. at 316, 73 L. Ed. 2d at 37, 102 S. Ct. at 2458. That interest, however, is not absolute. In order to determine whether the infringement of a liberty interest constitutes a violation of substantive due process, one balances the individual's interest in liberty against the state's asserted reasons for restraining individual liberty. Youngberg, 457 U.S. at 320, 73 L. Ed. 2d at 40, 102 S. Ct. at 2460. Youngberg further instructs us that the standard for the balancing is "professional judgment." It is this part of the holding that can be confusing for the word "judgment" can be ambiguous. "Professional judgment" can be argued to mean a decision--any decision, however outrageous it might be, so long as it has been made by a professional. A careful reading of Youngberg, however, explodes this interpretation. Youngberg uses "professional judgment" not to mean a decision made by a professional but rather as synonymous with accepted standards and practices within the relevant profession.

In our view, the ultimate standard that Youngberg delineates is treatment guided and informed by "normal professional standards." See Youngberg, 457 U.S. at 323, 73 L. Ed. 2d at 42, 102 S. Ct. at 2462. If a professional person makes the treatment decision, this standard is presumptively met. However, the presumption can be overcome. Deference to professional decision making imposes a concomitant judicial duty to ensure that the professional's expertise was actually brought into play. See Williams v. Robinson, 432 F.2d 637, 641 (D.C. Cir.

1970). If the decision is such a departure from the accepted standards and practices of the profession that it is clear that the decision was not guided by those standards and practices, then substantive due process is not satisfied. See Youngberg, 457 U.S. at 323, 73 L. Ed. 2d at 42, 102 S. Ct. at 2462.

In this case, there is no indication that a professional made a decision that Lucas and Dawson should be at White rather than elsewhere. Instead, the evidence indicates that they were placed at White pursuant to a blanket policy. Thus, the decision to place them at White does not enjoy a presumption of conformance with substantive due process. However, the plaintiffs have not presented evidence that placing them at White without an individualized determination is incompatible with normal professional standards and practices. Rather, the plaintiffs argue that, as understood by the Court in Youngberg, "professional judgment" by its very nature requires consideration of patients as individuals.

Some courts have interpreted Youngberg as the plaintiffs urge. See Walters v. Western State Hospital, 864 F.2d 695, 700 (10th Cir. 1988) (blanket policy of holding new patients incommunicado for a week or more could not be justified as in accord with professional judgment since individual patient's needs were not considered); C.J., 296 Ill. App. 3d at 31-32, 693 N.E.2d at 1218 (in evaluating Youngberg substantive due process claim on remand, trial court should determine whether staff had used "individualized professional judgment").

Nevertheless, given the lack of evidence with regard to the relevant professional standards and whether the treatment decision was made by a professional, we cannot decide the substantive due process issue. Moreover, the thrust of the plaintiffs' complaint deals with procedural rather than substantive shortcomings. The essence of the dispute in this case is whether the plaintiffs' assignment has been performed in accord with the proper procedure, not whether the substantive restrictions on their freedom of bodily movement are justified. Finally we note that, "[as a general policy, Illinois courts will only decide constitutional questions where necessary to the disposition of the case." Aurora East Public School District No. 131 v. Cronin, 92 Ill. App. 3d 1010, 1021, 415 N.E.2d 1372, 1381 (1981).

III. Injunctive Relief

While the standard of review for a preliminary injunction is abuse of discretion, the standard for a permanent injunction is manifest weight of the evidence. Harper v. Missouri Pacific Railroad Co., 282 Ill. App. 3d 19, 24-25 667 N.E.2d 1382, 1386 (1996); Hasco, Inc. v. Roche, 299 Ill. App. 3d 118, 126, 700 N.E.2d 768, 773-74 (1998). "A trial court's judgment is against the manifest weight of the evidence only if the opposite result is clearly evident." Harper, 282 Ill. App. 3d at 25, 667 N.E.2d at 1386.

An injunction should not be granted if the plaintiff has an adequate remedy at law. Cross Wood Products, Inc. v. Suter, 97 Ill. App. 3d 282, 284, 422 N.E.2d 953, 956 (1981). The remedy at law is "adequate" if it is "clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy." Cross Wood, 97 Ill. App. 3d at 286, 422 N.E.2d at 957. Here, the plaintiffs cannot be made whole by an action at law as there would be no way to determine damages. Where a violation is continuous in nature, the fact that only nominal damages could be recovered in an action at law often provides the very best reason why a court of equity should become involved. Mutual of Omaha Life Insurance Co. v. Executive Plaza, 99 Ill. App. 3d 190, 195, 425 N.E.2d 503, 508 (1981).

In order to be entitled to an injunction, a plaintiff must show that he or she possesses a certain and clearly ascertainable right. Smith Oil Corp. v. Viking Chemical Co., 127 Ill. App. 3d 423, 431, 468 N.E.2d 797, 802 (1984). In this case, we have determined that the plaintiffs have both a clear and certain right under the Mental Health Code to be placed pursuant to individualized assessments and a right under the fourteenth amendment not to be deprived of the entitlements granted under the Mental Health Code without procedural due process.

A plaintiff must also show that he or she will suffer "irreparable harm" if relief is not granted. Smith Oil, 127 Ill. App. 3d at 431, 468 N.E.2d at 802. In this context, "irreparable harm" does not mean injury that is beyond repair or compensation in damages but, rather, denotes transgressions of a continuing nature. Tamalunis v. City of Georgetown, 185 Ill. App. 3d 173, 190, 542 N.E.2d 402, 413 (1989).

The Department argues that the plaintiffs cannot demonstrate irreparable harm because the plaintiffs have not proven that after the requested individualized assessment they would be approved for placement elsewhere than at White. Thus, the Department argues, any harm is only speculative.

Initially, we note that this is not the case for Lucas because the Department has admitted that he would be at Madden if he were not classified as NGRI. More importantly, regardless of whether the plaintiffs would be assigned to a different facility after an individualized determination, in the absence of such a determination the plaintiffs are being denied their procedural due process rights under the fourteenth amendment. A continuing violation of the United States Constitution (that cannot be adequately compensated with money) is a per se irreparable harm for injunction purposes. Hamlyn v. Rock Island County Metropolitan Mass Transit District, 960 F. Supp. 160, 162-64 (C.D. Ill. 1997); Walters v. Thompson, 615 F. Supp. 330, 341 (N.D. Ill. 1985). The violation in the instant case is continuing and damages cannot be measured by any certain pecuniary standard.

Finally, a court considering injunctive relief should balance the equities. Village of Wilsonville v. SCA Services, Inc., 86 Ill. 2d 1, 27, 426 N.E.2d 824, 837 (1981). We have already performed a balancing of the relative burdens to the plaintiffs and the defendants in analyzing the procedural due process claim and have resolved it in the plaintiffs' favor.

Although the trial court denied the injunction, our analysis supports the opposite result. Accordingly, we hold that the trial court should have granted an injunction requiring that the placement of Lucas and Dawson be based on individualized determinations.

IV. Class Certification

The trial court has not yet ruled on class certification. As we have found that the individual plaintiffs are entitled to relief, we remand for consideration of whether class certification is appropriate. If class certification is appropriate, the trial court should go on to consider whether the class is entitled to an injunction against the complained-of practice.

The question may arise as to whether entry of judgment in favor of the proposed class representatives will render their individual claims moot and thus deprive them of standing to act as class representatives. As the question is not presently before us, we do not express an opinion on the effect of judgment being entered on behalf of the individual plaintiffs on the plaintiffs' status as class representatives. We instruct the trial court, however, that it should rule on the pending motion for class certification prior to ruling on any subsequent motions for dismissal or summary judgment based on the theory of mootness. If the class is certified, the court should allow a reasonable time for the substitution of other class members as the class representatives before making a ruling as to mootness. See Hillenbrand v. Meyer Medical Group, S.C., 308 Ill. App. 3d 381, 392, 720 N.E.2d 287, 296 (1999).

Reversed and remanded with instructions.

McNULTY, P.J., and TULLY, J., concur.

2004 WL 2609779

--- N.E.2d ---

Cite as: 2004 WL 2609779 (Ill.)

Supreme Court of Illinois.

In re ROBERT S. (The People of the State of Illinois, Appellee, v. Robert S., Appellant).

No. 96773.

Nov. 18, 2004.

JUSTICE RARICK delivered the opinion of the Court:

Respondent, Robert S., was found unfit to stand trial on a charge not specified in the record. He was admitted to the Elgin Mental Health Center (EMHC). Subsequently, respondent's treating psychiatrist filed a petition seeking the involuntary administration of psychotropic medication pursuant to section 2-107.1 of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/2-107.1 (West 2000)). After a two-day hearing, in which respondent represented himself, the circuit court of Kane County granted the petition. Respondent appealed, challenging, *inter alia*, the circuit court's decision to appoint, as an "impartial medical expert" pursuant to the "independent examination" provisions of section 3-804 of the Code (405 ILCS 5/3-804 (West 2000)), a person who was not qualified to conduct the examination. Respondent also contended that (1) section 2-107.1 of the Code "was never intended to be applied to non-dangerous pretrial detainees," (2) the application of section 2-107.1 deprived him of his constitutional right to a fair trial, and (3) reversal was warranted because the attorney in his pending criminal case was not notified of the hearing on the petition. The appellate court rejected these and other arguments. 341 Ill. App. 3d 238. We allowed the respondent's petition for leave to appeal (177 Ill. 2d R. 315), and allowed the Mental Health Association of Illinois and the Mental Health Project of the University of Chicago Law School's Mandel Legal Aid Clinic to file a brief as *amici curiae* in support of appellee.

Before this court, respondent contends that the appellate court erred in holding that (1) section 2-107.1 of the Code was constitutionally applied to him, a pretrial detainee who had been found unfit to stand trial, (2) he was not deprived of his right to due process of law where the independent examination guaranteed by statute was performed by an unlicensed intern with only a master's degree in psychology, and (3) he had no due process right to have notice of the forced-treatment action provided to his criminal defense attorney. We begin our review with a detailed recitation of pertinent facts.

BACKGROUND

On November 19, 2001, respondent's psychiatrist, Dr. Romulo Nazareno, filed a petition seeking to involuntarily administer psychotropic medication to respondent. The allegations of the petition tracked the requirements of section 2-107.1(a-5)(4) of the Code (405 ILCS 5/2-107.1(a-5)(4) (West 2000)), which provides in pertinent part as follows:

"(4) Authorized involuntary treatment shall not be administered to the recipient unless it has been determined by clear and convincing evidence that all of the following factors are present:

(A) That the recipient has a serious mental illness or developmental disability.

(B) That because of said mental illness or developmental disability, the recipient exhibits any one of the

following: (i) deterioration of his or her ability to function, (ii) suffering, or (iii) threatening behavior.

(C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.

(D) That the benefits of the treatment outweigh the harm.

(E) That the recipient lacks the capacity to make a reasoned decision about the treatment.

(F) That other less restrictive services have been explored and found inappropriate.

(G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment."

The petition in this case specifically alleged that, because of his mental illness, respondent had exhibited a deterioration of ability to function, suffering, and threatening behavior. Dr. Nazareno requested authorization to administer Risperidone-a medication respondent had previously taken, briefly, without noticeable side effects-or, alternatively, Haldol, Haldol Deconate, and Cogentin. Nazareno also sought permission to conduct testing to monitor respondent's reaction to the medication.

On November 26, 2001, the circuit court held a competency hearing pursuant to respondent's request to represent himself. At that time, the court denied respondent's request. Respondent filed a motion to reconsider. On November 30, 2001, respondent appeared in court with appointed counsel from the Legal Advocacy Service of the Illinois Guardianship and Advocacy Commission for a hearing on pending matters. The circuit court denied respondent's motion to reconsider, but granted his request for an independent evaluation pursuant to section 3-804 of the Code (405 ILCS 5/3-804 (West 2000)). However, rather than appoint the *psychiatrist* who had previously conducted independent examinations of respondent, the court, pursuant to the cost-conscious request of the State, appointed the Kane County Diagnostic Center to perform the evaluation. Respondent's counsel objected, noting: "Everyone associated with the Diagnostic Center is a psychologist and not a psychiatrist and therefore does not have the expertise when it comes to medication. So every time we go to the Diagnostic Center, we're starting behind the 8-ball because of that very thing."

The circuit court acknowledged:

"Although Mr. Rose is right, I suppose what appears to be on paper in the-on the way I make the decisions on these things, I don't think that I would really say psychiatrist versus psychologist; and therefore you're behind the 8-ball. I look at the issues and what the facts are and rule accordingly."

The court persisted in its decision to appoint the Kane County Diagnostic Center.

At a pretrial conference on January 4, 2002, the circuit court revisited the issue of self-representation. Noting "representations" that respondent had represented himself ably in the past, the court reversed its prior ruling, and allowed respondent to proceed *pro se*.

Hearing in this matter commenced on January 18, 2002. The State's first witness was Dr. Nazareno.

Nazareno diagnosed respondent with paranoid schizophrenia. He testified that respondent's symptoms included hallucinations, delusions, sleeplessness, irritability, and an overall deterioration in the ability to function. For instance, respondent complained of sleep deprivation as a result of auditory hallucinations. Moreover, respondent suffered delusions. He believed that the government had implanted a microchip in his brain in an effort to read

his mind. Respondent claimed that EMHC staff and patients were sending messages to a "mind reader" by actions such as rubbing their chins or adjusting their eyeglasses. In addition, respondent threatened to kill an EMHC patient who respondent believed was having a sexual relationship with women intended for respondent.

Dr. Nazareno testified that respondent's symptoms had subsided when he was medicated on a previous occasion with Risperidone. However, once the medication order expired, respondent again experienced auditory hallucinations, sleep deprivation, and delusional thinking. It was at that time that respondent threatened to kill a member of the EMHC staff.

Nazareno recommended administering Risperidone to respondent because, in the past, he had responded well to the drug without side effects. Nazareno suggested, however, that higher doses might be indicated. As alternatives, Nazareno recommended Haldol, Haldol Deconate (injectable), and, for side effects, Cogentin. Nazareno testified that Risperidone has fewer side effects than Haldol. According to Nazareno, Risperidone can cause dizziness, light-headedness, seizure, nausea, vomiting, muscular rigidity, difficulty swallowing, constipation, tardive dyskinesia, and neuroleptic malignant syndrome. He did not elaborate on the incidence of those side effects.

Nazareno acknowledged that Haldol has more severe side effects than Risperidone. He did not specify what those side effects might be. What *is* clear from his testimony is that Haldol would be the drug of choice if respondent refused to take Risperidone. Nazareno admitted that he had no way of knowing if respondent would have an adverse reaction to Haldol.

Nevertheless, Dr. Nazareno opined that the benefits of administering a psychotropic medication would outweigh the harm. He stated that respondent lacked the capacity to make a reasoned decision about potential side effects and benefits of the treatment. According to Dr. Nazareno, respondent's psychosis was the reason he could not make a knowledgeable decision whether to take the medication. Nazareno had tried less restrictive treatments, such as counseling and group therapy, but he deemed them ineffective without medication.

On cross-examination, Dr. Nazareno admitted that respondent had never threatened him and that he had never personally witnessed respondent threaten others. Nazareno also acknowledged that, during the court proceeding, he did not see a deterioration in respondent's functioning, and he noted that respondent did not exhibit his usual symptoms, such as talking to himself. However, Nazareno stated that respondent's behavior, and the way in which he asked questions, showed some paranoia and delusions. For instance, during questioning, respondent insinuated that Nazareno must also have heard voices. Nazareno pointed out that there are times during which an afflicted individual can contain delusions by focusing on a task.

The State next called Lesley Kane, an intern at the Kane County Diagnostic Center (KCDC). Kane conducted the court-ordered, independent examination of respondent. Kane's examination consisted of interviewing respondent for 60 to 90 minutes, talking to respondent's case worker, and reviewing two to three years of respondent's records. Noting that the "witness ha[d] been qualified as an expert" in a previous case, the circuit court qualified Kane as an expert over respondent's objection.

Citing symptoms similar to those identified by Nazareno, Kane diagnosed respondent with paranoid schizophrenia. With respect to whether respondent had exhibited a deterioration of his ability to function, suffering, or threatening behavior, Kane stated that respondent had indeed become increasingly tense and agitated, verbally aggressive, and more threatening in the months preceding the hearing. Moreover, his sexual preoccupations had increased, and EMHC staff had noted an increase in his use of profanity. Kane further testified that respondent's illness has existed for a period marked by the continuing presence of symptoms, noting

that respondent has had a history of delusions dating back to the 1970s. Without elaboration, Kane stated her opinion that the benefits of psychotropic medication would outweigh the harm. Kane noted that respondent's behavior posed a risk to himself and to others, and that any side effects of the medication could be dealt with effectively. Kane did not address the nature or likelihood of side effects that might result from forced administration of psychotropic medication. Kane opined that respondent's suffering, the deterioration of his ability to function, and his violent and threatening behavior would decrease with medication.

Kane also concluded that respondent lacked the capacity to make a reasoned decision about psychotropic medication. Respondent told her he did not need psychotropic medication because he did not have a mental illness. When she spoke with him, he was evasive and avoided any discussion of his inability to sleep, hallucinations, or delusions. According to Kane, respondent was unaware of the severity of his illness, which is typical of people diagnosed with schizophrenia. When she asked him if he ever heard voices other people did not hear, he responded, "I believe other people hear the voices as well."

Regarding less restrictive alternatives, Kane noted that respondent had been offered psychosocial therapy; however, because respondent lacked insight into his illness, "it doesn't seem as though that alone is going to be helpful." Kane also noted that, in individuals with schizophrenia, therapy is more often augmentation to medication. Kane opined "to a reasonable degree of psychological certainty" that respondent met the criteria for utilization of psychotropic medication.

On cross-examination, Kane admitted that, during her independent examination of respondent, she did not observe respondent suffering from delusions or hallucinations. She also acknowledged that respondent was not exhibiting such symptoms at the hearing.

Kane conceded that she had never done an evaluation without supervision. She stated that she had been supervised in her evaluation of respondent, though there is nothing in the record to reveal the nature or extent of that supervision. In fact, she admitted that a supervisor was not present when she conducted her examination of respondent and did not review respondent's charts or interview anyone with pertinent information. Kane stated that a licensed psychologist "has to assist" in a fitness examination, "but for an involuntary medication evaluation, that is not a requirement." When respondent asked why, Kane replied, "I didn't develop the law. I don't know." Kane did not cite "the law" to which she referred.

The State recalled Dr. Nazareno. Nazareno testified that respondent does not have the capacity to make a reasoned and rational choice regarding whether he needs medication. Nazareno noted that respondent does not believe he is ill. Nazareno added that respondent's judgment is so impaired by his illness that he sees only the risks, and not the benefits, of the medication.

Under cross-examination, Nazareno acknowledged that respondent understood the potential severity of the possible side effects of the medications proposed. He admitted that respondent was proceeding in a "logical" and "goal-oriented" manner in his cross-examination. However, Nazareno persisted in his opinion that respondent did not have the capacity to make a decision as to whether he should take psychotropic medication. Respondent continued:

"Q. So, you're saying I am logical, coherent, and goal-oriented, and they [psychotropic drugs] were prescribed for a period of three months a couple years ago, but you're saying I wouldn't know what the benefits are?

A. Yes. Even though I explain to you, you don't take it. You don't understand."

Kelli Childress, a former assistant State's Attorney, testified that she first met respondent in 1999 when she was

assigned to a hearing in which respondent was involved. On or about October 31, 2001, Childress received a telephone call from respondent. Respondent told Childress that he remembered her from the 1999 hearing and he had been thinking about her ever since. Respondent accused Childress of helping the government with a scheme to read his mind. Respondent believed that he and Childress were supposed to be together and that the government had indicated to him that Childress felt the same way. Respondent asked Childress if she would help him get out of EMHC so they could be together. Childress told respondent she was involved with someone else and the information he had was incorrect. Childress stated that she felt threatened during the conversation.

Respondent called Childress again on December 31, 2001. According to Childress, the tone of this conversation was less accusatory and more romantic. Respondent told Childress she was beautiful, he had feelings for her, and the government had informed him that they were supposed to be together. Respondent stated that he thought about marrying Childress, having children, and moving to California. Respondent told Childress that the government had informed him that she was romantically involved with other patients at EMHC and with a player for the Chicago Bears.

Childress testified she was familiar with respondent's case and knew why he was at EMHC. She was afraid that he could become violent if he believed she was part of a government scheme to read his mind. As a result, after both calls, Childress contacted the State's Attorney's office and the court liaison at EMHC. In addition, following the first call, she contacted local police. Childress did not hear from respondent after the second call. On cross-examination, Childress admitted that respondent did not specifically threaten her.

Mark Thomas, a licensed clinical social worker at EMHC, testified that he was respondent's primary therapist. Thomas stated that respondent's psychiatric diagnosis was paranoid schizophrenia. According to Thomas, respondent's condition had been deteriorating over the months preceding the hearing, with increased agitation, verbal outbursts, and verbal aggression.

Thomas testified that respondent believed the voices he heard were caused by a chip implanted by the government. Respondent thought the chip enabled the government to read his mind. On two occasions in the three months prior to the hearing, respondent became agitated with Thomas because respondent believed Thomas was "signaling the mind readers" by rubbing his limbs. A third incident occurred when Thomas sided with a technician who was involved in a dispute with respondent. At that time, respondent cursed at Thomas. Thomas considered respondent's behavior during the third incident to constitute a threat.

Thomas testified that respondent admitted he suffered from hallucinations and delusions. The hallucinations and delusions centered on female celebrities, but had included staff at EMHC. In addition, respondent told Thomas that he wanted to have a relationship with Childress. Respondent also told Thomas that his conversations with Childress had gone well and that she had been receptive.

Thomas further stated that respondent believed certain women had been "reserved" for him by the mind readers. Respondent became verbally abusive when he believed those women had ignored him or had been having relationships with other EMHC patients. Respondent confronted one patient whom he believed was having a sexual relationship with one of his "reserved" women.

Thomas opined that respondent suffered as a result of hearing voices. Thomas believed that respondent's ability to function had deteriorated in the three months prior to the hearing. Thomas also stated that, of his 36 patients, respondent posed the highest risk. Thomas stated that respondent was "in the upper echelon" of patients who frightened him.

On cross-examination, Thomas testified that respondent had a "remarkable ability" to contain his psychosis. Nevertheless, he thought that respondent had exhibited evidence of mental illness in the courtroom. As examples, Thomas noted respondent's allusions to government mind readers and his claim that the government had implanted a chip in his body.

The State next called respondent as a witness. Respondent objected. The trial court sustained respondent's objection on the basis that respondent was at EMHC because he had been found unfit to stand trial in an underlying criminal proceeding. The State then rested. Respondent requested two weeks to subpoena his witnesses, and the court continued the matter until February 1, 2002.

When court reconvened, respondent called as his first witness Denise Dojka, a clinical psychologist at EMHC and respondent's psychological therapist. Dojka stated that respondent suffered from paranoid schizophrenia. She had never seen respondent participate in any violent behavior. Nevertheless, based on a risk assessment she had conducted of respondent, Dojka believed he was one of the more dangerous people in his unit.

On cross-examination, Dojka testified that respondent heard voices that called him derogatory names and woke him at night. Respondent believed the voices were from the government and they were transmitted through an implant in his head. The voices informed respondent that women who were interested in a sexual relationship with him were being brought to other patients. Respondent told Dojka that he would have liked to have had a relationship with Childress and that he wanted Childress to have his children. However, he no longer believed it was possible to have a relationship with Childress because he believed she had been given large sums of money to have sex with another patient.

Dojka testified that she considered respondent dangerous because he had several risk factors. According to Dojka, respondent's history of violence, symptoms of mental illness, refusal of treatment, anger, and the lack of feasibility of future plans all contributed to a finding that respondent posed at least a moderate risk of committing violence in the future, especially since he was not medicated.

Dojka feared that respondent would commit violence against Childress and Lynette Krueger, Dojka's diagnostic psychology student. Respondent wanted to have relationships with both women, but he believed that they were sleeping with others. That made respondent feel betrayed and resentful.

Dojka believed that respondent needed to be medicated. She noted that, on a previous occasion, when he was medicated for a 90-day period, his sleeping improved, he was much more relaxed, he participated in activities, and he seemed to be functioning at a higher level. Dojka also believed that respondent was suffering. He had told her he felt "tormented" by the voices.

Becky Mitchell, an activity therapist at EMHC, testified that between October 2001 and February 2002, she had accompanied respondent to two or three activities. On those occasions, respondent did not cause her any problems and he did not have any problems with the other patients. However, Mitchell opined that respondent had the potential to be dangerous to others. Mitchell's opinion was based on respondent's status as a mental health patient, the statements of clinicians, and her past experiences with other patients. On cross-examination, Mitchell testified that respondent had told her he heard voices that tormented him.

Respondent's last witness was Jose Padilla, an activity staff member at EMHC. Padilla testified that he never had to restrict respondent as a result of his behavior. Padilla did not observe respondent express any anger toward other patients. On cross-examination, Padilla acknowledged that he saw respondent about once a month.

Based upon the foregoing testimony, the circuit court ruled that respondent was subject to the involuntary administration of psychotropic medication for a period not to exceed 90 days. The court found that, because of his mental illness, respondent had exhibited a deterioration of ability to function, suffering, and threatening behavior. Further, the court found that the suggested benefits of the treatment outweighed the potential for harm, respondent lacked the capacity to make a reasoned decision about the treatment, and other less restrictive services had been explored, but were found inappropriate. The court subsequently denied respondent's motion to reconsider. Respondent appealed. The appellate court affirmed. 341 Ill. App. 3d 238. This timely appeal followed.

ANALYSIS

Respondent raises constitutional questions concerning the construction and application of sections 2-107.1 and 3-804 of the Code. The standard of review for determining whether an individual's constitutional rights have been violated is *de novo*. *People v. Burns*, 209 Ill. 2d 551, 560 (2004). We apply the same standard in matters of statutory construction. *In re Mary Ann P.*, 202 Ill. 2d 393, 404 (2002). Statutes enjoy a strong presumption of constitutionality, and this court has a duty to construe statutes in a manner that upholds their validity whenever reasonably possible. *Hill v. Cowan*, 202 Ill. 2d 151, 157 (2002).

As a preliminary matter, we note that this case is moot. Section 2-107.1 of the Code provides that an order authorizing the administration of involuntary treatment shall, in no event, be effective for more than 90 days. 405 ILCS 5/2-107.1(a-5)(5) (West 2000). The 90 days have long since passed, and the circuit court's order no longer has any force or effect. Hence, it is impossible for this court to grant meaningful relief, and any decision we render is essentially advisory in nature. See *In re Mary Ann P.*, 202 Ill. 2d at 401; *In re Barbara H.*, 183 Ill. 2d 482, 490 (1998). Generally, a court of review will not consider moot or abstract questions or render advisory decisions. *In re Mary Ann P.*, 202 Ill. 2d at 401. However, a reviewing court may review otherwise moot issues pursuant to the public interest exception to the mootness doctrine. *In re Andrea F.*, 208 Ill. 2d 148, 156 (2003). The criteria for application of the public interest exception are: (1) the public nature of the question; (2) the desirability of an authoritative determination for the purpose of guiding public officers; and (3) the likelihood that the question will recur. *In re Andrea F.*, 208 Ill. 2d at 156; *In re Mary Ann P.*, 202 Ill. 2d at 402. This case satisfies those criteria.

This court has previously held that the procedures courts must follow to authorize the involuntary medication of mental health patients involve matters of "substantial public concern." *In re Mary Ann P.*, 202 Ill. 2d at 402. Moreover, because of the short duration of orders authorizing involuntary treatment, and respondent's history of mental illness, it is likely that the circumstances present in the case at bar will recur without the opportunity for resolutionary litigation before the case is rendered moot by expiration of the order. See *In re Mary Ann P.*, 202 Ill. 2d at 402-03; *In re Barbara H.*, 183 Ill. 2d at 491-92; *In re Evelyn S.*, 337 Ill. App. 3d 1096, 1102 (2003). Finally, having reviewed appellate court decisions in this area, we believe an authoritative determination is desirable at this time.

There is no question that involuntary mental health services, including the involuntary administration of psychotropic drugs, involve a "massive curtailment of liberty." *In re Barbara H.*, 183 Ill. 2d at 496, quoting *Vitek v. Jones*, 445 U.S. 480, 491, 63 L. Ed. 2d 552, 564, 100 S. Ct. 1254, 1263 (1980). The United States Supreme Court has, alternatively, described the forced administration of psychotropic drugs as a "particularly severe" interference with a person's liberty. See *Riggins v. Nevada*, 504 U.S. 127, 134, 118 L. Ed. 2d 479, 488, 112 S. Ct. 1810, 1814 (1992). One who is held on pending criminal charges retains this liberty interest

notwithstanding his or her status as a pretrial detainee. See generally *Sell v. United States*, 539 U.S. 166, 156 L. Ed. 2d 197, 123 S. Ct. 2174 (2003); *Washington v. Harper*, 494 U.S. 210, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990).

Respondent argues that the criteria for involuntary administration of psychotropic drugs enunciated in *Sell* are controlling in our analysis in this case. We disagree. As the Court's decision in *Sell* clearly indicates, differing criteria and analyses may apply to the decision to involuntarily medicate a pretrial detainee who has been found unfit to stand trial, depending upon the *purpose* for which authorization to medicate has been sought.

In *Sell*, the State sought authorization for the involuntary administration of drugs for the sole purpose of rendering the defendant competent to stand trial. Citing *Harper* and *Riggins*, the Court, in *Sell*, stated: "the Constitution permits the Government involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial" if certain criteria are satisfied. A court must conclude that (1) *important* governmental interests are at stake, (2) involuntary medication will *significantly further* those concomitant state interests, (3) involuntary medication is *necessary* to further those state interests, and (4) that the administration of the drugs is *medically appropriate*, i.e., in the patient's best medical interest in light of his medical condition. *Sell*, 539 U.S. at 180-81, 156 L. Ed. 2d at 211-13, 123 S. Ct. at 2184-85.

In *Sell*, the Court made clear that the standards it announced were restricted to the context of the case before it:

"We emphasize that the court applying these standards is seeking to determine whether involuntary administration of drugs is necessary significantly to further a particular governmental interest, namely, the interest in rendering the defendant *competent to stand trial*. A court need not consider whether to allow forced medication for that kind of purpose, if forced medication is warranted for a *different* purpose, such as the purposes set out in *Harper* related to the individual's dangerousness, or purposes related to the individual's own interests ***." (Emphases in original.) *Sell*, 539 U.S. at 181-82, 156 L. Ed. 2d at 213, 123 S. Ct. at 2185.

The petition in the instant case sought authorization to treat respondent on *Harper* grounds. The petition alleged that, because of his mental illness, respondent had exhibited a deterioration of ability to function, suffering, and threatening behavior. As the appellate court noted:

"[T]he trial court was not asked to decide whether respondent could be subject to the involuntary administration of psychotropic medication solely for the purpose of rendering him competent to stand trial. Indeed, the record is barren of any evidence that the petition to administer psychotropic medication was filed solely for the purpose of fitness for trial. *** Instead, the trial court reviewed each of the factors listed in section 2-107.1(a-5)(4) of the Code (405 ILCS 5/2-107.1(a-5)(4) (West 2000)) and found that the State proved each factor by clear and convincing evidence. The court found that respondent suffered [from] a mental illness, *** which resulted in a deterioration of his ability to function, suffering, and threatening behavior. Moreover, the court found that the benefits of the proposed treatment outweighed the harm and that less restrictive alternatives were inappropriate. It is evident that the trial court granted the State's petition because it found the involuntary administration of psychotropic medication to be medically appropriate. Notably, in rendering its decision the trial court never mentioned respondent's fitness to stand trial." 341 Ill. App. 3d at 258.

Like the appellate court, we believe that respondent's reliance upon *Sell* is misplaced. Respondent advances no plausible argument to convince us that, for purposes of section 2-107.1 of the Code, pretrial detainees should be treated differently than any other person in need of treatment.

However, that assessment does not end our due process inquiry; it simply shifts the focus of our analysis to basic requirements of due process as expressed in *Harper* and prior cases.

In *Mathews v. Eldridge*, 424 U.S. 319, 335, 47 L. Ed. 2d 18, 33, 96 S. Ct. 893, 903 (1976), the Supreme Court set forth three factors that must be considered when determining whether an individual has received the "process" that the Constitution finds "due":

"First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

By weighing these factors, courts can determine whether the government has met the fundamental requirements of due process—the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews*, 424 U.S. at 333, 47 L. Ed. 2d at 32, 96 S. Ct. at 902.

Addressing the first factor, there is no question that the private interest affected by the forced administration of psychotropic drugs is substantial. As we have previously noted, the United States Supreme Court has described the forced administration of psychotropic drugs as a "particularly severe," interference with a person's liberty. *Riggins*, 504 U.S. at 134, 118 L. Ed. 2d at 488, 112 S. Ct. at 1814.

In *Harper*, the Court spoke of the serious, and perhaps, permanent, consequences that psychotropic medication may have upon the recipient's life:

"The purpose of the drugs is to alter the chemical balance in a patient's brain, leading to changes, intended to be beneficial, in his or her cognitive processes. [Citation.] While the therapeutic benefits of antipsychotic drugs are well documented, it is also true that the drugs can have serious, even fatal, side effects. *** [S]ide effects include akathisia (motor restlessness, often characterized by an inability to sit still); neuroleptic malignant syndrome (a relatively rare condition which can lead to death from cardiac dysfunction); and tardive dyskinesia, perhaps the most discussed side effect of antipsychotic drugs. [Citation.] Tardive dyskinesia is a neurological disorder, irreversible in some cases, that is characterized by involuntary, uncontrollable movements of various muscles, especially around the face. [Citation.] *** A fair reading of the evidence, however, suggests that the proportion of patients treated with antipsychotic drugs who exhibit the symptoms of tardive dyskinesia ranges from 10% to 25%." *Harper*, 494 U.S. at 229-30, 108 L. Ed. 2d at 203-04, 110 S. Ct. at 1041.

See also *Riggins*, 504 U.S. at 134, 118 L. Ed. 2d at 488-89, 112 S. Ct. at 1814-15 (quoting this passage from *Harper*); *United States v. Williams*, 356 F.3d 1045, 1054-55 (9th Cir. 2004) (quoting from *Harper*); *In re Qawi*, 32 Cal. 4th 1, 14-15, 81 P.3d 224, 231, 7 Cal. Rptr. 3d 780, 788 (2004) (observing that antipsychotics "have been the cause of considerable [reversible and potentially permanent] side effects ***. On rare occasions, use of these drugs has caused sudden death"); *Kulas v. Valdez*, 159 F.3d 453, 455-56 (9th Cir. 1998) (noting "[t]he serious side effects that such medication can have on mind and personality, physical condition and life itself"); Physicians' Desk Reference 1787, 2464-65 (57th ed. 1999) (detailing extensive warnings and precautions for the use of Risperidone and Haldol, and noting, with respect to Risperidone, that the "risk of developing tardive dyskinesia and the likelihood that it will become irreversible are believed to increase as the duration of treatment and the total cumulative dose of antipsychotic drugs administered to the patient increase"); 2 M. Perlin, Mental Disability Law §§3B-2, at 370-71 (1999) (detailing "toxic effects" of antipsychotic drugs); E. Goode, *Leading Drugs for Psychosis Come Under New Scrutiny*, N.Y. Times, May 20, 2003, at A1 (describing "the stiffness, trembling and other Parkinson's-like symptoms commonly seen in patients taking older antipsychotics like

Haldol").

Suffice it to say that the involuntary administration of psychotropic drugs can have a profound and sometimes irreversible effect upon a recipient's personality and physical health. It would therefore seem that the "private interest" at stake in this type of proceeding is one of considerable magnitude. Deprivations of property are reversible and the consequences of erroneous deprivation may be remedied to some degree; however, the forced use of psychotropic drugs may effect modifications of brain chemistry and patterns of thought which are not so easily rectified, if they are at all. Moreover, use of these drugs may entail adverse *physical* side effects that are irreversible. In light of these sobering facts, we must once more confront the central question in this appeal: What process is due?

Again, *Harper* is instructive. In *Harper*, a psychiatrist in the correctional facility where the respondent was housed sought to administer antipsychotic medication to respondent over his objection. *Harper*, 494 U.S. at 214, 108 L. Ed. 2d at 193, 110 S. Ct. at 1033. In response to the Supreme Court's decision in *Vitek*, correctional authorities had developed a policy that provided for review of the treating psychiatrist's decision by a special committee consisting of a psychiatrist, a psychologist, and the associate superintendent of the correctional center, none of whom could be involved in the inmate's treatment or diagnosis. *Harper*, 494 U.S. at 215, 108 L. Ed. 2d at 194, 110 S. Ct. at 1033. Pursuant to the policy, the committee could authorize forced treatment with antipsychotic drugs, so long as the majority voted to do so and *the psychiatrist was a member of the majority*. *Harper*, 494 U.S. at 215-16, 108 L. Ed. 2d at 194, 110 S. Ct. at 1033. Noting that the "risks associated with antipsychotic drugs are for the most part *medical* ones, best assessed by *medical* professionals" (emphases added) (*Harper*, 494 U.S. at 233, 108 L. Ed. 2d at 205, 110 S. Ct. at 1042), the Court held that the internal review procedure in *Harper* satisfied requirements of due process. The Court held that adequate procedures existed, noting, in particular, the "independence of the decisionmaker." *Harper*, 494 U.S. at 233, 108 L. Ed. 2d at 205, 110 S. Ct. at 1043.

Two components of the procedure in *Harper* strike us as significant for present purposes, as they seem to have been prominent factors in the *Harper* decision: there was an *independent review* of the treating psychiatrist's evaluation and prescription, and that review was, conspicuously, overseen by a *psychiatrist*, a "medical professional" who would have been able to assess the "risks associated with antipsychotic drugs." See *Harper*, 494 U.S. at 233, 108 L. Ed. 2d at 205, 110 S. Ct. at 1042.

Harper seems to us the touchstone of due process when considering the propriety of forced medication with psychotropic drugs. The procedure sanctioned by the Supreme Court in *Harper* addressed two essential features of due process in this context: (1) "independent review" of the treating psychiatrist's evaluation and proposed course of medication, and (2) review by a "medical professional" who is qualified to prescribe psychotropic medications and trained in their possible side effects. This brings us to the second and third *Mathews* considerations.

With respect to the second *Mathews* factor, the risk of an erroneous deprivation of the respondent's rights through the procedures used in this case is obvious. The value of additional procedural safeguards is clear. Only a physician-such as a psychiatrist-can prescribe medication; a psychologist cannot. An intern in psychology most certainly cannot. These limitations exist for a reason: the medical community recognizes that a certain level of knowledge is necessary to safely prescribe medication, to fully recognize its beneficial effects as well as its adverse side effects, to understand its interaction with other drugs, to anticipate the consequences of using it on certain at-risk groups. It seems self-evident that the policy sanctioned in *Harper* required an independent assessment by a psychiatrist who was not involved in treatment or diagnosis for this very reason. In *Harper*, the Court stressed that the "risks associated with antipsychotic drugs are for the most part *medical* ones, best

assessed by *medical* professionals." (Emphases added.) *Harper*, 494 U.S. at 233, 108 L. Ed. 2d at 205, 110 S. Ct. at 1042.

The respondent in this case was denied the safeguards inherent in having what amounts to a second opinion by one qualified to give it on *every aspect* of the statute in question-what *Harper* appears to require. Kane was not qualified to give meaningful testimony about the possible harmful side effects of the proposed medications, and she did *not* give meaningful testimony. For that matter, neither did Nazareno render what we would consider "meaningful" testimony on the subject. What little he had to say about the possible side effects of Risperidone had no obvious relevance to the possible side effects of Haldol, a subject he did not address at all-this, notwithstanding the fact that he no doubt intended to use Haldol on respondent, since he testified that Haldol would have to be used if respondent refused to take Risperidone *voluntarily*. He seemed to have forgotten that the whole point of this proceeding was the *involuntary* treatment of respondent. We note in passing that this lack of logic is commensurate with Nazareno's simplistic assessment that respondent lacked the capacity to make a decision whether or not to take the drugs simply because he refused to do what Nazareno told him to do. We note Nazareno's answer during respondent's cross-examination: "Even though I explain to you, you don't take it. You don't understand."

We have previously expressed our concern that psychotropic substances may be misused by medical personnel, and subverted to the objective of patient control rather than patient treatment. *In re C.E.*, 161 Ill. 2d 200, 215-16 (1994). While we do not mean to imply that authorization was sought for an improper purpose in this case-there was in fact sufficient evidence to establish threat, suffering, and deterioration-we must insist upon adequate safeguards in *every* case. Otherwise, abuse of the process *will* undoubtedly occur.

In our opinion, the circuit court should have heeded the objection of respondent's counsel prior to his departure from this case: "Everyone associated with the Diagnostic Center is a psychologist and not a psychiatrist and therefore does not have the expertise when it comes to medication. So every time we go to the Diagnostic Center, we're starting behind the 8-ball because of that very thing." Ironically, the circuit court implicitly acknowledged counsel's point: "Although Mr. Rose is right, I suppose what [*sic*] appears to be on paper in the-on the way I make the decisions on these things, I don't think that I would really say psychiatrist versus psychologist; and therefore you're behind the 8-ball." We believe the circuit court failed to appreciate the significant difference in expertise between a psychiatrist and a psychologist, and the safeguards that another psychiatrist would have provided in the decisionmaking process.

Apparently, the circuit court had, in the past, recognized the significance of appointing a psychiatrist in a proceeding such as this. The court had in fact appointed a psychiatrist to do an independent examination in prior proceedings, and declined to do so on this occasion only because the State raised concerns over costs. Pursuant to the third prong of the *Mathews* analysis, we recognize the State's "fiscal" interest in cost-cutting; however, given the devastating consequences that could result from a less than fully informed decision, this is hardly the situation in which to pinch pennies. To do so, would, in our view, deny respondent due process.

It has been held, with respect to the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 1998)), that due process requires that a respondent be "entitled to defend himself on a 'level playing field' and that the State not be permitted to maintain a strategic advantage over the respondent when 'that advantage casts a pall on the proceedings.'" *In re Detention of Trevino*, 317 Ill. App. 3d 324, 330 (2000), quoting *In re Detention of Kortte*, 317 Ill. App. 3d 111, 115-16 (2000). We believe respondent was denied "a level playing field" and a fundamental requirement of due process: the opportunity to be heard in a meaningful manner. See *Mathews*, 424 U.S. at 333, 47 L. Ed. 2d at 32, 96 S. Ct. at 902.

However, we do not believe our legislature intended such a result. Rather, it is our opinion that the legislature, attempting to apply section 3-804 in two different contexts (proceedings for involuntary commitment and for involuntary administration of drugs), assumed that the use of disjunctive language therein would apprise circuit courts of the need to appoint an expert appropriate to the proceeding in question.

Section 3-804 of the Code provides in pertinent part:

"The respondent is entitled to secure an independent examination by a physician, qualified examiner, clinical psychologist or other expert of his choice. If the respondent is unable to obtain an examination, he may request that the court order an examination to be made by an impartial medical expert pursuant to Supreme Court Rules *or* by a qualified examiner, clinical psychologist or other expert." (Emphasis added.) 405 ILCS 5/3-804 (West 2000).

The statute uses the terms "medical expert" and "physician" interchangeably. "Physician" is defined in the Code as "any person licensed by the State of Illinois to practice medicine in all its branches" and "includes a psychiatrist." 405 ILCS 5/1-120 (West 2002). Section 3-804 appears in Chapter III of the Code, a chapter that addresses admission of the mentally ill to mental health facilities. In proceedings to that end, an examination by a "qualified examiner, clinical psychologist or other expert" may suffice for purposes of due process. That initial inquiry, after all, does not encompass forced medication. Of course, when forced medication with psychotropic drugs is sought pursuant to section 2-107.1 of the Code (405 ILCS 5/2-107.1(a)(4) (West 2000)), medical expertise *is* required of the independent examiner if the independent examination is to have any meaningful impact upon the decisionmaking process. It was, likely, the legislature's recognition of this fact that led to the use of the word "or" after the term "medical expert" and before the terms "qualified examiner, clinical psychologist or other expert." 405 ILCS 5/3-804 (West 2000). The legislature no doubt intended that the circuit court appoint an independent expert appropriate to the proceeding.

It is our duty to construe a statute in a manner that upholds its validity whenever reasonably possible. *Hill*, 202 Ill. 2d at 157. Therefore, we construe section 3-804 of the Code in this manner.

Finally, we address respondent's contention that his criminal defense attorney was entitled to notice of the hearing in this proceeding pursuant to section 2-107.1(a-5)(1) of the Code (405 ILCS 5/2-107.1(a-5)(1) (West 2000)), which provides in pertinent part:

"The petitioner shall deliver a copy of the petition, and notice of the time and place of the hearing, to the respondent, his or her attorney, any known agent or attorney-in-fact, if any, and the guardian, if any ***."

Although respondent urges us to decide this issue on due process grounds, we find it is unnecessary to pass on the constitutional question. See *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003) (a court will consider a constitutional question only where essential to the court's disposition).

Respondent came to be in a mental health facility because he was found unfit to stand trial in a criminal proceeding. In that proceeding, he was represented by an attorney. All of the parties to this action were aware of that proceeding. Although the purpose of the instant proceeding was to determine whether psychotropic medication should be forced upon respondent for his own benefit and/or the safety of those around him, ultimately, there may be consequences pertinent to the pending criminal matter.

We note that the language concerning notification in section 2-107.1 (a-5)(1) of the Code is very broad and general. It refers to notification of, *inter alios*, a respondent's "attorney" and "any known agent," without

qualification or limitation. We have previously construed this section to require notification of "any other interested parties to the proceeding." See *In re C.E.*, 161 Ill. 2d at 226. In the absence of any restrictive language in the statute, we believe respondent's criminal defense attorney qualifies as a party to whom notice is due. In the very least, criminal counsel was a "known agent," and thus should have been given notice of this proceeding.

In sum, we reject respondent's contentions that the *Sell* criteria should have been applied in this case and that section 2-107.1 of the Code is inapplicable to pretrial detainees. We, thus, affirm that portion of the appellate court judgment that held the criteria of section 2-107.1 were applicable in this context. However, we reject the appellate court's determination that the requirements for an independent examination under section 3-804 were satisfied in this case, and we find that deficiency constituted a due process violation pursuant to the reasoning of the Supreme Court, as expressed in *Harper*. We hold that the statute itself is not unconstitutional when properly applied. Finally, we hold that the plain language of section 2-107.1(a-5)(1) of the Code required notice of this proceeding to respondent's criminal defense attorney.

*Appellate court judgment affirmed in part
and reversed in part.*

MENTAL HEALTH CODE:

(405 ILCS 5/) Mental Health and Developmental Disabilities Code.

(405 ILCS 5/Ch. I heading)

CHAPTER I

SHORT TITLE AND DEFINITIONS

(405 ILCS 5/1-100) (from Ch. 91 ½, par. 1-100)

Sec. 1-100. This Act shall be known and may be cited as the "Mental Health and Developmental Disabilities Code".

(Source: P.A. 80-1414.)

(405 ILCS 5/1-101) (from Ch. 91 ½, par. 1-101)

Sec. 1-101. As used in this Act, unless the context otherwise requires, the terms defined in this Chapter have the meanings ascribed to them herein.

(Source: P.A. 80-1414.)

(405 ILCS 5/1 -101.1) (from Ch. 91 ½, par. 1 -01.1)

Sec. 1 101.1. "Abuse" means any physical injury, sexual abuse, or mental injury inflicted on a recipient of services other than by accidental means.

(Source: P.A. 86 -1013.)

(405 ILCS 5/1 -101.2)

Sec. 1 -101.2. Adequate and humane care and services" means services reasonably calculated to result in a significant improvement of the condition of a recipient of services confined in an inpatient mental health facility so that he or she may be released or services reasonably calculated to prevent further decline in the clinical condition of a recipient of services so that he or she does not present an imminent danger to self or others.

(Source: P.A. 91 -536, eff. 1 -1 -00.)

(405 ILCS 5/1 -102) (from Ch. 91 ½, par. 1 -102)

Sec. 1 -102. "Care and custody" means authorization to an appropriate person, with his consent, to provide or arrange for proper and adequate treatment of another person who is subject to involuntary admission but does not include the authority to require hospitalization of the recipient unless such authority is expressly granted by Court Order pursuant to Article VII of Chapter III.

(Source: P.A. 88 -380.)

(405 ILCS 5/1 -103) (from Ch. 91 ½, par. 1 -103)

Sec. 1 -103. "Clinical psychologist" means a psychologist registered with the Illinois Department of Professional Regulation who meets the following qualifications:

(a) has a doctoral degree from a regionally accredited university, college, or professional school, and has two years of supervised experience in health services of which at least one year is postdoctoral and one year is in an

organized health service program; or

b) has a graduate degree in psychology from a regionally accredited university or college, and has not less than six years of experience as a psychologist with at least two years of supervised experience in health services.

(Source: P.A. 85 -1209.)

(405 ILCS 5/1 -104) (from Ch. 91 ½, par. 1 -104)

Sec. 1 -104. "Facility director" means the chief officer of a mental health or developmental disabilities facility or his designee or the supervisor of a program of treatment or habilitation, or his designee. Designee may include a physician, clinical psychologist, social worker, or nurse.

(Source: P.A. 80 -1414.)

(405 ILCS 5/1 -105) (from Ch. 91 ½, par. 1 -105)

Sec. 1 -105. "Department" means the Department of Human Services in its capacity as successor to the Department of Mental Health and Developmental Disabilities. Unless the context otherwise requires, direct or indirect references in this Code to the programs, employees, facilities, service providers, or service recipients of the Department shall be construed to refer only to those programs, employees, facilities, service providers, or service recipients of the Department that pertain to its mental health and developmental disabilities functions.

(Source: P.A. 89 -507, eff. 7 -1 -97.)

(405 ILCS 5/1 -106) (from Ch. 91 ½, par. 1 -106)

Sec. 1 -106. "Developmental disability" means a disability which is attributable to: (a) mental retardation, cerebral palsy, epilepsy or autism; or to (b) any other condition which results in impairment similar to that caused by mental retardation and which requires services similar to those required by mentally retarded persons. Such disability must originate before the age of 18 years, be expected to continue indefinitely, and constitute a substantial handicap.

(Source: P.A. 80 -1414.)

(405 ILCS 5/1 -107) (from Ch. 91 ½, par. 1 -107)

Sec. 1 -107. "Developmental disability facility" means a facility or section thereof which is licensed or operated by or under contract with the State or a political subdivision thereof and which admits persons with a developmental disability for residential and habilitation services.

(Source: P.A. 88 -380.)

(405 ILCS 5/1 -108) (from Ch. 91 ½, par. 1 -108)

Sec. 1 -108. "Secretary" means the Secretary of Human Services.

(Source: P.A. 89 -507, eff. 7 -1 -97.)

(405 ILCS 5/1 -109) (from Ch. 91 ½, par. 1 -109)

Sec. 1 -109. "Discharge" means the full release of any person admitted or otherwise detained under this Act from treatment, habilitation, or care and custody.

(Source: P.A. 80 -1414.)

(405 ILCS 5/1 -110) (from Ch. 91 ½, par. 1 -110)

Sec. 1 -110. "Guardian" means the Court appointed guardian or conservator of the person.

(Source: P.A. 80 -1414.)

(405 ILCS 5/1 -110.5)

Sec. 1 -110.5. "Substitute decision maker" means a person who possesses the authority to make decisions under the Powers of Attorney for Health Care Law or under the Mental Health Treatment Preference Declaration

Act.

(Source: P.A. 91 -26, eff. 6 -2 -00.)

(405 ILCS 5/1 -111) (from Ch. 91 ½, par. 1 -111)

Sec. 1 -111. "Habilitation" means an effort directed toward the alleviation of a developmental disability or toward increasing a person with a developmental disability's level of physical, mental, social or economic functioning. Habilitation may include, but is not limited to, diagnosis, evaluation, medical services, residential care, day care, special living arrangements, training, education, sheltered employment, protective services, counseling and other services provided to persons with a developmental disability by developmental disabilities facilities.

(Source: P.A. 88 -380 .)

405 ILCS 5/1 -112) (from Ch. 91 ½, par. 1 -112)

Sec. 1 -112. "Hospitalization" means the treatment of a person by a mental health facility as an inpatient.

(Source: P.A. 80 -1414.)

(405 ILCS 5/1 -113) (from Ch. 91 ½, par. 1 -113)

Sec. 1 -113. "Licensed private hospital" means any privately owned home, hospital, or institution, or any section thereof which is licensed by the Department of Public Health and which provides treatment for persons with mental illness.

(Source: P.A. 88 -380.)

(405 ILCS 5/1 -113.5)

Sec. 1 -113.5. "Long -acting psychotropic medications" means psychotropic medications, including but not limited to Haldol Decanoate and Prolixin Decanoate, that are designed so that a single dose will have an intended clinical effect for a period of at least 48 hours.

(Source: P.A. 91 -726, eff. 6 -2 -00.)

(405 ILCS 5/1 -114) (from Ch. 91 ½, par. 1 -114)

Sec. 1 -114. "Mental health facility" means any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes all hospitals, institutions, clinics, evaluation facilities, and mental health centers which provide treatment for such persons.

(Source: P.A. 88 -380.)

(405 ILCS 5/1 -114.1)

Sec. 1 -114.1. "State -operated mental health facility" means a mental health facility operated by the Department.

(Source: P.A. 88 -484.)

(405 ILCS 5/1 -114.2)

Sec. 1 -114.2. (Repealed).

(Source: P.A. 88 -484. Repealed by P.A. 91 -726, eff. 6 -2 -00.)

(405 ILCS 5/1 -114.3)

Sec. 1 -114.3. (Repealed).

(Source: P.A. 88 -484. Repealed by P.A. 91 -726, eff. 6 -2 -00.)

(405 ILCS 5/1 -114.4)

Sec. 1 -114.4. (Repealed).

(Source: P.A. 88 -484. Repealed by P.A. 91 -726, eff. 6 -2 -00 .)

(405 ILCS 5/1 -114.5)

Sec. 1 -114.5. (Repealed).

(Source: P.A. 88 -484. Repealed by P.A. 91-726, eff. 6 -2 -00.)

(405 ILCS 5/1 -115) (from Ch. 91 ½, par. 1 -115)

Sec. 1 -115 . "Mental health or developmental disability services" or "services" means treatment or habilitation.

(Source: P.A. 80 -1414.)

(405 ILCS 5/1 -116) (from Ch. 91 ½, par. 1 -116)

Sec. 1 -116. "Mental retardation" means significantly sub-average general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of 18 years.

(Source: P.A. 80 -1414.)

(405 ILCS 5/1 -117) (from Ch. 91 ½, par. 1 -117)

Sec. 1 -117. "Minor" means a person under 18 years of age.

(Source: P.A. 80 -1414.)

(405 ILCS 5/1 -117.1) (from Ch. 91 ½, par. 1 -117.1)

Sec. 1 -117.1. "Neglect" means the failure to provide adequate medical or personal care or maintenance to a recipient of services, which failure results in physical or mental injury to a recipient or in the deterioration of a recipient's physical or mental condition.

(Source: P.A. 86 -1013.)

(405 ILCS 5/1 -118) (from Ch. 91 ½, par. 1 -118)

Sec. 1 -118. "Peace officer" means any sheriff, police officer, or other person deputized by proper authority to serve as a peace officer.

(Source: P.A. 80 -1414.)

(405 ILCS 5/1-119) (from Ch. 91 ½, par. 1-119)

Sec. 1-119. "Person subject to involuntary admission" means:

(1) A person with mental illness and who because of his or her illness is reasonably expected to inflict serious physical harm upon himself or herself or another in the near future which may include threatening behavior or conduct that places another individual in reasonable expectation of being harmed; or

(2) A person with mental illness and who because of his or her illness is unable to provide for his or her basic physical needs so as to guard himself or herself from serious harm without the assistance of family or outside help.

In determining whether a person meets the criteria specified in paragraph (1) or (2), the Court may consider evidence of the person's repeated past pattern of specific behavior and actions related to the person's illness.

(Source: P.A. 93-573, eff. 8-21-03.)

(405 ILCS 5/1-120) (from Ch. 91 ½, par. 1-120)

Sec. 1-120. "Physician" means any person licensed by the State of Illinois to practice medicine in all its branches and includes any person holding a temporary license, as provided in the Medical Practice Act of 1987. Physician includes a psychiatrist as defined in Section 1-121.

(Source: P.A. 85-1209.)

(405 ILCS 5/1-121) (from Ch. 91 ½, par. 1-121)

Sec. 1-121. "Psychiatrist" means a physician as defined in the first sentence of Section 1-120 who has successfully completed a residency program in psychiatry accredited by either the Accreditation Council for Graduate Medical Education or the American Osteopathic Association.

(Source: P.A. 91-726, eff. 6-2-00; 91-787, eff. 1-1-01.)

(405 ILCS 5/1-121.1) (from Ch. 91 ½, par. 1-121.1)

Sec. 1-121.1. "Psychotropic medication" means medication whose use for antipsychotic, antidepressant, anti-manic, anti-anxiety, behavioral modification or behavioral management purposes is listed in AMA Drug Evaluations, latest edition, or Physician's Desk Reference, latest edition, or which are administered for any of these purposes. For the purposes of Sections 2-107, 2-107.1, and 2-107.2 of this Act, "psychotropic medication" also includes those tests and related procedures that are essential for the safe and effective administration of a psychotropic medication.

(Source: P.A. 89-439, eff. 6-1-96.)

(405 ILCS 5/1-121.5)

Sec. 1-121.5. Authorized involuntary treatment. "Authorized involuntary treatment" means psychotropic medication or electro-convulsive therapy, including those tests and related procedures that are essential for the safe and effective administration of the treatment.

(Source: P.A. 90-538, eff. 12-1-97.)

(405 ILCS 5/1-122) (from Ch. 91 ½, par. 1-122)

Sec. 1-122. Qualified examiner. "Qualified examiner" means a person who is:

(a) a Clinical social worker as defined in this Act,

(b) a registered nurse with a master's degree in psychiatric nursing who has 3 years of clinical training and experience in the evaluation and treatment of mental illness which has been acquired subsequent to any training and experience which constituted a part of the degree program, or

(c) a licensed clinical professional counselor with a master's or doctoral degree in counseling or psychology or a similar master's or doctorate program from a regionally accredited institution who has at least 3 years of supervised postmaster's clinical professional counseling experience that includes the provision of mental health services for the evaluation, treatment, and prevention of mental and emotional disorders.

A social worker who is a qualified examiner shall be a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act.

(Source: P.A. 91-536, eff. 1-1-00.)

(405 ILCS 5/1-122.1) (from Ch. 91 ½, par. 1-122.1)

Sec. 1-122.1. "Clinical social worker" means a person who (1) has a master's or doctoral degree in social work from an accredited graduate school of social work and (2) has at least 3 years of supervised postmaster's clinical social work practice which shall include the provision of mental health services for the evaluation, treatment and prevention of mental and emotional disorders.

(Source: P.A. 84-766.)

(405 ILCS 5/1-122.4) (from Ch. 91 ½, par. 1-122.4)

Sec. 1-122.4. "Qualified mental retardation professional" as used in this Act means those persons who meet this definition under Section 483.430 of Chapter 42 of the Code of Federal Regulations, subpart G.

(Source: P.A. 86-1416.)

(405 ILCS 5/1-123) (from Ch. 91 ½, par. 1-123)

Sec. 1-123. "Recipient of services" or "recipient" means a person who has received or is receiving treatment or habilitation.

(Source: P.A. 80-1414.)

(405 ILCS 5/1-124) (from Ch. 91 ½, par. 1-124)

Sec. 1-124. "Responsible relative" means the spouse or, if the recipient is under 18 years of age, parent of a recipient or client receiving services in facilities or programs of the Department. However, if the definition of "responsible relative" in this Act is in conflict with the definition of "responsible relative" in any Federal statute and rules or regulations thereunder, under which the recipient or client is otherwise eligible to receive benefits, the definition of the Federal Act, rules, or regulations shall prevail.

(Source: P.A. 88-380.)

(405 ILCS 5/1-125) (from Ch. 91 ½, par. 1-125)

Sec. 1-125. "Restraint" means direct restriction through mechanical means or personal physical force of the limbs, head or body of a recipient. The partial or total immobilization of a recipient for the purpose of performing a medical, surgical or dental procedure or as part of a medically prescribed procedure for the treatment of an existing physical disorder or the amelioration of a physical handicap shall not constitute restraint, provided that the duration, nature and purposes of the procedures or immobilization are properly documented in the recipient's record and, that if the procedures or immobilization are applied continuously or regularly for a period in excess of 24 hours, and for every 24 hour period thereafter during which the immobilization may continue, they are authorized in writing by a physician or dentist; and provided further, that any such immobilization which extends for more than 30 days be reviewed by a physician or dentist other than the one who originally authorized the immobilization.

Momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished with limited force, and that are designed to prevent a recipient from completing an act that would result in potential physical harm to himself or another shall not constitute restraint, but shall be documented in the recipient's clinical record.

(Source: P.A. 86-1402; 87-124.)

(405 ILCS 5/1-126) (from Ch. 91 ½, par. 1-126)

Sec. 1-126. "Seclusion" means the sequestration by placement of a recipient alone in a room which he has no means of leaving. The restriction of a recipient to a given area or room as part of a behavior modification program which has been authorized pursuant to his individual services plan shall not constitute seclusion, provided that such restriction does not exceed any continuous period in excess of two hours nor any periods which total more than four hours in any twenty-four hour period and that the duration, nature and purposes of each such restriction are promptly documented in the recipient's record.

(Source: P.A. 86-1402.)

(405 ILCS 5/1-127) (from Ch. 91 ½, par. 1-127)

Sec. 1-127. "Service provider" means any mental health or developmental disabilities facility, or any other person which is devoted in whole or part to providing mental health or developmental disabilities services.

(Source: P.A. 80-1414.)

(405 ILCS 5/1-128) (from Ch. 91 ½, par. 1-128)

Sec. 1-128. "Treatment" means an effort to accomplish an improvement in the mental condition or related behavior of a recipient. Treatment includes, but is not limited to, hospitalization, partial hospitalization,

outpatient services, examination, diagnosis, evaluation, care, training, psychotherapy, pharmaceuticals, and other services provided for recipients by mental health facilities.

(Source: P.A. 88-380.)

(405 ILCS 5/1-128) (from Ch. 91 ½, par. 1-128)

Sec. 1-128. "Treatment" means an effort to accomplish an improvement in the mental condition or related behavior of a recipient. Treatment includes, but is not limited to, hospitalization, partial hospitalization, outpatient services, examination, diagnosis, evaluation, care, training, psychotherapy, pharmaceuticals, and other services provided for recipients by mental health facilities.

(Source: P.A. 88-380.)

(405 ILCS 5/1-129)

Sec. 1-129. Mental illness. "Mental illness" means a mental, or emotional disorder that substantially impairs a person's thought, perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life, but does not include a developmental disability, dementia or Alzheimer's disease absent psychosis, a substance abuse disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(Source: P.A. 93-573, eff. 8-21-03.)

(405 ILCS 5/Ch. II heading)

CHAPTER II
RIGHTS OF RECIPIENTS OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES SERVICES

(405 ILCS 5/Ch. II Art. I heading)

ARTICLE I. RIGHTS

(405 ILCS 5/2-100) (from Ch. 91 ½, par. 2-100)

Sec. 2-100. (a) No recipient of services shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely on account of the receipt of such services.

(b) A person with a known or suspected mental illness or developmental disability shall not be denied mental health or developmental services because of age, sex, race, religious belief, ethnic origin, marital status, physical or mental disability or criminal record unrelated to present dangerousness.

(Source: P.A. 86-1416.)

(405 ILCS 5/2-101) (from Ch. 91 ½, par. 2-101)

Sec. 2-101. No recipient of services shall be presumed legally disabled, nor shall such person be held legally disabled except as determined by a Court. Such determination shall be separate from a judicial proceeding held to determine whether a person is subject to involuntary admission or meets the standard for judicial admission.

(Source: P.A. 85-971.)

(405 ILCS 5/2-102) (from Ch. 91 ½, par. 2-102)

Sec. 2-102. (a) A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible and the recipient's guardian, the recipient's substitute decision maker, if any, or any other individual designated in writing by the recipient. The facility shall advise the recipient of his or her right to designate a family member or other individual to participate in the formulation and review of the treatment plan. In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the treatment being provided. The recipient's preferences regarding emergency interventions under subsection (d) of Section 2-200 shall be noted in the recipient's treatment plan.

(a-5) If the services include the administration of authorized involuntary treatment, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated. The physician shall determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. The physician or the physician's designee shall provide to the recipient's substitute decision maker, if any, the same written information that is required to be presented to the recipient in writing. If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only (i) pursuant to the provisions of Section 2-107 or 2-107.1 or (ii) pursuant to a power of attorney for health care under the Powers of Attorney for Health Care Law or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act. A surrogate decision maker, other than a Court appointed guardian, under the Health Care Surrogate Act may not consent to the administration of authorized involuntary treatment. A surrogate may, however, petition for administration of authorized involuntary treatment pursuant to this Act. If the recipient is under guardianship and the guardian is authorized to consent to the administration of authorized involuntary treatment pursuant to

subsection (c) of Section 2-107.1 of this Code, the physician shall advise the guardian in writing of the side effects and risks of the treatment, alternatives to the proposed treatment, and the risks and benefits of the treatment. A qualified professional shall be responsible for overseeing the implementation of such plan. Such care and treatment shall make reasonable accommodation of any physical disability of the recipient, including but not limited to the regular use of sign language for any hearing impaired individual for whom sign language is a primary mode of communication. If the recipient is unable to communicate effectively in English, the facility shall make reasonable efforts to provide services to the recipient in a language that the recipient understands.

(b) A recipient of services who is an adherent or a member of any well-recognized religious denomination, the principles and tenets of which teach reliance upon services by spiritual means through prayer alone for healing by a duly accredited practitioner thereof, shall have the right to choose such services. The parent or guardian of a recipient of services who is a minor, or a guardian of a recipient of services who is not a minor, shall have the right to choose services by spiritual means through prayer for the recipient of services.

(Source: P.A. 90-538, eff. 12-1-97; 91-726, eff. 6-2-00.)

(405 ILCS 5/2-103) (from Ch. 91 ½, par. 2-103)

Sec. 2-103. Except as provided in this Section, a recipient who resides in a mental health or developmental disabilities facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone and visitation.

(a) The facility director shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for visits is available. Writing materials, postage and telephone usage funds shall be

provided in reasonable amounts to recipients who reside in Department facilities and who are unable to procure such items.

(b) Reasonable times and places for the use of telephones and for visits may be established in writing by the facility director.

(c) Unimpeded, private and uncensored communication by mail, telephone, and visitation may be reasonably restricted by the facility director only in order to protect the recipient or others from harm, harassment or intimidation, provided that notice of such restriction shall be given to all recipients upon admission. When communications are restricted, the facility shall advise the recipient that he has the right to require the facility to notify the affected parties of the restriction, and to notify such affected party when the restrictions are no longer in effect. However, all letters addressed by a recipient to the Governor, members of the General Assembly, Attorney General, judges, state's attorneys, Guardianship and Advocacy Commission, or the Agency designated pursuant to "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named", approved September 20, 1985, officers of the Department, or licensed attorneys at law must be forwarded at once to the persons to whom they are addressed without examination by the facility authorities. Letters in reply from the officials and attorneys mentioned above must be delivered to the recipient without examination by the facility authorities.

(d) No facility shall prevent any attorney who represents a recipient or who has been requested to do so by any relative or family member of the recipient, from visiting a recipient during normal business hours, unless that recipient refuses to meet with the attorney.

(Source: P.A. 86-1417.)

(405 ILCS 5/2-104) (from Ch. 91 ½, par. 2-104)

Sec. 2-104. Every recipient who resides in a mental health or developmental disabilities facility shall be permitted to receive, possess and use personal property and shall be provided with a reasonable amount of storage space therefor, except in the circumstances and under the conditions provided in this Section.

(a) Possession and use of certain classes of property may be restricted by the facility director when necessary

to protect the recipient or others from harm, provided that notice of such restriction shall be given to all recipients upon admission.

(b) The professional responsible for overseeing the implementation of a recipient's services plan may, with the approval of the facility director, restrict the right to property when necessary to protect such recipient or others from harm.

(c) When a recipient is discharged from the mental health or developmental disabilities facility, all of his lawful personal property which is in the custody of the facility shall be returned to him.

(Source: P.A. 80-1414.)

(405 ILCS 5/2-105) (from Ch. 91 ½, par. 2-105)

Sec. 2-105. A recipient of services may use his money as he chooses, unless he is a minor or prohibited from doing so under a Court guardianship order. A recipient may deposit or cause to be deposited money in his name with a service provider or financial institution with the approval of the provider or financial institution. Money deposited with a service provider shall not be retained by the service provider. Any earnings attributable to a recipient's money shall accrue to him.

Except where a recipient has given informed consent, no service provider nor any of its employees shall be made representative payee for his social security, pension, annuity, trust fund, or any other form of direct payment or assistance.

When a recipient is discharged from a service provider, all of his money, including earnings, shall be returned to him.

(Source: P.A. 80-1414.)

(405 ILCS 5/2-106) (from Ch. 91 ½, par. 2-106)

Sec. 2-106. A recipient of services may perform labor to which he consents for a service provider, if the professional responsible for overseeing the implementation of the services plan for such recipient determines that such labor would be consistent with such plan. A recipient who performs labor which is of any consequential economic benefit to a service provider shall receive wages which are commensurate with the value of the work performed, in accordance with applicable federal and state laws and regulations. A recipient may be required to perform tasks of a personal housekeeping nature without compensation. Wages earned by a recipient of services shall be considered money which he is entitled to receive pursuant to Section 2-105, and such wages shall be paid by the service provider not less than once a month.

(Source: P.A. 80-1414.)

405 ILCS 5/2-107) (from Ch. 91 ½, par. 2-107)

Sec. 2-107. Refusal of services; informing of risks.

(a) An adult recipient of services or the recipient's guardian, if the recipient is under guardianship, and the recipient's substitute decision maker, if any, must be informed of the recipient's right to refuse medication. The recipient and the recipient's guardian or substitute decision maker shall be given the opportunity to refuse generally accepted mental health or developmental disability services, including but not limited to medication. If such services are refused, they shall not be given unless such services are necessary to prevent the recipient from causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is available. The facility director shall inform a recipient, guardian, or substitute decision maker, if any, who refuses such services of alternate services available and the risks of such alternate services, as well as the possible consequences to the recipient of refusal of such services.

(b) Authorized involuntary treatment may be given under this Section for up to 24 hours only if the circumstances leading up to the need for emergency treatment are set forth in writing in the recipient's record.

(c) Authorized involuntary treatment may not be continued unless the need for such treatment is redetermined at least every 24 hours based upon a personal examination of the recipient by a physician or a nurse

under the supervision of a physician and the circumstances demonstrating that need are set forth in writing in the recipient's record.

(d) Authorized involuntary treatment may not be administered under this Section for a period in excess of 72 hours, excluding Saturdays, Sundays, and holidays, unless a petition is filed under Section 2-107.1 and the treatment continues to be necessary under subsection (a) of this Section. Once the petition has been filed, treatment may continue in compliance with subsections (a), (b), and (c) of this Section until the final outcome of the hearing on the petition.

(e) The Department shall issue rules designed to insure that in State-operated mental health facilities authorized involuntary treatment is administered in accordance with this Section and only when appropriately authorized and monitored by a physician or a nurse under the supervision of a physician in accordance with accepted medical practice. The facility director of each mental health facility not operated by the State shall issue rules designed to insure that in that facility authorized involuntary treatment is administered in accordance with this Section and only when appropriately authorized and monitored by a physician or a nurse under the supervision of a physician in accordance with accepted medical practice. Such rules shall be available for public inspection and copying during normal business hours.

(f) The provisions of this Section with respect to the emergency administration of authorized involuntary treatment do not apply to facilities licensed under the Nursing Home Care Act.

(g) Under no circumstances may long-acting psychotropic medications be administered under this Section. (Source: P.A. 90-538, eff. 12-1-97; 91-726, eff. 6-2-00.)

(405 ILCS 5/2-107.1) (from Ch. 91 ½, par. 2-107.1)

Sec. 2-107.1. Administration of authorized involuntary treatment upon application to a Court.

(a) An adult recipient of services and the recipient's guardian, if the recipient is under guardianship, and the substitute decision maker, if any, shall be informed of the recipient's right to refuse medication. The recipient and the recipient's guardian or substitute decision maker shall be given the opportunity to refuse generally accepted mental health or developmental disability services, including but not limited to medication.

(a-5) Notwithstanding the provisions of Section 2-107 of this Code, authorized involuntary treatment may be administered to an adult recipient of services without the informed consent of the recipient under the following standards:

(1) Any person 18 years of age or older, including any guardian, may petition the circuit Court for an order authorizing the administration of authorized involuntary treatment to a recipient of services. The petition shall state that the petitioner has made a good faith attempt to determine whether the recipient has executed a power of attorney for health care under the Powers of Attorney for Health Care Law or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act and to obtain copies of these instruments if they exist. If either of the above-named instruments is available to the petitioner, the instrument or a copy of the instrument shall be attached to the petition as an exhibit. The petitioner shall deliver a copy of the petition, and notice of the time and place of the hearing, to the respondent, his or her attorney, any known agent or attorney-in-fact, if any, and the guardian, if any, no later than 3 days prior to the date of the hearing. Service of the petition and notice of the time and place of the hearing may be made by transmitting them via facsimile machine to the respondent or other party. Upon receipt of the petition and notice, the party served, or the person delivering the petition and notice to the party served, shall acknowledge service. If the party sending the petition and notice does not receive acknowledgment of service within 24 hours, service must be made by personal service.

The petition may include a request that the Court authorize such testing and procedures as may be essential for the safe and effective administration of the authorized involuntary treatment sought to be administered, but only where the petition sets forth the specific testing and procedures sought to be administered.

If a hearing is requested to be held immediately following the hearing on a petition for involuntary admission, then the notice requirement shall be the same as that for the hearing on the petition for involuntary admission, and the petition filed pursuant to this Section shall be filed with the petition for involuntary admission.

(2) The Court shall hold a hearing within 7 days of the filing of the petition. The People, the petitioner, or the respondent shall be entitled to a continuance of up to 7 days as of right. An additional continuance of not more than 7 days may be granted to any party (i) upon a showing that the continuance is needed in order to adequately prepare for or present evidence in a hearing under this Section or (ii) under exceptional circumstances. The Court may grant an additional continuance not to exceed 21 days when, in its discretion, the Court determines that such a continuance is necessary in order to provide the recipient with an examination pursuant to Section 3-803 or 3-804 of this Act, to provide the recipient with a trial by jury as provided in Section 3-802 of this Act, or to arrange for the substitution of counsel as provided for by the Illinois Supreme Court Rules. The hearing shall be separate from a judicial proceeding held to determine whether a person is subject to involuntary admission but may be heard immediately preceding or following such a judicial proceeding and may be heard by the same trier of fact or law as in that judicial proceeding.

(3) Unless otherwise provided herein, the procedures set forth in Article VIII of Chapter 3 of this Act, including the provisions regarding appointment of counsel, shall govern hearings held under this subsection (a-5).

(4) Authorized involuntary treatment shall not be administered to the recipient unless it has been determined by clear and convincing evidence that all of the following factors are present:

(A) That the recipient has a serious mental illness or developmental disability.

(B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following: (i) deterioration of his or her ability to function, as compared to the recipient's ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.

(C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.

(D) That the benefits of the treatment outweigh the harm.

(E) That the recipient lacks the capacity to make a reasoned decision about the treatment.

(F) That other less restrictive services have been explored and found inappropriate.

(G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment.

(5) In no event shall an order issued under this Section be effective for more than 90 days. A second 90-day period of involuntary treatment may be authorized pursuant to a hearing that complies with the standards and procedures of this subsection (a-5). Thereafter, additional 180-day periods of involuntary treatment may be authorized pursuant to the standards and procedures of this Section without limit. If a new petition to authorize the administration of authorized involuntary treatment is filed at least 15 days prior to the expiration of the prior order, and if any continuance of the hearing is agreed to by the recipient, the administration of the treatment may continue in accordance with the prior order pending the completion of a hearing under this Section.

(6) An order issued under this subsection (a-5) shall designate the persons authorized to administer the authorized involuntary treatment under the standards and procedures of this subsection (a-5). Those persons shall have complete discretion not to administer any treatment authorized under this Section. The order shall also specify the medications and the anticipated range of dosages that have been authorized and may include a list of

any alternative medications and range of dosages deemed necessary.

(b) A guardian may be authorized to consent to the administration of authorized involuntary treatment to an objecting recipient only under the standards and procedures of subsection (a-5).

(c) Notwithstanding any other provision of this Section, a guardian may consent to the administration of authorized involuntary treatment to a non-objecting recipient under Article XIa of the Probate Act of 1975.

(d) Nothing in this Section shall prevent the administration of authorized involuntary treatment to recipients in an emergency under Section 2-107 of this Act.

(e) Notwithstanding any of the provisions of this Section, authorized involuntary treatment may be administered pursuant to a power of attorney for health care under the Powers of Attorney for Health Care Law or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act.

(Source: P.A. 92-16, eff. 6-28-01; 93-573, eff. 8-21-03.)

(405 ILCS 5/2-107.2) (from Ch. 91 ½, par. 2-107.2)

Sec. 2-107.2. Review ; notice.

(a) Whenever any recipient, who is receiving treatment in a residential mental health facility, has been receiving authorized involuntary treatment in that facility continuously or on a regular basis for a period of 3 months, and, if the treatment is continued while the recipient is a resident in that facility, every 6 months thereafter, for so long as the treatment shall continue, the facility director shall convene a treatment review panel to review the treatment.

(b) At least 7 days prior to the date of the meeting, the recipient, his or her guardian, if any, and the person designated under subsection (b) of Section 2-200 shall be given written notification of the time and place of the treatment review meeting. The notice shall also advise the recipient of his or her right to designate some person to attend the meeting and assist the recipient.

(c) If, during the course of the review, the recipient or guardian, if any, advises the committee that he no longer agrees to continue receiving the treatment, the treatment must be discontinued except that the treatment may be administered under either Section 2-107 or 2-107.1. If the recipient and guardian, if any, continues to agree to the treatment, the treatment shall be continued if the committee determines that the recipient is receiving appropriate treatment and that the benefit to the recipient outweighs any risk of harm to the recipient.

(d) The Department shall issue rules to implement the requirements of this Section.

(Source: P.A. 89-439, eff. 6-1-96; 90-538, eff. 12-1-97.)

(405 ILCS 5/2-108) (from Ch. 91 ½, par. 2-108)

Sec. 2-108. Use of restraint. Restraint may be used only as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others. Restraint may only be applied by a person who has been trained in the application of the particular type of restraint to be utilized. In no event shall restraint be utilized to punish or discipline a recipient, nor is restraint to be used as a convenience for the staff.

(a) Except as provided in this Section, restraint shall be employed only upon the written order of a physician, clinical psychologist, clinical social worker, or registered nurse with supervisory responsibilities. No restraint shall be ordered unless the physician, clinical psychologist, clinical social worker, or registered nurse with supervisory responsibilities, after personally observing and examining the recipient, is clinically satisfied that the use of restraint is justified to prevent the recipient from causing physical harm to himself or others. In no event may restraint continue for longer than 2 hours unless within that time period a nurse with supervisory responsibilities or a physician confirms, in writing, following a personal examination of the recipient, that the

restraint does not pose an undue risk to the recipient's health in light of the recipient's physical or medical condition. The order shall state the events leading up to the need for restraint and the purposes for which restraint is employed. The order shall also state the length of time restraint is to be employed and the clinical justification for that length of time. No order for restraint shall be valid for more than 16 hours. If further restraint is required, a new order must be issued pursuant to the requirements provided in this Section.

(b) In the event there is an emergency requiring the immediate use of restraint, it may be ordered temporarily by a qualified person only where a physician, clinical psychologist, clinical social worker, or registered nurse with supervisory responsibilities is not immediately available. In that event, an order by a nurse, clinical psychologist, clinical social worker, or physician shall be obtained pursuant to the requirements of this Section as quickly as possible, and the recipient shall be examined by a physician or supervisory nurse within 2 hours after the initial employment of the emergency restraint. Whoever orders restraint in emergency situations shall document its necessity and place that documentation in the recipient's record.

(c) The person who orders restraint shall inform the facility director or his designee in writing of the use of restraint within 24 hours.

(d) The facility director shall review all restraint orders daily and shall inquire into the reasons for the orders for restraint by any person who routinely orders them.

(e) Restraint may be employed during all or part of one 24 hour period, the period commencing with the initial application of the restraint. However, once restraint has been employed during one 24 hour period, it shall not be used again on the same recipient during the next 48 hours without the prior written authorization of the facility director.

(f) Restraint shall be employed in a humane and therapeutic manner and the person being restrained shall be observed by a qualified person as often as is clinically appropriate but in no event less than once every 15 minutes. The qualified person shall maintain a record of the observations. Specifically, unless there is an immediate danger that the recipient will physically harm himself or others, restraint shall be loosely applied to permit freedom of movement. Further, the recipient shall be permitted to have regular meals and toilet privileges free from the restraint, except when freedom of action may result in physical harm to the recipient or others.

(g) Every facility that employs restraint shall provide training in the safe and humane application of each type of restraint employed. The facility shall not authorize the use of any type of restraint by an employee who has not received training in the safe and humane application of that type of restraint. Each facility in which restraint is used shall maintain records detailing which employees have been trained and are authorized to apply restraint, the date of the training and the type of restraint that the employee was trained to use.

(h) Whenever restraint is imposed upon any recipient whose primary mode of communication is sign language, the recipient shall be permitted to have his hands free from restraint for brief periods each hour, except when freedom may result in physical harm to the recipient or others.

(i) A recipient who is restrained may only be secluded at the same time pursuant to an explicit written authorization as provided in Section 2-109 of this Code. Whenever a recipient is restrained, a member of the facility staff shall remain with the recipient at all times unless the recipient has been secluded. A recipient who is restrained and secluded shall be observed by a qualified person as often as is clinically appropriate but in no event less than every 15 minutes.

(j) Whenever restraint is used, the recipient shall be advised of his right, pursuant to Sections 2-200 and 2-201 of this Code, to have any person of his choosing, including the Guardianship and Advocacy Commission or the agency designated pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act notified of the restraint. A recipient who is under guardianship may request that any person of his choosing be notified of the restraint whether or not the guardian approves of the notice. Whenever the Guardianship and Advocacy Commission is notified that a recipient has been restrained, it shall contact that recipient to determine the circumstances of the restraint and whether further action is warranted.

(Source: P.A. 92-651, eff. 7-11-02.)

(405 ILCS 5/2-109) (from Ch. 91 ½, par. 2-109)

Sec. 2-109. Seclusion. Seclusion may be used only as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others. In no event shall seclusion be utilized to punish or discipline a recipient, nor is seclusion to be used as a convenience for the staff.

(a) Seclusion shall be employed only upon the written order of a physician, clinical psychologist, clinical social worker, or registered nurse with supervisory responsibilities. No seclusion shall be ordered unless the physician, clinical psychologist, clinical social worker, or registered nurse with supervisory responsibilities, after personally observing and examining the recipient, is clinically satisfied that the use of seclusion is justified to prevent the recipient from causing physical harm to himself or others. In no event may seclusion continue for longer than 2 hours unless within that time period a nurse with supervisory responsibilities or a physician confirms in writing, following a personal examination of the recipient, that the seclusion does not pose an undue risk to the recipient's health in light of the recipient's physical or medical condition. The order shall state the events leading up to the need for seclusion and the purposes for which seclusion is employed. The order shall also state the length of time seclusion is to be employed and the clinical justification for the length of time. No order for seclusion shall be valid for more than 16 hours. If further seclusion is required, a new order must be issued pursuant to the requirements provided in this Section.

(b) The person who orders seclusion shall inform the facility director or his designee in writing of the use of seclusion within 24 hours.

(c) The facility director shall review all seclusion orders daily and shall inquire into the reasons for the orders for seclusion by any person who routinely orders them.

(d) Seclusion may be employed during all or part of one 16 hour period, that period commencing with the initial application of the seclusion. However, once seclusion has been employed during one 16 hour period, it shall not be used again on the same recipient during the next 48 hours without the prior written authorization of the facility director.

(e) The person who ordered the seclusion shall assign a qualified person to observe the recipient at all times. A recipient who is restrained and secluded shall be observed by a qualified person as often as is clinically appropriate but in no event less than once every 15 minutes.

(f) Safety precautions shall be followed to prevent injuries to the recipient in the seclusion room. Seclusion rooms shall be adequately lighted, heated, and furnished. If a door is locked, someone with a key shall be in constant attendance nearby.

(g) Whenever seclusion is used, the recipient shall be advised of his right, pursuant to Sections 2-200 and 2-201 of this Code, to have any person of his choosing, including the Guardianship and Advocacy Commission notified of the seclusion. A person who is under guardianship may request that any person of his choosing be notified of the seclusion whether or not the guardian approves of the notice. Whenever the Guardianship and Advocacy Commission is notified that a recipient has been secluded, it shall contact that recipient to determine the circumstances of the seclusion and whether further action is warranted.

(Source: P.A. 86-1013; 86-1402; 87-124; 87-530; 87-895.)

(405 ILCS 5/2-110) (from Ch. 91 ½, par. 2-110)

Sec. 2-110. No recipient of services shall be subjected to any unusual, hazardous, or experimental services or psychosurgery, without his written and informed consent. If the recipient is a minor or is under guardianship, such recipient's parent or guardian is authorized, only with the approval of the Court, to provide informed consent for participation of the ward in any such services which the guardian deems to be in the best interests of the ward.

(Source: P.A. 90-538, eff. 12-1-97.)

(405 ILCS 5/2-110.1)

Sec. 2-110.1. Reports.

(a) A mental hospital or facility at which electro-convulsive therapy is administered shall submit to the Department quarterly reports relating to the administration of the therapy for the purposes of reducing morbidity or mortality and improving patient care.

(b) A report shall state the following for each quarter:

(1) The number of persons who received the therapy, including:

(A) the number of persons who gave informed consent to the therapy;

(B) the number of persons confined as subject to involuntary admission who gave informed consent to the therapy;

(C) the number of persons who received the therapy without informed consent pursuant to Section 2-107.1; and

(D) the number of persons who received the therapy on an emergency basis pursuant to subsection (d) of Section 2-107.1.

(2) The age, sex, and race of the recipients of the therapy.

(3) The source of the treatment payment.

(4) The average number of electro-convulsive treatments administered for each complete series of treatments, but not including maintenance treatments.

(5) The average number of maintenance electro-convulsive treatments administered per month.

(6) Any significant adverse reactions to the treatment as defined by rule.

(7) Autopsy findings if death followed within 14 days after the date of the administration of the therapy.

(8) Any other information required by the Department by rule.

(c) The Department shall prepare and publish an annual written report summarizing the information received under this Section. The report shall not contain any information that identifies or tends to identify any facility, physician, health care provider, or patient.

(Source: P.A. 90-538, eff. 12-1-97.)

(405 ILCS 5/2-110.5)

Sec. 2-110.5. Electro-convulsive therapy for minors. If a recipient is a minor, that recipient's parent or guardian is authorized, only with the approval of the Court under the procedures set out in Section 2-107.1, to provide consent for participation of the minor in electro-convulsive therapy if the parent or guardian deems it to be in the best interest of the minor. In addition to the requirements in Section 2-107.1, prior to the Court entering an order approving treatment by electro-convulsive therapy, 2 licensed psychiatrists, one of which may be the minor's treating psychiatrist, who have examined the patient must concur in the determination that the minor should participate in treatment by electro-convulsive therapy.

(Source: P.A. 91-74, eff. 7-9-99.)

(405 ILCS 5/2-111) (from Ch. 91 ½, par. 2-111)

Sec. 2-111. A medical or dental emergency exists when delay for the purpose of obtaining consent would endanger the life or adversely and substantially affect the health of a recipient of services. When a medical or dental emergency exists, if a physician or licensed dentist who examines a recipient determines that the recipient is not capable of giving informed consent, essential medical or dental procedures may be performed without consent. No physician nor licensed dentist shall be liable for a non-negligent good faith determination that a medical or dental emergency exists or a non-negligent good faith determination that the recipient is not capable

of giving informed consent.
(Source: P.A. 85-971.)

(405 ILCS 5/2-112) (from Ch. 91 ½, par. 2-112)

Sec. 2-112. Freedom from abuse and neglect. Every recipient of services in a mental health or developmental disability facility shall be free from abuse and neglect.
(Source: P.A. 86-1013.)

(405 ILCS 5/2-113) (from Ch. 91 ½, par. 2-113)

Sec. 2-113. (a) Upon admission, the facility shall inquire of the recipient if a spouse, family member, friend or an agency is to be notified of his admission to the facility. If the recipient consents to release of information concerning his admission, the facility shall immediately attempt to make phone contact with at least two designated persons or agencies or by mail within 24 hours.

(b) Any person may request information from a developmental disability or mental health facility relating to whether an adult recipient or minor recipient admitted pursuant to Section 3-502 has been admitted to the facility. Any parties requesting information must submit proof of identification and list their name, address, phone number, relationship to the recipient and reason for the request.

(c) The facility shall respond to the inquirer within 2 working days. If the recipient is located at the facility, the facility director shall inform the recipient of the request and shall advise the recipient that disclosure of his presence at the facility will not obligate the recipient to have contact with the inquirer. No information shall be disclosed unless the recipient consents in writing to the disclosure.

(d) If the recipient has consented to the release of information the facility shall inform the requesting party that the recipient is located at the facility. The facility shall, with the recipient's consent, tell the requesting party how to contact the recipient.

(e) When the recipient is not located at the facility or when the recipient does not consent in writing to release such information, the facility shall inform the consenting party that no information is available regarding that person.

(f) Transactions pursuant to this Section shall be noted in the recipient's record.
(Source: P.A. 86-1417.)

(405 ILCS 5/2-114) (from Ch. 91 ½, par. 2-114)

Sec. 2-114. (a) Whenever an attorney or other advocate from the Guardianship and Advocacy Commission or the agency designated by the Governor under Section 1 of the Protection and Advocacy for Developmentally Disabled Persons Act or any other attorney advises a facility in which a recipient is receiving inpatient mental health services that he is presently representing the recipient, or has been appointed by any Court or administrative agency to do so or has been requested to represent the recipient by a member of the recipient's family, the facility shall, subject to the provisions of Section 2-113 of this Code, disclose to the attorney or advocate whether the recipient is presently residing in the facility and, if so, how the attorney or advocate may communicate with the recipient.

(b) The facility may take reasonable precautions to identify the attorney or advocate. No further information shall be disclosed to the attorney or advocate except in conformity with the authorization procedures contained in the Mental Health and Developmental Disabilities Confidentiality Act.

(c) Whenever the location of the recipient has been disclosed to an attorney or advocate, the facility director shall inform the recipient of that fact and shall note this disclosure in the recipient's records.

(d) An attorney or advocate who receives any information under this Section may not disclose this information to anyone else without the written consent of the recipient obtained pursuant to Section 5 of the Mental Health and Developmental Disabilities Confidentiality Act.

(Source: P.A. 91-357, eff. 7-29-99.)

(405 ILCS 5/2-115)

Sec. 2-115. Participants in mental health Courts. Subject to appropriations, the Department shall establish pilot programs to provide the clinical services necessary to serve participants in mental health Courts that have been established in any judicial circuit in this State.

(Source: P.A. 92-120, eff. 1-1-02.)

(405 ILCS 5/Ch. II Art. II heading)

ARTICLE II. PROCEDURES

(405 ILCS 5/2-200) (from Ch. 91 ½, par. 2-200)

Sec. 2-200. (a) Upon commencement of services, or as soon thereafter as the condition of the recipient permits, every adult recipient, as well as the recipient's guardian or substitute decision maker, and every recipient who is 12 years of age or older and the parent or guardian of a minor or person under guardianship shall be informed orally and in writing of the rights guaranteed by this Chapter which are relevant to the nature of the recipient's services program. Every facility shall also post conspicuously in public areas a summary of the rights which are relevant to the services delivered by that facility.

(b) A recipient who is 12 years of age or older and the parent or guardian of a minor or person under guardianship at any time may designate, and upon commencement of services shall be informed of the right to designate, a person or agency to receive notice under Section 2-201 or to direct that no information about the recipient be disclosed to any person or agency.

(c) Upon commencement of services, or as soon thereafter as the condition of the recipient permits, the facility shall ask the adult recipient or minor recipient admitted pursuant to Section 3-502 whether the recipient wants the facility to contact the recipient's spouse, parents, guardian, close relatives, friends, attorney, advocate from the Guardianship and Advocacy Commission or the agency designated by the Governor under Section 1 of "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named", approved September 20, 1985, or others and inform them of the recipient's presence at the facility. The facility shall by phone or by mail contact at least two of those people designated by the recipient and shall inform them of the recipient's location. If the recipient so requests, the facility shall also inform them of how to contact the recipient.

(d) Upon commencement of services, or as soon thereafter as the condition of the recipient permits, the facility shall advise the recipient as to the circumstances under which the law permits the use of emergency forced medication under subsection (a) of Section 2-107, restraint under Section 2-108, or seclusion under Section 2-109. At the same time, the facility shall inquire of the recipient which form of intervention the recipient would prefer if any of these circumstances should arise. The recipient's preference shall be noted in the recipient's record and communicated by the facility to the recipient's guardian or substitute decision maker, if any, and any other individual designated by the recipient. If any such circumstances subsequently do arise, the facility shall give due consideration to the preferences of the recipient regarding which form of intervention to use as communicated to the facility by the recipient or as stated in the recipient's advance directive.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/2-201) (from Ch. 91 ½, par. 2-201)

Sec. 2-201. (a) Whenever any rights of a recipient of services that are specified in this Chapter are restricted, the professional responsible for overseeing the implementation of the recipient's services plan shall be responsible for promptly giving notice of the restriction or use of restraint or seclusion and the reason therefor to: (1) the recipient and, if such recipient is a minor or under guardianship, his parent or guardian;

- (2) a person designated under subsection (b) of Section 2-200 upon commencement of services or at any later time to receive such notice;
- (3) the facility director;
- (4) the Guardianship and Advocacy Commission, or the agency designated under "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named", approved September 20, 1985, if either is so designated; and
- (5) the recipient's substitute decision maker, if any.

The professional shall also be responsible for promptly recording such restriction or use of restraint or seclusion and the reason therefor in the recipient's record.

(b) The facility director shall maintain a file of all notices of restrictions of rights, or the use of restraint or seclusion for the past 3 years. The facility director shall allow the Guardianship and Advocacy Commission, the agency designated by the Governor under Section 1 of "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named," approved September 20, 1985, and the Department to examine and copy such records upon request. Records obtained under this Section shall not be further disclosed except pursuant to written authorization of the recipient under Section 5 of the Mental Health and Developmental Disabilities Confidentiality Act.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/2-202) (from Ch. 91 ½, par. 2-202)

Sec. 2-202. The Secretary of Human Services and the facility director of each service provider shall adopt in writing such policies and procedures as are necessary to implement this Chapter. Such policies and procedures may amplify or expand, but shall not restrict or limit, the rights guaranteed to recipients by this Chapter.

(Source: P.A. 89-507, eff. 7-1-97.)

(405 ILCS 5/Ch. III heading)

CHAPTER III
ADMISSION, TRANSFER AND DISCHARGE
PROCEDURES FOR THE MENTALLY ILL

(405 ILCS 5/Ch. III Art. I heading)

ARTICLE I. JURISDICTION; DUTIES OF STATE'S ATTORNEY

(405 ILCS 5/3-100) (from Ch. 91 ½, par. 3-100)

Sec. 3-100. The circuit Court has jurisdiction under this Chapter over persons not charged with a felony who are subject to involuntary admission. Inmates of penal institutions shall not be considered as charged with a felony within the meaning of this Chapter. Court proceedings under Article VIII of this Chapter may be instituted as to any such inmate at any time within 90 days prior to discharge of such inmate by expiration of sentence or otherwise, and if such inmate is found to be subject to involuntary admission, the order of the Court Ordering hospitalization or other disposition shall become effective at the time of discharge of the inmate from penal custody.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-101) (from Ch. 91 ½, par. 3-101)

Sec. 3-101. The State's Attorneys of the several counties shall represent the people of the State of Illinois in Court proceedings under this Chapter and in proceedings under Section 2-107.1 in their respective counties, shall attend such proceedings either in person or by assistant, and shall ensure that petitions, reports and orders are properly prepared. Nothing herein contained shall prevent any party from being represented by his own counsel.

(Source: P.A. 89-439, eff. 6-1-96.)

(405 ILCS 5/Ch. III Art. II heading)

ARTICLE II. GENERAL PROVISIONS

(405 ILCS 5/3-200) (from Ch. 91 ½, par. 3-200)

Sec. 3-200. (a) A person may be admitted as an inpatient to a mental health facility for treatment of mental illness only as provided in this Chapter, except that a person may be transferred by the Department of Corrections pursuant to the Unified Code of Corrections. A person transferred by the Department of Corrections in this manner may be released only as provided in the Unified Code of Corrections.

(b) No person who is diagnosed as mentally retarded or a person with a developmental disability may be admitted or transferred to a Department mental health facility or, any portion thereof, except as provided in this Chapter. However, the evaluation and placement of such persons shall be governed by Article II of Chapter 4 of this Code.

(Source: P.A. 88-380.)

(405 ILCS 5/3-201) (from Ch. 91 ½, par. 3-201)

Sec. 3-201. The Department shall prescribe all forms necessary for proceedings under this Chapter, and all forms used in such proceedings shall comply substantially with the forms so prescribed. The Department shall print and furnish an initial supply of such forms to the clerks of the circuit Courts.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-202) (from Ch. 91 ½, par. 3-202)

Sec. 3-202. (a) Every mental health facility shall maintain adequate records which shall include the Section of

this Chapter under which the recipient was admitted, any subsequent change in the recipient's status, and requisite documentation for such admission and status.

(b) Nothing contained in this Chapter shall be construed to limit or otherwise affect the power of any mental health facility to determine the qualifications of persons who may be permitted to admit recipients to such facility. This subsection shall not affect or limit the powers of any Court to order hospitalization or admission to a program of alternative treatment as set forth in this Chapter.
(Source: P.A. 91-357, eff. 7-29-99.)

(405 ILCS 5/3-203) (from Ch. 91 1/2, par. 3-203)

Sec. 3-203. Every petition, certificate and proof of service required by this Chapter shall be executed under penalty of perjury as though under oath or affirmation, but no acknowledgement is required.
(Source: P.A. 80-1414.)

(405 ILCS 5/3-204) (from Ch. 91 1/2, par. 3-204)

Sec. 3-204. Whenever a statement or explanation is required to be given to a recipient under this Chapter and the recipient does not read or understand English, such statement or explanation shall be provided to him in a language which he understands. Such statement or explanation shall be communicated in sign language for any hearing impaired person for whom sign language is a primary mode of communication. When a statement or explanation is provided in a language other than English, or through the use of sign language, that fact and the name of the persons by whom it was provided shall be noted in the recipient's record. This Section does not apply to copies of petitions and Court Orders.
(Source: P.A. 88-380.)

(405 ILCS 5/3-205) (from Ch. 91 1/2, par. 3-205)

Sec. 3-205. Within 12 hours after the admission of a person to a mental health facility under Article VI or Article VII of this Chapter the facility director shall give the person a copy of the petition and a clear and concise written statement explaining the person's legal status and his right to counsel and to a Court hearing. Following admission, any changes in the person's legal status shall be fully explained to him. When an explanation required by this Chapter must be given in a language other than English or through the use of sign language, it shall be given within a reasonable time before any hearing is held.
(Source: P.A. 82-205.)

(405 ILCS 5/3-205.5)

Sec. 3-205.5. Examination and social investigation. When any person is first presented for admission to a mental health facility under Chapter III of this Code, within 72 hours thereafter, excluding Saturdays, Sundays, and holidays, the facility shall provide or arrange for a comprehensive physical examination, mental examination, and social investigation of that person. The examinations and social investigation shall be used to determine whether some program other than hospitalization will meet the needs of the person, with preference being given to care or treatment that will enable the person to return to his or her own home or community.
(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-206) (from Ch. 91 1/2, par. 3-206)

Sec. 3-206. Whenever a person is admitted or objects to admission, and whenever a recipient is notified that his legal status is to be changed, the facility director of the mental health facility shall provide the person, if he is 12 or older, with the address and phone number of the Guardianship and Advocacy Commission. If the person requests, the facility director shall assist him in contacting the Commission.
(Source: P.A. 88-380.)

405 ILCS 5/3-207) (from Ch. 91 ½, par. 3-207)

Sec. 3-207. (a) Hearings under Sections 3-405, 3-904 and 3-911 of this Chapter shall be conducted by a utilization review committee. The Secretary shall appoint a utilization review committee at each Department facility. Each such committee shall consist of a multi-disciplinary group of professional staff members who are trained and equipped to deal with the clinical and treatment needs of recipients. The recipient and the objector may be represented by persons of their choice.

(b) The committee shall not be bound by rules of evidence or procedure but shall conduct the proceedings in a manner intended to ensure a fair hearing. The committee may make such investigation as it deems necessary. A record of the proceedings shall be made and shall be kept in the recipient's record. Within 3 days of conclusion of the hearing, the committee shall submit to the facility director its written recommendations which include its factual findings and conclusions. A copy of the recommendations shall be given to the recipient and the objector.

(c) Within 7 days of receipt of the recommendations, the facility director shall give written notice to the recipient and objector of his acceptance or rejection of the recommendations and his reason therefor. If the director of the facility rejects the recommendations or if the recipient or objector requests review of the director's decision, the director shall promptly forward a copy of his decision, the recommendations, and the record of the hearing to the Secretary of the Department for final review. The decision of the director or the decision of the Secretary of the Department, if his review was requested, shall be considered a final administrative decision.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-208) (from Ch. 91 ½, par. 3-208)

Sec. 3-208. Whenever a petition has been executed pursuant to Section 3-507, 3-601 or 3-701, and prior to this examination for the purpose of certification of a person 12 or over, the person conducting this examination shall inform the person being examined in a simple comprehensible manner of the purpose of the examination; that he does not have to talk to the examiner; and that any statements he makes may be disclosed at a Court hearing on the issue of whether he is subject to involuntary admission. If the person being examined has not been so informed, the examiner shall not be permitted to testify at any subsequent Court hearing concerning the respondent's admission.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-209) (from Ch. 91 ½, par. 3-209)

Sec. 3-209. Within three days of admission under this Chapter, a treatment plan shall be prepared for each recipient of service and entered into his or her record. The plan shall include an assessment of the recipient's treatment needs, a description of the services recommended for treatment, the goals of each type of element of service, an anticipated timetable for the accomplishment of the goals, and a designation of the qualified professional responsible for the implementation of the plan. The plan shall be reviewed and updated as the clinical condition warrants, but not less than every 30 days.

(Source: P.A. 81-920.)

(405 ILCS 5/3-210) (from Ch. 91 ½, par. 3-210)

Sec. 3-210. Employee as perpetrator of abuse. When an investigation of a report of suspected abuse of a recipient of services indicates, based upon credible evidence, that an employee of a mental health or developmental disability facility is the perpetrator of the abuse, that employee shall immediately be barred from any further contact with recipients of services of the facility, pending the outcome of any further investigation, prosecution or disciplinary action against the employee.

(Source: P.A. 86-1013.)

(405 ILCS 5/3-211) (from Ch. 91 ½, par. 3-211)

Sec. 3-211. Resident as perpetrator of abuse. When an investigation of a report of suspected abuse of a recipient of services indicates, based upon credible evidence, that another recipient of services in a mental health or developmental disability facility is the perpetrator of the abuse, the condition of the recipient suspected of being the perpetrator shall be immediately evaluated to determine the most suitable therapy and placement, considering the safety of that recipient as well as the safety of other recipients of services and employees of the facility.

(Source: P.A. 86-1013.)

(405 ILCS 5/Ch. III Art. III heading)

ARTICLE III. INFORMAL ADMISSION

(405 ILCS 5/3-300) (from Ch. 91 ½, par. 3-300)

Sec. 3-300. Admission.

(a) Any person desiring admission to a mental health facility for treatment of a mental illness may be admitted upon his request without making formal application therefor if, after examination, the facility director considers that person clinically suitable for admission upon an informal basis.

(b) Each recipient admitted under this Section shall be informed in writing and orally at the time of admission of his right to be discharged from the facility at any time during the normal daily day-shift hours of operation, which shall include but need not be limited to 9 a.m. to 5 p.m. Such right to be discharged shall commence with the first day-shift hours of operation after his admission.

(c) If the facility director decides to admit a person as a voluntary recipient, he shall state in the recipient's record the reason why informal admission is not suitable.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/Ch. III Art. IV heading)

ARTICLE IV. VOLUNTARY ADMISSION OF ADULTS

(405 ILCS 5/3-400) (from Ch. 91 ½, par. 3-400)

Sec. 3-400. Any person 16 or older may be admitted to a mental health facility as a voluntary recipient for treatment of a mental illness upon the filing of an application with the facility director of the facility if the facility director deems such person clinically suitable for admission as a voluntary recipient.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-401) (from Ch. 91 ½, par. 3-401)

Sec. 3-401. (a) The application for admission as a voluntary recipient may be executed by:

1. The person seeking admission, if 18 or older; or
2. Any interested person, 18 or older, at the request of the person seeking admission; or 3. A minor, 16 or older, as provided in Section 3-502.

(b) The written application form shall contain in large, bold-face type a statement in simple nontechnical terms that the voluntary recipient may be discharged from the facility at the earliest appropriate time, not to exceed 5 days, excluding Saturdays, Sundays and holidays, after giving a written notice of his desire to be discharged, unless within that time, a petition and 2 certificates are filed with the Court asserting that the recipient is subject to involuntary admission. Upon admission the right to be discharged shall be communicated orally to the recipient and a copy of the application form shall be given to the recipient and to any parent, guardian, relative, attorney, or friend who accompanied the recipient to the facility.

(Source: P.A. 88-380.)

(405 ILCS 5/3-402) (from Ch. 91 ½, par. 3-402)

Sec. 3-402. No physician, qualified examiner, or clinical psychologist shall state to any person that

involuntary admission may result if such person does not voluntarily admit himself to a mental health facility unless a physician, qualified examiner, or clinical psychologist who has examined the person is prepared to execute a certificate under Section 3-602 and the person is advised that if he is admitted upon certification, he will be entitled to a Court hearing with counsel appointed to represent him at which the State will have to prove that he is subject to involuntary admission.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-403) (from Ch. 91 ½, par. 3-403)

Sec. 3-403. A voluntary recipient shall be allowed to be discharged from the facility at the earliest appropriate time, not to exceed 5 days, excluding Saturdays, Sundays and holidays, after he gives any treatment staff person written notice of his desire to be discharged unless he either withdraws the notice in writing or unless within the 5 day period a petition and 2 certificates conforming to the requirements of paragraph (b) of Section 3-601 and Section 3-602 are filed with the Court. Upon receipt of the petition, the Court shall order a hearing to be held within 5 days, excluding Saturdays, Sundays and holidays, and to be conducted pursuant to Article IX of this Chapter. Hospitalization of the recipient may continue pending further order of the Court.

(Source: P.A. 88-830.)

(405 ILCS 5/3-404) (from Ch. 91 ½, par. 3-404)

Sec. 3-404. Thirty days after the voluntary admission of a recipient, the facility director shall review the recipient's record and assess the need for continuing hospitalization. The facility director shall consult with the recipient if continuing hospitalization is indicated and request from the recipient an affirmation of his desire for continued treatment. The request and affirmation shall be noted in the recipient's record. Every 60 days thereafter a review shall be conducted and a reaffirmation shall be secured from the recipient for as long as the hospitalization continues. A recipient's failure to reaffirm a desire to continue treatment shall constitute notice of his desire to be discharged.

(Source: P.A. 88-380.)

(405 ILCS 5/3-405) (from Ch. 91 ½, par. 3-405)

Sec. 3-405. (a) If the facility director of a Department mental health facility declines to admit a person seeking admission under Articles III or IV of this Chapter, a review of the denial may be requested by the person seeking admission or, with his consent, by an interested person on his behalf. Such a request may be made on behalf of a minor presented for admission under Section 3-502, 3-503 or 3-504 by the minor's attorney, by the parent, guardian or person in loco parentis who executed the application for his admission, or by the minor himself if he is 16 years of age or older. Whenever admission to a Department facility is denied, the person seeking admission shall immediately be given written notice of the right to request review of the denial under this Section and shall be provided, if he is 12 or older, with the address and phone number of the Guardianship and Advocacy Commission. If the person requests, the facility director shall assist him in contacting the Commission. A written request for review shall be submitted to the director of the facility that denied admission within 14 days of the denial. Upon receipt of the request, the facility director shall promptly schedule a hearing to be held at the denying facility within 7 days pursuant to Section 3-207.

(b) At the hearing the Department shall have the burden of proving that the person denied admission does not meet the standard set forth in the Section under which admission is sought or that an appropriate alternative community treatment program was available to meet the person's needs and was offered. If the utilization review committee finds that the decision denying admission is based upon substantial evidence, it shall recommend that the denial of admission be upheld. However, if it finds that the facility to which admission is sought can provide adequate and appropriate treatment for the person and no appropriate community alternative treatment is available, it shall recommend that the person denied admission be admitted. If it determines that another facility can provide treatment appropriate to the clinical condition and needs of the person denied admission, it may recommend that the

Department or other agency assist the person in obtaining such treatment.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/Ch. III Art. V heading)

ARTICLE V. ADMISSION OF MINORS

(405 ILCS 5/3-500) (from Ch. 91 ½, par. 3-500)

Sec. 3-500. A minor may be admitted to a mental health facility for treatment of a mental illness or emotional disturbance only as provided in this Article or as provided in Sections 3-10-5 or 5-2-4 of the Unified Code of Corrections, as now or hereafter amended.

(Source: P.A. 81-1497.)

(405 ILCS 5/3-501) (from Ch. 91 ½, par. 3-501)

Sec. 3-501. (a) Any minor 12 years of age or older may request and receive counseling services or psychotherapy on an outpatient basis. The consent of his parent, guardian or person in loco parentis shall not be necessary to authorize outpatient counseling or psychotherapy. The minor's parent, guardian or person in loco parentis shall not be informed of such counseling or psychotherapy without the consent of the minor unless the facility director believes such disclosure is necessary. If the facility director intends to disclose the fact of counseling or psychotherapy, the minor shall be so informed. However, until the consent of the minor's parent, guardian or person in loco parentis has been obtained, outpatient counseling or psychotherapy provided to a minor under the age of 17 shall be limited to not more than 5 sessions, a session lasting not more than 45 minutes.

(b) The minor's parent, guardian or person in loco parentis shall not be liable for the costs of outpatient counseling or psychotherapy which is received by the minor without the consent of the minor's parent, guardian or person in loco parentis.

(Source: P.A. 86-922.)

(405 ILCS 5/3-502) (from Ch. 91 ½, par. 3-502)

Sec. 3-502. Any minor 16 years of age or older may be admitted to a mental health facility as a voluntary recipient under Article IV of this Chapter if the minor himself executes the application. A minor so admitted shall be treated as an adult under Article IV and shall be subject to all of the provisions of that Article. The minor's parent, guardian or person in loco parentis shall be immediately informed of the admission.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-503) (from Ch. 91 ½, par. 3-503)

Sec. 3-503. Admission on application of parent or guardian.

(a) Any minor may be admitted to a mental health facility for inpatient treatment upon application to the facility director, if the facility director finds that the minor has a mental illness or emotional disturbance of such severity that hospitalization is necessary and that the minor is likely to benefit from inpatient treatment. Except in cases of admission under Section 3-504, prior to admission, a psychiatrist, clinical social worker, or clinical psychologist who has personally examined the minor shall state in writing that the minor meets the standard for admission. The statement shall set forth in detail the reasons for that conclusion and shall indicate what alternatives to hospitalization have been explored. (b) The application may be executed by a parent or guardian or, in the absence of a parent or guardian, by a person in loco parentis. Application may be made for a minor who is a ward of the State by the Department of Children and Family Services or by the Department of Corrections.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-504) (from Ch. 91 ½, par. 3-504)

Sec. 3-504. Minors; emergency admissions.

(a) A minor who is eligible for admission under Section 3-503 and who is in a condition that immediate hospitalization is necessary may be admitted upon the application of a parent or guardian, or person in loco parentis, or of an interested person 18 years of age or older when, after diligent effort, the minor's parent, guardian or person

in loco parentis cannot be located or refuses to consent to admission. Following admission of the minor, the facility director of the mental health facility shall continue efforts to locate the minor's parent, guardian or person in loco parentis. If that person is located and consents in writing to the admission, the minor may continue to be hospitalized. However, upon notification of the admission, the parent, guardian or person in loco parentis may request the minor's discharge subject to the provisions of Section 3-508.

(b) A peace officer may take a minor into custody and transport the minor to a mental health facility when, as a result of his personal observation, the peace officer has reasonable grounds to believe that the minor is eligible for admission under Section 3-503 and is in a condition that immediate hospitalization is necessary in order to protect the minor or others from physical harm. Upon arrival at the facility, the peace officer shall complete an application under Section 3-503 and shall further include a detailed statement of the reason for the assertion that immediate hospitalization is necessary, including a description of any acts or significant threats supporting the assertion, the time and place of the occurrence of those acts or threats, and the names, addresses and telephone numbers of other witnesses of those acts or threats.

(c) If no parent, guardian or person in loco parentis can be found within 3 days, excluding Saturdays, Sundays or holidays, after the admission of a minor, or if that person refuses either to consent to admission of the minor or to request his discharge, a petition shall be filed under the Juvenile Court Act of 1987 to ensure that appropriate guardianship is provided.

(d) If, however, a Court finds, based on the evaluation by a psychiatrist, licensed clinical social worker, or licensed clinical psychologist or the testimony or other information offered by a parent, guardian, person acting in loco parentis or other interested adults, that it is necessary in order to complete an examination of a minor, the Court may order that the minor be admitted to a mental health facility pending examination and may order a peace officer or other person to transport the minor to the facility.

(e) If a parent, guardian, or person acting in loco parentis is unable to transport a minor to a mental health facility for examination, the parent, guardian, or person acting in loco parentis may petition the Court to compel a peace officer to take the minor into custody and transport the minor to a mental health facility for examination. The Court may grant the order if the Court finds, based on the evaluation by a psychiatrist, licensed clinical social worker, or licensed clinical psychologist or the testimony of a parent, guardian, or person acting in loco parentis that the examination is necessary and that the assistance of a peace officer is required to effectuate admission of the minor to a mental health facility.

(f) Within 24 hours after admission under this Section, a psychiatrist or clinical psychologist who has personally examined the minor shall certify in writing that the minor meets the standard for admission. If no certificate is furnished, the minor shall be discharged immediately.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-505) (from Ch. 91 ½, par. 3-505)

Sec. 3-505. The application for admission under Section 3-503 or 3-504 shall contain in large, bold-face type a statement in simple nontechnical terms of the minor's objection and hearing rights under this Article. A minor 12 years of age or older shall be given a copy of the application and his right to object shall be explained to him in an understandable manner. A copy of the application shall also be given to the person who executed it, to the minor's parent, guardian or person in loco parentis, and attorney, if any, and to 2 other persons whom the minor may designate.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-506) (from Ch. 91 ½, par. 3-506)

Sec. 3-506. Thirty days after the admission of a minor under Section 3-503 or 3-504, the facility director shall

review the minor's record and assess the need for continuing hospitalization. The facility director shall consult with the person who executed the application for admission if continuing hospitalization is indicated and request authorization for continued treatment of the minor. The request and authorization shall be noted in the minor's record. Every 60 days thereafter a review shall be conducted and a new authorization shall be secured from the person who executed the application for as long as the hospitalization continues. Failure or refusal to authorize continued treatment shall constitute a request for the minor's discharge.

(Source: P.A. 81-799.)

(405 ILCS 5/3-507) (from Ch. 91 ½, par. 3-507)

Sec. 3-507. (a) Objection may be made to the admission of a minor under Section 3-503 or 3-504. When an objection is made, the minor shall be discharged at the earliest appropriate time, not to exceed 15 days, excluding Saturdays, Sundays and holidays, unless the objection is withdrawn in writing or unless, within that time, a petition for review of the admission and 2 certificates are filed with the Court.

(b) The written objection shall be submitted to the facility director of the facility by an interested person 18 years of age or older on the minor's behalf or by the minor himself if he is 12 years of age or older. Each objection shall be noted in the minor's record.

(c) The 2 certificates which accompany the petition shall be executed pursuant to Section 3-703. Each certificate shall be based upon a personal examination and shall specify that the minor has a mental illness or an emotional disturbance of such severity that hospitalization is necessary, that he can benefit from inpatient treatment, and that a less restrictive alternative is not appropriate. If the minor is 12 years of age or older the certificate shall state whether the minor was advised of his rights under Section 3-208.

(Source: P.A. 85-643.)

(405 ILCS 5/3-508) (from Ch. 91 ½, par. 3-508)

Sec. 3-508. Whenever a parent, guardian, or person in loco parentis requests the discharge of a minor admitted under Section 3-503 or 3-504, the minor shall be discharged at the earliest appropriate time, not to exceed 5 days to the custody of such person unless within that time the minor, if he is 12 years of age or older, or the facility director objects to the discharge in which event he shall file with the Court a petition for review of the admission accompanied by 2 certificates prepared pursuant to paragraph (c) of Section 3-507.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-509) (from Ch. 91 ½, par. 3-509)

Sec. 3-509. Upon receipt of a petition filed pursuant to Section 3-507 or 3-508, the Court shall appoint counsel for the minor and shall set a hearing to be held within 5 days, excluding Saturdays, Sundays and holidays. The Court shall direct that notice of the time and place of the hearing be served upon the minor, his attorney, the person who executed the application, the objector, and the facility director. The hearing shall be conducted pursuant to Article VIII of this Chapter. Hospitalization of the minor may continue pending further order from the Court.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-510) (from Ch. 91 ½, par. 3-510)

Sec. 3-510. (a) The Court shall disapprove the admission and order the minor discharged if it determines that the minor does not have a mental illness or an emotional disturbance of such a severity that hospitalization is necessary, or if it determines that he cannot benefit from inpatient treatment, or if it determines that a less restrictive alternative is appropriate. If any of these 3 conditions is met, the Court shall order the minor discharged from hospitalization.

(b) If, however, the Court finds that the minor does have a mental illness or an emotional disturbance for which the minor is likely to benefit from hospitalization, but that a less restrictive alternative is appropriate, the Court may order alternative treatment pursuant to Section 3-812.

(c) Unless the Court Orders the discharge of the minor, the Court shall authorize the continued hospitalization of the minor for the remainder of the admission period or may make such orders as it deems appropriate pursuant to Section 3-815. When the Court has authorized continued hospitalization, no new objection to the hospitalization of the minor may be heard for 20 days without leave of the Court.
(Source: P.A. 86-922.)

(405 ILCS 5/3-511) (from Ch. 91 ½, par. 3-511)

Sec. 3-511. Unwillingness or inability of the minor's parent, guardian, or person in loco parentis to provide for his care or residence shall not be grounds for the Court's refusing to order the discharge of the minor. In that case, a petition may be filed under the Juvenile Court Act of 1987 to ensure that appropriate care or residence is provided.
(Source: P.A. 85-1209.)

(405 ILCS 5/Ch. III Art. VI heading)

ARTICLE VI. EMERGENCY ADMISSION BY CERTIFICATION

(405 ILCS 5/3-600) (from Ch. 91 ½, par. 3-600)

Sec. 3-600. A person 18 years of age or older who is subject to involuntary admission and in need of immediate hospitalization may be admitted to a mental health facility pursuant to this Article.
(Source: P.A. 80-1414.)

(405 ILCS 5/3-601) (from Ch. 91 ½, par. 3-601)

Sec. 3-601. Involuntary admission; petition.

(a) When a person is asserted to be subject to involuntary admission and in such a condition that immediate hospitalization is necessary for the protection of such person or others from physical harm, any person 18 years of age or older may present a petition to the facility director of a mental health facility in the county where the respondent resides or is present. The petition may be prepared by the facility director of the facility.

(b) The petition shall include all of the following:

1. A detailed statement of the reason for the assertion that the respondent is subject to involuntary admission, including the signs and symptoms of a mental illness and a description of any acts, threats, or other behavior or pattern of behavior supporting the assertion and the time and place of their occurrence.

2. The name and address of the spouse, parent, guardian, substitute decision maker, if any, and close relative, or if none, the name and address of any known friend of the respondent whom the petitioner has reason to believe may know or have any of the other names and addresses. If the petitioner is unable to supply any such names and addresses, the petitioner shall state that diligent inquiry was made to learn this information and specify the steps taken.

3. The petitioner's relationship to the respondent and a statement as to whether the petitioner has legal or financial interest in the matter or is involved in litigation with the respondent. If the petitioner has a legal or financial interest in the matter or is involved in litigation with the respondent, a statement of why the petitioner believes it would not be practicable or possible for someone else to be the petitioner.

4. The names, addresses and phone numbers of the witnesses by which the facts asserted may be proved.

(c) Knowingly making a material false statement in the petition is a Class A misdemeanor.
(Source: P.A. 91-726, eff. 6-2-00; 92-651, eff. 7-11-02.)

(405 ILCS 5/3-601.1)

Sec. 3-601.1. (Repealed).

(Source: P.A. 88-484. Repealed by P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-601.2)

Sec. 3-601.2. Consent to admission by healthcare surrogate. A surrogate decision maker under the Health Care Surrogate Act may not consent to the admission to a mental health facility of a person who lacks decision making capacity. A surrogate may, however, petition for involuntary admission pursuant to this Code. This Section does not affect the authority of a Court appointed guardian.

(Source: P.A. 90-538, eff. 12-1-97.)

(405 ILCS 5/3-602) (from Ch. 91 ½, par. 3-602)

Sec. 3-602. The petition shall be accompanied by a certificate executed by a physician, qualified examiner, or clinical psychologist which states that the respondent is subject to involuntary admission and requires immediate hospitalization. The certificate shall indicate that the physician, qualified examiner, or clinical psychologist personally examined the respondent not more than 72 hours prior to admission. It shall also contain the physician's, qualified examiner's, or clinical psychologist's clinical observations, other factual information relied upon in reaching a diagnosis, and a statement as to whether the respondent was advised of his rights under Section 3-208.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-603) (from Ch. 91 ½, par. 3-603)

Sec. 3-603. (a) If no physician, qualified examiner, or clinical psychologist is immediately available or it is not possible after a diligent effort to obtain the certificate provided for in Section 3-602, the respondent may be detained for examination in a mental health facility upon presentation of the petition alone pending the obtaining of such a certificate.

(b) In such instance the petition shall conform to the requirements of Section 3-601 and further specify that:

1. the petitioner believes, as a result of his personal observation, that the respondent is subject to involuntary admission;

2. a diligent effort was made to obtain a certificate;

3. no physician, qualified examiner, or clinical psychologist could be found who has examined or could examine the respondent; and

4. a diligent effort has been made to convince the respondent to appear voluntarily for examination by a physician, qualified examiner, or clinical psychologist, unless the petitioner reasonably believes that effort would impose a risk of harm to the respondent or others.

(Source: P.A. 91-726, eff. 6-2-00; 91-837, eff. 6-16-00; 92-16, eff. 6-28-01.)

(405 ILCS 5/3-604) (from Ch. 91 ½, par. 3-604)

Sec. 3-604. No person detained for examination under this Article on the basis of a petition alone may be held for more than 24 hours unless within that period a certificate is furnished to or by the mental health facility. If no certificate is furnished, the respondent shall be released forthwith.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-605) (from Ch. 91 ½, par. 3-605)

Sec. 3-605. (a) In counties with a population of 3,000,000 or more, upon receipt of a petition and certificate prepared pursuant to this Article, the county sheriff of the county in which a respondent is found shall take a respondent into custody and transport him to a mental health facility, or may make arrangements with another public or private entity including a licensed ambulance service to transport the respondent to the mental health facility. In the event it is determined by such facility that the respondent is in need of commitment or treatment at another mental health facility, the county sheriff shall transport the respondent to the appropriate mental health

facility, or the county sheriff may make arrangements with another public or private entity including a licensed ambulance service to transport the respondent to the mental health facility.

(b) The county sheriff may delegate his duties under subsection (a) to another law enforcement body within that county if that law enforcement body agrees.

(b-5) In counties with a population under 3,000,000, upon receipt of a petition and certificate prepared pursuant to this Article, the Department shall make arrangements to appropriately transport the respondent to a mental health facility. In the event it is determined by the facility that the respondent is in need of commitment or treatment at another mental health facility, the Department shall make arrangements to appropriately transport the respondent to another mental health facility. The making of such arrangements and agreements with public or private entities is independent of the Department's role as a provider of mental health services and does not indicate that the respondent is admitted to any Department facility. In making such arrangements and agreements with other public or private entities, the Department shall include provisions to ensure (i) the provision of trained personnel and the use of an appropriate vehicle for the safe transport of the respondent and (ii) that the respondent's insurance carrier as well as other programs, both public and private, that provide payment for such transportation services are fully utilized to the maximum extent possible.

The Department may not make arrangements with an existing hospital or grant-in-aid or fee-for-service community provider for transportation services under this Section unless the hospital or provider has voluntarily submitted a proposal for its transportation services. This requirement does not eliminate or reduce any responsibility on the part of a hospital or community provider to ensure transportation that may arise independently through other State or federal law or regulation.

(c) The transporting authority acting in good faith and without negligence in connection with the transportation of respondents shall incur no liability, civil or criminal, by reason of such transportation.

(d) The respondent and the estate of that respondent are liable for the payment of transportation costs for transporting the respondent to a mental health facility. If the respondent is a beneficiary of a trust described in Section 15.1 of the Trusts and Trustees Act, the trust shall not be considered a part of the respondent's estate and shall not be subject to payment for transportation costs for transporting the respondent to a mental health facility under this Section except to the extent permitted under Section 15.1 of the Trusts and Trustees Act. If the respondent is unable to pay or if the estate of the respondent is insufficient, the responsible relatives are severally liable for the payment of those sums or for the balance due in case less than the amount owing has been paid. If the respondent is covered by insurance, the insurance carrier shall be liable for payment to the extent authorized by the respondent's insurance policy.

(Source: P.A. 93-770, eff. 1-1-05.)

(405 ILCS 5/3-606) (from Ch. 91 ½, par. 3-606)

Sec. 3-606. A peace officer may take a person into custody and transport him to a mental health facility when, as a result of his personal observation, the peace officer has reasonable grounds to believe that the person is subject to involuntary admission and in need of immediate hospitalization to protect such person or others from physical harm. Upon arrival at the facility, the peace officer shall complete the petition under Section 3-601.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-607) (from Ch. 91 ½, par. 3-607)

Sec. 3-607. Court Ordered temporary detention and examination. When, as a result of personal observation and testimony in open Court, any Court has reasonable grounds to believe that a person appearing before it is subject to involuntary admission and in need of immediate hospitalization to protect such person or others from physical harm, the Court may enter an order for the temporary detention and examination of such person. The order shall set forth in detail the facts which are the basis for its conclusion. The Court may order a peace officer

to take the person into custody and transport him to a mental health facility. The person may be detained for examination for no more than 24 hours. If a petition and certificate, as provided in this Article, are executed within the 24 hours, the person may be admitted and the provisions of this Article shall apply. If no petition or certificate is executed, the person shall be released.
(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-608) (from Ch. 91 ½, par. 3-608)

Sec. 3-608. Upon completion of one certificate, the facility may begin treatment of the respondent. However, the respondent shall be informed of his right to refuse medication and if he refuses, medication shall not be given unless it is necessary to prevent the respondent from causing serious harm to himself or others. The facility shall record what treatment is given to the respondent together with the reasons therefor.
(Source: P.A. 80-1414.)

(405 ILCS 5/3-609) (from Ch. 91 ½, par. 3-609)

Sec. 3-609. Within 12 hours after his admission, the respondent shall be given a copy of the petition and a statement as provided in Section 3-206. Not later than 24 hours, excluding Saturdays, Sundays and holidays, after admission, a copy of the petition and statement shall be given or sent to the respondent's attorney and guardian, if any. The respondent shall be asked if he desires such documents sent to any other persons, and at least 2 such persons designated by the respondent shall receive such documents. The respondent shall be allowed to complete no less than 2 telephone calls at the time of his admission to such persons as he chooses. (Source: P.A. 80-1414.)

(405 ILCS 5/3-610) (from Ch. 91 ½, par. 3-610)

Sec. 3-610. As soon as possible but not later than 24 hours, excluding Saturdays, Sundays and holidays, after admission of a respondent pursuant to this Article, the respondent shall be examined by a psychiatrist. The psychiatrist may be a member of the staff of the facility but shall not be the person who executed the first certificate. If the respondent is not examined or if the psychiatrist does not execute a certificate pursuant to Section 3-602, the respondent shall be released forthwith.
(Source: P.A. 80-1414.)

(405 ILCS 5/3-611) (from Ch. 91 ½, par. 3-611)

Sec. 3-611. Within 24 hours, excluding Saturdays, Sundays and holidays, after the respondent's admission under this Article, the facility director of the facility shall file 2 copies of the petition, the first certificate, and proof of service of the petition and statement of rights upon the respondent with the Court in the county in which the facility is located. Upon completion of the second certificate, the facility director shall promptly file it with the Court. The facility director shall make copies of the certificates available to the attorneys for the parties upon request. Upon the filing of the petition and first certificate, the Court shall set a hearing to be held within 5 days, excluding Saturdays, Sundays and holidays, after receipt of the petition. The Court shall direct that notice of the time and place of the hearing be served upon the respondent, his responsible relatives, and the persons entitled to receive a copy of the petition pursuant to Section 3-609.
(Source: P.A. 80-1414.)

(405 ILCS 5/Ch. III Art. VII heading)

ARTICLE VII. ADMISSION BY Court Order

(405 ILCS 5/3-700) (from Ch. 91 ½, par. 3-700)

Sec. 3-700. A person 18 years of age or older who is subject to involuntary admission may be admitted to a mental health facility upon Court Order pursuant to this Article.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-701) (from Ch. 91 ½, par. 3-701)

Sec. 3-701. (a) Any person 18 years of age or older may execute a petition asserting that another person is subject to involuntary admission. The petition shall be prepared pursuant to paragraph (b) of Section 3-601 and shall be filed with the Court in the county where the respondent resides or is present.

(b) The Court may inquire of the petitioner whether there are reasonable grounds to believe that the facts stated in the petition are true and whether the respondent is subject to involuntary admission. The inquiry may proceed without notice to the respondent only if the petitioner alleges facts showing that an emergency exists such that immediate hospitalization is necessary and the petitioner testifies before the Court as to the factual basis for the allegations.

(Source: P.A. 91-837, eff. 6-16-00.)

(405 ILCS 5/3-702) (from Ch. 91 ½, par. 3-702)

Sec. 3-702. (a) The petition may be accompanied by the certificate of a physician, qualified examiner, or clinical psychologist which certifies that the respondent is subject to involuntary admission and which contains the other information specified in Section 3-602.

(b) Upon receipt of the petition either with or without a certificate, if the Court finds the documents are in order, it may make such orders pursuant to Section 3-703 as are necessary to provide for examination of the respondent. If the petition is not accompanied by 2 certificates executed pursuant to Section 3-703, the Court may order the respondent to present himself for examination at a time and place designated by the Court. If the petition is accompanied by 2 certificates executed pursuant to Section 3-703 and the Court finds the documents are in order, it shall set the matter for hearing.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-703) (from Ch. 91 ½, par. 3-703)

Sec. 3-703. If no certificate was filed, the respondent shall be examined separately by a physician, or clinical psychologist, or qualified examiner and by a psychiatrist. If a certificate executed by a psychiatrist was filed, the respondent shall be examined by a physician, clinical psychologist, qualified examiner, or psychiatrist. If a certificate executed by a qualified examiner, clinical psychologist, or a physician who is not a psychiatrist was filed, the respondent shall be examined by a psychiatrist. The examining physician, clinical psychologist, qualified examiner or psychiatrist may interview by telephone or in person any witnesses or other persons listed in the petition for involuntary admission. If, as a result of an examination, a certificate is executed, the certificate shall be promptly filed with the Court. If a certificate is executed, the examining physician, clinical psychologist, qualified examiner or psychiatrist may also submit for filing with the Court a report in which his findings are described in detail, and may rely upon such findings for his opinion that the respondent is subject to involuntary admission. Copies of the certificates shall be made available to the attorneys for the parties upon request prior to the hearing.

(Source: P.A. 85-558.)

(405 ILCS 5/3-704) (from Ch. 91 ½, par. 3-704)

Sec. 3-704. Examination; detention.

(a) The respondent shall be permitted to remain in his or her place of residence pending any examination. The respondent may be accompanied by one or more of his or her relatives or friends or by his or her attorney to the place of examination. If, however, the Court finds that it is necessary in order to complete the examination the Court may order that the person be admitted to a mental health facility pending examination and may order a peace officer or other person to transport the person there. The examination shall be conducted at a local mental health facility or hospital or, if possible, in the respondent's own place of residence. No person may be detained for examination under

this Section for more than 24 hours. The person shall be released upon completion of the examination unless the physician, qualified examiner or clinical psychologist executes a certificate stating that the person is subject to involuntary admission and in need of immediate hospitalization to protect such person or others from physical harm. Upon admission under this Section treatment may be given pursuant to Section 3-608.

(a-5) Whenever a respondent has been transported to a mental health facility for an examination, the admitting facility shall inquire, upon the respondent's arrival, whether the respondent wishes any person or persons to be notified of his or her detention at that facility. If the respondent does wish to have any person or persons notified of his or her detention at the facility, the facility must promptly make all reasonable attempts to locate the individual identified by the respondent, or at least 2 individuals identified by the respondent if more than one has been identified, and notify them of the respondent's detention at the facility for a mandatory examination pursuant to Court Order.

(b) Not later than 24 hours, excluding Saturdays, Sundays, and holidays, after admission under this Section, the respondent shall be asked if he desires the petition and the notice required under Section 3-206 sent to any other persons and at least 2 such persons designated by the respondent shall be sent the documents. At the time of his admission the respondent shall be allowed to complete not fewer than 2 telephone calls to such persons as he chooses.

(Source: P.A. 91-726, eff. 6-2-00; 91-837, eff. 6-16-00; 92-16, eff. 6-28-01.)

(405 ILCS 5/3-704.1)

Sec. 3-704.1. Task force.

(a) The Illinois Law Enforcement Training Standards Board shall convene a task force for the purpose of developing and recommending for adoption by the Board a model protocol concerning the involvement of mental health professionals when a peace officer is required to transport an individual for a mental health examination pursuant to an order entered under subsection (a) of Section 3-704. The task force in its discretion may also develop other model protocols concerning the interaction between law enforcement and individuals with mental illness. The task force shall have no more than 19 members, appointed by the Executive Director of the Illinois Law Enforcement Training Standards Board, and shall be comprised of the following: (i) up to 8 representatives from law enforcement, (ii) up to 8 representatives of community mental health service providers and State operated and private psychiatric hospitals, including up to 3 representatives of the Office of Mental Health, Department of Human Services, and (iii) 3 members of the general public, at least one of whom must be a primary consumer of mental health services. In establishing the task force every effort shall be made to ensure that it represents the geographic diversity of the State.

(b) The members of the task force shall serve without compensation and shall not receive reimbursement for any expense incurred in performing their duties.

(c) Prior to taking any formal action upon the recommendations of the task force, the Board shall hold a public hearing to provide the opportunity for individuals with mental illness and their family members, mental health advocacy organizations, and the public at large to review, comment upon, and suggest any changes to the proposed model protocols.

(d) The Board shall submit to the General Assembly, no later than March 1, 2001, whatever model protocols it has adopted under subsection (a).

(Source: P.A. 91-837, eff. 6-16-00.)

(405 ILCS 5/3-705) (from Ch. 91 ½, par. 3-705)

Sec. 3-705. At least 36 hours before the time of the examination fixed by the Court, a copy of the petition, the

order for examination, and a statement of rights as provided in Section 3-205 shall be personally delivered to the person and shall be given personally or sent by mail to his attorney and guardian, if any. If the respondent is admitted to a mental health facility for examination under Section 3-704, such notices may be delivered at the time of service of the order for admission.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-706) (from Ch. 91 ½, par. 3-706)

Sec. 3-706. The Court shall set a hearing to be held within 5 days, excluding Saturdays, Sundays and holidays, after its receipt of the second certificate or after the respondent is admitted to a mental health facility, whichever is earlier. The Court shall direct that notice of the time and place of hearing be served upon the respondent, his attorney, and guardian, if any, his responsible relatives, and the facility director. Unless the respondent is admitted pursuant to Section 3-704, he may remain at his residence pending the hearing. If, however, the Court finds it necessary, it may order a peace officer or another person to have the respondent before the Court at the time and place set for hearing.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/Ch. III Art. VIII heading)

ARTICLE VIII. Court HEARINGS

(405 ILCS 5/3-800) (from Ch. 91 ½, par. 3-800)

Sec. 3-800. (a) Unless otherwise indicated, Court hearings under this Chapter shall be held pursuant to this Article. Hearings shall be held in such quarters as the Court directs. To the extent practical, hearings shall be held in the mental health facility where the respondent is hospitalized. Any party may request a change of venue or transfer to any other county because of the convenience of parties or witnesses or the condition of the respondent. The respondent may request to have the proceedings transferred to the county of his residence.

(b) If the Court grants a continuance on its own motion or upon the motion of one of the parties, the respondent may continue to be detained pending further order of the Court. Such continuance shall not extend beyond 15 days except to the extent that continuances are requested by the respondent.

(c) Court hearings under this Chapter, including hearings under Section 2-107.1, shall be open to the press and public unless the respondent or some other party requests that they be closed. The Court may also indicate its intention to close a hearing, including when it determines that the respondent may be unable to make a reasoned decision to request that the hearing be closed. A request that a hearing be closed shall be granted unless there is an objection to closing the hearing by a party or any other person. If an objection is made, the Court shall not close the hearing unless, following a hearing, it determines that the patient's interest in having the hearing closed is compelling. The Court shall support its determination with written findings of fact and conclusions of law. The Court shall not close the hearing if the respondent objects to its closure. Whenever a Court determines that a hearing shall be closed, access to the records of the hearing, including but not limited to transcripts and pleadings, shall be limited to the parties involved in the hearing, Court personnel, and any person or agency providing mental health services that are the subject of the hearing. Access may also be granted, however, pursuant to the provisions of the Mental Health and Developmental Disabilities Confidentiality Act.

(Source: P.A. 90-538, eff. 12-1-97.)

(405 ILCS 5/3-801) (from Ch. 91 ½, par. 3-801)

Sec. 3-801. A respondent may request admission as an informal or voluntary recipient at any time prior to an adjudication that he is subject to involuntary admission. If the facility director approves such a request, the Court may dismiss the pending proceedings but may require proof that such dismissal is in the best interest of the

respondent and of the public.

(Source: P.A. 88-380.)

(405 ILCS 5/3-802) (from Ch. 91 ½, par. 3-802)

Sec. 3-802. The respondent is entitled to a jury on the question of whether he is subject to involuntary admission. The jury shall consist of 6 persons to be chosen in the same manner as are jurors in other civil proceedings. A respondent is not entitled to a jury on the question of whether authorized involuntary treatment may be administered under Section 2-107.1.

(Source: P.A. 93-573, eff. 8-21-03.)

(405 ILCS 5/3-803) (from Ch. 91 ½, par. 3-803)

Sec. 3-803. The Court may appoint one or more physicians, qualified examiners, clinical psychologists or other experts to examine the respondent and make a detailed written report of his findings regarding the respondent's condition. Any such physician or other examiner so appointed may interview by telephone or in person any witnesses or other persons listed in the petition for involuntary admission. The report shall be filed with the Court and copies shall be made available to the attorneys for the parties.

(Source: P.A. 85-558.)

(405 ILCS 5/3-804) (from Ch. 91 ½, par. 3-804)

Sec. 3-804. The respondent is entitled to secure an independent examination by a physician, qualified examiner, clinical psychologist or other expert of his choice. If the respondent is unable to obtain an examination, he may request that the Court Order an examination to be made by an impartial medical expert pursuant to Supreme Court Rules or by a qualified examiner, clinical psychologist or other expert. Any such physician or other examiner, whether secured by the respondent or appointed by the Court, may interview by telephone or in person any witnesses or other persons listed in the petition for involuntary admission. The physician or other examiner may submit to the Court a report in which his findings are described in detail. Determination of the compensation of the physician, qualified examiner, clinical psychologist or other expert and its payment shall be governed by Supreme Court Rule.

(Source: P.A. 85-558.)

(405 ILCS 5/3-805) (from Ch. 91 ½, par. 3-805)

Sec. 3-805. Every respondent alleged to be subject to involuntary admission shall be represented by counsel. If the respondent is indigent or an appearance has not been entered on his behalf at the time the matter is set for hearing, the Court shall appoint counsel for him. A hearing shall not proceed when a respondent is not represented by counsel unless, after conferring with counsel, the respondent requests to represent himself and the Court is satisfied that the respondent has the capacity to make an informed waiver of his right to counsel. Counsel shall be allowed time for adequate preparation and shall not be prevented from conferring with the respondent at reasonable times nor from making an investigation of the matters in issue and presenting such relevant evidence as he believes is necessary.

1. If the Court determines that the respondent is unable to obtain counsel, the Court shall appoint as counsel an attorney employed by or under contract with the Guardianship and Mental Health Advocacy Commission, if available.

2. If an attorney from the Guardianship and Mental Health Advocacy Commission is not available, the Court shall appoint as counsel the public defender or, only if no public defender is available, an attorney licensed to practice law in this State.

3. Upon filing with the Court of a verified statement of legal services rendered by the private attorney appointed pursuant to paragraph (2) of this Section, the Court shall determine a reasonable fee for such services. If the respondent is unable to pay the fee, the Court shall enter an order upon the county to pay the entire fee or

such amount as the respondent is unable to pay.
(Source: P.A. 80-1414.)

(405 ILCS 5/3-806) (from Ch. 91 ½, par. 3-806)

Sec. 3-806. Presence at hearing; location.

(a) The respondent shall be present at any hearing held under this Act unless his attorney waives his right to be present and the Court is satisfied by a clear showing that the respondent's attendance would subject him to substantial risk of serious physical or emotional harm.

(b) The Court shall make reasonable accommodation of any request by the recipient's attorney concerning the location of the hearing. If the recipient's attorney advises the Court that the recipient refuses to attend, the hearing may proceed in his or her absence.

(c) No inference may be drawn from the recipient's non-attendance pursuant to either subsection (a) or (b) of this Section.

(Source: P.A. 89-439, eff. 6-1-96.)

(405 ILCS 5/3-807) (from Ch. 91 ½, par. 3-807)

Sec. 3-807. No respondent may be found subject to involuntary admission unless at least one psychiatrist, clinical social worker, or clinical psychologist who has examined him testifies in person at the hearing. The respondent may waive the requirement of the testimony subject to the approval of the Court.

(Source: P.A. 87-530.)

(405 ILCS 5/3-808) (from Ch. 91 ½, par. 3-808)

Sec. 3-808. No respondent may be found subject to involuntary admission unless that finding has been established by clear and convincing evidence.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-809) (from Ch. 91 ½, par. 3-809)

Sec. 3-809. If the respondent is not found subject to involuntary admission, the Court shall dismiss the petition and order the respondent discharged. If the respondent is found subject to involuntary admission, the Court shall enter an order so specifying. If the Court is not satisfied with the verdict of the jury finding the respondent subject to involuntary admission, it may set aside such verdict and order the respondent discharged or it may order another hearing.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-810) (from Ch. 91 ½, par. 3-810)

Sec. 3-810. Before disposition is determined, the facility director or such other person as the Court may direct shall prepare a written report including information on the appropriateness and availability of alternative treatment settings, a social investigation of the respondent, a preliminary treatment plan, and any other information which the Court may order. The treatment plan shall describe the respondent's problems and needs, the treatment goals, the proposed treatment methods, and a projected timetable for their attainment. If the respondent is found subject to involuntary admission, the Court shall consider the report in determining an appropriate disposition.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-811) (from Ch. 91 ½, par. 3-811)

Sec. 3-811. Involuntary admission; alternative mental health facilities. If any person is found subject to involuntary admission, the Court shall consider alternative mental health facilities which are appropriate for and available to the respondent, including but not limited to hospitalization. The Court may order the respondent to undergo a program of hospitalization in a mental health facility designated by the Department, in a licensed private hospital or private

mental health facility if it agrees, or in a facility of the United States Veterans Administration if it agrees; or the Court may order the respondent to undergo a program of alternative treatment; or the Court may place the respondent in the care and custody of a relative or other person willing and able to properly care for him or her. The Court shall order the least restrictive alternative for treatment which is appropriate.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-812) (from Ch. 91 ½, par. 3-812)

Sec. 3-812. Court Ordered alternative treatment; modification; revocation.

(a) Alternative treatment shall not be ordered unless the program being considered is capable of providing adequate and humane treatment in the least restrictive setting which is appropriate to the respondent's condition.

The Court shall have continuing authority to modify an order for alternative treatment if the recipient fails to comply with the order or is otherwise found unsuitable for alternative treatment. Prior to modifying such an order, the Court shall receive a report from the facility director of the program specifying why the alternative treatment is unsuitable. The recipient shall be notified and given an opportunity to respond when modification of the order for alternative treatment is considered.

(b) If the Court revokes an order for alternative treatment and orders a recipient hospitalized, it may order a peace officer to take the recipient into custody and transport him to the facility. The Court may order the recipient to undergo a program of hospitalization at a licensed private hospital or private mental health facility, or a facility of the United States Veterans Administration, if such private or Veterans Administration facility agrees to such placement, or at a mental health facility designated by the Department.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-813) (from Ch. 91 ½, par. 3-813)

Sec. 3-813. (a) An initial order for hospitalization shall be for a period not to exceed 90 days. Prior to the expiration of the initial order if the facility director believes that the recipient continues to be subject to involuntary admission, a new petition and 2 new certificates may be filed with the Court. If a petition is filed, the facility director shall file with the Court a current treatment plan which includes an evaluation of the recipient's progress and the extent to which he is benefitting from treatment. If no petition is filed prior to the expiration of the initial order, the recipient shall be discharged. Following a hearing, the Court may order a second period of hospitalization not to exceed 90 days only if it finds that the recipient continues to be subject to involuntary admission.

(b) Additional 180 day periods of treatment may be sought pursuant to the procedures set out in this Section for so long as the recipient continues to be subject to involuntary admission. The provisions of this chapter which apply whenever an initial order is sought shall apply whenever an additional period of treatment is sought.

(Source: P.A. 91-787, eff. 1-1-01.)

(405 ILCS 5/3-814) (from Ch. 91 ½, par. 3-814)

Sec. 3-814. Treatment plan.

(a) Not more than 30 days after admission under this Article, the facility director shall file with the Court a current treatment plan which shall include: all the requirements listed in Section 3-209, an evaluation of the recipient's progress and the extent to which he is benefitting from treatment, the criteria which form the basis for the determination that the patient is subject to involuntary admission as defined in Section 1-119, and the specific behaviors or conditions that demonstrate that the recipient meets these criteria for continued confinement. If the facility director is unable to determine any of the required information, the treatment plan shall include an explanation of why the facility director is unable to make this determination, what the facility director is doing to

enable himself or herself to determine the information, and the date by which the facility director expects to be able to make this determination. The facility director shall forward a copy of the plan to the State's Attorney, the recipient's attorney, if the recipient is represented by counsel, the recipient, and any guardian of the recipient.

(b) The purpose of the filing, forwarding, and review of treatment plans and treatment is to ensure that the recipient is receiving adequate and humane care and services as defined in Section 1-101.2 and to ensure that the recipient continues to meet the standards for involuntary confinement.

(c) On request of the recipient or an interested person on his behalf, or on the Court's own initiative, the Court shall review the current treatment plan to determine whether its contents comply with the requirements of this Section and Section 3-209. A request to review the current treatment plan may be made by the recipient, or by an interested person on his behalf, 30 days after initial commitment under Section 3-813, 90 days after the initial commitment, and 90 days after each additional period of commitment under subsection (b) of Section 3-813. If the Court determines that any of the information required by this Section or Section 3-209 to be included in the treatment plan is not in the treatment plan or that the treatment plan does not contain information from which the Court can determine whether the recipient continues to meet the criteria for continued confinement, the Court shall indicate what is lacking and order the facility director to revise the current treatment plan to comply with this Section and Section 3-209. If the recipient has been ordered committed to the facility after he has been found not guilty by reason of insanity, the treatment plan and its review shall be subject to the provisions of Section 5-2-4 of the Unified Code of Corrections.

(d) The recipient or an interested person on his or her behalf may request a hearing or the Court on its own motion may order a hearing to review the treatment being received by the recipient. The Court, the recipient, or the State's Attorney may call witnesses at the hearing. The Court may order any public agency, officer, or employee to render such information, cooperation, and assistance as is within its legal authority and as may be appropriate to achieve the objectives of this Section. The Court may order an independent examination on its own initiative and shall order such an evaluation if either the recipient or the State's Attorney so requests and has demonstrated to the Court that the plan cannot be effectively reviewed by the Court without such an examination. Under no circumstances shall the Court be required to order an independent examination pursuant to this Section more than once each year. The examination shall be conducted by persons authorized to conduct independent examinations under Section 3-804. If the Court is satisfied that the recipient is benefitting from treatment, it may continue the original order for the remainder of the admission period. If the Court is not so satisfied, it may modify its original order or it may order the recipient discharged.

(e) In lieu of a treatment plan, the facility director may file a typed summary of the treatment plan which contains the information required under Section 3-209 and subsection (a) of this Section.

(Source: P.A. 91-536, eff. 1-1-00.)

(405 ILCS 5/3-815) (from Ch. 91 ½, par. 3-815)

Sec. 3-815. (a) An order placing any person in care and custody shall be valid for not more than 180 days. Additional 180 day periods of care and custody may be sought pursuant to the procedures of Section 3-813. If, for any reason, a custodian becomes unable or unwilling to adequately fulfill his duties, the Court may terminate the appointment and may appoint another person as a successor custodian for the duration of the order.

(b) Any order appointing a custodian shall specify the authority of the custodian, not inconsistent with this Chapter. The custodian shall apply to the Court for permission to do any act not recited in the order. A custodian may require the hospitalization of the person in his custody only if authorized to do so by the Court Order. Any order which authorizes a custodian to arrange for the hospitalization of a person shall specify the name of the facility in which the custodian may arrange such hospitalization. The recipient may not be transferred to another facility except by further order of the Court.

(Source: P.A. 86-1402.)

(405 ILCS 5/3-816) (from Ch. 91 ½, par. 3-816)

Sec. 3-816. Final orders; copies; appeal.

(a) Every final order entered by the Court under this Act shall be in writing and shall be accompanied by a statement on the record of the Court's findings of fact and conclusions of law. A copy of such order shall be promptly given to the recipient or his or her attorney and to the facility director of the facility or alternative treatment to which the recipient is admitted or to the person in whose care and custody the recipient is placed.

(b) An appeal from a final order may be taken in the same manner as in other civil cases. Upon entry of a final order, the Court shall notify the recipient orally and in writing of his or her right to appeal and, if he or she is indigent, of his or her right to a free transcript and counsel. The cost of the transcript shall be paid pursuant to subsection (c) of Section 3-818 and subsection (c) of Section 4-615 of this Code. If the recipient wishes to appeal and is unable to obtain counsel, counsel shall be appointed pursuant to Section 3-805.

(Source: P.A. 90-765, eff. 8-14-98.)

(405 ILCS 5/3-817) (from Ch. 91 ½, par. 3-817)

Sec. 3-817. A verbatim record shall be made of all judicial hearings held pursuant to this Chapter.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-818) (from Ch. 91 ½, par. 3-818)

Sec. 3-818. Fees; costs.

(a) Fees for jury service, witnesses, and service and execution of process are the same as for similar services in civil proceedings.

(b) Except as provided under subsection (c) of this Section, the Court may assess costs of the proceedings against the parties. If the respondent is not a resident of the county in which the hearing is held and the party against whom the Court would otherwise assess costs has insufficient funds to pay the costs, the Court may enter an order upon the State to pay the cost of the proceedings, from funds appropriated by the General Assembly for that purpose.

(c) If the respondent is a party against whom the Court would otherwise assess costs and that respondent is determined by the Court to have insufficient funds to pay the cost of transcripts for the purpose of appeal, the Court shall enter an order upon the State to pay the cost of one original and one copy of a transcript of proceedings established under this Code. Payment of transcript costs authorized under this subsection (c) shall be paid from funds appropriated by the General Assembly to the Administrative Office of the Illinois Courts.

(Source: P.A. 90-765, eff. 8-14-98.)

(405 ILCS 5/3-819) (from Ch. 91 ½, par. 3-819)

Sec. 3-819. (a) In counties with a population of 3,000,000 or more, when a recipient is hospitalized upon Court Order, the order may authorize a relative or friend of the recipient to transport the recipient to the facility if such person is able to do so safely and humanely. When the Department indicates that it has transportation to the facility available, the order may authorize the Department to transport the recipient there. The Court may order the sheriff of the county in which such proceedings are held to transport the recipient to the facility. When a recipient is hospitalized upon Court Order, and the recipient has been transported to a mental health facility, other than a state-operated mental health facility, and it is determined by the facility that the recipient is in need of commitment or treatment at another mental health facility, the Court shall determine whether a relative or friend of the recipient or the Department is authorized to transport the recipient between facilities, or whether the county sheriff is responsible for transporting the recipient between facilities.

The sheriff may make arrangements with another public or private entity including a licensed ambulance service to transport the recipient to the facility. The transporting entity acting in good faith and without negligence in connection with the transportation of recipients shall incur no liability, civil or criminal, by reason of such

transportation.

(a-5) In counties with a population under 3,000,000, when a recipient is hospitalized upon Court Order, the order may authorize a relative or friend of the recipient to transport the recipient to the facility if the person is able to do so safely and humanely. The Court may order the Department to transport the recipient to the facility. When a recipient is hospitalized upon Court Order, and the recipient has been transported to a mental health facility other than a State-operated mental health facility, and it is determined by the facility that the recipient is in need of commitment or treatment at another mental health facility, the Court shall determine whether a relative or friend of the recipient is authorized to transport the recipient between facilities, or whether the Department is responsible for transporting the recipient between facilities. If the Court determines that the Department is responsible for the transportation, the Department shall make arrangements either directly or through agreements with another public or private entity, including a licensed ambulance service, to appropriately transport the recipient to the facility. The making of such arrangements and agreements with public or private entities is independent of the Department's role as a provider of mental health services and does not indicate that the recipient is admitted to any Department facility. In making such arrangements and agreements with other public or private entities, the Department shall include provisions to ensure (i) the provision of trained personnel and the use of an appropriate vehicle for the safe transport of the recipient and (ii) that the recipient's insurance carrier as well as other programs, both public and private, that provide payment for such transportation services are fully utilized to the maximum extent possible.

The Department may not make arrangements with an existing hospital or grant-in-aid or fee-for-service community provider for transportation services under this Section unless the hospital or provider has voluntarily submitted a proposal for its transportation services. This requirement does not eliminate or reduce any responsibility on the part of a hospital or community provider to ensure transportation that may arise independently through other State or federal law or regulation.

A transporting entity acting in good faith and without negligence in connection with the transportation of a recipient incurs no liability, civil or criminal, by reason of that transportation.

(b) The transporting entity may bill the recipient, the estate of the recipient, legally responsible relatives, or insurance carrier for the cost of providing transportation of the recipient to a mental health facility. The recipient and the estate of the recipient are liable for the payment of transportation costs for transporting the recipient to a mental health facility. If the recipient is a beneficiary of a trust described in Section 15.1 of the Trusts and Trustees Act, the trust shall not be considered a part of the recipient's estate and shall not be subject to payment for transportation costs for transporting the recipient to a mental health facility under this section, except to the extent permitted under Section 15.1 of the Trusts and Trustees Act. If the recipient is unable to pay or if the estate of the recipient is insufficient, the responsible relatives are severally liable for the payment of those sums or for the balance due in case less than the amount owing has been paid. If the recipient is covered by insurance, the insurance carrier shall be liable for payment to the extent authorized by the recipient's insurance policy.

(c) Upon the delivery of a recipient to a facility, in accordance with the procedure set forth in this Article, the facility director of the facility shall sign a receipt acknowledging custody of the recipient and for any personal property belonging to him, which receipt shall be filed with the clerk of the Court entering the hospitalization order.

(Source: P.A. 93-770, eff. 1-1-05.)

(405 ILCS 5/3-820) (from Ch. 91 ½, par. 3-820)

Sec. 3-820. Domestic violence; order of protection An order of protection, as defined in the Illinois Domestic Violence Act of 1986, may be issued in conjunction with a proceeding for involuntary commitment if the petition for an order of protection alleges that a person who is party to or the subject of the proceeding has been abused by or has abused a family or household member. The Illinois Domestic Violence Act of 1986 shall govern the issuance, enforcement, and recording of orders of protection issued under this Section.

(Source: P.A. 92-16, eff. 6-28-01.)

(405 ILCS 5/Ch. III Art. IX heading)

ARTICLE IX. DISCHARGE RESTORATION TRANSFER

(405 ILCS 5/3-900) (from Ch. 91 ½, par. 3-900)

Sec. 3-900. (a) Any person hospitalized or admitted to alternative treatment or care and custody as having mental illness on Court Order under this Chapter or under any prior statute or any person on his behalf may file a petition for discharge at any time in the Court of the county where the recipient resides or is found.

(b) The petition shall set forth: (1) the name of the recipient; (2) the underlying circumstances and date of the order; (3) a request for discharge from the order; and (4) the reasons for such request.

(Source: P.A. 88-380.)

(405 ILCS 5/3-901) (from Ch. 91 ½, par. 3-901)

Sec. 3-901. (a) Upon the filing of a petition under Section 3-900 or Section 3-906, the Court shall set the matter for hearing to be held within 5 days, excluding Saturdays, Sundays, and holidays. The Court shall direct that notice of the time and place of the hearing be given to the recipient, his attorney, his guardian, the facility director, the person having care and custody of the recipient, and to at least 2 persons whom the recipient may designate.

(b) Article VIII of this Chapter applies to hearings held under this Section. If the Court finds that the recipient is not subject to involuntary admission, the Court shall enter an order so finding and discharging the recipient. If the Court Orders the discharge of a recipient who was adjudicated as having mental illness pursuant to any prior statute of this State or who was otherwise adjudicated to be under legal disability, the Court shall also enter an order restoring the recipient to legal status without disability unless the Court finds that the recipient continues to be under legal disability. A copy of any order discharging the recipient shall be given to the recipient and to the facility director.

(c) If the Court determines that the recipient continues to be subject to involuntary admission, the Court may continue or modify its original order in accordance with this Act. Thereafter, no new petition for discharge may be filed without leave of Court.

(Source: P.A. 88-380.)

(405 ILCS 5/3-902) (from Ch. 91 ½, par. 3-902)

Sec. 3-902. Director initiated discharge.

(a) The facility director may at any time discharge an informal, voluntary, or minor recipient who is clinically suitable for discharge.

(b) The facility director shall discharge a recipient admitted upon Court Order under this Chapter or any prior statute where he is no longer subject to involuntary admission. If the facility director believes that continuing treatment is advisable for such recipient, he shall inform the recipient of

his right to remain as an informal or voluntary recipient.

(c) When a facility director discharges or changes the status of a recipient pursuant to this Section he shall promptly notify the clerk of the Court which entered the original order of the discharge or change in status. Upon receipt of such notice, the clerk of the Court shall note the action taken in the Court record. If the person being discharged is a person under legal disability, the facility director shall also submit a certificate regarding his legal status without disability pursuant to Section 3-907.

(d) When the facility director determines that discharge is appropriate for a recipient pursuant to this Section or Section 3-403 he or she shall notify the state's attorney of the county in which the recipient resided

immediately prior to his admission to a mental health facility and the state's attorney of the county where the last petition for commitment was filed at least 48 hours prior to the discharge when either state's attorney has requested in writing such notification on that individual recipient or when the facility director regards a recipient as a continuing threat to the peace and safety of the community. Upon receipt of such notice, the state's attorney may take any Court action or notify such peace officers that he deems appropriate.

(e) The facility director may grant a temporary release to a recipient whose condition is not considered appropriate for discharge where such release is considered to be clinically appropriate, provided that the release does not endanger the public safety.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-903) (from Ch. 91 ½, par. 3-903)

Sec. 3-903. (a) The facility director shall give written notice of discharge from a Department mental health facility to the recipient, his attorney, and guardian, if any, or in the case of a minor, to his attorney, to the parent, guardian, or person in loco parentis who executed the application for admission, to the resident school district when appropriate, and to the minor if he is 12 years of age or older. The notice, except that to the school district, shall include the reason for discharge and a statement of the right to object. Whenever possible, this notice shall be given at least 7 days prior to the date of intended discharge.

(b) A recipient may object to his discharge or his attorney or guardian may object on his behalf. In the case of a minor, his attorney, the person who executed the application or the minor himself if he is 12 years of age or older may object to the discharge. Prior to discharge a written objection shall be submitted to the facility director of the mental health facility where the recipient is located. Upon receipt of an objection, the facility director shall promptly schedule a hearing to be held within 7 days at the facility pursuant to Section 3-207. No discharge shall proceed pending hearing on an objection, unless the person objecting to the discharge consents to discharge pending the outcome of the hearing.

(c) At the hearing the Department shall have the burden of proving that the recipient meets the standard for discharge under this Chapter and under Section 15 of the Mental Health and Developmental Disabilities Administrative Act. If the utilization review committee finds that the Department sustained its burden and that the proposed discharge is based upon substantial evidence, it shall recommend that the discharge proceed. If the utilization review committee does not so find, it shall recommend that the recipient not be discharged but it may recommend that the recipient be transferred to another mental health facility which can provide treatment appropriate to the clinical condition and needs of the recipient. It may recommend that the Department or other agency assist the person in obtaining such appropriate treatment.

(Source: P.A. 88-380; 89-507, eff. 7-1-97.)

(405 ILCS 5/3-904) (from Ch. 91 ½, par. 3-904)

Sec. 3-904. Any person with mental illness admitted to a facility or placed in the care and custody of another person under any prior statute of this State is subject to this Chapter and may be discharged in accordance with its provisions.

(Source: P.A. 88-380.)

(405 ILCS 5/3-905) (from Ch. 91 ½, par. 3-905)

Sec. 3-905. Nothing in this Chapter shall deprive any person of the benefits of relief by habeas corpus. If the Court issuing the order of habeas corpus grants relief, a copy of the order shall be sent to the Court which entered the order of admission and the clerk of the Court shall file the order in the Court record.

(Source: P.A. 83-346.)

(405 ILCS 5/3-906) (from Ch. 91 ½, par. 3-906)

Sec. 3-906. (a) Any person who has been adjudicated to be a person under legal disability in any proceedings under any prior mental health statute of this State or any person on his behalf may file at any time a petition for modification of the guardianship order of the Court or for restoration to legal status without disability. The petition may be filed in the Court which adjudicated the person to be under legal disability or in the Court of the county where he resides or is present. The petition may be accompanied by a certificate of a physician, qualified examiner, or clinical psychologist or by a notice of discharge issued pursuant to this Chapter. The certificate shall indicate the extent to which the recipient is capable of managing his person and estate. If no certificate accompanies the petition, the Court may appoint a physician, qualified examiner, or clinical psychologist to examine the recipient and prepare a certificate regarding his status without disability.

(b) The procedures for conduct of hearings set forth in Article VIII of this Chapter apply to hearings held under this Section.

(Source: P.A. 88-380.)

(405 ILCS 5/3-907) (from Ch. 91 ½, par. 3-907)

Sec. 3-907. Any person who is under legal disability solely by reason of a Court Order adjudicating him mentally ill entered prior to January 1, 1964, shall be deemed to be a person under no legal disability 180 days from the effective date of this Act unless, prior to that date, a hearing is held pursuant to the provisions of the Probate Act of 1975, approved August 7, 1975, as now or hereafter amended, and a guardian is appointed.

(Source: P.A. 83-706.)

(405 ILCS 5/3-908) (from Ch. 91 ½, par. 3-908)

Sec. 3-908. The facility director of any Department facility may transfer a recipient to another Department facility if he determines the transfer to be clinically advisable and consistent with the treatment needs of the recipient.

(Source: P.A. 88-380.)

(405 ILCS 5/3-909) (from Ch. 91 ½, par. 3-909)

Sec. 3-909. Alternative treatment. Any recipient hospitalized or admitted to alternative treatment or care and custody under Article VIII of this Chapter may at any time petition the Court for transfer to a different facility or program of alternative treatment, to care and custody, or to the care and custody of a different person. His attorney, guardian, custodian, or responsible relative may file such a petition on his behalf. If the recipient is in a private facility, the facility may also petition for transfer. Recipients in private facilities or United States Veterans Administration facilities may petition for transfer to a mental health facility designated by the Department. Recipients may petition for transfer to a program of alternative treatment, or to care and custody. Recipients in private facilities may also petition for transfer to United States Veterans Administration facilities. Recipients in United States Veterans Administration facilities may also petition for transfer to private facilities. Recipients in Department facilities may petition for transfer to a private mental health facility, a United States Veterans Administration facility, a program of alternative treatment, or to care and custody. Admission to a United States Veterans Administration facility shall be governed by Article X of this Chapter 3. No transfers between Department facilities or between units of the same facility may be ordered under this Section. An order for hospitalization shall not be entered under this Section if the original order did not authorize hospitalization unless a hearing is held pursuant to Article VIII of this Chapter.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/3-910)

(from Ch. 91 ½, par. 3-910)

Sec. 3-910. (a) Whenever a recipient who has been in a Department facility for more than 7 days is to be

transferred to another facility under Section 3-908, the facility director of the facility shall give written notice at least 14 days before the transfer to the recipient, his attorney, guardian, if any, and responsible relative. In the case of a minor, notice shall be given to his attorney, to the parent, guardian, or person in loco parentis who executed the application for his admission, and to the minor himself if he is 12 years of age or older. The notice shall include the reasons for transfer, a statement of the right to object and the address and phone number of the Guardianship and Advocacy Commission. If the recipient requests, the facility director shall assist him in contacting the Commission.

(b) In an emergency, when the health of the recipient or the physical safety of the recipient or others is imminently imperiled and appropriate care is not available where the recipient is located, a recipient may be immediately transferred to another facility provided that notice of the transfer is given as soon as possible but not more than 48 hours after transfer. The reason for the emergency shall be noted in the recipient's record and specified in the notice.

(c) A recipient may object to his transfer or his attorney, guardian, or responsible relative may object on his behalf. In the case of a minor, his attorney, the person who executed the application for admission, or the minor himself if he is 12 years of age or older, may object to the transfer. Prior to transfer or within 14 days after an emergency transfer, a written objection shall be submitted to the facility director of the facility where the recipient is located. Upon receipt of an objection, the facility director shall promptly schedule a hearing to be held within 7 days pursuant to Section 3-207. The hearing shall be held at the transferring facility except that when an emergency transfer has taken place the hearing may be held at the receiving facility. Except in an emergency, no transfer shall proceed pending hearing on an objection.

(d) At the hearing the Department shall have the burden of proving that the standard for transfer under Section 3-908 is met. If the transfer is to a facility which is substantially more physically restrictive than the transferring facility, the Department shall also prove that the transfer is reasonably required for the safety of the recipient or others. If the utilization review committee finds that the Department has sustained its burden and the decision to transfer is based upon substantial evidence, it shall recommend that the transfer proceed. If it does not so find, it shall recommend that the recipient not be transferred.

(Source: P.A. 88-380.)

(405 ILCS 5/Ch. III Art. X heading)

ARTICLE X. VETERANS ADMINISTRATION FACILITIES

(405 ILCS 5/3-1000) (from Ch. 91 ½, par. 3-1000)

Sec. 3-1000. (a) A person may be admitted pursuant to any of the provisions of this Chapter to a mental health facility of the United States government when the facility determines that services for the person are available and that the person is eligible to receive them. A person so admitted is subject to the rules and regulations of the Veterans Administration or other agency of the United States government which operates the facility in which such treatment is provided.

(b) The chief officer of such facility has with respect to a person admitted under this Chapter, the same powers and duties as the facility director.

(c) A person employed by the Veterans Administration as a physician may perform the functions of a physician under this Act insofar as relates to a person who is or is proposed to be admitted to a Veterans Administration facility.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-1001) (from Ch. 91 ½, par. 3-1001)

Sec. 3-1001. The Courts of this State retain jurisdiction over persons admitted under this Article for purposes of enforcing the provisions of this Act.

(Source: P.A. 80-1414.)

(405 ILCS 5/3-1002) (from Ch. 91 ½, par. 3-1002)

Sec. 3-1002. Whenever any person who is a veteran and who has been previously adjudicated as having a mental illness or under legal disability is subsequently rated as being under no legal disability by the Veterans Administration, the Director of the Veterans Administration Regional Office which has so rated the veteran may notify the Court which found that the person has a mental illness or under legal disability of such rating. The Court may restore the person to legal status without disability on the basis of the documents filed or may order a hearing. (Source: P.A. 88-380.)

(405 ILCS 5/3-1003) (from Ch. 91 ½, par. 3-1003)

Sec. 3-1003. The Veterans Administration or other agency of the United States Government may transfer any recipient admitted to it under this Article, to any other facility of the Veterans Administration or any other agency of the United States government, to any licensed private hospital which has agreed to accept the recipient or, subject to the approval of the Department, to a Department facility. The Department may transfer any recipient admitted to a Department facility, to a facility of the Veterans Administration or other appropriate agency of the United States Government, subject to eligibility and the prior approval of the agency. If a recipient transferred under this Section was admitted upon a Court Order, the transferring facility or agency shall give notice of the transfer to the Court which entered the order of admission, and such order of admission shall continue in effect. (Source: P.A. 88-380.)

(405 ILCS 5/Ch. IV heading)

CHAPTER IV
ADMISSION, TRANSFER, AND DISCHARGE PROCEDURES
FOR THE DEVELOPMENTALLY DISABLED

(405 ILCS 5/Ch. IV Art. I heading)

ARTICLE I. JURISDICTION

DUTIES OF STATE'S ATTORNEY

(405 ILCS 5/4 -100) (from Ch. 91 ½, par. 4 -100)

Sec. 4 -100. The circuit Court has jurisdiction under this Chapter over persons not charged with a felony who meet the standard for judicial admission. Inmates of penal institutions shall not be considered as charged with a felony within the meaning of this Chapter. Court proceedings under Article VI of this Chapter may be instituted as to any such inmate at any time within 90 days prior to discharge of such inmate by expiration of sentence or otherwise, and if such inmate is found to meet the standard for judicial admission, the order of the Court Ordering hospitalization or other disposition shall become effective at the time of discharge of the inmate from penal custody.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -101) (from Ch. 91 ½, par. 4 -101)

Sec. 4 -101. The State's Attorneys of the several counties shall represent the people of the State of Illinois in Court proceedings under this Chapter in their respective counties, shall attend such proceedings either in person or by assistant, and shall ensure that petitions, reports and orders are properly prepared. Nothing herein contained shall prevent any party from being represented by his own counsel.

(Source: P.A. 80 -1414.)

(405 ILCS 5/Ch. IV Art. II heading)

ARTICLE II. GENERAL PROVISIONS

(405 ILCS 5/4 -200) (from Ch. 91 ½, par. 4 -200)

Sec. 4 -200. (a) A person with a developmental disability may be admitted to a facility for residential and habilitation services only as provided in this Chapter, except that a person may be transferred by the Department of Corrections pursuant to the Unified Code of Corrections, as now or hereafter amended. A person transferred by the Department of Corrections in this manner may be released only as provided in the Unified Code of Corrections.

(b) Persons shall be admitted to Department facilities based on an assessment of their current individual needs and not solely on the basis of inclusion in a particular diagnostic category, identification by subaverage intelligence test score, or consideration of a past history of hospitalization or residential placement.

(c) In all cases, the Department shall provide services to persons identified as having a developmental disability in the least restrictive environment as required by subsection (a) of Section 2 -102 of this Code.

(d) Except as provided in Article VI of this Chapter, nothing in this Chapter shall govern or prohibit the admission of a person with a developmental disability to nonresidential services.

(Source: P.A. 88 -380; 89 -439, eff. 6 -1 -96.)

(405 ILCS 5/4 -201) (from Ch. 91 ½, par. 4 -201)

Sec. 4 -201. (a) A mentally retarded person shall not reside in a Department mental health facility unless the person is evaluated and is determined to be a person with mental illness and the facility director determines that appropriate treatment and habilitation are available and will be provided to such person on the unit. In all such cases the Department mental health facility director shall certify in writing within 30 days of the completion of the evaluation and every 30 days thereafter, that the person has been appropriately evaluated, that services specified in the treatment and habilitation plan are being provided, that the setting in which services are being provided is appropriate to the person's needs, and that provision of such services fully complies with all applicable federal statutes and regulations concerning the provision of services to persons with a developmental disability. Those regulations shall include, but not be limited to the regulations which govern the provision of services to persons with a developmental disability in facilities certified under the Social Security Act for federal financial participation, whether or not the facility or portion thereof in which the recipient has been placed is presently certified under the Social Security Act or would be eligible for such certification under applicable federal regulations. The certifications shall be filed in the recipient's record and with the office of the Secretary of the Department. A copy of the certification shall be given to the person, an attorney or advocate who is representing the person and the person's guardian.

(b) Any person admitted to a Department mental health facility who is reasonably suspected of being mildly or moderately mentally retarded, including those who also have a mental illness, shall be evaluated by a multidisciplinary team which includes a qualified mental retardation professional designated by the Department facility director. The evaluation shall be consistent with Section 4 -300 of Article III in this Chapter, and shall include: (1) a written assessment of whether the person needs a habilitation plan and, if so, (2) a written habilitation plan consistent with Section 4 -309, and (3) a written determination whether the admitting facility is capable of providing the specified habilitation services. This evaluation shall occur within a reasonable period of time, but in no case shall that period exceed 14 days after admission. In all events, a treatment plan shall be prepared for the person within 3 days of admission, and reviewed and updated every 30 days, consistent with Section 3 -209 of this Code.

(c) Any person admitted to a Department mental health facility with an admitting diagnosis of severe or profound mental retardation shall be transferred to an appropriate facility or unit for persons with a developmental disability within 72 hours of admission unless transfer is contraindicated by the person's medical condition documented by appropriate medical personnel. Any person diagnosed as severely or profoundly mentally retarded while in a Department mental health facility shall be transferred to an appropriate facility or unit for persons with a developmental disability within 72 hours of such diagnosis unless transfer is contraindicated by the person's medical condition documented by appropriate medical personnel.

(d) The Secretary of the Department shall designate a qualified mental retardation professional in each of its mental health facilities who has responsibility for insuring compliance with the provisions of Sections 4 -201 and 4 -201.1.

(Source: P.A. 88 -380; 89 -439, eff. 6 -1 -96; 89 -507, eff. 7 -1 -97.)

(405 ILCS 5/4 -201.1) (from Ch. 91 ½, par. 4 -201.1)

Sec. 4 -201.1. (a) A person residing in a Department mental health facility who is evaluated as being mildly or moderately mentally retarded, an attorney or advocate representing the person, or a guardian of such person may object to the Department facility director's certification required in Section 4 -201, the treatment and habilitation plan, or appropriateness of setting, and obtain an administrative decision requiring revision of a treatment or habilitation plan or change of setting, by utilization review as provided in Sections 3 -207 and 4 -209 of this Code. As part of this utilization review, the Committee shall include as one of its members a qualified mental

retardation professional.

(b) The mental health facility director shall give written notice to each person evaluated as being mildly or moderately mentally retarded, the person's attorney and guardian, if any, or in the case of a minor, to his or her attorney, to the parent, guardian or person in loco parentis and to the minor if 12 years of age or older, of the person's right to request a review of the facility director's initial or subsequent determination that such person is appropriately placed or is receiving appropriate services. The notice shall also provide the address and phone number of the Legal Advocacy Service of the Guardianship and Advocacy Commission, which the person or guardian can contact for legal assistance. If requested, the facility director shall assist the person or guardian in contacting the Legal Advocacy Service. This notice shall be given within 24 hours of Department's evaluation that the person is mildly or moderately mentally retarded.

(c) Any recipient of services who successfully challenges a final decision of the Secretary of the Department (or his or her designee) reviewing an objection to the certification required under Section 4 -201, the treatment and habilitation plan, or the appropriateness of the setting shall be entitled to recover reasonable attorney's fees incurred in that challenge, unless the Department's position was substantially justified.

(Source: P.A. 89 -507, eff. 7 -1 -97.)

(405 ILCS 5/4 -202) (from Ch. 91 ½, par. 4 -202)

Sec. 4 -202. The Department shall prescribe all forms necessary for proceedings under this Chapter, and all forms used in such proceedings shall comply substantially with the forms so prescribed. The Department shall print and furnish an initial supply of such forms to the clerks of the circuit Courts.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -203) (from Ch. 91 ½, par. 4 -203)

Sec. 4 -203. (a) Every developmental disabilities facility shall maintain adequate records which shall include the Section of this Act under which the client was admitted, any subsequent change in the client's status, and requisite documentation for such admission and status.

(b) The Department shall ensure that a monthly report is maintained for each Department mental health facility, and each unit of a Department developmental disability facility for dually diagnosed persons, which lists (1) initials of persons admitted to, residing at, or discharged from a Department mental health facility or unit for dually diagnosed persons of Department developmental disability facility during that month with a primary or secondary diagnosis of mental retardation, (2) the date and facility and unit of admission or continuing care, (3) the legal admission status, (4) the recipient's diagnosis, (5) the date and facility and unit of transfer or discharge, (6) whether or not there is a public or private guardian, (7) whether the facility director has certified that appropriate treatment and habilitation are available for and being provided to such person pursuant to Section 4 -203 of this Chapter, and (8) whether the person or a guardian has requested review as provided in Section 4 -209 of this Chapter and, if so, the outcome of the review. The Secretary of the Department shall furnish a copy of each monthly report upon request to the Guardianship and Advocacy Commission and the agency designated by the Governor under Section 1 of "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending certain Acts therein named", approved September 20, 1985, and under Section 1 of "An Act for the protection and advocacy of mentally ill persons", approved September 20, 1987.

(c) Nothing contained in this Chapter shall be construed to limit or otherwise affect the power of any developmental disabilities facility to determine the qualifications of persons permitted to admit clients to such facility. This subsection shall not affect or limit the powers of any Court to order admission to a developmental disabilities facility as set forth in this Chapter.

(Source: P.A. 89 -507, eff. 7 -1 -97.)

(405 ILCS 5/4 -204) (from Ch. 91 ½, par. 4 -204)

Sec. 4 -204. Every petition, certificate, and proof of service required by this Chapter shall be executed under penalty of perjury as though under oath or affirmation, but no acknowledgment is required.
(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -205) (from Ch. 91 ½, par. 4 -205)

Sec. 4 -205. Whenever a statement or explanation is required to be given to the persons specified in Section 4 -206, every effort shall be made to furnish such statement or explanation in a comprehensible language and in a manner calculated to ensure understanding. Such statement or explanation shall be communicated in sign language for any hearing impaired person for whom sign language is a primary mode of communication. When a statement or explanation is provided in a language other than English, or through the use of sign language, that fact and the name of the person providing it shall be noted in the client's record. This Section does not apply to copies of petitions and Court Orders.
(Source: P.A. 82 -205.)

(405 ILCS 5/4 -206) (from Ch. 91 ½, par. 4 -206)

Sec. 4 -206. Unless otherwise indicated, whenever notice is required under this Chapter, it shall be given pursuant to this Section. If a client is under 18 years of age, notice shall be given to his parent, guardian or person in loco parentis. If the client is 18 years of age or older, notice shall be given to the client, his guardian, if any, and any 2 other persons whom the client may designate. If the client is 18 or older but lacks sufficient capacity to understand and consent to the designation of persons to receive notice, notice shall also be sent to his nearest adult relative.
(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -207) (from Ch. 91 ½, par. 4 -207)

Sec. 4 -207. (a) Six months prior to the eighteenth birthday of a client who is resident in a facility, the client shall be evaluated by the facility to determine whether he has the capacity to consent to administrative admission. If the client does not have such capacity or otherwise requires a guardian, his parent or another interested person shall be so notified and requested to file a petition for the appointment of a guardian. If no petition is filed, the facility director of the facility shall file such a petition.

(b) Six months prior to the eighteenth birthday of a client who is receiving nonresidential services provided by or under contract with the Department, the client's parent or another interested person shall be notified by the facility providing the services or by the Department of the possible need and procedures for the appointment of a guardian. If such person so requests, the client shall be evaluated by the facility or the Department for the purpose of determining whether he requires a guardian and a report of the evaluation shall be provided to such person. If the report indicates that the client requires a guardian but no petition is filed by the time the client reaches 18, the facility or the Department shall file such a petition.
(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -208) (from Ch. 91 ½, par. 4 -208)

Sec. 4 -208. Whenever a person is admitted, is denied admission, or objects to admission to a facility and whenever a client is notified that he is to be transferred or discharged or that his legal status is to be changed, the facility director of the facility shall provide the persons specified in Section 4 -206 with the address and phone number of the Guardianship and Advocacy Commission. If any person so notified requests, the facility director shall assist him in contacting the Commission.
(Source: P.A. 85 -1247.)

(405 ILCS 5/4 -209) (from Ch. 91 ½, par. 4 -209)

Sec. 4 -209. (a) Hearings under Sections 4 -201.1, 4 -312, 4 -704 and 4 -709 of this Chapter shall be conducted by a utilization review committee. The Secretary shall appoint a utilization review committee at each Department facility. Each such committee shall consist of multi -disciplinary professional staff members who are trained and equipped to deal with the habilitation needs of clients. At least one member of the committee shall be a qualified mental retardation professional. The client and the objector may be represented by persons of their choice.

(b) The utilization review committee shall not be bound by rules of evidence or procedure but shall conduct the proceedings in a manner intended to ensure a fair hearing. The committee may make such investigation as it deems necessary. It may administer oaths and compel by subpoena testimony and the production of records. A stenographic or audio recording of the proceedings shall be made and shall be kept in the client's record. Within 3 days of conclusion of the hearing, the committee shall submit to the facility director its written recommendations which include its factual findings and conclusions. A copy of the recommendations shall be given to the client and the objector.

(c) Within 7 days of receipt of the recommendations, the facility director shall give written notice to the client and objector of his acceptance or rejection of the recommendations and his reason therefor. If the facility director rejects the recommendations or if the client or objector requests review of the facility director's decision, the facility director shall promptly forward a copy of his decision, the recommendations, and the record of the hearing to the Secretary of the Department for final review. The review of the facility director's decision shall be decided by the Secretary or his or her designee within 30 days of the receipt of a request for final review. The decision of the facility director, or the decision of the Secretary (or his or her designee) if review was requested, shall be considered a final administrative decision, and shall be subject to review under and in accordance with Article III of the Code of Civil Procedure. The decision of the facility director, or the decision of the Secretary (or his or her designee) if review was requested, shall be considered a final administrative decision.

(Source: P.A. 91 -357, eff. 7 -29 -99.)

(405 ILCS 5/4 -210) (from Ch. 91 ½, par. 4 -210)

Sec. 4 -210. Whenever a petition has been executed pursuant to Sections 4 -401 or 4 -501, and prior to the examination for the purpose of certification, the person conducting this examination shall inform the person being examined in a simple comprehensible manner: that he is entitled to consult with a relative, friend, or attorney before the examination and that an attorney will be appointed for him if he desires; that he will be evaluated to determine if he meets the standard for judicial or emergency admission; that he does not have to talk to the examiner; and that any statement made by him may be disclosed at a Court hearing on the issue of whether he meets the standard for judicial admission. If the respondent is not so informed, the examiner shall not be permitted to testify at any subsequent Court hearing concerning the respondent's admission.

(Source: P.A. 91 -357, eff. 7 -29 -99.)

(405 ILCS 5/Ch. IV Art. III heading)

ARTICLE III. ADMINISTRATIVE AND TEMPORARY ADMISSION
OF THE DEVELOPMENTALLY DISABLED

(405 ILCS 5/4 -300) (from Ch. 91 ½, par. 4 -300)

Sec. 4 -300. (a) No person may be administratively admitted to any facility including Chester Mental Health Center, unless an adequate diagnostic evaluation of his current condition has been conducted to determine his suitability for admission. Prior to an administrative admission, the person may be admitted to a facility for not more than 14 days for such evaluation.

(b) The evaluation shall include current psychological, physical, neurological, social, educational or vocational, and developmental evaluations. It shall be conducted under the supervision of qualified professionals including at least one physician and either one clinical psychologist or one clinical social worker. Any tests which require language familiarity shall be conducted in the person's primary language.

(Source: P.A. 89 -439, eff. 6 -1 -96.)

(405 ILCS 5/4 -301) (from Ch. 91 ½, par. 4 -301)

Sec. 4 -301. Report and recommendation.

(a) A report of the evaluation results shall include a description of the person's disability and need for services, if any; a description of the methods of evaluation used; an evaluation of the ability of the family to meet the needs of the person and a recommendation as to the supportive services the family may need; a recommendation as to the least restrictive living arrangement appropriate for the person; and the names and positions of the persons who conducted the evaluations.

(b) The report shall be signed by at least one clinical psychologist or clinical social worker and one physician who have personally examined the person to be admitted. If the report does not recommend admission to a residential facility or to the facility to which admission is sought, a written explanation of the reasons therefor shall be included. A summary of the report shall be given to the person who executed the application.

(Source: P.A. 87 -530.)

(405 ILCS 5/4 -302) (from Ch. 91 ½, par. 4 -302)

Sec. 4 -302. A person with a developmental disability may be administratively admitted to a facility upon application if the facility director of the facility determines that he is suitable for admission. A person 18 years of age or older, if he has the capacity, or his guardian, if he is authorized by the guardianship order of the Circuit Court, may execute an application for administrative admission. Application may be executed for a person under 18 years of age by his parent, guardian, or person in loco parentis.

(Source: P.A. 88 -380.)

(405 ILCS 5/4 303) (from Ch. 91 ½, par. 4 -303)

Sec. 4 -303. (a) The application shall include the name and address of the person to be admitted; the name and address of his spouse, nearest adult relative, and guardian, or if none, friend; the name and address of the person executing the application and his relationship to the person to be admitted; and a short statement explaining the reason for the application.

(b) The application form shall contain in large type and simple language the substance of Sections 4 -302, 4 -305, 4 -306 and 4 -700. The rights set forth in the application shall be explained to the person to be admitted if he is 12 or older and to the person who executed the application.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -304) (from Ch. 91 ½, par. 4 -304)

Sec. 4 -304. A person may be admitted pursuant to the recommendation of the diagnostic report. At the time of admission, a clear written statement and oral explanation of the procedures for discharge, transfer and objection to admission shall be given to the person if he is 12 years of age or older and to the person who executed the application. Within 3 days of the admission, notice of the admission and an explanation of the objection procedure shall be sent or given to the persons specified in Section 4 206.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -305) (from Ch. 91 ½, par. 4 -305)

Sec. 4 -305. (a) Any interested person on behalf of a client or a client himself if he is 12 years of age or older may object to an administrative, diagnostic or temporary admission under this Article. An objection may be made at any time following the admission, but once an objection has been heard, no subsequent objection may be made for 6 months without leave of the Court.

(b) An objection shall be submitted in writing to the facility director of the facility.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -306) (from Ch. 91 ½, par. 4 -306)

Sec. 4 -306. (a) A client 18 years of age or over, who is not under guardianship, shall be allowed to be discharged from the facility at the earliest appropriate time, not to exceed 5 days, excluding Saturdays, Sundays and holidays, after he submits a written objection to the facility director, unless he either withdraws the objection in writing or unless within the 5 day period a petition and certificate conforming to the requirements of Section 4 -501 are filed with the Court. Upon receipt of the petition, the Court shall order a hearing to be held within 5 days, excluding Saturdays, Sundays and holidays, and to be conducted pursuant to Article VI of this Chapter. Admission of the client may continue pending further order of the Court. In all other objections to admission under this Article, paragraph (b) of this Section and Sections 4 -307 and 4 -308 shall apply.

(b) Unless the objection is withdrawn in writing or the client is discharged, the facility director shall file a petition for review of the admission with the Court within 5 days of submission of the objection, excluding Saturdays, Sundays and holidays as provided in Sections 4 -307 and 4 -308. The facility director shall also file the report of the client's diagnostic evaluation and current habilitation plan with the Court.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -307) (from Ch. 91 ½, par. 4 -307)

Sec. 4 -307. Upon the filing of the petition, the Court shall set a hearing to be held within 5 days, excluding Saturdays, Sundays and holidays. The Court shall direct that notice of the time and place of the hearing be served upon the client, his attorney, the objector, the person who executed the application, and the facility director of the facility. The hearing shall be conducted pursuant to Article VI of this Chapter.

(Source: P.A. 86 -820.)

(405 ILCS 5/4 -308) (from Ch. 91 ½, par. 4 -308)

Sec. 4 -308. (a) If the Court finds that the client is not a person with a developmental disability, that he is not in need of the services which are available at the facility, or that a less restrictive alternative is appropriate, it shall disapprove the admission and order the client discharged. If the client is in a Department facility and the Court finds that he or she is a person with a developmental disability but that he is not in need of the services which are available at the facility or that a less restrictive alternative is appropriate, the Court may order him transferred to a more appropriate Department facility. If the person who executed the application for admission objects to the transfer, the Court shall order the client discharged.

(b) Unless the Court Orders the discharge or transfer of the client, the facility may continue to provide the client with residential and habilitation services.

(c) Unwillingness or inability of the client's parent, guardian or person in loco parentis to provide for his care or residence shall not be grounds for the Court's refusing to order discharge. In that event, a petition may be filed under the Juvenile Court Act of 1987 or the Probate Act of 1975, approved August 7, 1975, as now or hereafter amended, to ensure that appropriate care and residence are provided.

(Source: P.A. 88 -380.)

(405 ILCS 5/4 -309) (from Ch. 91 ½, par. 4 -309)

Sec. 4 -309. Habilitation plan.

(a) Within 14 days of admission, the facility shall prepare a written habilitation plan consistent with the client's diagnosis and needs. The Department shall fully implement habilitation plans. Every reasonable effort shall be made to involve the client and his family in the preparation and implementation of the plans.

(b) The habilitation plan shall describe the habilitation goals; a projected timetable for their attainment; the services to be provided; the role of the family in the implementation of the plan; and the name of the person responsible for supervising the habilitation plan.

(c) The habilitation plan shall be reviewed regularly, but at least once every calendar month, by the person responsible for its supervision. They shall be modified when necessary. The client and the persons specified in Section 4 -206 shall be informed regularly of the client's progress.

(Source: P.A. 89 -439, eff. 6 -1 -96.)

(405 ILCS 5/4 -309.1) (from Ch. 91 ½, par. 4 -309.1)

Sec. 4 -309.1. Habilitation and incentives. In accordance with Departmental powers and duties, facilities may offer incentives, including cash, to residents in connection with their habilitation plan.

(Source: P.A. 89 -439, eff. 6 -1 -96.)

(405 ILCS 5/4 -309.2) (from Ch. 91 ½, par. 4 -309.2)

Sec. 4 -309.2. Habilitation; incentives; disbursements. The Department may advance monies from its appropriations to facility directors for disbursement to residents in accordance with Section 4 -309.1. The facility directors may maintain these monies in a locally held account prior to disbursements.

(Source: P.A. 89 -439, eff. 6 -1 -96.)

(405 ILCS 5/4 -310) (from Ch. 91 ½, par. 4 -310)

Sec. 4 -310. At least once annually the client shall be evaluated to determine his need for continued residential services. If need for continued residence is indicated, the facility director of the facility shall consult with the person who made application for the admission and shall request authorization for continued residence of the client. The request and authorization shall be noted in the client's record.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -311) (from Ch. 91 ½, par. 4 -311)

Sec. 4 -311. (a) A person with a developmental disability may be temporarily admitted to a facility for respite care intended for the benefit of the parent or guardian, or in the event of a crisis, care where immediate temporary residential services are necessary, upon application by a person empowered to make application for administrative admission, if the facility director determines that the individual is suitable for temporary admission. The application shall describe the person's developmental disability and shall conform with the provisions of paragraph (a) of Section 4 -301.

(b) A temporary admission may continue for not more than 30 days. A client admitted on a temporary basis shall be provided with such services as are determined by mutual agreement between the facility director, the

client, and the person executing the application.

(c) Upon temporary admission, a clear written statement and oral explanation of the objection procedure shall be given to the client if he is 12 years of age or older. Within 3 days of a temporary admission, notice of the admission and an explanation of the objection procedure shall be sent to the persons specified in Section 4 -206. An objection to temporary admission may be made and heard in the same manner as an objection to administrative admission.

(Source: P.A. 88 -380.)

(405 ILCS 5/4 -312) (from Ch. 91 ½, par. 4 -312)

Sec. 4 -312. (a) If the facility director of a Department facility declines to admit a person seeking administrative or temporary admission under this Article, a review of the denial may be requested by the person who executed the application for admission or by the attorney or guardian of the person with a developmental disability. Whenever admission to a Department facility is denied, the person seeking admission shall immediately be given written notice of the right to request review of the denial under this Section. A written request for review shall be submitted to the facility director of the facility to which admission is sought within 14 days of the denial. Upon receipt of the request, the facility director shall promptly schedule a hearing to be held at the facility within 7 days pursuant to Section 4 -209.

(b) At the hearing the Department shall have the burden of proving that the person denied admission does not meet the standard for administrative admission. If the utilization review committee finds that the decision denying admission is based upon substantial evidence, it shall recommend that the denial of admission be upheld. However, if it finds that the facility to which admission is sought can provide adequate and appropriate habilitation for the person, it shall recommend that the person denied admission be admitted. If it determines that another facility can provide habilitation appropriate to the condition and needs of the person denied admission, it may recommend that the Department or other agency assist the person in obtaining such appropriate habilitation.

(Source: P.A. 88 -380.)

(405 ILCS 5/Ch. IV Art. IV heading)

ARTICLE IV. EMERGENCY ADMISSION OF THE MENTALLY RETARDED

(405 ILCS 5/4 -400) (from Ch. 91 ½, par. 4 -400)

Sec. 4 -400. (a) A person 18 years of age or older may be admitted on an emergency basis to a facility under this Article if the facility director of the facility determines: (1) that he is mentally retarded; (2) that he is reasonably expected to inflict serious physical harm upon himself or another in the near future; and (3) that immediate admission is necessary to prevent such harm.

(b) Persons with a developmental disability under 18 years of age and persons with a developmental disability 18 years of age or over who are under guardianship or who are seeking admission on their own behalf may be admitted for emergency care under Section 4 -311.

(Source: P.A. 88 -380.)

(405 ILCS 5/4 -401) (from Ch. 91 ½, par. 4 -401)

Sec. 4 -401. A petition for emergency admission may be submitted to the facility director of a facility by any interested person 18 years of age or older. The petition shall include a detailed statement of the basis for the assertion that the respondent meets the criteria of Section 4 -400 including a description of any act or significant threat supporting the assertion; the name and address of the spouse, parent, guardian, and close relative or, if

none, any known friend of the respondent; a statement of the petitioner's relationship to the respondent and interest in the matter; the name, address and phone number of any witness by which the facts asserted may be proved. The petition may be prepared by the facility director of a facility.

(Source: P.A. 81 -1509.)

(405 ILCS 5/4 -402) (from Ch. 91 ½, par. 4 -402)

Sec. 4 -402. Examination; certificate.

(a) No person may be detained at a facility for more than 24 hours pending admission under this Article unless within that time a clinical psychologist, clinical social worker, or physician examines the respondent and certifies that he meets the standard for emergency admission.

(b) The certificate shall contain the examiner's observations, other factual information relied upon, and a statement as to whether the respondent was advised of his rights under Section 4 -503. If no certificate is executed, the respondent shall be released immediately.

(Source: P.A. 87 -530.)

(405 ILCS 5/4 -403) (from Ch. 91 ½, par. 4 403)

Sec. 4 -403. Upon receipt of a petition and certificate prepared pursuant to this Article, a peace officer shall take a respondent into custody and transport him to a developmental disabilities facility.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -404) (from Ch. 91 ½, par. 4 -404)

Sec. 4 -404. A peace officer may take a person into custody and transport him to a facility when, as a result of his personal observation, the peace officer has reasonable grounds to believe that the person meets the standard for emergency admission. Upon arrival at the facility, the peace officer shall complete a petition for emergency admission.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -405) (from Ch. 91 ½, par. 4 -405)

Sec. 4 -405. When, as a result of personal observation and testimony in open Court, any Court has reasonable grounds to believe that a person appearing before it meets the standard for emergency admission, the Court may enter an order for the temporary detention and examination of such person. The order shall set forth in detail the facts which are the basis for the Court's conclusion. The Court may order a peace officer to take the person into custody and transport him to a facility. The person may be detained for examination for no more than 24 hours. If a petition and certificate, as provided in this Article, are executed within the 24 hours, the person may be admitted and the provisions of this Article shall apply. If no petition or certificate is executed, the person shall be released.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -406) (from Ch. 91 ½, par. 4 -406)

Sec. 4 -406. Within 12 hours after admission, the respondent shall be given a copy of the petition and an explanation of his hearing rights under Article VI of this Chapter. Within 24 hours after admission, excluding Saturdays, Sundays and holidays, a copy of the petition shall be given personally or mailed to the persons specified in Section 4 -206. The respondent shall be allowed to complete no fewer than 2 telephone calls at the time of his admission to such persons as he chooses.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -407) (from Ch. 91 ½, par. 4 -407)

Sec. 4 -407. (a) Within 24 hours, excluding Saturdays, Sundays and holidays, after the respondent's admission

under this Article, the facility director of the facility shall file with the Court 2 copies of the petition and certificate and proof of service of the petition and the explanation of rights.

(b) Upon admission under this Article, the respondent shall be evaluated pursuant to the provisions of paragraph (b) of Section 4 -300. A report of the evaluation prepared pursuant to Section 4 -301 shall be filed with the Court not more than 7 days after the admission. Upon receipt of the report, the Court shall set a hearing pursuant to Section 4 -505 to determine whether the respondent meets the standard for judicial admission.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -408) (from Ch. 91 ½, par. 4 -408)

Sec. 4 -408. A respondent admitted on an emergency basis shall receive habilitation appropriate to his condition. However, the respondent shall be informed of his right to refuse medication and if he refuses, medication shall not be given unless it is necessary to prevent the respondent from causing serious harm to himself or others. The facility shall record what habilitation is given to the respondent together with the reasons therefore.

(Source: P.A. 80 -1414.)

(405 ILCS 5/Ch. IV Art. V heading)

ARTICLE V. JUDICIAL ADMISSION FOR THE MENTALLY RETARDED

(405 ILCS 5/4 -500) (from Ch. 91 ½, par. 4 -500)

Sec. 4 -500. A person 18 years of age or older may be admitted to a facility upon Court Order under this Article if the Court determines: (1) that he is mentally retarded; and (2) that he is reasonably expected to inflict serious physical harm upon himself or another in the near future.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -501) (from Ch. 91 ½, par. 4 -501)

Sec. 4 -501. Petition; certificate.

(a) Any person 18 years of age or older may file a petition with the Court asserting that the respondent meets the standard for judicial admission as set out in Section 4 -500. The petition shall be prepared according to the form specified in Section 4 -401. The Court may inquire of the petitioner whether there are reasonable grounds to believe that the facts presented in the petition are true and whether the respondent meets the standard for judicial admission.

(b) The petition may be accompanied by the certificate of a clinical psychologist, clinical social worker, or physician indicating that the respondent was examined not more than 72 hours prior to the filing of the petition and certifying that he meets the standard for judicial admission. The certificate shall also set out the examiner's observations, other factual information relied upon, and a statement as to whether the respondent was advised of his rights under Section 4 -210.

(Source: P.A. 87 -530.)

(405 ILCS 5/4 -502) (from Ch. 91 ½, par. 4 -502)

Sec. 4 -502. Orders; examination; setting for hearing.

(a) When no certificate is filed with the petition, if the Court finds that the petition is in order and that there is a valid reason why no certificate has been filed, it may make any orders as are necessary to provide for an examination of the respondent by a clinical psychologist, clinical social worker, or physician. If, as a result of the examination, a certificate is executed, the certificate shall be promptly filed with the Court.

(b) When a certificate is filed with the petition or is filed pursuant to this Section, if the Court finds that the documents are in order, it may make any orders as are necessary to provide for a diagnostic evaluation of the respondent pursuant to paragraph (b) of Section 4 -300 of this Chapter.

(c) Upon receipt of the diagnostic report prepared pursuant to Section 4 -301, the Court shall set the matter for hearing pursuant to Section 4 -505.

(Source: P.A. 87 -530.)

(405 ILCS 5/4 -503) (from Ch. 91 ½, par. 4 -503)

Sec. 4 -503. A copy of the petition, any order for examination or evaluation, and a statement of the respondent's hearing rights under Article VI of this Chapter shall be personally served upon the respondent and shall be given or mailed to the persons specified in Section 4 -206 at least 24 hours before the Court Ordered examination or evaluation. (Source: P.A. 80 -1414.)

(405 ILCS 5/4 -504) (from Ch. 91 ½, par. 4 -504)

Sec. 4 -504. The respondent shall be permitted to remain in his place of residence pending any examination for certification or diagnostic evaluation. He may be accompanied by one or more of his relatives or friends or by his attorney to the place of examination. If, however, the Court finds that it is necessary in order to complete the examination the Court may order that the person be admitted to a developmental disabilities facility pending examination and may order a peace officer or other person to transport him there. Whenever possible the examination shall be conducted at a local developmental disabilities facility. No person may be detained for examination for certification for more than 24 hours and for a diagnostic evaluation for more than 7 days.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -505) (from Ch. 91 ½, par. 4 -505)

Sec. 4 -505. The Court shall set a hearing to be held within 5 days, excluding Saturdays, Sundays, and holidays, after it receives the diagnostic report. The Court shall direct that notice of the time and place of the hearing be given or sent to the respondent, his attorney, the facility director of the facility, and the persons specified in Section 4 -206. The facility director shall make copies of the certificate and the diagnostic report available to the attorneys for the parties upon request.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -506) (from Ch. 91 ½, par. 4 -506)

Sec. 4 -506. The respondent may remain at his place of residence pending the hearing. If the Court finds it necessary, it may order a peace officer or other person to have the respondent before the Court at the time of the hearing.

(Source: P.A. 80 -1414.)

(405 ILCS 5/Ch. IV Art. VI heading)

ARTICLE VI. Court HEARINGS

(405 ILCS 5/4 -600) (from Ch. 91 ½, par. 4 -600)

Sec. 4 -600. (a) Unless otherwise indicated, hearings under this Chapter shall be held pursuant to this Article. Hearings shall be held in such quarters as the Court directs. To the extent practical, hearings shall be held at the developmental disabilities facility where the respondent is located. Any party may request a change of venue transfer to any other county because of the convenience of parties or witnesses or the condition of the respondent. The respondent may have the proceedings transferred to the county of his residence.

(b) If the Court grants a continuance on its own motion or upon the motion of one of the parties, the respondent

may continue to be detained pending further order of the Court. Such continuance shall not extend beyond 15 days except to the extent that continuances are requested by the respondent.
(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -601) (from Ch. 91 ½, par. 4 -601)

Sec. 4 -601. A respondent may request administrative admission at any time prior to a Court Order for judicial admission. If the facility director approves such a request, the Court may dismiss the pending proceedings but may require proof that such dismissal is in the best interest of the respondent and of the public.
(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -602) (from Ch. 91 ½, par. 4 -602)

Sec. 4 -602. The respondent is entitled to a jury on the question of whether he meets the standard for judicial admission. The jury shall consist of 6 persons to be chosen in the same manner as are jurors in other civil proceedings.
(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -603) (from Ch. 91 ½, par. 4 -603)

Sec. 4 -603. Appointment of examiners; report. The Court may appoint one or more clinical psychologists, clinical social workers, physicians, or other experts to examine the respondent and make a detailed written report of his or their findings regarding the respondent's condition. The report shall be filed with the Court and copies shall be made available to the attorneys for the parties.
(Source: P.A. 87 -530.)

(405 ILCS 5/4 -604) (from Ch. 91 ½, par. 4 -604)

Sec. 4 -604. Independent examination. The respondent is entitled to secure an independent examination by a physician, clinical psychologist, clinical social worker, or other expert of his choice. If the respondent is unable to obtain an examination, he may request that the Court Order an examination to be made by an impartial medical expert pursuant to Supreme Court Rules or by a clinical psychologist, clinical social worker, or other expert. Determination of the compensation of the physician, clinical psychologist, clinical social worker, or other expert and its payment shall be governed by Supreme Court Rule.
(Source: P.A. 80 -1414; 87 -530.)

(405 ILCS 5/4 -605) (from Ch. 91 ½, par. 4 -605)

Sec. 4 -605. Every respondent alleged to meet the standard for judicial admission shall be represented by counsel. If the respondent is indigent or an appearance has not been entered on his behalf at the time the matter is set for hearing, the Court shall appoint counsel for him. A hearing shall not proceed when a respondent is not represented by counsel unless, after conferring with counsel, the respondent requests to represent himself and the Court is satisfied that the respondent has the capacity to make an informed waiver of his right to counsel. Counsel shall be allowed time for adequate preparation and shall not be prevented from conferring with the respondent at reasonable times nor from making an investigation of the matters in issue and presenting such relevant evidence as he believes is necessary.

1. If the Court determines that the respondent is unable to obtain counsel, the Court shall appoint as counsel an attorney employed by or under contract with the Guardianship and Advocacy Commission, if available.

2. If an attorney from the Guardianship and Advocacy Commission is not available, the Court shall appoint as counsel the public defender or, only if no public defender is available, an attorney licensed to practice law in this

State.

3. Upon filing with the Court of a verified statement of legal services rendered by the private attorney appointed pursuant to paragraph (2) of this Section, the Court shall determine a reasonable fee for such services. If the respondent is unable to pay the fee, the Court shall enter an order upon the county to pay the entire fee or such amount as the respondent is unable to pay.

(Source: P.A. 85 -1247.)

(405 ILCS 5/4 -606) (from Ch. 91 ½, par. 4 -606)

Sec. 4 -606. The respondent shall be present at any hearing held under this Act unless his attorney waives his right to be present and the Court is satisfied by a clear showing that the respondent's attendance would subject him to substantial risk of serious physical or emotional harm.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -607) (from Ch. 91 ½, par. 4 -607)

Sec. 4 -607. Expert testimony; waiver. No respondent may be found to meet the standard for judicial admission unless at least one clinical psychologist, clinical social worker, or physician who has examined him testifies in person at the hearing. The respondent may waive the requirement of this testimony subject to the approval of the Court.

(Source: P.A. 87 -530.)

(405 ILCS 5/4 -608) (from Ch. 91 ½, par. 4 -608)

Sec. 4 -608. No respondent may be found to meet the standard for judicial admission unless that finding has been established by clear and convincing evidence.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -609) (from Ch. 91 ½, par. 4 -609)

Sec. 4 -609. (a) In a hearing for judicial admission, if the respondent is not found to meet the standard for judicial admission, the Court shall dismiss the petition and order the respondent discharged.

(b) If it is found that the respondent meets the standard for judicial admission, the Court may order him admitted to a developmental disabilities facility designated by the Department; to a private facility, if it agrees; or to a program of nonresidential habilitation. If the Court is not satisfied with the verdict of the jury finding that the respondent meets the standard for judicial admission, it may set aside such verdict and order the respondent discharged or it may order another hearing. Before disposition is determined, the Court shall consider the diagnostic report and its recommendations and shall select the least restrictive alternative which is consistent with the respondent's needs.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -610) (from Ch. 91 ½, par. 4 -610)

Sec. 4 -610. Nonresidential habilitation; orders; modification and revocation.

(a) Prior to ordering admission to a program of nonresidential habilitation, the Court shall ascertain that the program is capable of providing adequate and humane habilitation appropriate to the respondent's condition.

(b) The Court shall have continuing authority to modify an order for nonresidential habilitation if the respondent fails to comply with it or is otherwise found unsuitable for such habilitation. Prior to modifying such an order, the Court must receive a report from the facility director specifying why the habilitation is unsuitable. The respondent shall be notified and given an opportunity to respond when modification is considered.

(c) If the Court revokes an order for nonresidential habilitation and orders admission of the respondent to a developmental disabilities facility, it may order a peace officer or other person to transport the respondent to the

facility.

(Source: P.A. 89 -439, eff. 6 -1 -96.)

(405 ILCS 5/4 -611) (from Ch. 91 ½, par. 4 -611)

Sec. 4 -611. (a) An order for admission to a developmental disabilities facility or to a program of nonresidential habilitation shall be for a period not to exceed 180 days. Prior to the expiration of the order, if the facility director of the facility or program believes that the client continues to meet the standard for judicial admission, a new petition and certificate may be filed with the Court. In the event that a new petition is filed, the facility director of the facility shall file with the Court a current habilitation plan which includes an evaluation of the respondent's progress and the extent to which he is benefitting from habilitation. If no petition is filed prior to expiration of the order, the client shall be discharged. Following a hearing on the petition, the Court may order an additional 180 day period of admission to a facility or to a program of nonresidential habilitation only if the client continues to meet the standard for judicial admission.

(b) Additional 180 day periods of judicial admission may be sought pursuant to the procedures set out in this Section for so long as the client continues to meet the standard for judicial admission. The provisions of this Article which apply whenever an initial order is sought shall apply whenever an additional period of admission is sought.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -612) (from Ch. 91 ½, par. 4 -612)

Sec. 4 -612. Not more than 60 days after any admission under this Article, the facility director of the facility shall file a current habilitation plan with the Court which includes an evaluation of the client's progress and the extent to which he is benefitting from habilitation. The Court shall review the habilitation plan. The Court may order any public agency, officer, or employee to render such information, cooperation, and assistance as is within its legal authority and as may be necessary to achieve the objectives of this Section. The client or any person on his behalf may request a hearing to review the habilitation plan or the Court on its own motion may order such a hearing. If the Court is satisfied that the client is benefitting from habilitation, it may continue the original order for the remainder of the admission period. If the Court is not so satisfied, it may modify its original order or it may order the client discharged.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 613) (from Ch. 91 ½, par. 4 -613)

Sec. 4 -613. Final orders; notice; appeals.

(a) Every final order of the Court shall be in writing and shall be accompanied by a statement on the record of the Court's findings of fact and conclusions of law. A copy of such order shall be promptly given to the client, his or her attorney, and the facility director of the developmental disabilities facility or program to which the respondent is admitted.

(b) An appeal from a final order may be taken in the same manner as in other civil cases. Upon entry of a final order, the Court shall notify the client of his or her right to appeal and, if he or she is indigent, of his or her right to a free transcript and counsel. The cost of the transcript shall be paid pursuant to subsection (c) of Section 3 - 818 and subsection (c) of Section 4 -615 of this Code. If the client wishes to appeal and is unable to obtain counsel, counsel shall be appointed pursuant to the provisions of Section 4 -605.

(Source: P.A. 90 -765, eff. 8 -14 -98.)

(405 ILCS 5/4 -613) (from Ch. 91 ½, par. 4 -613)

Sec. 4 -613. Final orders; notice; appeals.

(a) Every final order of the Court shall be in writing and shall be accompanied by a statement on the record of the Court's findings of fact and conclusions of law. A copy of such order shall be promptly given to the client, his or her attorney, and the facility director of the developmental disabilities facility or program to which the

respondent is admitted.

(b) An appeal from a final order may be taken in the same manner as in other civil cases. Upon entry of a final order, the Court shall notify the client of his or her right to appeal and, if he or she is indigent, of his or her right to a free transcript and counsel. The cost of the transcript shall be paid pursuant to subsection (c) of Section 3 - 818 and subsection (c) of Section 4 -615 of this Code. If the client wishes to appeal and is unable to obtain counsel, counsel shall be appointed pursuant to the provisions of Section 4 -605.

(Source: P.A. 90 -765, eff. 8 -14 -98.)

(405 ILCS 5/4 -614) (from Ch. 91 ½, par. 4 -614)

Sec. 4 -614. A verbatim record shall be made of all judicial hearings held pursuant to this Chapter.

(Source: P.A. 80 -1414.) (405 ILCS 5/4 -615) (from Ch. 91 ½, par. 4 -615)

Sec. 4 -615. Fees; costs; State funds.

(a) Fees for jury service, witnesses, and service and execution of process are the same as for similar services in civil proceedings.

(b) Except as provided under subsection (c) of this Section, the Court may assess costs of the proceedings against the parties. If the respondent is not a resident of the county in which the hearing is held and the party against whom the Court would otherwise assess costs has insufficient funds to pay the costs, the Court may enter an order upon the State to pay the cost of the proceedings, from funds appropriated by the General Assembly for that purpose.

(c) If the respondent is a party against whom the Court would otherwise assess costs and that respondent is determined by the Court to have insufficient funds to pay the cost of transcripts for the purpose of appeal, the Court shall enter an order upon the State to pay the cost of one original and one copy of a transcript of proceedings established under this Code. Payment of transcript costs authorized under this subsection (c) shall be paid from funds appropriated by the General Assembly to the Administrative Office of the Illinois Courts.

(Source: P.A. 90 -765, eff. 8 -14 -98.)

(405 ILCS 5/4 -616) (from Ch. 91 ½, par. 4 -616)

Sec. 4 -616. (a) When a client is admitted upon Court Order, the order may authorize a relative or friend of the client to transport the client to the developmental disabilities facility if such person is able to do so safely and humanely. When the Department indicates that it has transportation to the facility available, the order may authorize the Department to transport the client there. The Court may order the sheriff of the county in which such proceedings are held to transport the client to the facility.

(b) Upon the delivery of a client to a facility, in accordance with the procedure set forth in this Article, the facility director of the facility shall sign a receipt acknowledging custody of the client and for any personal property belonging to him or her, which receipt shall be filed with the clerk of the Court which entered the admission order.

(Source: P.A. 83 -346.)

(405 ILCS 5/4 -617) (from Ch. 91 ½, par. 4 -617)

Sec. 4 -617. Nothing in this Chapter shall deprive any person of the benefits of relief by habeas corpus. If the Court issuing the order of habeas corpus grants relief, a copy of the order shall be sent to the Court which entered the order of admission and the clerk of the Court shall file the order in the Court record.

(Source: P.A. 83 -346.)

(405 ILCS 5/Ch. IV Art. VII heading)

ARTICLE VII. DISCHARGE AND TRANSFER

(405 ILCS 5/4 -700) (from Ch. 91 ½, par. 4 -700)

Sec. 4 -700. The person who executed the application for administrative or temporary admission may request discharge of the client so admitted at any time. The client shall be discharged within 3 days of receipt of a written request by the facility director of the developmental disabilities facility.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -701) (from Ch. 91 ½, par. 4 -701)

Sec. 4 -701. (a) Any client admitted to a developmental disabilities facility under this Chapter may be discharged whenever the facility director determines that he is suitable for discharge.

(b) Any client admitted to a facility or program of nonresidential services upon Court Order under Article V of this Chapter or admitted upon Court Order as mentally retarded or mentally deficient under any prior statute shall be discharged whenever the facility director determines that he no longer meets the standard for judicial admission. When the facility director believes that continued residence is advisable for such a client, he shall inform the client and his guardian, if any, that the client may remain at the facility on administrative admission status. When a facility director discharges or changes the status of such client, he shall promptly notify the clerk of the Court who shall note the action in the Court record.

(c) When the facility director discharges a client pursuant to subsection (b) of this Section, he shall promptly notify the State's Attorney of the county in which the client resided immediately prior to his admission to a development disabilities facility. Upon receipt of such notice, the State's Attorney may notify such peace officers that he deems appropriate.

(d) The facility director may grant a temporary release to any client when such release is appropriate and consistent with the habilitation needs of the client.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -702) (from Ch. 91 ½, par. 4 -702)

Sec. 4 -702. (a) Conditional discharge means the placement of a client out of a facility for continuing habilitation provided under supervision of the discharging developmental disabilities facility or of the Department if he was in a Department facility. The facility director may grant a conditional discharge to a client when he determines that conditional discharge is appropriate and consistent with the habilitation needs of the client.

(b) A conditional discharge shall terminate within one year unless it is extended for one additional year. Written notice of the extension shall be given to the persons specified in Section 4 -206 and to the facility, if any, where the client is residing.

(c) A conditionally discharged client may be readmitted to the facility if the facility director determines that such readmission is consistent with the client's habilitation needs and if the Court, in the event that the client was judicially admitted, or the person who executed the application for administrative admission, consents thereto.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -703) (from Ch. 91 ½, par. 4 -703)

Sec. 4 -703. (a) Prior to discharge under Sections 4 -701 or 4 -702, the facility director shall prepare a post - discharge plan which is consistent with the client's habilitation goals. To the extent possible, the client and his family shall be consulted in the preparation and implementation of the plan.

(b) Prior to discharge if the client is 18 years of age or older and does not have a guardian, he shall be evaluated to determine whether he requires one. If it is determined that the client requires a guardian, his parent or another interested person shall be notified and requested to file a petition for the appointment of a guardian. If no petition is filed, the facility director of the facility may file such a petition.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -704) (from Ch. 91 ½, par. 4 -704)

Sec. 4 -704. (a) At least 14 days prior to the discharge of a client from a Department developmental disabilities facility under Section 4 -701 or 4 -702, the facility director shall give written notice of the discharge to the client, if he is 12 years of age or older, to his attorney and guardian, if any, to the person who executed the application for admission and to the resident school district when appropriate. The notice, except that to the school district, shall include the reason for the discharge and a statement of the right to object.

(b) The client, if he is 12 years of age or older, may object to his discharge or the attorney or guardian of a client or the person who executed the application may object on behalf of a client. Prior to discharge a written objection shall be submitted to the facility director of the facility where the client is located. Upon receipt of an objection, the facility director shall promptly schedule a hearing to be held at the facility within 7 days pursuant to Section 4 -209. No discharge shall proceed pending hearing on an objection, unless the person objecting to the discharge consents to discharge pending the hearing.

(c) At the hearing the Department shall have the burden of proving that the client meets the standard for discharge under this Chapter and under Section 15 of the Mental Health and Developmental Disabilities Administrative Act. If the utilization review committee finds that the Department has sustained its burden and that the proposed discharge is based upon substantial evidence, it shall recommend that the discharge proceed. If the utilization review committee does not so find, it shall recommend that the client not be discharged but it may recommend that the client be transferred to another facility which can provide habilitation appropriate to the condition and needs of the client. It may recommend that the Department or other agency assist the person in obtaining such appropriate habilitation.

(Source: P.A. 89 -507, eff. 7 -1 -97.)

(405 ILCS 5/4 -705) (from Ch. 91 ½, par. 4 -705)

Sec. 4 -705. Petition for discharge; examination.

(a) At any time a person admitted by Court Order under Article V of this Chapter or under any prior statute or any person 18 years of age or older on his behalf may file a petition for discharge with the Court.

(b) The petition shall set forth: (1) the name of the client; (2) the events that precipitated the admission and the date of the admission order; and (3) a request for discharge and the reasons for the request. The petition shall be accompanied by the certificate of a clinical psychologist, clinical social worker, or physician stating that the client no longer meets the standard for judicial admission and specifying the reasons for that conclusion.

(c) If the petition is not accompanied by a certificate, the Court shall appoint a clinical psychologist, clinical social worker, or physician to examine the client. If the clinical psychologist, clinical social worker, or physician determines that the client does not meet the standard for judicial admission, he shall execute a certificate so stating. The client is also entitled to an independent examination pursuant to Section 4 -605.

(Source: P.A. 87 -530.)

(405 ILCS 5/4 -706) (from Ch. 91 ½, par. 4 -706)

Sec. 4 -706. (a) Upon receipt of a petition for discharge, the Court shall set a hearing to be held within 7 days. The Court shall direct that notice of the time and place of the hearing be given to the client, the person specified in Section 4 -206, and to the facility director. Article VI of this Chapter shall apply to hearings held under this Section.

(b) If the Court finds that the client does not meet the standard for judicial admission, the Court shall enter an order so finding and shall order the client discharged. If the Court determines that the client continues to meet the

standard for judicial admission, the Court may continue or modify its original order. Thereafter, no new petition for discharge may be filed for 60 days without leave of the Court.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -707) (from Ch. 91 ½, par. 4 -707)

Sec. 4 -707. The facility director of any Department facility may transfer a client to another Department facility if he determines that the transfer is appropriate and consistent with the habilitation needs of the client. An appropriate facility which is close to the client's place of residence shall be preferred unless the client requests otherwise or unless compelling reasons exist for preferring another facility.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -708) (from Ch. 91 ½, par. 4 -708)

Sec. 4 -708. Any client admitted to a facility or to a program of nonresidential habilitation under Article V of this Chapter or his guardian, attorney, or nearest adult relative on his behalf may at any time petition the Court for transfer to a different facility or program of nonresidential services. If the client is in a private facility, the facility may also petition for transfer. An order for admission to a facility shall not be entered under this Section if the original order did not authorize such admission unless a hearing is held pursuant to Article VI of this Chapter.

(Source: P.A. 80 -1414.)

(405 ILCS 5/4 -709) (from Ch. 91 ½, par. 4 -709)

Sec. 4 -709. (a) Whenever a client who has been in a Department facility for more than 7 days is to be transferred to another facility under Section 4 -707, the facility director of the facility shall give written notice at least 14 days before transfer to the client's attorney and to the persons specified in Section 4 -206 of the reasons for the transfer and of the right to object. In an emergency, when the health of the client or the physical safety of the client or others is imminently imperiled and appropriate care and services are not available where the client is located, a client may be immediately transferred to another facility provided that notice is given as soon as possible but not more than 48 hours after the transfer. The reason for the emergency shall be noted in the client's record and specified in the notice.

(b) A client may object to his transfer or his attorney or any person receiving notice under Section 4 -206 may object on his behalf. Prior to transfer or within 14 days after an emergency transfer, a written objection shall be submitted to the facility director of the facility where the client is located. Upon receipt of an objection, the facility director shall promptly schedule a hearing to be held within 7 days pursuant to the procedures in Section 4 -209. The hearing shall be held at the transferring facility except that when an emergency transfer has taken place, the hearing may be held at the receiving facility. Except in an emergency, no transfer shall proceed pending hearing on an objection.

(c) At the hearing the Department shall have the burden of proving that the standard for transfer under Section 4 -707 is met. If the transfer is to a facility which is substantially more physically restrictive than the transferring facility, the Department shall also prove that the transfer is reasonably required for the safety of the client or others. If the utilization review committee finds that the Department has sustained its burden and the decision to transfer is based upon substantial evidence, it shall recommend that the transfer proceed. If it does not so find, it shall recommend that the client not be transferred.

(Source: P.A. 80 -1414.)

MENTAL HEALTH
(405 ILCS 5/) Mental Health and Developmental Disabilities Code.

405 ILCS 5/Ch. V heading)

CHAPTER V
GENERAL PROVISIONS

(405 ILCS 5/5-100) (from Ch. 91 ½, par. 5-100)

Sec. 5-100. Written notice of the death of a recipient of services which occurs at a mental health or developmental disabilities facility, or the death of a recipient of services who has not been discharged from a mental health or developmental disabilities facility but whose death occurs elsewhere, shall within 10 days of the death of a recipient be mailed to the Department of Public Health which, for the primary purpose of monitoring patterns of abuse and neglect of recipients of services, shall make such notices available to the Guardianship and Advocacy Commission and to the agency designated by the Governor under Section 1 of "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named", approved September 20, 1985. Such notice shall include the name of the recipient, the name and address of the facility at which the death occurred, the recipient's age, the nature of the recipient's condition, including any evidence of the previous injuries or disabilities, or relevant medical conditions or any other information which might be helpful in establishing the cause of death.

Written notice of the death of a recipient of services who was admitted by Court Order, and the cause thereof shall, in all cases, be mailed by the facility director to the Court entering the original admission order, and if possible, to the same judge, and the time, place and alleged cause of such death shall be entered upon the docket. Such notice must be mailed within 10 days following the death of the recipient.

In the event of a sudden or mysterious death of any recipient of services at any public or private facility, a coroner's inquest shall be held as provided by law in other cases.

In cases where the deceased person was a recipient or client of any state facility, and the fees for holding an inquest cannot be collected out of his estate, such fees shall be paid by the Department.

(Source: P.A. 88-380.)

(405 ILCS 5/5-100A) (from Ch. 91 ½, par. 5-100A)

Sec. 5-100A. Review Board.

(a) There is created the Mental Health and Developmental Disabilities Medical Review Board, hereinafter referred to as the Board, consisting of 5 members appointed by the Governor, who shall be physicians licensed to practice medicine in all its branches, including specialists in psychiatry and primary care. Members shall serve at the pleasure of the Governor and shall receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties. The terms of members appointed before the effective date of this amendatory Act of 1995 shall expire on the effective date of this amendatory Act of 1995. As soon as possible after the effective date of this amendatory Act of 1995, the Governor shall appoint new Board members.

The Governor shall designate one member as chairman. The chairman shall appoint an executive secretary and such other officers and employees as may be necessary to perform the functions of the Board. The chairman may appoint one or more committees of Board members and delegate in writing to any such committee the authority to perform any of the Board's functions and duties and to exercise any of its powers. Any reports of such committees shall be forwarded to the chairman for review and forwarding to the Secretary. The chairman may also seek consultation from consultants, including but not limited to specialists in forensic pathology and forensic psychiatry.

(b) The director or chief officer of every mental health or developmental disabilities facility licensed or operated

by the Department shall immediately report the death of any recipient of services at the facility to the Board in a manner and form prescribed by the Board, but in any case within 3 working days of the death.

(c) The Board's functions shall include the following:

- (1) investigation of any death that occurs within 24 hours after admission;
- (2) investigation of the causes and circumstances of unusual deaths or deaths from other than natural causes;
- (3) expert consultation with the Inspector General on suspected abuse and neglect investigations that the Inspector General determines require independent medical review;
- (4) investigation of all suspected cases of neglect concerning delivery of medical services, including investigations by the Inspector General;
- (5) visitation and inspection of any facility operated by the Department in which such a death has occurred;
- (6) reporting upon its review of the cause and circumstances of the death of any recipient to the Secretary and his or her designee and, when appropriate, making recommendations to those individuals and to the facility director to prevent similar deaths; and
- (7) reporting by April 1 of each year to the Governor and the Legislature concerning its work during the preceding year and reporting more frequently to the Governor or the Legislature as such bodies shall direct or as it shall deem advisable.

(d) All records of the Board's proceedings and deliberations and any testimony given before it are protected from disclosure under Section 8-2101 of the Code of Civil Procedure and are subject to the Mental Health and Developmental Disabilities Confidentiality Act.

(e) Notwithstanding any report by the facility director or chief officer to the Board and any subsequent investigation by the Board, the facility director or chief officer shall also report such incidents to other agencies or entities as may be required by law or policies and procedures of the Department with respect to deaths. Investigations by the Board are not to be in lieu of or to replace those lawful duties of other agencies or entities.

(f) If the report by the Board to the Secretary contains a conclusion of misconduct or criminal acts, such facts shall be forwarded by the Secretary to the appropriate law enforcement or disciplinary entity.

(Source: P.A. 89-427, eff. 12-7-95; 89-507, eff. 7-1-97.)

(405 ILCS 5/5-101) (from Ch. 91 ½, par. 5-101)

Sec. 5-101. If any recipient of services leaves a facility without being duly discharged or being free to do so, as provided in this Act, or if any resident is placed on conditional discharge or temporarily released from the facility and if such recipient is considered by the facility director to be in such condition as to require immediate detention for the protection of such recipient or other persons, then upon the request of the facility director of the facility, any peace officer shall apprehend such recipient and return him to the nearest Department facility which provides residential services. The Department shall then arrange for the return of the recipient to the appropriate facility. The cost of returning a recipient whose absence from a private facility or a Veterans Administration facility is unauthorized shall be paid by such facility. If the unauthorized absence is from a facility of the Department, such cost shall be paid by the Department in accordance with the fee schedule set forth in Section 19 of "An Act concerning fees and salaries, and to classify the several counties of the state with reference thereto", approved March 29, 1872, as now or hereafter amended.

(Source: P.A. 80-1414.)

(405 ILCS 5/5-102) (from Ch. 91 ½, par. 5-102)

Sec. 5-102. Persons who are not residents of this State may not be detained in any facility unless admitted thereto in accordance with the laws of this State, or of the state having jurisdiction of such persons. A person who is not a resident of this State and who is admitted to a Department facility for services may be returned by the Department to the state of which he is a resident, but no such person may be returned unless arrangements to

receive him have been made in the state to which he is to be returned. The Department, subject to the approval of the Attorney General, may enter into reciprocal agreements with corresponding agencies of other states regarding the interstate transportation or transfer of recipients and may arrange with the proper officials for the acceptance, transfer and support of persons who are residents of this State but who are temporarily detained or who are receiving services in public facilities of other states in accordance with the terms of such agreements. In the case of persons brought to this State under any agreements authorized under this Section, local peace officers may upon request of the Department receive and arrange for admission of such persons pursuant to this Act.
(Source: P.A. 84-871.)

(405 ILCS 5/5-103) (from Ch. 91 ½, par. 5-103)

Sec. 5-103. The Department, or any health officer of this State or any municipality where any person subject to involuntary admission or who meets the standard for judicial admission may be, may inquire into the manner in which any such person who is not a recipient of services in a state facility is cared for and maintained. Whenever the Department has reason to believe that any person asserted or adjudged to be subject to involuntary admission or to meet the standard for judicial admission is confined and may be wrongfully deprived of his liberty, or is cruelly, negligently or improperly treated, or that inadequate provision is made for his care, supervision and safekeeping, it may ascertain the facts or may order an investigation of the facts. The Department, or any duly authorized representative of the Department, may at any time visit and examine the persons in any place to ascertain if persons subject to involuntary admission or who meet the standard for judicial admission are kept therein. The Secretary, or any duly authorized representative of the Department conducting the investigation, may administer oaths and issue subpoenas requiring the attendance of and the giving of testimony by witnesses and subpoenas duces tecum requiring the production of books, papers, records, or memoranda. All subpoenas issued under this Act may be served by any person 18 years of age or older. The fees of witnesses for attendance and travel are the same as the fees of witnesses before the circuit Courts of this State. Such fees are to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Department or any officer or employee thereof, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding the Department may require that the cost of service of the subpoena and the fee of the witness be borne by such party. In such case the Department, in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued under this Section must be served in the same manner as a subpoena issued out of a Court.

Any Court of this State, upon the application of the Department or any officer or employee thereof may compel the attendance of witnesses, the production of books, papers, records, or memoranda and the giving of testimony before the Department or any officer or employee thereof conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before that Court. The Department or any officer or employee thereof, or any party interested in an investigation or hearing before the Department, may cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in Courts of this State and, to that end, compel the attendance of witnesses and the production of books, papers, records or memoranda.

Whenever the Department undertakes an investigation into the general management and administration of any facility, it may give notice to the Attorney General who shall appear personally or by an assistant and examine witnesses who may be in attendance and otherwise represent the Department in such investigation.

Any recipient's records or confidential communications disclosed under this Section or under proceedings pursuant thereto shall not lose their confidential and privileged character as established by the "Mental Health and Developmental Disabilities Confidentiality Act", enacted by the 80th General Assembly; such records or confidential communications shall not be utilized for any other purpose nor be redisclosed or otherwise discoverable except in connection with such investigation and proceedings pursuant thereto.

(Source: P.A. 89-507, eff. 7-1-97.)

(405 ILCS 5/5-104) (from Ch. 91 ½, par. 5-104)

Sec. 5-104. The Department may prescribe and publish rules and regulations to carry out the purposes of this Act and to enforce the provisions this Act and may alter, amend and supplement such rules and regulations relating to this Act; but any person affected adversely by any order or ruling of the Department is entitled to review as provided in Section 6-100 of this Act. Pending final decision on such review, the acts, orders and rulings of the Department shall remain in full force and effect unless modified or suspended by order of Court pending final judicial decision thereof.

The provisions of the Illinois Administrative Procedure Act are hereby expressly adopted and shall apply to all administrative rules and procedures of the Department under this Act, except that in case of conflict between the Illinois Administrative Procedure Act and this Act the provisions of this Act shall control, and except that Section 5-35 of the Illinois Administrative Procedure Act relating to procedures for rule-making does not apply to the adoption of any rule required by federal law in connection with which the Department is precluded by law from exercising any discretion.

As part of such rules and regulations, the Department shall require that any State operated facility and any community agency, whether public or private, which provides mental health or developmental disabilities services to any person shall, with respect to such person, use a uniform case opening form approved by the Department. The form shall require that such person's Social Security number be obtained and stated among other information requested. The facility or agency may assign a case number to each recipient of its services, and that number shall be provided to the Department on any reports requested by the Department.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/5-105) (from Ch. 91 ½, par. 5-105)

Sec. 5-105. Each recipient of services provided directly or funded by the Department and the estate of that recipient is liable for the payment of sums representing charges for services to the recipient at a rate to be determined by the Department in accordance with this Act. If a recipient is a beneficiary of a trust described in Section 15.1 of the Trusts and Trustees Act, the trust shall not be considered a part of the recipient's estate and shall not be subject to payment for services to the recipient under this Section except to the extent permitted under Section 15.1 of the Trusts and Trustees Act. If the recipient is unable to pay or if the estate of the recipient is insufficient, the responsible relatives are severally liable for the payment of those sums or for the balance due in case less than the amount prescribed under this Act has been paid. If the recipient is under the age of 18, the recipient and responsible relative shall be liable for medical costs on a case-by-case basis for services for the diagnosis and treatment of conditions other than that child's handicapping condition. The liability shall be the lesser of the cost of medical care or the amount of responsible relative liability established by the Department under Section 5-116. Any person 18 through 21 years of age who is receiving services under the Education for All Handicapped Children Act of 1975 (Public Law 94-142) or that person's responsible relative shall only be liable for medical costs on a case-by-case basis for services for the diagnosis and treatment of conditions other than the person's handicapping condition. The liability shall be the lesser of the cost of medical care or the amount of responsible relative liability established by the Department under Section 5-116. In the case of any person who has received residential services from the Department, whether directly from the Department or through a public or private agency or entity funded by the Department, the liability shall be the same regardless of the source of services. The maximum services charges for each recipient assessed against responsible relatives collectively may not exceed financial liability determined from income in accordance with Section 5-116. Where the recipient is placed in a nursing home or other facility outside the Department, the Department may pay the actual cost of services in that facility and may collect reimbursement for the entire amount paid from the recipient or an amount not to exceed those amounts determined under Section 5-116 from responsible relatives according to their proportionate ability to contribute to those charges. The liability of each responsible relative for payment of services charges ceases when payments on the basis of financial ability have been made for a total of 12 years for any recipient, and any portion of that 12 year period during which a responsible relative has been determined by the Department to be financially unable to pay any services charges must be

included in fixing the total period of liability. No child is liable under this Act for services to a parent. No spouse is liable under this Act for the services to the other spouse who wilfully failed to contribute to the spouse's support for a period of 5 years immediately preceding his or her admission. Any spouse claiming exemption because of wilful failure to support during any such 5 year period must furnish the Department with clear and convincing evidence substantiating the claim. No parent is liable under this Act for the services charges incurred by a child after the child reaches the age of majority. Nothing in this Section shall preclude the Department from applying federal benefits that are specifically provided for the care and treatment of a disabled person toward the cost of care provided by a State facility or private agency. (Source: P.A. 87-311; 88-380.)

(405 ILCS 5/5-106) (from Ch. 91 ½, par. 5-106)

Sec. 5-106. The rate at which sums for the services to recipients in a mental health or developmental disabilities program of the Department is calculated by the Department is the average per capita cost of the services to all such recipients, such cost to be computed by the Department on the general average per capita cost of operation of all State facilities for the fiscal year immediately preceding the period of State care for which the rate is being calculated, except the Department may, in its discretion, set the rate at a lesser amount than such average per capita cost. The Department in its rules and regulations may establish a maximum rate not to exceed the rate set by the Office of Health Finance for the cost of services furnished to persons in mental health or developmental disabilities programs involving residential care. If a recipient is placed in a residential program or facility outside the Department, the ability of responsible relatives to pay these costs shall be determined under Section 5-116 of this Act. The Department may supplement the contribution of these persons to private facilities after all other sources of income have been utilized, provided responsible relatives do not contribute to actual cost of services in excess of amounts charged to responsible relatives as established under Section 5-116 of this Act. The Department shall make an annual report to the Commission on Mental Health and Developmental Disabilities setting forth proposed changes in rules and regulations relating to Sections 5-105 through 5-115 and summarizing all amounts expended by the Department on behalf of recipients in private facilities. The Department may pay the actual costs of services or maintenance in such facility and may collect reimbursement for the entire amount paid from the recipient, or an amount not to exceed the amount listed in Section 5-106 of this Act from responsible relatives according to their proportionate ability to contribute to such charges. Lesser or greater amounts may be accepted by the Department when conditions warrant such action or when offered by persons not liable under this Act. The amounts so received shall be deposited with the State Treasurer and placed in the Mental Health Fund. (Source: P.A. 83-578.)

MENTAL HEALTH
(405 ILCS 5/) Mental Health and Developmental Disabilities Code.

(405 ILCS 5/Ch. VI heading)

CHAPTER VI
MISCELLANEOUS PROVISIONS

(405 ILCS 5/6-100) (from Ch. 91 ½, par. 6-100)

Sec. 6-100. Judicial proceedings conducted pursuant to this Act shall be conducted in accordance with the Civil Practice Law, except to the extent the provisions of this Act indicate to the contrary or are inconsistent, in which case this Act governs.

(Source: P.A. 82-783.)

(405 ILCS 5/6-101) (from Ch. 91 ½, par. 6-101)

Sec. 6-101. Any person affected by a final administrative decision of the Department or the Board of Reimbursement Appeals, pursuant to this Act, may have such decisions reviewed only under and in accordance with the Administrative Review Law, as now or hereafter amended. The Administrative Review Law, as amended, and the rules adopted pursuant thereto, apply to and govern all proceedings for the judicial review of final administrative decisions of the Department hereunder. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure. (Source: P.A. 82-783.)

(405 ILCS 5/6-102) (from Ch. 91 ½, par. 6-102)

Sec. 6-102. Any person who conspires unlawfully to cause, or unlawfully causes, any person to be adjudicated as subject to involuntary or judicial admission or as a person under legal disability or to be detained at, or admitted to any mental health facility or developmental disabilities facility, or any person who receives or detains a person with mental illness or person with a developmental disability, contrary to this Act, or any person who maltreats a person with mental illness or person with a developmental disability, or any person who knowingly aids, abets or assists or encourages a person with mental illness or person with a developmental disability to be absent without permission from any facility or custodian in which or by whom such person is lawfully detained, or any person who violates any provision contained in this Act or rule or regulation of the Department issued under this Act commits a Class A misdemeanor.

(Source: P.A. 88-380.)

(405 ILCS 5/6-103) (from Ch. 91 ½, par. 6-103)

Sec. 6-103. (a) All persons acting in good faith and without negligence in connection with the preparation of applications, petitions, certificates or other documents, for the apprehension, transportation, examination, treatment, habilitation, detention or discharge of an individual under the provisions of this Act incur no liability, civil or criminal, by reason of such acts.

(b) There shall be no liability on the part of, and no cause of action shall arise against, any person who is a physician, clinical psychologist, or qualified examiner based upon that person's failure to warn of and protect from a recipient's threatened or actual violent behavior except where the recipient has communicated to the person a serious threat of physical violence against a reasonably identifiable victim or victims. Nothing in this Section shall relieve any employee or director of any residential mental health or developmental disabilities facility from any duty he may have to protect the residents of such a facility from any other resident.

c) Any duty which any person may owe to anyone other than a resident of a mental health and developmental disabilities facility shall be discharged by that person making a reasonable effort to communicate the threat to the victim and to a law enforcement agency, or by a reasonable effort to obtain the hospitalization of the recipient.

(d) An act of omission or commission by a peace officer acting in good faith in rendering emergency assistance or otherwise enforcing this Code does not impose civil liability on the peace officer or his or her supervisor or employer unless the act is a result of willful or wanton misconduct.

(Source: P.A. 91-726, eff. 6-2-00.)

(405 ILCS 5/6-104) (from Ch. 91 ½, par. 6-104)

Sec. 6-104. Unless otherwise specifically provided elsewhere by law, nothing contained in this Act or in any Act amendatory thereof affects or impairs the validity of any act done or right accruing, accrued, acquired, or any order, judgment or status established prior to the enactment of this Act or prior to the enactment of any Act amendatory thereof, and, as to any persons admitted or committed pursuant to any Act in effect prior to the effective date of this Act, the provisions of any such prior Act shall continue to govern, except where there are express provisions in this Act relating to such persons.

(Source: P.A. 80-1414.)

(405 ILCS 5/6-105) (from Ch. 91 ½, par. 6-105)

Sec. 6-105. The provisions for repeal contained in this Act do not in any way affect an offense committed, an act done, a penalty, punishment or forfeiture incurred, or a claim, right, power or remedy accrued under any law in force prior to the effective date of this Act.

(Source: P.A. 80-1414.)

(405 ILCS 5/6-106) (from Ch. 91 ½, par. 6-106)

Sec. 6-106. The "Mental Health Code of 1967", approved August 14, 1967, as amended, is repealed.

(Source: P.A. 80-1414.)

(405 ILCS 5/6-107) (from Ch. 91 ½, par. 6-107)

Sec. 6-107. This Act takes effect January 1, 1979.

(Source: P.A. 80-1414.)

Confidentiality Act

(740 ILCS 110/) Mental Health and Developmental Disabilities Confidentiality Act.

(740 ILCS 110/1) (from Ch. 91 1/2, par. 801)

Sec. 1. This Act shall be known and may be cited as the "Mental Health and Developmental Disabilities Confidentiality Act".

(Source: P.A. 80-1508.)

(740 ILCS 110/2) (from Ch. 91 1/2, par. 802)

Sec. 2. The terms used in this Act, unless the context requires otherwise, have the meanings ascribed to them in this Section.

"Agent" means a person who has been legally appointed as an individual's agent under a power of attorney for health care or for property.

"Confidential communication" or "communication" means any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes information which indicates that a person is a recipient.

"Guardian" means a legally appointed guardian or conservator of the person.

"Mental health or developmental disabilities services" or "services" includes but is not limited to examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation.

"Personal notes" means:

(i) information disclosed to the therapist in confidence by other persons on condition that such information would never be disclosed to the recipient or other persons;

(ii) information disclosed to the therapist by the recipient which would be injurious to the recipient's relationships to other persons, and

(iii) the therapist's speculations, impressions, hunches, and reminders.

"Parent" means a parent or, in the absence of a parent or guardian, a person in loco parentis.

"Recipient" means a person who is receiving or has received mental health or developmental disabilities services.

"Record" means any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided. "Records" includes all records maintained by a court that have been created in connection with, in preparation for, or as a result of the filing of any petition or certificate under Chapter II, Chapter III, or Chapter IV of the Mental Health and Developmental Disabilities Code and includes the petitions, certificates, dispositional reports, treatment plans, and reports of diagnostic evaluations and of hearings under Article VIII of Chapter III or under Article V of Chapter IV of that Code. Record does not include the therapist's personal notes, if such notes are kept in the therapist's sole possession for his own personal use and are not disclosed to any other person, except the therapist's supervisor, consulting therapist or attorney. If at any time such notes are disclosed, they shall be considered part of the recipient's record for purposes of this Act.

"Record custodian" means a person responsible for maintaining a recipient's record.

"Therapist" means a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or developmental disabilities services or any other person not prohibited by law from providing such services or from holding himself out as a therapist if the recipient reasonably believes that such person is permitted to do so. Therapist includes any successor of the therapist.

(Source: P.A. 89-58, eff. 1-1-96; 90-538, eff. 12-1-97.)

(740 ILCS 110/3) (from Ch. 91 1/2, par. 803)

Sec. 3. (a) All records and communications shall be confidential and shall not be disclosed except as provided in this Act.

(b) A therapist is not required to but may, to the extent he determines it necessary and appropriate, keep personal notes regarding a recipient. Such personal notes are the work product and personal property of the therapist and shall not be subject to discovery in any judicial, administrative or legislative proceeding or any proceeding preliminary thereto.

(c) Psychological test material whose disclosure would compromise the objectivity or fairness of the testing process may not be disclosed to anyone including the subject of the test and is not subject to disclosure in any administrative, judicial or legislative proceeding. However, any recipient who has been the subject of the psychological test shall have the right to have all records relating to that test disclosed to any psychologist designated by the recipient. Requests for such disclosure shall be in writing and shall comply with the requirements of subsection (b) of Section 5 of this Act.

(Source: P.A. 86-1417.)

(740 ILCS 110/4) (from Ch. 91 1/2, par. 804)

Sec. 4. (a) The following persons shall be entitled, upon request, to inspect and copy a recipient's record or any part thereof:

(1) the parent or guardian of a recipient who is under 12 years of age;

(2) the recipient if he is 12 years of age or older;

(3) the parent or guardian of a recipient who is at least 12 but under 18 years, if the recipient is informed and does not object or if the therapist does not find that there are compelling reasons for denying the access. The parent or guardian who is denied access by either the recipient or the therapist may petition a court for access to the record. Nothing in this paragraph is intended to prohibit the parent or guardian of a recipient who is at least 12 but under 18 years from requesting and receiving the following information: current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, including medication, if any;

(4) the guardian of a recipient who is 18 years or older;

(5) an attorney or guardian ad litem who represents a minor 12 years of age or older in any judicial or administrative proceeding, provided that the court or administrative hearing officer has entered an order granting the attorney this right; or

(6) an agent appointed under a recipient's power of attorney for health care or for property, when the power of attorney authorizes the access.

(b) Assistance in interpreting the record may be provided without charge and shall be provided if the person inspecting the record is under 18 years of age. However, access may in no way be denied or limited if the person inspecting the record refuses the assistance. A reasonable fee may be charged for duplication of a record. However, when requested to do so in writing by any indigent recipient, the custodian of the records shall provide at no charge to the recipient, or to the Guardianship and Advocacy Commission, the agency designated by the Governor under Section 1 of the Protection and Advocacy for Developmentally Disabled Persons Act or to any other not-for-profit agency whose primary purpose is to provide free legal services or advocacy for the indigent and who has received written authorization from the recipient under Section 5 of this Act to receive his records, one copy of any records in its possession whose disclosure is authorized under this Act.

(c) Any person entitled to access to a record under this Section may submit a written statement concerning any disputed or new information, which statement shall be entered into the record. Whenever any disputed part of a record is disclosed, any submitted statement relating thereto shall accompany the disclosed part. Additionally, any person entitled to access may request modification of any part of the record which he believes is incorrect or misleading. If the request is refused, the person may seek a court order to compel modification.

(d) Whenever access or modification is requested, the request and any action taken thereon shall be noted in the recipient's record.

(Source: P.A. 88-484; 89-439, eff. 6-1-96.)

(740 ILCS 110/5) (from Ch. 91 1/2, par. 805)

Sec. 5. Disclosure; consent.

(a) Except as provided in Sections 6 through 12.2 of this Act, records and communications may be disclosed to

someone other than those persons listed in Section 4 of this Act only with the written consent of those persons who are entitled to inspect and copy a recipient's record pursuant to Section 4 of this Act.

(b) Every consent form shall be in writing and shall specify the following:

- (1) the person or agency to whom disclosure is to be made;
- (2) the purpose for which disclosure is to be made;
- (3) the nature of the information to be disclosed;
- (4) the right to inspect and copy the information to be disclosed;
- (5) the consequences of a refusal to consent, if any; and
- (6) the calendar date on which the consent expires, provided that if no calendar date is stated, information may be released only on the day the consent form is received by the therapist; and
- (7) the right to revoke the consent at any time.

The consent form shall be signed by the person entitled to give consent and the signature shall be witnessed by a person who can attest to the identity of the person so entitled. A copy of the consent and a notation as to any action taken thereon shall be entered in the recipient's record. Any revocation of consent shall be in writing, signed by the person who gave the consent and the signature shall be witnessed by a person who can attest to the identity of the person so entitled. No written revocation of consent shall be effective to prevent disclosure of records and communications until it is received by the person otherwise authorized to disclose records and communications.

(c) Only information relevant to the purpose for which disclosure is sought may be disclosed. Blanket consent to the disclosure of unspecified information shall not be valid. Advance consent may be valid only if the nature of the information to be disclosed is specified in detail and the duration of the consent is indicated. Consent may be revoked in writing at any time; any such revocation shall have no effect on disclosures made prior thereto.

(d) No person or agency to whom any information is disclosed under this Section may redisclose such information unless the person who consented to the disclosure specifically consents to such redisclosure.

(e) Except as otherwise provided in this Act, records and communications shall remain confidential after the death of a recipient and shall not be disclosed unless the recipient's representative, as defined in the Probate Act of 1975 and the therapist consent to such disclosure or unless disclosure is authorized by court order after in camera examination and upon good cause shown.

(f) Paragraphs (a) through (e) of this Section shall not apply to and shall not be construed to limit insurance companies writing Life, Accident or Health insurance as defined in Section 4 of the Illinois Insurance Code in obtaining general consents for the release to them or their designated representatives of any and all confidential communications and records kept by agencies, hospitals, therapists or record custodians, and utilizing such information in connection with the underwriting of applications for coverage for such policies or contracts, or in connection with evaluating claims or liability under such policies or contracts, or coordinating benefits pursuant to policy or contract provisions.

(Source: P.A. 90-655, eff. 7-30-98)

(740 ILCS 110/6) (from Ch. 91 1/2, par. 806)

Sec. 6. Such information from a recipient's record as is necessary to enable him to apply for or receive benefits may be disclosed with consent obtained pursuant to Section 5 of this Act. Disclosure may be made without consent when despite every reasonable effort it is not possible to obtain consent because the person entitled to give consent is not capable of consenting or is not available to do so. The recipient shall be informed of any disclosure made without consent. The information disclosed without consent under this Section may include only the identity of the recipient and therapist and a description of the nature, purpose, quantity, and date of the services provided. Any request for additional information shall state with particularity what further information is needed and the reasons therefor. Refusal to consent to the disclosure of more information than is necessary to apply for or receive direct benefits shall not be grounds for in any way denying, limiting, or cancelling such benefits or refusing to accept an application or renew such benefits. Such information shall not be redisclosed except with the consent of the person entitled to give consent.

(Source: P.A. 80-1508.)

(740 ILCS 110/7) (from Ch. 91 ½, par. 807)

Sec. 7. Review of therapist or agency; use of recipient's record.

(a) When a therapist or agency which provides services is being reviewed for purposes of licensure, statistical compilation, research, evaluation, or other similar purpose, a recipient's record may be used by the person conducting the review to the extent that this is necessary to accomplish the purpose of the review, provided that personally identifiable data is removed from the record before use. Personally identifiable data may be disclosed only with the consent obtained under Section 5 of this Act. Licensure and the like may not be withheld or withdrawn for failure to disclose personally identifiable data if consent is not obtained.

(b) When an agency which provides services is being reviewed for purposes of funding, accreditation, reimbursement or audit by a State or federal agency or accrediting body, a recipient's record may be used by the person conducting the review and personally identifiable information may be disclosed without consent, provided that the personally identifiable information is necessary to accomplish the purpose of the review.

For the purpose of this subsection, an inspection investigation or site visit by the United States Department of Justice regarding compliance with a pending consent decree is considered an audit by a federal agency.

(c) The Mental Health and Developmental Disabilities Medical Review Board shall be entitled to inspect and copy the records of any recipient. Information disclosed under this subsection may not be redisclosed without the written consent of one of the persons identified in Section 4 of this Act.

(Source: P.A. 88-484.)

(740 ILCS 110/7.1)

Sec. 7.1. Interagency disclosures.

(a) Nothing in this Act shall be construed to prevent the interagency disclosure of the name, social security number, and information concerning services rendered, currently being rendered, or proposed to be rendered regarding a recipient of services. This disclosure may be made only between agencies or departments of the State including, but not limited to: (i) the Department of Human Services, (ii) the Department of Public Aid, (iii) the Department of Public Health, (iv) the State Board of Education, and (v) the Department of Children and Family Services for the purpose of a diligent search for a missing parent pursuant to Sections 2-15 and 2-16 of the Juvenile Court Act of 1987 if the Department of Children and Family Services has reason to believe the parent is residing in a mental health facility, when one or more agencies or departments of the State have entered into a prior interagency agreement, memorandum of understanding, or similar agreement to jointly provide or cooperate in the provision of or funding of mental health or developmental disabilities services.

The Department of Children and Family Services shall not redisclose the information received under this Section other than for purposes of service provision or as necessary for proceedings under the Juvenile Court Act of 1987.

(b) This Section applies to, but is not limited to, interagency disclosures under interagency agreements entered into in compliance with the Early Intervention Services System Act.

(c) Information disclosed under this Section shall be for the limited purpose of coordinating State efforts in providing efficient interagency service systems and avoiding duplication of interagency services.

(d) Information disclosed under this Section shall be limited to the recipient's name, address, social security number or other individually assigned identifying number, or information generally descriptive of services rendered or to be rendered. The disclosure of individual clinical or treatment records or other confidential information is not authorized by this Section.

(Source: P.A. 89-507, eff. 7-1-97; 90-608, eff. 6-30-98.)

(740 ILCS 110/8) (from Ch. 91 ½, par. 808)

Sec. 8. In the course of an investigation, or in the course of monitoring issues concerning the rights of recipients or the services provided to recipients as authorized by subsection (l) of Section 5 of the Guardianship and Advocacy Act, a regional human rights authority of the Guardianship and Advocacy Commission created by the Guardianship and

Advocacy Act may inspect and copy any recipient's records in the possession of a therapist, agency, Department or facility which provides services to a recipient, including reports of suspected abuse or neglect of a recipient and information regarding the disposition of such reports. However, a regional authority may not inspect or copy records containing personally identifiable data which cannot be removed without imposing an unreasonable burden on the therapist, agency, Department or facility which provides services, except as provided herein. The regional authority shall give written notice to the person entitled to give consent for the identifiable recipient of services under Section 4 that it is conducting an investigation or monitoring and indicating the nature and purpose of the investigation or monitoring and the need to inspect and copy the recipient's record. If the person notified objects in writing to such inspection and copying, the regional authority may not inspect or copy the record. The therapist, agency, Department or facility which provides services may not object on behalf of a recipient.
(Source: P.A. 86-820; 86-1013; 86-1475.)

(740 ILCS 110/8.1) (from Ch. 91 1/2, par. 808.1)

Sec. 8.1. The agency designated by the Governor under Section 1 of "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named", approved September 20, 1985, as now or hereafter amended, shall have access, for the purpose of inspection and copying, to the records of a person with developmental disabilities who resides in a developmental disability facility or mental health facility, as defined in Sections 1-107 and 1-114, respectively, of the Mental Health and Developmental Disabilities Code, as now or hereafter amended, if (a) a complaint is received by such agency from or on behalf of the person with a developmental disability, and (b) such person does not have a guardian of the person or the State or the designee of the State is his or her guardian of the person. The designated agency shall provide written notice of the receipt of a complaint to the custodian of the records of the person from whom or on whose behalf a complaint is received. The designated agency shall provide to the person with developmental disabilities and to his or her State guardian, if appointed, written notice of the nature of the complaint based upon which the designated agency has gained access to the records. No record or the contents of any record shall be redisclosed by the designated agency unless the person with developmental disabilities and the State guardian are provided 7 days advance written notice, except in emergency situations, of the designated agency's intent to redisclose such record, during which time the person with developmental disabilities or the State guardian may seek to judicially enjoin the designated agency's redisclosure of such record on the grounds that such redisclosure is contrary to the interests of the person with developmental disabilities. If a person with developmental disabilities resides in a developmental disability or mental health facility and has a guardian other than the State or the designee of the State, the facility director shall disclose the guardian's name, address and telephone number to the designated agency at the agency's request.

Upon written request and after the provision of written notice to the agency, facility or other body from which records and other materials are sought of the designated agency's investigation of problems affecting numbers of persons with developmental disabilities, the designated agency shall be entitled to inspect and copy any records or other materials which may further the agency's investigation of problems affecting numbers of persons with developmental disabilities. When required by law any personally identifiable information of persons with developmental disabilities shall be removed from the records. However, the designated agency may not inspect or copy records or other materials when the removal of personally identifiable information imposes an unreasonable burden on mental health and developmental disabilities facilities.

For the purposes of this Section, "developmental disability" means a severe, chronic disability of a person which -

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in 3 or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

(Source: P.A. 88-380.)

740 ILCS 110/9) (from Ch. 91 1/2, par. 809)

(Text of Section WITH the changes made by P.A. 89-7, which has been held unconstitutional)

Sec. 9. Therapist's disclosure without consent. In the course of providing services and after the conclusion of the provision of services, a therapist may disclose a record or communications without consent to:

- (1) the therapist's supervisor, a consulting therapist, members of a staff team participating in the provision of services, a record custodian, or a person acting under the supervision and control of the therapist;
- (2) persons conducting a peer review of the services being provided;
- (3) the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities;
- (4) an attorney or advocate consulted by a therapist or agency which provides services concerning the therapist's or agency's legal rights or duties in relation to the recipient and the services being provided; and
- (5) the Inspector General of the Department of Children and Family Services when such records or communications are relevant to a pending investigation authorized by Section 35.5 of the Children and Family Services Act where:

(A) the recipient was either (i) a parent, foster parent, or caretaker who is an alleged perpetrator of abuse or neglect or the subject of a dependency investigation or (ii) a non-ward victim of alleged abuse or neglect, and

(B) available information demonstrates that the mental health of the recipient was or should have been an issue to the safety of the child. In the course of providing services, a therapist may disclose a record or communications without consent to any department, agency, institution or facility which has custody of the recipient pursuant to State statute or any court order of commitment. Information may be disclosed under this Section only to the extent that knowledge of the record or communications is essential to the purpose for which disclosure is made and only after the recipient is informed that such disclosure may be made. A person to whom disclosure is made under this Section shall not redisclose any information except as provided in this Act. Notwithstanding any other provision of this Section, a therapist has the right to communicate at any time and in any fashion with his or her counsel or professional liability insurance carrier, or both, concerning any care or treatment he or she provided, or assisted in providing, to any recipient. A therapist has the right to communicate at any time and in any fashion with his or her present or former employer, principal, partner, professional corporation, or professional liability insurance carrier, or counsel for any of those entities, concerning any care or treatment he or she provided, or assisted in providing, to the recipient within the scope of his or her employment, affiliation, or other agency with the employer, principal, partner, or professional corporation. This amendatory Act of 1995 applies to causes of action filed on or after its effective date.

(Source: P.A. 89-7, eff. 3-9-95; 90-512, eff. 8-22-97.)

(Text of Section WITHOUT the changes made by P.A. 89-7, which has been held unconstitutional)

Sec. 9. In the course of providing services and after the conclusion of the provision of services, a therapist may disclose a record or communications without consent to:

- (1) the therapist's supervisor, a consulting therapist, members of a staff team participating in the provision of services, a record custodian, or a person acting under the supervision and control of the therapist;
- (2) persons conducting a peer review of the services being provided;
- (3) the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities;
- (4) an attorney or advocate consulted by a therapist or agency which provides services concerning the therapist's or agency's legal rights or duties relation to the recipient and the services being provided; and
- (5) the Inspector General of the Department of Children and Family Services when such records or communications are relevant to a pending investigation authorized by Section 35.5 of the Children and Family Services Act where:
 - (A) the recipient was either (i) a parent, foster parent, or caretaker who is an alleged perpetrator of abuse or

neglect or the subject of a dependency investigation or (ii) a non-ward victim of alleged abuse or neglect, and

(B) available information demonstrates that the mental health of the recipient was or should have been an issue to the safety of the child. In the course of providing services, a therapist may disclose a record or communications without consent to any department, agency, institution or facility which has custody of the recipient pursuant to State statute or any court order of commitment. Information may be disclosed under this Section only to the extent that knowledge of the record or communications is essential to the purpose for which disclosure is made and only after the recipient is informed that such disclosure may be made. A person to whom disclosure is made under this Section shall not redisclose any information except as provided in this Act.

(Source: P.A. 86-955; 90-512, eff. 8-22-97.)

(740 ILCS 110/9.1) (from Ch. 91 1/2, par. 809.1)

Sec. 9.1. The Department of Human Services, and other agencies and institutions which provide services, may disclose a recipient's record or communications, without consent, to the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities for purposes of research, education and treatment. The Institutes shall not redisclose any personally identifiable information, unless necessary for treatment of the identified recipient.

(Source: P.A. 89-507, eff. 7-1-97.)

(740 ILCS 110/9.2)

Sec. 9.2. Interagency disclosure of recipient information. For the purposes of continuity of care, the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities), community agencies funded by the Department of Human Services in that capacity, and jails operated by any county of this State may disclose a recipient's record or communications, without consent, to each other, but only for the purpose of admission, treatment, planning, or discharge. Entities shall not redisclose any personally identifiable information, unless necessary for admission, treatment, planning, or discharge of the identified recipient to another setting. No records or communications may be disclosed to a county jail pursuant to this Section unless the Department has entered into a written agreement with the county jail requiring that the county jail adopt written policies and procedures designed to ensure that the records and communications are disclosed only to those persons employed by or under contract to the county jail who are involved in the provision of mental health services to inmates and that the records and communications are protected from further disclosure.

(Source: P.A. 91-536, eff. 1-1-00.)

(740 ILCS 110/9.3)

Sec. 9.3. Disclosure without consent under the Sexually Violent Persons Commitment Act. Disclosure may be made without consent by any therapist or other treatment provider providing mental health or developmental disabilities services pursuant to the provisions of the Sexually Violent Persons Commitment Act or who previously provided any type of mental health or developmental disabilities services to a person who is subject to an evaluation, investigation, or prosecution of a petition under the Sexually Violent Persons Commitment Act. Disclosure may be made to the Attorney General, the State's Attorney participating in the case, the Department of Human Services, the court, and any other party to whom the court directs disclosure to be made. The information disclosed may include any records or communications in the possession of the Department of Corrections, if those records or communications were relied upon by the therapist in providing mental health or developmental disabilities services pursuant to the Sexually Violent Persons Commitment Act. Any records and any information obtained from those records under this Section may be used only in sexually violent persons commitment proceedings.

(Source: P.A. 92-415, eff. 8-17-01.)

(740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

Sec. 10. (a) Except as provided herein, in any civil, criminal, administrative, or legislative proceeding, or in any proceeding preliminary thereto, a recipient, and a therapist on behalf and in the interest of a recipient, has the privilege to refuse to disclose and to prevent the disclosure of the recipient's record or communications.

(1) Records and communications may be disclosed in a civil, criminal or administrative proceeding in which the recipient introduces his mental condition or any aspect of his services received for such condition as an element of his claim or defense, if and only to the extent the court in which the proceedings have been brought, or, in the case of an administrative proceeding, the court to which an appeal or other action for review of an administrative determination may be taken, finds, after in camera examination of testimony or other evidence, that it is relevant, probative, not unduly prejudicial or inflammatory, and otherwise clearly admissible; that other satisfactory evidence is demonstrably unsatisfactory as evidence of the facts sought to be established by such evidence; and that disclosure is more important to the interests of substantial justice than protection from injury to the therapist-recipient relationship or to the recipient or other whom disclosure is likely to harm. Except in a criminal proceeding in which the recipient, who is accused in that proceeding, raises the defense of insanity, no record or communication between a therapist and a recipient shall be deemed relevant for purposes of this subsection, except the fact of treatment, the cost of services and the ultimate diagnosis unless the party seeking disclosure of the communication clearly establishes in the trial court a compelling need for its production. However, for purposes of this Act, in any action brought or defended under the Illinois Marriage and Dissolution of Marriage Act, or in any action in which pain and suffering is an element of the claim, mental condition shall not be deemed to be introduced merely by making such claim and shall be deemed to be introduced only if the recipient or a witness on his behalf first testifies concerning the record or communication.

(2) Records or communications may be disclosed in a civil proceeding after the recipient's death when the recipient's physical or mental condition has been introduced as an element of a claim or defense by any party claiming or defending through or as a beneficiary of the recipient, provided the court finds, after in camera examination of the evidence, that it is relevant, probative, and otherwise clearly admissible; that other satisfactory evidence is not available regarding the facts sought to be established by such evidence; and that disclosure is more important to the interests of substantial justice than protection from any injury which disclosure is likely to cause.

(3) In the event of a claim made or an action filed by a recipient, or, following the recipient's death, by any party claiming as a beneficiary of the recipient for injury caused in the course of providing services to such recipient, the therapist and other persons whose actions are alleged to have been the cause of injury may disclose pertinent records and communications to an attorney or attorneys engaged to render advice about and to provide representation in connection with such matter and to persons working under the supervision of such attorney or attorneys, and may testify as to such records or communication in any administrative, judicial or discovery proceeding for the purpose of preparing and presenting a defense against such claim or action.

(4) Records and communications made to or by a therapist in the course of examination ordered by a court for good cause shown may, if otherwise relevant and admissible, be disclosed in a civil, criminal, or administrative proceeding in which the recipient is a party or in appropriate pretrial proceedings, provided such court has found that the recipient has been as adequately and as effectively as possible informed before submitting to such examination that such records and communications would not be considered confidential or privileged. Such records and communications shall be admissible only as to issues involving the recipient's physical or mental condition and only to the extent that these are germane to such proceedings.

(5) Records and communications may be disclosed in a proceeding under the Probate Act of 1975, to determine a recipient's competency or need for guardianship, provided that the disclosure is made only with respect to that issue.

(6) Records and communications may be disclosed when such are made during treatment which the recipient is ordered to undergo to render him fit to stand trial on a criminal charge, provided that the disclosure is made only with respect to the issue of fitness to stand trial.

(7) Records and communications of the recipient may be disclosed in any civil or administrative proceeding involving the validity of or benefits under a life, accident, health or disability insurance policy or certificate, or Health Care Service Plan Contract, insuring the recipient, but only if and to the extent that the recipient's mental condition, or

treatment or services in connection therewith, is a material element of any claim or defense of any party, provided that information sought or disclosed shall not be redisclosed except in connection with the proceeding in which disclosure is made.

(8) Records or communications may be disclosed when such are relevant to a matter in issue in any action brought under this Act and proceedings preliminary thereto, provided that any information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with such action or preliminary proceedings.

(9) Records and communications of the recipient may be disclosed in investigations of and trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide.

(10) Records and communications of a deceased recipient may be disclosed to a coroner conducting a preliminary investigation into the recipient's death under Section 3-3013 of the Counties Code. However, records and communications of the deceased recipient disclosed in an investigation shall be limited solely to the deceased recipient's records and communications relating to the factual circumstances of the incident being investigated in a mental health facility.

(11) Records and communications of a recipient shall be disclosed in a proceeding where a petition or motion is filed under the Juvenile Court Act of 1987 and the recipient is named as a parent, guardian, or legal custodian of a minor who is the subject of a petition for wardship as described in Section 2-3 of that Act or a minor who is the subject of a petition for wardship as described in Section 2-4 of that Act alleging the minor is abused, neglected, or dependent or the recipient is named as a parent of a child who is the subject of a petition, supplemental petition, or motion to appoint a guardian with the power to consent to adoption under Section 2-29 of the Juvenile Court Act of 1987.

(12) Records and communications of a recipient may be disclosed when disclosure is necessary to collect sums or receive third party payment representing charges for mental health or developmental disabilities services provided by a therapist or agency to a recipient; however, disclosure shall be limited to information needed to pursue collection, and the information so disclosed may not be used for any other purposes nor may it be redisclosed except in connection with collection activities. Whenever records are disclosed pursuant to this subdivision (12), the recipient of the records shall be advised in writing that any person who discloses mental health records and communications in violation of this Act may be subject to civil liability pursuant to Section 15 of this Act or to criminal penalties pursuant to Section 16 of this Act or both.

(b) Before a disclosure is made under subsection (a), any party to the proceeding or any other interested person may request an in camera review of the record or communications to be disclosed. The court or agency conducting the proceeding may hold an in camera review on its own motion. When, contrary to the express wish of the recipient, the therapist asserts a privilege on behalf and in the interest of a recipient, the court may require that the therapist, in an in camera hearing, establish that disclosure is not in the best interest of the recipient. The court or agency may prevent disclosure or limit disclosure to the extent that other admissible evidence is sufficient to establish the facts in issue. The court or agency may enter such orders as may be necessary in order to protect the confidentiality, privacy, and safety of the recipient or of other persons. Any order to disclose or to not disclose shall be considered a final order for purposes of appeal and shall be subject to interlocutory appeal.

(c) A recipient's records and communications may be disclosed to a duly authorized committee, commission or subcommittee of the General Assembly which possesses subpoena and hearing powers, upon a written request approved by a majority vote of the committee, commission or subcommittee members. The committee, commission or subcommittee may request records only for the purposes of investigating or studying possible violations of recipient rights. The request shall state the purpose for which disclosure is sought.

The facility shall notify the recipient, or his guardian, and therapist in writing of any disclosure request under this subsection within 5 business days after such request. Such notification shall also inform the recipient, or guardian, and therapist of their right to object to the disclosure within 10 business days after receipt of the notification and shall include the name, address and telephone number of the committee, commission or subcommittee member or staff person with whom an objection shall be filed. If no objection has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and communications to the committee, commission or subcommittee. If an objection

has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and communications only after the committee, commission or subcommittee has permitted the recipient, guardian or therapist to present his objection in person before it and has renewed its request for disclosure by a majority vote of its members.

Disclosure under this subsection shall not occur until all personally identifiable data of the recipient and provider are removed from the records and communications. Disclosure under this subsection shall not occur in any public proceeding.

(d) No party to any proceeding described under paragraphs (1), (2), (3), (4), (7), or (8) of subsection (a) of this Section, nor his or her attorney, shall serve a subpoena seeking to obtain access to records or communications under this Act unless the subpoena is accompanied by a written order issued by a judge, authorizing the disclosure of the records or the issuance of the subpoena. No person shall comply with a subpoena for records or communications under this Act, unless the subpoena is accompanied by a written order authorizing the issuance of the subpoena or the disclosure of the records.

(e) When a person has been transported by a peace officer to a mental health facility, then upon the request of a peace officer, if the person is allowed to leave the mental health facility within 48 hours of arrival, excluding Saturdays, Sundays, and holidays, the facility director shall notify the local law enforcement authority prior to the release of the person. The local law enforcement authority may re-disclose the information as necessary to alert the appropriate enforcement or prosecuting authority.

(f) A recipient's records and communications shall be disclosed to the Inspector General of the Department of Human Services within 10 business days of a request by the Inspector General (i) in the course of an investigation authorized by the Abused and Neglected Long Term Care Facility Residents Reporting Act and applicable rule or (ii) during the course of an assessment authorized by the Abuse of Adults with Disabilities Intervention Act and applicable rule. The request shall be in writing and signed by the Inspector General or his or her designee. The request shall state the purpose for which disclosure is sought. Any person who knowingly and willfully refuses to comply with such a request is guilty of a Class A misdemeanor.

(Source: P.A. 92-358, eff. 8-15-01; 92-708, eff. 7-19-02; 93-751, eff. 7-15-04.)

(740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

Sec. 11. Disclosure of records and communications. Records and communications may be disclosed:

(i) in accordance with the provisions of the Abused and Neglected Child Reporting Act;

(ii) when, and to the extent, a therapist, in his or her sole discretion, determines that disclosure is necessary to initiate or continue civil commitment proceedings under the laws of this State or to otherwise protect the recipient or other person against a clear, imminent risk of serious physical or mental injury or disease or death being inflicted upon the recipient or by the recipient on himself or another;

(iii) when, and to the extent disclosure is, in the sole discretion of the therapist, necessary to the provision of emergency medical care to a recipient who is unable to assert or waive his or her rights hereunder;

(iv) when disclosure is necessary to collect sums or receive third party payment representing charges for mental health or developmental disabilities services provided by a therapist or agency to a recipient under Chapter V of the Mental Health and Developmental Disabilities Code or to transfer debts under the Uncollected State Claims Act; however, disclosure shall be limited to information needed to pursue collection, and the information so disclosed shall not be used for any other purposes nor shall it be redisclosed except in connection with collection activities;

(v) when requested by a family member, the Department of Human Services may assist in the location of the interment site of a deceased recipient who is interred in a cemetery established under Section 100-26 of the Mental Health and Developmental Disabilities Administrative Act;

(vi) in judicial proceedings under Article VIII of Chapter III and Article V of Chapter IV of the Mental Health and Developmental Disabilities Code and proceedings and investigations preliminary thereto, to the State's Attorney for the

county or residence of a person who is the subject of such proceedings, or in which the person is found, or in which the facility is located, to the attorney representing the recipient in the judicial proceedings, to any person or agency providing mental health services that are the subject of the proceedings and to that person's or agency's attorney, to any court personnel, including but not limited to judges and circuit court clerks, and to a guardian ad litem if one has been appointed by the court, provided that the information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with the proceedings or investigations;

(vii) when, and to the extent disclosure is necessary to comply with the requirements of the Census Bureau in taking the federal Decennial Census;

(viii) when, and to the extent, in the therapist's

sole discretion, disclosure is necessary to warn or protect a specific individual against whom a recipient has made a specific threat of violence where there exists a therapist-recipient relationship or a special recipient-individual relationship;

(ix) in accordance with the Sex Offender Registration Act; and

(x) in accordance with the Rights of Crime Victims and Witnesses Act.

Any person, institution, or agency, under this Act, participating in good faith in the making of a report under the Abused and Neglected Child Reporting Act or in the disclosure of records and communications under this Section, shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of such action. For the purpose of any proceeding, civil or criminal, arising out of a report or disclosure under this Section, the good faith of any person, institution, or agency so reporting or disclosing shall be presumed.

(Source: P.A. 90-423, eff. 8-15-97; 90-538, eff. 12-1-97; 90-655, eff. 7-30-98; 91-357, eff. 7-29-99.)

(740 ILCS 110/12) (from Ch. 91 1/2, par. 812)

Sec. 12. (a) If the United States Secret Service or the Department of State Police requests information from a mental health or developmental disability facility, as defined in Section 1-107 and 1-114 of the Mental Health and Developmental Disabilities Code, relating to a specific recipient and the facility director determines that disclosure of such information may be necessary to protect the life of, or to prevent the infliction of great bodily harm to, a public official, or a person under the protection of the United States Secret Service, only the following information may be disclosed: the recipient's name, address, and age and the date of any admission to or discharge from a facility; and any information which would indicate whether or not the recipient has a history of violence or presents a danger of violence to the person under protection. Any information so disclosed shall be used for investigative purposes only and shall not be publicly disseminated. Any person participating in good faith in the disclosure of such information in accordance with this provision shall have immunity from any liability, civil, criminal or otherwise, if such information is disclosed relying upon the representation of an officer of the United States Secret Service or the Department of State Police that a person is under the protection of the United States Secret Service or is a public official.

For the purpose of this subsection (a), the term "public official" means the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Comptroller, State Treasurer or member of the General Assembly. The term shall also include the spouse, child or children of a public official.

(b) The Department of Human Services (acting as successor to the Department of Mental Health and Developmental Disabilities) and all private hospitals are required, as hereafter described in this subsection, to furnish the Department of State Police only such information as may be required for the sole purpose of determining whether an individual who may be or may have been a patient is disqualified because of that status from receiving or retaining a Firearm Owner's Identification Card under subsection (e) of Section 8 of the Firearm Owners Identification Card Act. All private hospitals shall, in the form and manner required by the Department, provide such information as shall be necessary for the Department to comply with the reporting requirements to the Department of State Police. Such information shall be furnished within 30 days after admission to a private hospital. Any such information disclosed under this subsection shall remain privileged and confidential, and shall not be redisclosed nor utilized for any other purpose. The method of

requiring the providing of such information shall guarantee that no information is released beyond what is necessary for this purpose. In addition, the information disclosed shall be provided by the Department within the time period established by Section 24-3 of the Criminal Code of 1961 regarding the delivery of firearms. The method used shall be sufficient to provide the necessary information within the prescribed time period, which may include periodically providing lists to the Department of Human Services or any private hospital of Firearm Owner's Identification Card applicants on which the Department or hospital shall indicate the identities of those individuals who are to its knowledge disqualified from having a Firearm Owner's Identification Card for reasons described herein. The Department may provide for a centralized source of information for the State on this subject under its jurisdiction.

Any person, institution, or agency, under this Act, participating in good faith in the reporting or disclosure of records and communications otherwise in accordance with this provision or with rules, regulations or guidelines issued by the Department shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of the action. For the purpose of any proceeding, civil or criminal, arising out of a report or disclosure in accordance with this provision, the good faith of any person, institution, or agency so reporting or disclosing shall be presumed. The full extent of the immunity provided in this subsection (b) shall apply to any person, institution or agency that fails to make a report or disclosure in the good faith belief that the report or disclosure would violate federal regulations governing the confidentiality of alcohol and drug abuse patient records implementing 42 U.S.C. 290dd-3 and 290ee-3.

For purposes of this subsection (b) only, the following terms shall have the meaning prescribed:

(1) "Hospital" means only that type of institution which is providing full-time residential facilities and treatment for in-patients and excludes institutions, such as community clinics, which only provide treatment to out-patients.

(2) "Patient" shall mean only a person who is an in-patient or resident of any hospital, not an out-patient or client seen solely for periodic consultation.

(c) Upon the request of a peace officer who takes a person into custody and transports such person to a mental health or developmental disability facility pursuant to Section 3-606 or 4-404 of the Mental Health and Developmental Disabilities Code or who transports a person from such facility, a facility director shall furnish said peace officer the name, address, age and name of the nearest relative of the person transported to or from the mental health or developmental disability facility. In no case shall the facility director disclose to the peace officer any information relating to the diagnosis, treatment or evaluation of the person's mental or physical health.

For the purposes of this subsection (c), the terms "mental health or developmental disability facility", "peace officer" and "facility director" shall have the meanings ascribed to them in the Mental Health and Developmental Disabilities Code.

(d) Upon the request of a peace officer or prosecuting authority who is conducting a bona fide investigation of a criminal offense, or attempting to apprehend a fugitive from justice, a facility director may disclose whether a person is present at the facility. Upon request of a peace officer or prosecuting authority who has a valid forcible felony warrant issued, a facility director shall disclose: (1) whether the person who is the subject of the warrant is present at the facility and (2) the date of that person's discharge or future discharge from the facility. The requesting peace officer or prosecuting authority must furnish a case number and the purpose of the investigation or an outstanding arrest warrant at the time of the request. Any person, institution, or agency participating in good faith in disclosing such information in accordance with this subsection (d) is immune from any liability, civil, criminal or otherwise, that might result by reason of the action.

(Source: P.A. 92-738, eff. 7-25-02.)

(740 ILCS 110/12.1) (from Ch. 91 1/2, par. 812.1)

Sec. 12.1. A facility director who has reason to believe that a violation of criminal law or other serious incident has occurred within a mental health or developmental disability facility shall report that violation or incident and the identity of individuals with personal knowledge of the facts related to the violation or incident to the appropriate law enforcement and investigating agencies.

In the course of any investigation conducted pursuant to a report made under this Section, any person with personal

knowledge of the incident or the circumstances surrounding the incident shall disclose that information to the individuals conducting the investigation, except that information regarding a recipient of services shall be limited solely to information relating to the factual circumstances of the incident.

(Source: P.A. 86-1417.)

(740 ILCS 110/12.2) (from Ch. 91 1/2, par. 812.2)

Sec. 12.2. (a) When a recipient who has been judicially or involuntarily admitted, or is a forensic recipient admitted to a developmental disability or mental health facility, as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code, is on an unauthorized absence or otherwise has left the facility without being discharged or being free to do so, the facility director shall immediately furnish and disclose to the appropriate local law enforcement agency identifying information, as defined in this Section, and all further information unrelated to the diagnosis, treatment or evaluation of the recipient's mental or physical health that would aid the law enforcement agency in locating and apprehending the recipient and returning him to the facility.

(b) If a law enforcement agency requests information from a developmental disability or mental health facility, as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code, relating to a recipient who has been admitted to the facility and for whom a missing person report has been filed with a law enforcement agency, the facility director shall, except in the case of a voluntary recipient wherein the recipient's permission in writing must first be obtained, furnish and disclose to the law enforcement agency identifying information as is necessary to confirm or deny whether that person is, or has been since the missing person report was filed, a resident of that facility. The facility director shall notify the law enforcement agency if the missing person is admitted after the request. Any person participating in good faith in the disclosure of information in accordance with this provision shall have immunity from any liability, civil, criminal, or otherwise, if the information is disclosed relying upon the representation of an officer of a law enforcement agency that a missing person report has been filed.

(c) Upon the request of a law enforcement agency in connection with the investigation of a particular felony or sex offense, when the investigation case file number is furnished by the law enforcement agency, a facility director shall immediately disclose to that law enforcement agency identifying information on any forensic recipient who is admitted to a developmental disability or mental health facility, as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code, who was or may have been away from the facility at or about the time of the commission of a particular felony or sex offense, and: (1) whose description, clothing, or both reasonably match the physical description of any person allegedly involved in that particular felony or sex offense; or (2) whose past modus operandi matches the modus operandi of that particular felony or sex offense.

(d) For the purposes of this Section and Section 12.1, "law enforcement agency" means an agency of the State or unit of local government that is vested by law or ordinance with the duty to maintain public order and to enforce criminal laws or ordinances, the Federal Bureau of Investigation, the Central Intelligence Agency, and the United States Secret Service.

(e) For the purpose of this Section, "identifying information" means the name, address, age, and a physical description, including clothing, of the recipient of services, the names and addresses of the recipient's nearest known relatives, where the recipient was known to have been during any past unauthorized absences from a facility, whether the recipient may be suicidal, and the condition of the recipient's physical health as it relates to exposure to the weather. Except as provided in Section 11, in no case shall the facility director disclose to the law enforcement agency any information relating to the diagnosis, treatment, or evaluation of the recipient's mental or physical health, unless the disclosure is deemed necessary by the facility director to insure the safety of the investigating officers or general public.

(f) For the purpose of this Section, "forensic recipient" means a recipient who is placed in a developmental disability facility or mental health facility, as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code, pursuant to Article 104 of the Code of Criminal Procedure or Sections 3-8-5, 3-10-5 or 5-2-4 of the Unified Code of Corrections.

(Source: P.A. 85-666; 85-971; 86-1417.)

(740 ILCS 110/12.3) (from Ch. 91 1/2, par. 812.3)

Sec. 12.3. Nothing in this Act shall be construed to prevent compliance with the notice requirements of Sections 3-902 and 4-704 of the Mental Health and Developmental Disabilities Code.

(Source: P.A. 89-439, eff. 6-1-96.)

(740 ILCS 110/13) (from Ch. 91 1/2, par. 813)

Sec. 13. Whenever disclosure of a record or communication is made without consent pursuant to this Act or whenever a record is used pursuant to Sections 7 and 8 of this Act, a notation of the information disclosed and the purpose of such disclosure or use shall be noted in the recipient's record together with the date and the name of the person to whom disclosure was made or by whom the record was used.

(Source: P.A. 80-1508.)

(740 ILCS 110/14) (from Ch. 91 1/2, par. 814)

Sec. 14. Any agreement purporting to waive any of the provisions of this Act is void.

(Source: P.A. 80-1508.)

(740 ILCS 110/15) (from Ch. 91 1/2, par. 815)

Sec. 15. Any person aggrieved by a violation of this Act may sue for damages, an injunction, or other appropriate relief. Reasonable attorney's fees and costs may be awarded to the successful plaintiff in any action under this Act.

(Source: P.A. 80-1508.)

(740 ILCS 110/16) (from Ch. 91 1/2, par. 816)

Sec. 16. Any person who knowingly and wilfully violates any provision of this Act is guilty of a Class A misdemeanor.

(Source: P.A. 80-1508.)

(740 ILCS 110/17) (from Ch. 91 1/2, par. 817)

Sec. 17. The Secretary of Human Services shall adopt rules and regulations to implement this Act.

(Source: P.A. 89-507, eff. 7-1-97.)