DEPARTMENT OF HUMAN SERVICES FORENSIC HANDBOOK

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SECTION I: INTRODUCTION

This section provides an introduction to the Illinois Department of Human Services Forensic Handbook, an overview of Forensic Services, Forensic Facility contact persons, a map of the State of Illinois identifying the Forensic Treatment Facilities and geographic demarcations for referrals, and contact information for referral coordinators.

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 be located on the Department of Human Services website and updates will be available online.

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PROGRAM OVERVIEW

Forensic Services oversees and coordinates all forensic mental health services for the Illinois Department of Human Services, Division of Mental Health (The Department). 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 5/104) 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 the Department 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 – Minimum and Medium Security

Chester MHC
Adult Males with Mental Illness and/or Mental Retardation – Medium and 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 for the developmentally disabled)

Elgin MHC
Adult Males and Females with Mental Illness – Minimum and Medium Security

McFarland MHC
Adult Males and Females with Mental Illness – Minimum and Medium Security

*__Juvenile Male & Female forensic treatment__ is coordinated through community providers

FORENSIC FACILITY SECURITY LEVEL INFORMATION:
The Department of Human Services - Forensic Services essentially has three general security levels for forensic inpatients.

(1) Minimum Security (formerly Non-Secure) - This type of unit typically serves civil inpatients. The general unit structure is secure with locked doors, including 24/7 staff supervision, security services and controlled access. Residents need an approved grounds pass before they may leave escorted or unescorted. Currently, Minimum Security placement can only be used for forensic patients with prior approval by the court. Typically these patients have misdemeanors, non-violent offenses, and low elopement risk.

(2) Medium Security - 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) Maximum Security - Chester Mental Health Center is the only State operated hospital with maximum security units 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 for more physically dangerous or assaultive patients to be treated as well as those who present substantial escape potential. Chester MHC also has one Medium Security UST unit with reduced in-building restrictions.

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.

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 (Minimum Security) 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:

1. Review and final approval of conditional release recommendations for inpatients in NGRI status.

2. Review, evaluation, and admission approval for Referrals to Chester MHC from non-secure state facilities. These referrals result from combative and high elopement risk civil and forensic patients who cannot be managed in a minimum or medium security state operated mental health inpatient facilities.

3. Placement review of Department of Corrections inmates subject to civil commitment upon release from prison.

4. Development of outpatient treatment options for individuals in NGRI status and monitoring and tracking of conditionally released NGRI clients receiving services in outpatient settings.

5. Development of outpatient treatment options for individuals in UST legal status and monitoring and tracking of UST clients receiving services on outpatient settings

6. Program monitoring of community inpatient juvenile forensic sites.

7. Administrative Oversight for the Sexually Violent Persons - Treatment and Detention Facility in Rushville, Illinois.

8. Development and implementation of initiatives for justice involved adults and juveniles with serious mental illness.

FORENSIC FACILITY CONTACTS & ILLINOIS 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: Ron Floyd, Forensic Coordinator

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: Wayne Womac, Forensic Coordinator

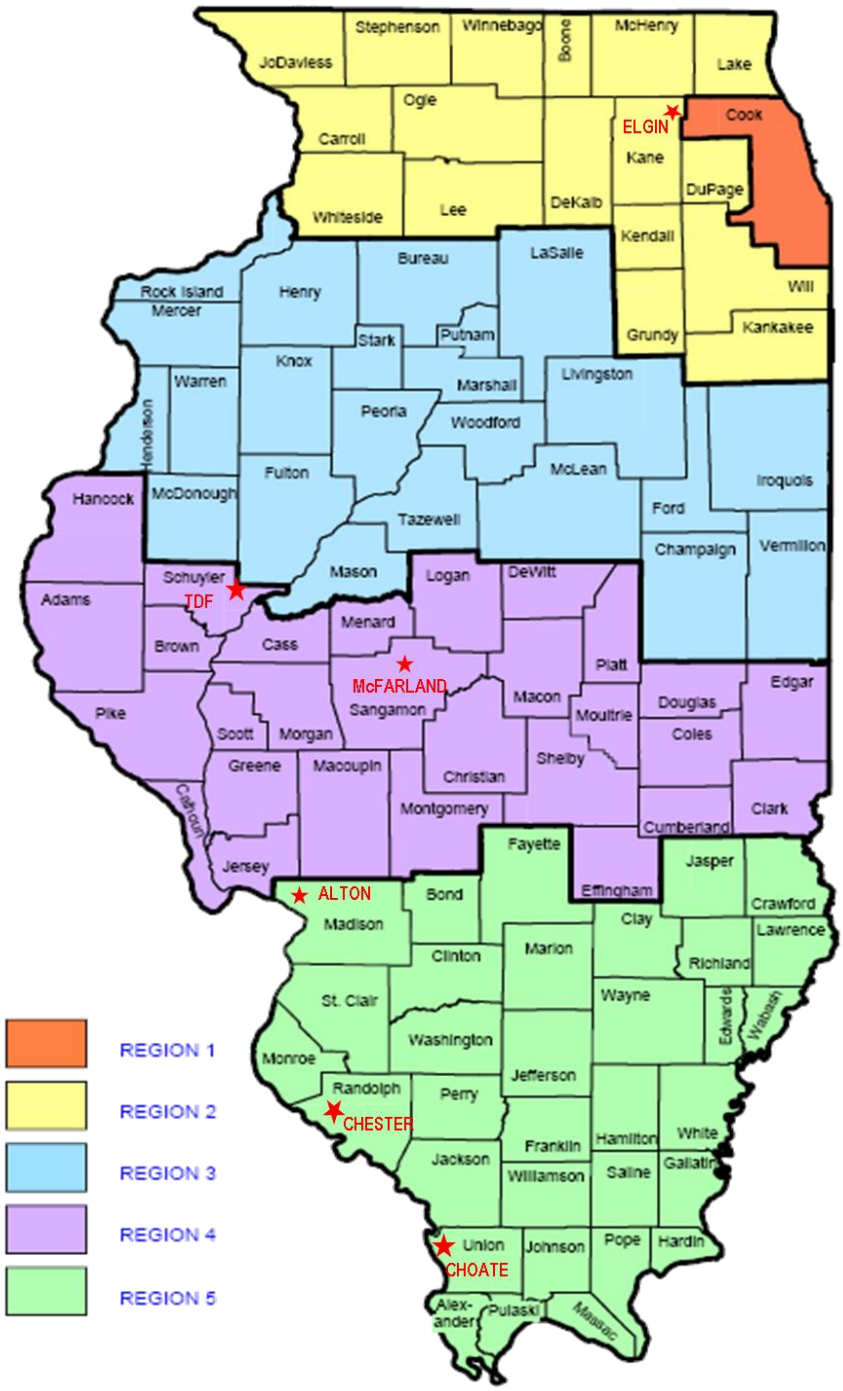
Clyde L. Choate Mental Health and Developmental Center
1000 North Main Street
Anna, IL 62906
Phone: 618/833-5161; TTY: 618/833-4052
Fax: 618/833-4191
Contact: Michael Jasmon, Unit Director - DD Forensic Unit

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: Jeff Pharis, Forensic Coordinator

Andrew McFarland Mental Health Center
901 Southwind Road
Springfield, IL 62703
Phone: 217/786-6900; TDD: 217/786-7241
Fax: 217/786-7167
Contact: Don Henke, Forensic Coordinator

Juvenile Forensic Treatment
Contact: Dr. Sharon L. Coleman, Associate Director of Forensic Services
Phone: 312/814-4909

PLEASE SEE MAP FOR GEOGRAPHIC LOCATION OF THE FACILITIES



SECTION II: UNFIT TO STAND TRIAL

See http://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=1966&ChapterID=54&SeqStart=4200000&SeqEnd=6500000

OVERVIEW

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. Summary of Fitness Procedures

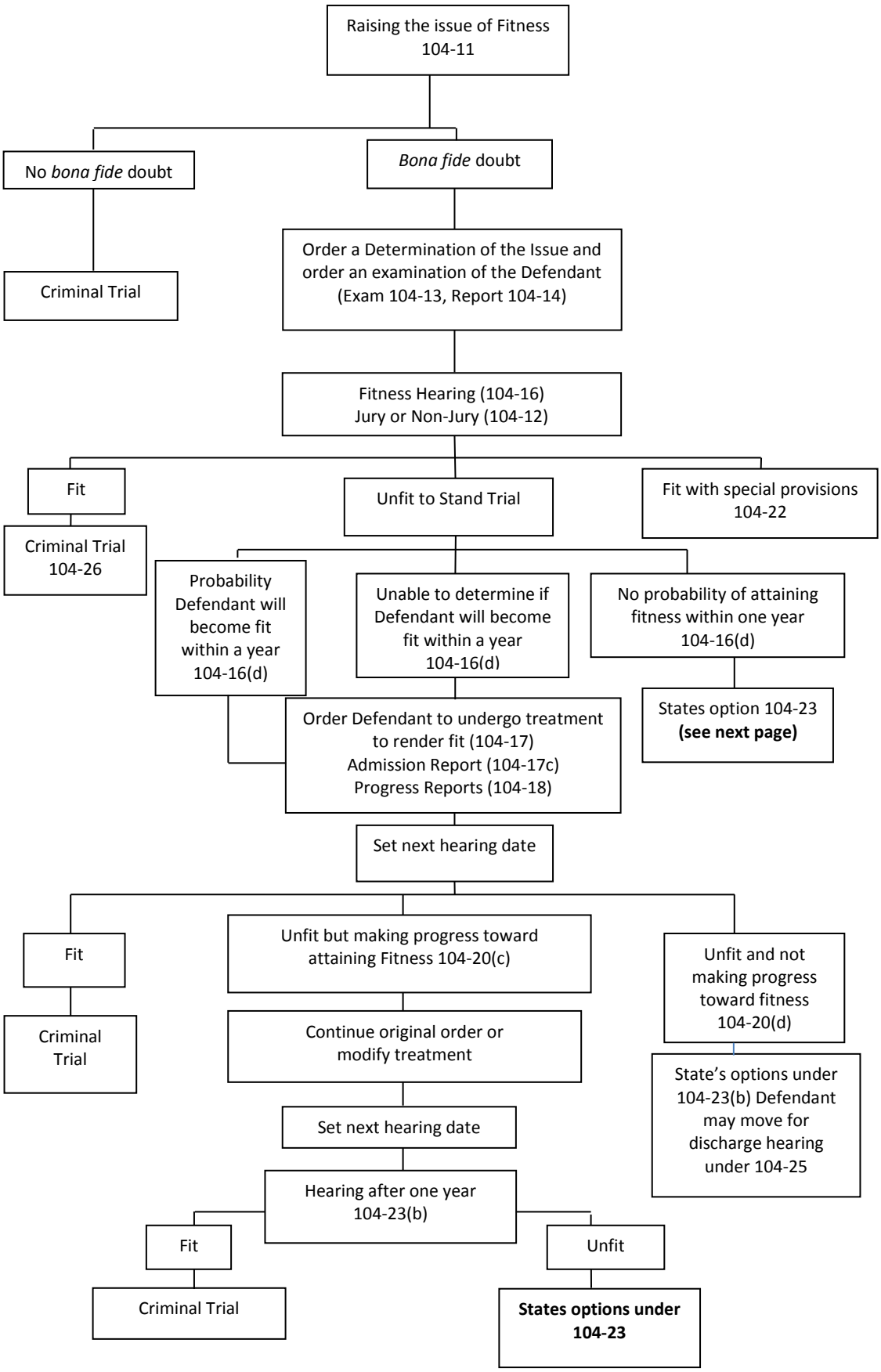
C. The statute for Unfit to Stand Trial (Appendix A)

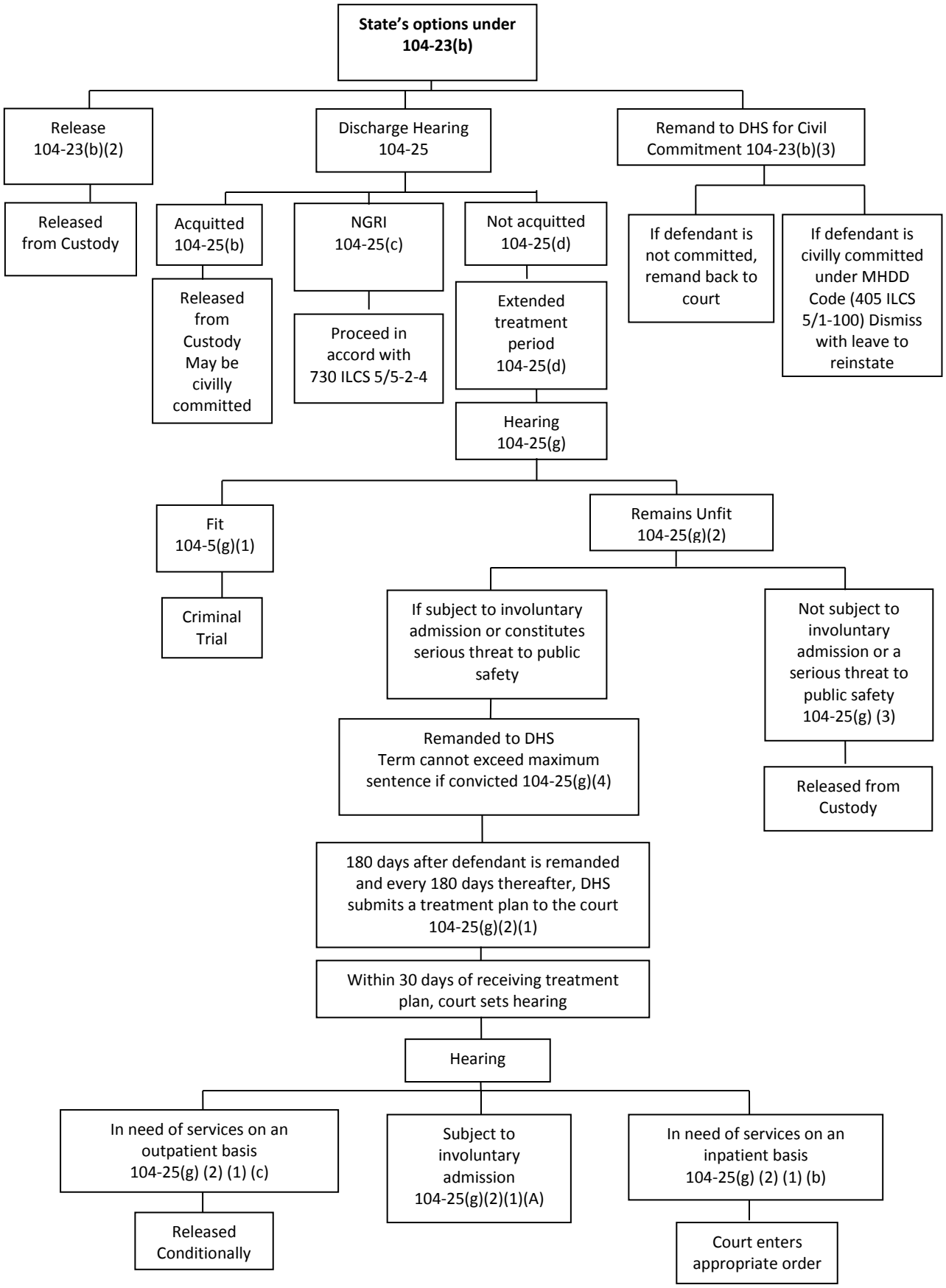
D. Sample Orders (Appendix B)

E. An explanation of the reports required in the Fitness Proceedings.

F. Sample Reports (Appendix C)

FITNESS TO STAND TRIAL, TO PLEAD OR TO BE SENTENCED (725 ILCS 5/104) FLOWCHART




State's options under 104-23(b)
Release 104-23(b)(2)
Discharge Hearing 104-25
Remand to DHS for Civil Commitment 104-23(b)(3)
Released from Custody
Acquitted 104-25(b)
NGRI 104-25(c)
Not acquitted 104-25(d)
If defendant is not committed, remand back to court
If defendant is civilly committed under MHDD Code (405 ILCS 5/1-100) Dismiss with leave to reinstate
Released from Custody May be civilly committed
Proceed in accord with 730 ILCS 5/5-2-4
Extended treatment period 104-25(d)
Hearing 104-25(g)
Fit 104-5(g)(1)
Remains Unfit 104-25(g)(2)
Criminal Trial
If subject to involuntary admission or constitutes serious threat to public safety
Not subject to involuntary admission or a serious threat to public safety 104-25(g) (3)
Remanded to DHS Term cannot exceed maximum sentence if convicted 104-25(g)(4)
Released from Custody
180 days after defendant is remanded and every 180 days thereafter, DHS submits a treatment plan to the court 104-25(g)(2)(1)
Within 30 days of receiving treatment plan, court sets hearing
Hearing
In need of services on an outpatient basis 104-25(g) (2) (1) (c)
Subject to involuntary admission 104-25(g)(2)(1)(A)
In need of services on an inpatient basis 104-25(g) (2) (1) (b)
Released Conditionally
Court enters appropriate order

SUMMARY OF FITNESS PROCEDURES
Introduction

Federal and state due process prohibits a criminal case from proceeding if the defendant is unable to understand the nature or purpose of proceedings against him or her or is unable to assist in the defense due to a physical or mental condition. *People v. Johnson*, 206 Ill.2d 348, 361 (2002).

As criminal court judges, attorneys, mental health personnel, and defendants proceed through the fitness determination and periods of treatment, the Illinois fitness statute becomes increasingly an entangled thicket of confusing terms, imprecise procedure, and frustration. This Fitness Section of the Forensic Handbook is intended to provide some degree of assistance and clarity as one wades the Illinois' fitness procedure laws.

The Fitness Section is divided into 5 parts. The first is *Matters that are Applicable to All Periods*. The last four parts correspond to the four periods of treatment, namely (1) *the Period Leading up to the Fitness Determination*, (2) *the Initial Period of Treatment*, (3) *the Extended Period of Treatment,* and (4) *the g(2) Period of Treatment*.

I. Matters Applicable to All Periods

A. Common abbreviations: Common abbreviations in the criminal law and mental health areas include:

- UST = unfit to stand trial
- NGRI = not guilty by reason of insanity
- DHS = Department of Human Services
- MHDDC = Mental Health and Developmental Disabilities Code
- BCX = behavioral clinical exam

B. Presence of the defendant at hearings: At any hearing involving fitness, the defendant has a right to be present. Waiver is allowable only if a certificate is filed stating the defendant is physically unable to be present and the reasons for that inability. The certificate shall be signed by a licensed physician who, within 7 days, has examined the defendant. 725 ILCS 5/104-16(c).

At the 90 or 180-Day Hearings during the g(2) Period of Treatment, fitness is part of those hearings only upon motion of the Court, State, or Defense. *People v. Olsson*, --Ill.App.3d--, 979 N.E.2d 982, 990-991, 366 Ill.Dec. 181, 190 (2012). If fitness is not part of those hearings, a defendant "confined in a secure setting" is to appear only if "the court enters an order" requiring that appearance. 725 ILCS 5/104-25(g)(2)(par 5).

Prior to ruling that the defendant's presence is waived at any hearing involving fitness, the Court should make certain that the physician's certificate is on file. This physician's certificate is presumably a document that falls within the confidentiality statute and should be maintained separately by the clerk of the court. 725 ILCS 5/104-19.

1. Practices regarding DHS bringing the defendant to Court:

It is usually the receipt of a writ or court order to DHS directing that the defendant appear in a particular Court on a specific date and time that triggers the internal steps for DHS to either make the arrangements for that appearance or to file a doctor's certificate that the clinical opinion is that the defendant is unable to present. 725 ILCS 5/104-16(c).

Because the defendant has the right to be present at every hearing on the issue of fitness and that presence may only be waived with a physician's certificate (725 ILCS 5/104-15(c)), counsel need to be on the alert to make certain either the defendant is present or the physician's certificate is on file. By a strict reading of the statute, there is no provision for an agreement by the Court, State, defense, and DHS of the defendant not appearing without the filing of the physician's certificate.

In addition, there are different practices as to the "default" as to whether DHS is going to bring the defendant to Court if DHS has caused a physician's certificate to be filed. If the physician's certificate has been filed:

- In some counties, the understood protocol is that DHS does not bring the defendant to the hearing unless otherwise notified. The rationale is that the certificate recites the clinical impossibility of the defendant appearing, and this concludes the matter unless DHS is otherwise informed or ordered.
- In other counties, unless DHS is otherwise notified by the Court, the State, or the defendant's attorney, an unfit defendant is expected to attend regardless that a physician's certificate has been filed.
- In yet other counties, especially the more rural ones, DHS and the State and/or the Defense will discuss in each instance if the defendant should be brought to court when a certificate has been filed.

As with any procedural matter involving DHS, the Court, State, and the defense, communication is important so that all involved are working with the same understanding of the protocol and all is consistent with the statutes.

2. Order or writ to bring the defendant to Court: Counties also differ as to whether they expect DHS to produce an unfit defendant for hearing as directed by a court "order" or whether a "writ" needs to issue. Both procedures are referred to in the Fitness Statutes at 725 ILCS 5/104-25(g)(2)par 5. For those counties that issue writs for the appearance of the defendant, they differ as to whether it is the State, the clerk, or the Defense who prepares the paperwork for the issuance of the writ. For those counties that issue orders, they differ as to whether it is the State or the Defense who prepares the order.

3. Timely advance notice to DHS that a defendant is needed in Court: While the statute states during the g(2) period that "timely" notice should be given to DHS of the need to transport a defendant to Court, as a matter of efficiency and courtesy (725 ILCS 5/104-25(g)(2)par 5), "timely" notice should be given to DHS **whenever** a defendant is personally needed in Court, regardless of the period of treatment. Additionally, if it is clinically

appropriate for the filing of a physician's certificate that indicates the defendant is not able to be present for the hearing, sufficient time is needed in advance by DHA to comply.

4. Establishing a protocol or procedure with DHS: To avoid problems, the Court, the State, the Defense, and DHS in each county should have a clear understanding as to the protocol on the presence of defendants, the need for a writ or order, who is responsible for the paperwork, and the practical meaning of "timely" notice.

C. Waiver of hearings: The Fitness Statutes allow waiver of certain hearings, but it is the recommendation of this Forensic Handbook to avoid that practice. This is not in regard to the waiver of the presence of the defendant at a UST hearing; this is in the matter of the waiver of the hearing itself. In the context of this Forensic Handbook, "waiver" does not include the very quick 90-Day hearings where the reports' contents are stipulated, the defendant's presence has been properly waived, and no one objects to a finding of continued unfitness and an order of continued treatment. This is in the context of a hearing not being held at all.

The Fitness Statutes specifically allow waiver of hearings in two instances. The first is the hearing that is otherwise to be held "as soon as possible" after an initial finding of unfit but the trier of fact, that is, the judge or jury, is "unable to determine if there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within 1 year." 725 ILCS 5/104-16(d).

The second type of hearing that may be waived is a 90-Day Hearing during the Initial and Extended Periods of Treatment. 725 ILCS 5/104-20(a). In practice, it is generally assumed that the waiver possibility includes 180-Day Hearings during the g(2) Period of Treatment as well. 725 ILCS 5/104-25(g)(2).

No standards are given as to what is required for an effective waiver of the hearing.

To ensure that defendants and their cases are not overlooked and that the rights of those suffering mental or physical health problems are not denied, waivers of hearing are discouraged.

For an example of problems that can develop, see *Barichello v. Campagna*, 276 Ill.App.3d 269, 271 (1995) where the defendant was held in DHS without a UST hearing from June of 1989 to mid-1994 and had made no waivers. The trial court was affirmed for granting a UST hearing instanter rather than releasing the defendant. But practices should be used that minimize the risk of forgotten unfit defendants. Waivers of hearings increase that risk.

Where the prosecution and defense are in agreement that treatment should be continued, instead of waiving a 90-Day (or 180-Day) hearing, the attorneys and the Court could consider a short hearing in which:

- The defendant's presence is waived and the required physician's certificate is filed (725 ILCS 5/104-16(c)),
- The parties stipulate that the author of the report is an expert and the expert would testify in accordance with the information in the report , and

- The Court makes the appropriate findings, enters an order, and sets the case for the next hearing date.

D. Representation by an attorney: Because a proper waiver of counsel requires the defendant to have use of his or her mental faculties, it is error to allow a defendant to represent him or herself once a *bona fide* doubt regarding the defendant's competence has arisen. *People v. Rath*, 121 Ill. App. 3d 548, 551 (1984).

In a case at the fitness determination stage and where standby counsel was not merely a "passive bystander," an appellate court found that the "defendant was adequately represented by counsel at his fitness hearing." *People v. Allensworth*, 235 Ill. App. 3d 185, 190-191 (1992). Once a *bona fide* doubt has arisen, appellate issues may be avoided by the Court declining requests by a defendant to represent him or herself at a fitness trial with the assistance of standby counsel.

If the defendant is found unfit, the defendant should not be allowed to represent him or herself at any hearing until fitness is restored. *People v. Young*, 220 Ill. App. 3d 98, 106 (1991), see also 725 ILCS 5/104-25(g)(2)(i).

If restored to fitness (or never having been found unfit), a defendant may be competent to stand trial while at the same time incompetent to represent him or herself, and he or she suffers no constitutional injury from a trial court's refusal to permit him or her to represent him or herself. *Indiana v. Edwards*, 128 S.Ct. 2379, 2388 (U.S.Ind. 2008); *People v. Esang*, 396 Ill.App.3d 833, 841 (2009).

E. No stipulations to fitness or the lack of fitness: The Supreme Court has held that a trial court should not accept a stipulation to fitness or of the lack of fitness of a defendant. Instead, a trial court must make an independent determination of fitness. However, where the parties stipulate to what an expert would testify, rather than to fitness or the lack of fitness, a trial court may consider this stipulated testimony in exercising its discretion. *People v. Lewis*, 103 Ill. 2d 111, 116 (1984); *People v. Greene*, 102 Ill.App.3d 639, 643 (1981).

A stipulation that the author of the report is an expert and the expert would testify in accordance with the information in the report probably qualifies as an acceptable stipulation.

While a mere stipulation to the admissibility of a fitness report without the Court affirmatively exercising its discretion to determine fitness is never a good idea, it is expressly prohibited at a restoration hearing. A Court needs to recite a further basis for a finding that a defendant has been restored to fitness. "When a defendant has previously been found unfit, a finding of restored fitness must be based not only upon a stipulation to the conclusion of psychiatric reports, but upon an affirmative exercise of the court's discretion to determine the defendant's mental state." *Esang,* 396 Ill.App.3d at 839.

F. Confidentiality of records: Any report filed of record regarding "diagnosis, treatment or treatment plans made pursuant" to the Fitness Statutes shall be maintained separately by the clerk of the Court. These records shall be available only to the court or an appellate court, the State and the Defense, the facility providing treatment per order of the court (meaning the

"order" to treat and not the "order" to release records), and any other persons as the court may direct. 725 ILCS 5/104-19.

In practice, some clerks' offices seal the confidential records and physically keep them with the criminal file. This practice has the obvious risk of the confidential records being opened accidentally or intentionally by the public, media, and others who are given access to the file. Criminal court judges, presiding judges, and chief judges, along with prosecutors, public defenders, and private defense counsel, should review the clerks' practices with confidential fitness records to be sure that confidentiality is ensured.

G. Consequence of missing a deadline: If a deadline or time period for a hearing or other legal action is violated, the Fitness Statutes contain no provisions for sanctions or dismissal. *People v. Durham*, 142 Ill. App. 3d 473, 484 (1986), *People v. Oliver*, 367 Ill.App.3d 826, 832 (2006).

H. Bail: There are two references to bail in the Fitness Statutes.

The first provides that release on bail or on recognizance shall not be revoked because a fitness examination is ordered, nor shall a defendant be denied the right to file and proceed with a motion for bond reduction or for release on recognizance. 725 ILCS 5/104-13(d). For the defendant not yet found unfit, cooperation with fitness examinations probably qualifies as a reasonable bond condition. See 725 ILCS 5/110-10(a)(2) and (b)(1), (7), (17). For the unfit defendant, a Court may order as a bond condition compliance with treatment intended to render the defendant fit. *People v. Lang*, 76 Ill.2d 311, 332 (1979); 725 ILCS 5/110-10(b)(7), (9), (13).

The second reference to bail in the Fitness Statutes provides that if a defendant is eligible to be or has been released on bail or on his or her own recognizance, then in ordering treatment the Court shall select the least physically restrictive form of treatment therapeutically appropriate and consistent with the treatment plan. 725 ILCS 5/104-17(a).

As for the status of a defendant's bail amount and bond conditions after release from inpatient treatment upon restoration to fitness, presumably all remains the same unless otherwise ordered by the Court or unless the treatment period has been equal to the maximum sentence the defendant could have receive on the charge. In the latter instance, a defendant must be released not only from treatment but from custody as well (725 ILCS 5/104-25(g)(4)). There may be an argument on due process grounds that if a defendant completes the initial, the extended, and the g(2) periods of treatment and remains unfit, the defendant is entitled to be released without any bond obligation as theoretical restoration to fitness is awaited. See *People v. Bocik*, 211 Ill. App. 3d 801 (1991).

There is no statutory reason that the procedure is other than a jailed defendant who had been unable to post bond prior to inpatient treatment must return to the jail upon restoration to fitness until bail is posted. A defendant who had been released on bond prior to inpatient treatment remains released on bond upon restoration to fitness.

I. Treatment to maintain fitness and prevent regression: If through a course of treatment the defendant has been restored to fitness and the Court believes the defendant will regress into unfitness unless that treatment continues, the Fitness Statutes allow for the possibility of

continued treatment. If 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. 725 ILCS 5/104-20(b).

J. Trial with special provisions and assistance: The concept of fit for trial, sentencing or to plead encompasses court-ordered special provisions or assistance that will render a developmentally or physically disabled defendant fit to stand trial. 725 ILCS 5/104-22.

1. Applicability: While this statute specifically refers to, among other things, the appointment of "translators" 725 ILCS 5/104-22(b)(1), this statute is "not related to the needs of an accused who simply is non-English-speaking." *People v. Perez*, 108 Ill.2d 70, 95 (1985). "Translators" are in the nature of such things as for sign language. *People v. Stewart,* 104 Ill.2d 463, 502 (1984).

The statute is also not applicable to those defendants who only require medication to keep them fit for trial. The statute contemplates assisting the developmentally disabled and/or physically disabled defendant. *People v. Cundiff*, 322 Ill.App.3d 426, 437-438 (2001).

2. Consideration upon motion: At any time during initial, extended, or g(2) treatment and 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 a developmentally disabled and/or physically defendant fit to stand trial. 725 ILCS 5/104-22(a).

3. Due process duty to *sua sponte* consider: Due process may impose a duty upon the trial court to *sua sponte* order a hearing on the issue of "Trial with special provisions and assistance." In *People vs. Lang*, a case with a defendant suffering a disability that prevented any communication, the Illinois Supreme Court compared the lesser of two evils. In weighing the denial of due process by proceeding with the criminal trial of an incompetent defendant against "withholding a criminal trial" of a defendant "until competent to stand trial, with the resultant possibility of permanent commitment," the Court found the latter "more unfair." *People v. Lang*, 26 Ill.App.3d 648, 656 (1975).

Courts should be vigilant as to whether special provisions or assistance will render the defendant fit to stand trial. While that vigilance should be continual, revisiting the issue immediately prior to the start of the Extended Period of Treatment and again prior to the start of the g(2) period of treatment are practical times to consider the matter.

4. Necessary findings before proceeding: The case may proceed to trial pursuant to this statute only if the Court determines that proposed provisions or assistance compensate for a defendant's disabilities so as to render the defendant fit as defined in 725 ILCS 5/104-10. 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 5/104-22(c).

5. Special sentencing: If a trial with special provisions and assistance is conducted and the defendant is convicted, special presentence and sentencing provisions apply (725 ILCS 5/104-26), including:

(a) A written presentence report must be presented and considered by the court. The statute does not exempt misdemeanor cases from the presentence report requirement. The presentence report 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. 725 ILCS 5/104-26(a).

(b) No longer relevant is that the defendant shall not be subject to the death penalty. 725 ILCS 5/104-26(b).

(c) 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. 725 ILCS 5/104-26(c)(1).

(d) After imposing a sentence of imprisonment upon an offender who has a mental disability, the court:

- May remand the defendant to the custody of the Department of Human Services and order a civil commitment hearing. If the offender is civilly committed, he or she shall be treated in the same manner as any other civilly committed patient except as provided in this Section. If the defendant is not civilly committed, he or she shall be remanded to the sentencing court for disposition according to the sentence imposed [725 ILCS 5/104-26(c)(2)], or

- Must, if not proceeding under the prior section, order the Department of Corrections to proceed pursuant to the “Transfer to Department of Human Services” statute in the Unified Code of Corrections at 730 ILCS 5/3-8-5. 725 ILCS 5/104-26(c)(3). That statute provides possibilities of transfer to DHS, as well as treatment within the DOC system.

(e) 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. 725 ILCS 5/104-26(c)(4).

(f) When a defendant sentenced to DOC is placed with DHS or another facility pursuant to this statute, the defendant shall not be discharged or allowed to be at large in the community without prior approval of the court. If placed with DHS, the defendant shall be placed in a secure setting unless the court determines that there are compelling reasons why such placement is not necessary. When the defendant no longer requires hospitalization, care, or treatment, then DHS or the facility shall transfer him or her, if the sentence has not expired, to DOC. 725 ILCS 5/104-26(c)(5).

(g) DOC shall notify DHS or a facility in which an offender has been placed pursuant to this statute of the expiration of his sentence. Thereafter, an offender in DHS 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 (regarding a non-imprisonment sentence) 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 5/104-26(c)(6).

II. The Period Leading up to the Fitness Determination

A. Fitness defined: A defendant is unfit if, because of a mental or physical condition, he or she is unable to understand the nature or purpose of proceedings against him or her or is unable to assist in the defense. A defendant is presumed to be fit to stand trial, to plead, or to be sentenced. 725 ILCS 5/104-10.

Forensic Handbook note: *This manual usually employs the shorter term "fitness" rather than "fitness for trial, to plead, or to be sentenced."*

B. When may fitness be raised: The issue of fitness may be raised any time before, during, or after trial. 725 ILCS 5/104-11(a)

C. Who may raise the issue of fitness: The Defense, State, or Court may raise the issue of fitness. 725 ILCS 5/104-11(a).

A judge has a duty to order a fitness hearing *sua sponte* once facts are brought to the judge's attention that raise a *bona fide* doubt of the accused's fitness to stand trial or be sentenced. *People v. McCallister,* 193 Ill.2d 63, 110-111 (2000), *People v. Murphy*, 72 Ill.2d 421, 430 (1978).

Contents of a presentence report may put the Court on notice. *People v. Shanklin* 351 Ill.App.3d 303, 308 (2004).

D. When is fitness considered to have been raised? When a *bona fide* doubt of the defendant's fitness is raised, the court shall order a determination of the issue before proceeding further. 725 ILCS 5/104-11.

E. *Bona fide* doubt as to fitness factors: A list follows of some factors to consider when the Defense, State or the Court contemplates whether a *bona fide* doubt as to fitness exists.

1. *Bona fide* doubt factors:

- Defendant's irrational behavior and demeanor at trial (or otherwise before the court), *People v. Eddmonds*, 143 Ill.2d 501, 518 (1991).
- Any prior medical opinion on competence to stand trial, *Eddmonds*, 143 Ill.2d at 518
    - A prior finding of unfitness is not conclusive on present unfitness. Factors to consider are: (1) the remoteness of the prior finding, (2) whether the prior unfitness was caused by a continuing or permanent condition, and (3) current conduct of the defendant. *People v. Meyers*, 367 Ill.App.3d 402, 411-412 (2006), *People v. Schoreck*, 384 Ill.App.3d 904, 925 (2008).
- Although not conclusive, representations of defendant's counsel concerning the competence of his or her client, *Eddmonds*, 143 Ill.2d at 518.
    - If the matter is raised by the Defense, the Defense usually states the factual basis for the motion. If the matter is broached by the State or the Court, inquiries by the Court of the defendant's attorney are limited by the attorney-client privilege, but questions about demeanor are permitted. *People v. Burgess*, 176 Ill. 2d 289, 305 (1997). Some judges inquire of

defense counsel whether he or she believes there is a *bona fide* doubt as to the defendant's fitness and why.

- The fact that a defendant suffers from mental disturbances or requires psychiatric treatment does not automatically result in a *bona fide* doubt of his fitness. *Eddmonds*, 143 Ill.2d at 519.
- While it is not stated with certainty in the case law, if the defendant appears in court, if no *bona fide* doubt as to fitness is raised, and if the Court, the State, or the Defense learn that the defendant's fitness is probably dependent upon psychiatric medication that the defendant is properly taking, then (1) no *bona fide* doubt as to fitness has been raised, and (2) the Court, the State, and the Defense should monitor the defendant's continuing fitness, as well as whether the medication continues to be properly administered.
- A *bona fide doubt* of fitness is one that is a "real, substantial and legitimate doubt as to his mental capacity to meaningfully participate in his defense and cooperate with counsel." *Eddmonds* 143 Ill.2d at 581. "[S]ome doubt as to a defendant's fitness is not necessarily enough to warrant a fitness hearing." *People v. Sandham*, 174 Ill.2d 379, 389 (1996).
- The *Eddmonds* court added there are "no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated." *Eddmonds* 143 Ill.2d at 518.

2. Addressing the defendant directly: Some judges reportedly ask questions of the defendant to get a measure of whether the defendant understands the nature of the proceedings and is able to assist his or her attorney in the defense. Those questions are usually designed to elicit more than one word responses in order to give the trial court and reviewing courts an indication of the defendant's cognitive functions. This questioning of the defendant at the Fitness Hearing is a different matter. See Par. V(9) *Propriety of the Court asking the defendant questions at a Fitness Trial* in this section.

3. Psychotropic medication as a factor raising a *bona fide* doubt:

Definition of "psychotropic medication:" The Illinois Supreme Court has relied on the MHDDC and a United States Supreme Court case for definitions of psychotropic medications. *People v. Mitchell*, 189 Ill. 2d 312, 323-324 (2000). "Psychotropic medication" means medication whose use for antipsychotic, antidepressant, antimanic, antianxiety, 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. 405 ILCS 5/1-121.1.

Considerations:

- Taking of psychotropic medication alone does not create a *bona fide* doubt as to a defendant's fitness to stand trial. *Mitchell*, 189 Ill. 2d at 331, 725 ILCS 5/104-21(a).

- Court must view the totality of the circumstances in determining whether a *bona fide* doubt as to a defendant's fitness exists. *People v. Chamberlain*, 354 Ill. App. 3d 1070, 1073 (2005).
- Court should consider a defendant's irrational behavior, his or her demeanor at trial or other hearing and any prior medical opinion as to the defendant's fitness. *People v. Easley*, 192 Ill. 2d 307, 319 (2000).

Recommendations:

- The statute provides that the taking of psychotropic medication does not create a presumption of unfitness. 725 ILCS 5/104-21(a). The *Mitchell* decision has added that the medication alone does not create a *bona fide* doubt. Nevertheless, simple steps at the trial court level could be significant in avoiding later post trial, appellate, or post conviction issues.
- If it is learned by the Defense, State, or the Court that a defendant is receiving psychotropic medication, then immediately and directly addressing whether a *bona fide* doubt as to fitness exists may be advisable. Helpful information may include what the medication is, who prescribed it, when it was prescribed, for what condition it has been prescribed, and how recently the last dosage was taken.
- The judge is advised to then make a statement into the record as to what was considered and the Court's conclusion as to whether a *bona fide* doubt as to fitness exists. If a *bona fide* doubt exists, a fitness examination should be ordered. If none exists, later issues may have been avoided.

F. Procedure to attempt to raise a *bona fide* doubt as to fitness: The Fitness Statute does not specifically refer to a written motion or a formal hearing with notice in any attempt to raise a *bona fide* doubt as to fitness. Reportedly the practice in some counties is for a written motion with notice to be filed. If an oral motion is made and someone suggests they are caught unprepared to respond, presumably the matter would be set over for a prompt court date. The statute contemplates that it is possible for the question to arise at any time, including during the middle of a trial. 725 ILCS 5/104-11(a).

Anecdotal evidence suggests that long, contested hearings with the formal presentation of evidence are very rare in addressing whether a *bona fide* doubt. Commonly it is the defendant himself or herself, rather than the Defense or State, that raises some of the strongest objections to a finding of a *bona fide* doubt as to fitness.

G. Procedure for the Defense for an examination to see IF a *bona fide* doubt exists: The Defense may request a fitness examination to see if a *bona fide* doubt as to fitness exists. In its discretion, the Court may order an appropriate examination. The examination shall be paid by the county, regardless of the indigency of the defendant. 725 ILCS 5/104-11(b).

Speedy trial is tolled, at least for the period of the examination and to receive the report. 725 ILCS 5/103-5(a). *People v. Sonntag*, 128 Ill. App. 3d 548, 558 (1984). The trial court retains the discretion to require the case to continue to proceed as the parties await the fitness report. 725

ILCS 5/104-11(b). If the case is to await the return of the fitness report, it is recommended that cases never be continued generally, that is, without the setting of the next court date. At a minimum, it is advisable to set a status hearing to see if the report has been filed.

The trial court should specify that no *bona fide* doubt as to fitness has yet been raised when granting this motion. *People v. Goodman*, 347 Ill. App. 3d 278, 291 (2004). If the report is filed and it contains an opinion that the defendant is unfit, then this would almost certainly raise a *bona fide* doubt as to the defendant's fitness, and a fitness hearing must be held. On the other hand, if the report indicates that the defendant is fit, no further hearing may be necessary. *People v. Hanson*, 212 Ill.2d 212, 222, (2004).

H. Authority for Court to order an examination to see if a *bona fide* doubt exists: In the *Hanson* decision, the Illinois Supreme Court commented that a trial court may order "a fitness examination by an expert to aid in its determination of whether a *bona fide* doubt is raised without a fitness hearing becoming mandatory." This is pursuant to 725 ILCS 5/104-11(a) rather than 5/104-11(b). *People v. Hanson* 212 Ill.2d at 217-218.

I. No authority for the State to obtain a fitness examination by an expert of its choosing: An appellate court has held that as a matter of statutory construction, the Fitness Statutes do not provide for a fitness examination by an expert chosen by the State. *People v. Sedlacek*, 986 N.E.2d 1281, 1289 (2013).

J. If the defendant personally objects to a finding of a *bona fide* doubt: When objections are made to a finding of a *bona fide* doubt by the defendant personally rather than by his or her counsel, the practice of many judges is reportedly for the Court to listen and respond to the defendant. At times the dialog might be used by the Court to assist in determining if a *bona fide* doubt exists, and, at other times, it may be to engage the defendant in a conversation to explain the purpose of the examination and to encourage the defendant to cooperate with it.

K. Upon finding a *bona fide* doubt as to fitness, fitness hearing must follow: If a *bona fide* doubt as to fitness is raised, the Court shall order a determination of the issue before proceeding further. 725 ILCS 5/104-11(a). In effect, that means to order the examination by an expert and conduct a fitness hearing thereafter, both as detailed below.

It cannot be overly emphasized **<u>that there is no turning back</u>** on the procedural requirement of a fitness hearing when the Court has determined that a *bona fide* doubt as to fitness has been raised. Once the trial court concludes that a *bona fide* doubt exists concerning the defendant's fitness, the defendant becomes constitutionally entitled to a fitness hearing. *People v. Johnson*, 206 Ill. 2d 348, 362 (2002); *People v. Sandham*, 174 Ill. 2d 379, 382, 389 (1996); *People v. Smith*, 353 Ill. App. 3d 236, 241 (2004).

L. Required admonishments upon a finding of a *bona fide* doubt as to fitness: Per 725 ILCS 5/104-14, the Court shall advise the defendant of the limitation on the use of any statements made by the defendant in the course of any fitness examination or subsequent treatment substantially as follows:

"Statements made by you and information gathered in the course of any examination or treatment ordered under Illinois fitness laws shall not be admissible against you unless you raise the defenses of insanity or drugged or intoxicated condition.

If you refuse to cooperate with the exam, you can still raise these defenses. But you cannot offer expert evidence or testimony to support those defenses if it's based on an expert's examination of you.

With the exception of what I have already said, no statement made by you in the examination or in ordered treatment which relates to the crime charged or to other criminal acts shall be disclosed by persons conducting the examination or the treatment, except to other members of the examining and treating team, without your informed written consent, and only if you are competent at the time of giving the consent.

You may refuse to cooperate with the examination, but that refusal may be admissible on the issue of your mental or physical condition."

1. Use of statements made during the examination: Statements obtained during the course of a fitness examination are not admissible and should be excluded, unless the defendant has raised an insanity or drugged or intoxicated condition defense. 725 ILCS 5/104-14; *People v. Kashney*, 111 Ill.2d 454, 465 (1986). In *Kashney*, the defendant was held to have waived the protection of this statute by calling the court-appointed psychiatrist and asking about the examination. *Kasheny*, 111 Ill.2d at 461.

2. Effect of failure of the Court to give the admonishments: Giving the required admonition before a fitness examination is a practice reportedly not strictly followed by judges in some parts of the State. Failure to do so probably works more to the detriment of the prosecution than the defendant. Based on the Court's failure to warn:

- Defendants who assert defenses of insanity or drugged or intoxicated condition may seek to bar statements made during the fitness examination that would have otherwise been admissible. See 725 ILCS 5/104-14(a).
- Defendants who refuse to cooperate with the examination and who assert defenses of insanity or drugged or intoxicated condition may seek to offer expert testimony on those defenses which would have otherwise been barred for failure to cooperate. See 725 ILCS 5/104-14(a).
- Defendants who refuse to cooperate with the examination may seek to bar that refusal as admissible on the issue of mental or physical condition which otherwise would have been admissible. See 725 ILCS 5/104-14(c).

M. Requirement of ordering a fitness exam: When the *bona fide* doubt of fitness involves the defendant's mental condition, the Court shall order an examination by one or more licensed physicians, clinical psychologists, or psychiatrists, as chosen by the Court. No examiner in his or

her official capacity with the Department of Human Services shall be ordered to make the examination. 725 ILCS 5/104-13(a).

When the *bona fide* doubt of fitness involves the defendant's physical condition, the Court shall appoint one or more physicians and any other experts as the Court deems appropriate. 725 ILCS 5/104-13(b).

If the defendant is not in custody, the examiner shall designate where the examination shall take place. For a defendant not in custody who fails to keep appointments without reasonable cause and for any defendant that 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 not more than 7 days. The in-patient examination shall be for a fitness determination and not for a screening examination for the facility. 725 ILCS 5/104-13(c).

If the defendant is in custody, the Court shall direct where the examination shall take place. 725 ILCS 5/104-13(c). In Section III(B)(3)(a) of this Fitness portion of the Forensic Handbook: *Problems with DHS placing unfit defendants for treatment*, there is discussion about treatment delays that may be helpful with examination delays.

N. Payment for the examination: It appears the State must always pay for a fitness examination, with one exception. And beyond that one exception, no statutory provision prevents the defendant from paying for his or her own exam.

The "State usually pays" analysis begins with the "Fitness Examination" statute requiring the county to pay for an examination if the Court grants a "request of the defendant" that an examination be conducted to see <u>if</u> a *bona fide* doubt as to fitness exists. 725 ILCS 5/104-11(b). That provision makes no reference to any prerequisite that there be a showing of the defendant's indigency to trigger payment by the county.

It follows that if the county must pay for the examination of a non-indigent defendant to see merely <u>if</u> a *bona fide* doubt exists, absent any contrary provision it would seem that the county must also pay for the examination of a non-indigent defendant where the Court has actually made a finding that a *bona fide* doubt exists as to the defendant's fitness.

The exception to the county paying is that if upon a *bona fide* doubt as to fitness the Court had ordered a county-paid fitness examination and appointed an expert to conduct the exam, an independent exam requested by the defense is to be paid by the county only for "indigent" defendants. 725 ILCS 5/104-13(e).

O. Right to have counsel present during the examination: While defense counsel must be given advance notice of a fitness examination, there is no constitutional right for counsel to be present during the examination. *People v. Mahaffey*, 166 Ill.2d 1, 19-20 (1995).

P. Defendant's right to an independent examination: If a *bona fide* doubt as to fitness has been raised and even though the Court has already ordered a fitness examination, a defendant may seek an independent examination. An indigent defendant may request the Court to appoint an independent expert and that the reasonable fee be paid by the county. 725 ILCS 5/104-13(e).

While the strict wording of the statute appears to make the request for an independent examination a matter of discretion for the trial court, there is authority for the proposition that granting the request is probably – but not certainly – mandatory. *People v. Vallo*, 323 Ill.App.3d 495, 506 (2001).

In practice and with the ever-growing number of fitness examinations, many courts have informally worked out an agreement with their state's attorney and public defenders' offices as to who the Court will routinely initially appoint to conduct the examinations. This is to minimize costs, and, to a degree, reduce the number of county-paid exams.

Q. Next setting after ordering a fitness examination: Upon entry of the order for a fitness exam, the Court could consider setting the next hearing as a status to see if the fitness report has been filed.

The Court could also set the matter for fitness hearing without a status hearing, depending on the practice of the local court. The fitness report is due in 30 days from the entry of the order (725 ILCS 5/104-15(a), and the fitness hearing is to be held within 45 days of the receipt of the report (725 ILCS 5/104-16(a)).

R. Proceeding in spite of a *bona fide* doubt: The statute provides that when a "*bona fide* doubt of the defendant's fitness is raised, the Court shall order a determination of the issue before proceeding further." 725 ILCS 5/104-11(a). Aside from the statutory exception of a bail motion [725 ILCS 5/104-13(d)], any other motions and other matters must await the fitness determination. This is not to be confused with the procedural status of motions and other matters upon a finding of unfitness. As discussed below, different rules apply. See III(Y) of this Fitness portion of the Forensic Handbook: *Proceeding with the criminal case after a finding of unfitness*.

S. The report: The examiners shall submit a written report to the Court, the State, and the Defense within 30 days of the order of examination. 725 ILCS 5/104-15(a). The Court may, upon a showing of good cause, grant an additional 7 days to complete the examination. 725 ILCS 5/104-13(c). If the report is filed late, there is no sanction that the defendant may seek. *People v. Oliver*, 367 Ill.App.3d 826, 832 (2006)

The statute (725 ILCS 5/104-15) specifies what the report shall include:

> •A diagnosis and an explanation as to how it was reached and the facts upon which it is based;
>
> •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 her or to assist in his or her defense, or both.
>
> •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 for that inability.

•The report may include a general description of the type of treatment needed and of the least physically restrictive form of treatment therapeutically appropriate.

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

T. Motions to Continue the Fitness Hearing: Per 725 ILCS 5/104-16(a), motions for continuance of the fitness hearing are governed by the general "Motions for Continuance" statute at 725 ILCS 5/114-4.

U. Speedy trial tolled: An order for examination for fitness, a fitness hearing, and an adjudication of unfitness to stand trial all toll speedy trial. 725 ILCS 5/103-5(a).

V. The fitness hearing: The issue of the defendant's fitness may be determined in the first instance by the Court at a bench trial or by a jury. The Defense or the State may demand a jury, or the Court on its own motion may order a jury. 725 ILCS 5/104-12. There are limitations based on the procedural status of a case as to when a jury may be requested, as discussed in Section 1(c).

1. Bench or jury trial: A defendant may waive his or her non-constitutional statutory right to a jury trial on the issue of fitness. The right is a statutory one and not a constitutional right. *People v. Brown*, 43 Ill.2d 79, 82 (1969).

a. Six-person juries: In a case in which the trial judge *sua sponte* ordered a six-person jury to determine fitness, an Illinois appellate court affirmed the conviction. The appellate court pointed out that the United States Supreme Court has found no constitutional bar to six-person juries in criminal and civil cases. (*Williams v. State of Florida* (1970), 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 for the criminal cases, and *Colgrove v. Battin* (1973), 413 U.S. 149, 151–52, 93 S.Ct. 2448, 2449–50, 37 L.Ed.2d 522 for civil cases.) The appellate court also noted that a fitness trial is a civil proceeding and not a criminal one *People v. Williams*, 205 Ill.App.3d 715, 721 (1990) rehearing denied, appeal denied 137 Ill.2d 671. Finally, the court commented that if it was error, it "was harmless beyond a reasonable doubt." *People v. Williams*, 205 Ill.App.3d at 722.

b. The need for a waiver of jury before a bench trial is held: There is authority for the proposition that because the right to a jury trial on the issue of fitness is only a statutory right and not a constitutional one, the Court may proceed as if the matter is a bench trial without affirmatively inquiring as to whether there is a waiver of a jury on the matter. *People v. Shanklin*, 26 Ill.App.3d 167, 170 (1975). If the Defense or the State wants a jury trial, the statute indicates that a demand for jury should be made. 725 ILCS 5/104-12.

Either out of caution against creating unnecessary error or as a matter of habit in the criminal court, in practice many judges:

- Seek the agreement of counsel and the defendant before proceeding with a six-person jury, and
- Take waivers of jury trial from the defendant before proceeding with a bench trial

At a time when the statutory requirement was to take waivers of jury trial in order to proceed to bench trial, the Illinois Supreme Court found nothing inconsistent with a trial court finding that the defendant had knowingly and voluntarily waived a jury trial on the issue of his mental competence. *People v. Brown*, 43 Ill.2d 79, 82, 250 N.E.2d 647, 649 (Ill. 1969).

c. Limitations on jury availability: When the issue of fitness is raised "after trial has begun or after conviction but before sentencing," the Court is to determine the issue of fitness. Subsequent fitness determinations, after the initial fitness hearing, are to be held by the Court and not by a jury. 725 ILCS 5/104-12.

The same statute also supports the proposition that a jury trial may be demanded only for the initial fitness determination, and then, only if the trial on the criminal charge has not yet begun. The pertinent language states, "However, …when the issue is to be redetermined under Section 104-20 [regarding 90-Day hearings], the issue shall be determined by the court." 725 ILCS 5/104-12. So, at most, only one jury trial.

2. A civil, not criminal, proceeding: The fitness hearing is not considered to be part of the trial on the criminal charges against the defendant. Instead, a fitness hearing is a preliminary civil proceeding, separately conducted to determine an accused's competency to stand trial. *People v. Rosochacki* 41 Ill.2d 483, 489-490 (1969); *People v. Williams*, 205 Ill.App.3d 715, 721 (1990).

3. Number of jury peremptory challenges: Regardless if the pending criminal charge is a misdemeanor or felony, it may follow that five peremptory challenges against prospective jurors are appropriate as provided in the Code of Civil Procedure. 735 ILCS 5/2-1106. No recent case has dealt with the issue, but the Illinois Supreme Court said in 1921 that the defense is "entitled to the same number of peremptory challenges in selecting the jury as in civil cases." *People v. Geary*, 298 Ill. 236, 243 (1921).

4. Burdens: The burden of going forward with the evidence and the burden of proving that the defendant is fit are upon the State. The State must prove fitness by a preponderance of the evidence. The statute provides that the court may call its own witnesses and conduct its own inquiry. 725 ILCS 5/104-11(c).

5. No existence of and no reference to any "presumption of fitness": Once a *bona fide* doubt as to fitness had been raised, the presumption of fitness has ended. *People v.*

Baldwin, 185 Ill. App. 3d 1079, 1086 (1989). No reference should be made to the presumption at the fitness hearing.

6. No stipulations to fitness or the lack of fitness: As discussed at Section I(E) of this Fitness portion of the Forensic Handbook: *No stipulations to fitness or the lack of fitness*, the trial Court should not accept a stipulation to the fitness or the lack of fitness of a defendant. Instead, the trial Court may accept a stipulation to the admission of a report, that the author of the report is an expert, that the expert would testify in accordance with the information in the report, and that the Court may consider the report in exercising its discretion. *People v. Lewis*, 103 Ill. 2d 111, 116 (1984); *People v. Greene*, 102 Ill.App.3d 639, 643 (1981).

While a mere stipulation to the admissibility of a fitness report without the Court affirmatively exercising its discretion to determine fitness is never a good idea, it is expressly prohibited at a restoration hearing. A Court needs to recite a further basis for a finding that a defendant has been restored to fitness. "When a defendant has previously been found unfit, a finding of restored fitness must be based not only upon a stipulation to the conclusion of psychiatric reports, but upon an affirmative exercise of the court's discretion to determine the defendant's mental state." *People v. Esang*, 396 Ill.App.3d 833, 839 (2009)

7. Matters admissible:

According to the "Fitness Hearing" statute, the following is admissible on the issue of the defendant's fitness subject to the rules of evidence:

> (1) 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 person, places and things; and performance of motor processes. 725 ILCS 5/104-16(b).
>
> The statute states that admissible evidence is not limited to the above.
>
> An Illinois appellate court said,
>
> In making the fitness determination, the court should consider whether the defendant has sufficient present ability to consult with defense counsel with a reasonable degree of rational understanding and whether the defendant has both a rational and factual understanding of the proceedings. *People v. Newell*, 196 Ill.App.3d 373, 377, 143 Ill.Dec. 15, 553 N.E.2d 722 (1990). The ultimate issue of fitness is for the trial court, not the experts, to decide. *Coleman*, 168 Ill.2d at 525, 214 Ill.Dec. 212, 660 N.E.2d 919. The mere fact that a psychiatrist expresses the

> opinion that the defendant is unfit does not require a similar finding by the trial court; it is the trial court's function to assess the credibility and weight to be given to a psychiatric expert's testimony. *Coleman*, 168 Ill.2d at 525, 214 Ill.Dec. 212, 660 N.E.2d 919." *People v. Baugh*, 358 Ill.App.3d 718, 732 (2005).

There are not many cases that discuss the specific type of evidence that is admissible at a fitness trial. Of course, because the fitness statute provides for an examination by an expert (725 ILCS 5/104-13), nearly every reported case makes reference to expert testimony.

Lay testimony is admissible. "Nonexperts who have had an opportunity to observe a person may give their opinions of mental condition or capacity based on their observations, and such lay opinions may overcome an expert opinion." *People v. Coleman*, 168 Ill.2d 509, 526 (1995).

A defendant's trial court demeanor, while not dispositive of the issue of fitness, is relevant to the statutory factors for determining fitness. *People v. Mitchell*, 189 Ill.2d 312, 335, (2000); *People v. Baugh*, 358 Ill.App.3d 718, 732 (2005).

8. No right against self-incrimination: There would appear to be no bar to the State calling the defendant as a witness, as long as any testimony is not used at a subsequent trial. *Holmes v. King*, 709 F.2d 965, 968 (5th Cir. La.) cert. denied, 464 U.S. 984 (1983).

9. Propriety of the Court asking the defendant questions at a fitness trial: In a case where the issue of defendant's fitness was tried before a jury and the defendant was critical of the trial court for asking no questions of the defendant at trial, the appellate court said, "We are aware of no statute or supreme court rule that requires trial courts to... independently question a defendant." *People v. Goodman,* 347 Ill.App.3d 278, 287 (2004).

To the extent that a Court may choose to ask questions, the appellate court said the court had the "discretion to question witnesses to clarify ambiguities and help elicit the truth." *People v. Goodman,* 347 Ill.App.3d at 287. The statutory provision that the Court may call its own witnesses and conduct its own inquiry would add some authority to the proposition that the Court has discretion to ask questions of the defendant. 725 ILCS 5/104-11(c).

10. Weight to be given to experts' opinions: The case of *People v. Lucas*, 388 Ill.App.3d 721, 728 (2009) has a summary of the Illinois case law on the issue of the weight to be given to experts' opinions at a fitness trial.

According to the *Lucas* case, in determining fitness, the trial court is not required to accept the opinions of psychiatrists. *People v. Jones*, 386 Ill.App.3d 665, 671 (2008); *People v. Baldwin*, 185 Ill.App.3d 1079, 1086 (1989). But the power to reject or to give little weight to expert testimony that the defendant is unfit is not unbridled, especially where there is no expert testimony on the other side. *Jones*, 386 Ill.App.3d at 671; *People v. Schoreck*, 384 Ill.App.3d 904, 922 (2008); *People v. Williams,* 87 Ill.App.3d 860, 864 (1980). *See also insanity cases: People v. Baker*, 253 Ill.App.3d 15, 30 (1993); *People v. Garcia*, 156 Ill.App.3d 417, 424 (1987).

11. The finding or verdict at a bench or jury trial: The statute lists the possible findings that the jury or Court may make at a Fitness Trial. 725 ILCS 5/104-16 (d).

But the statute, while referring to yet-to-plead defendants or yet-to-trial defendants, appears to inadvertently omit any reference to a convicted-but-not-yet-sentenced defendants whose sentencing is delayed until the fitness matter is resolved. 725 ILCS 5/104-16 (d). The certainty that the omission is due to inadvertence is demonstrated by the references to convicted-but-not-yet-sentenced defendants elsewhere. *See* 725 ILCS 5/104-10 & 11. This Forensic Handbook includes that status within the possible findings or verdicts.

Possible findings or verdicts at the conclusion of the fitness trial:

a. The defendant is fit to stand trial, to plead, or to be sentenced, 725 ILCS 5/104-16(d).

b. The defendant is unfit to stand trial to plead, or to be sentenced with a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. 725 ILCS 5/104-16(d).

c. The defendant is unfit to stand trial, to plead, or to be sentenced with no substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. 725 ILCS 5/104-16(d).

d. The defendant is unfit to stand trial, to plead, or to be sentenced but the trier of fact is unable to determine if there is a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. 725 ILCS 5/104-16(d).

12. Simplifying verdicts for a jury: In some courts in Illinois, the practice at jury trials is for the prosecution and defense to sometimes ask the Court to approve an agreement that the jury is given only two possible verdict forms:

a. Fit to stand trial

b. Unfit to stand trial

The agreement provides that if the jury verdict is “unfit to stand trial,” then the Court and not the jury will decide if:

a. There is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year, or

b. There is not a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year, or

c. The Court is unable to determine if there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year.

The latter possibility invokes a statutory procedure to resolve the inability to determine whether there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year. Upon that finding or verdict, the Court is to issue an order of treatment and decide the issue "as soon as possible" after the 30-Day Report is received. 725 ILCS 5/104-16(d).

If the prosecution and defense present an agreement to simplify jury verdicts, in order to avoid later claims of error the Court could inquire of the defendant about the agreement and make a determination as to whether the defendant was knowingly and voluntarily entering into this agreement. Obtaining the agreement in writing is a further protection against claims of error.

> **i. Jury verdicts in misdemeanor cases:** In the Fitness Portion of this Forensic Handbook, see Section IV(C)(1)(l)(iii): *Are Discharge Hearings ever required in misdemeanor cases?* regarding the possibility of simpler jury verdict forms in misdemeanor fitness cases.

13. Jury instructions: The Illinois Supreme Court has no pattern jury instructions regarding a fitness jury trial its website. (See http://www.state.il.us/court/) Issues regarding jury instructions have not been raised on appeal. So guidance is limited. There are sample instructions in the *Illinois Criminal Jury Instructions Companion Handbook*, published by Thomson West, 2011-2012 edition. They are somewhat hidden at §2:12 First Degree Murder – Unfitness, p. 58-61.

Even though the case law states with certainty that a fitness hearing is a civil proceeding and not criminal one [*People v. Rosochacki* 41 Ill.2d 483, 489-490 (1969); *People v. Williams*, 205 Ill.App.3d 715, 721 (1990)], the practice in the state is reportedly to draw upon the criminal Illinois Jury Pattern Instructions. No doubt this is because most of the prosecutors, public defenders and other defense attorneys, and judges are more familiar and comfortable with the criminal jury instructions rather than the civil ones.

If an objection is raised by either side as to the use of criminal jury instructions rather than civil jury instructions, the prudent ruling may be to give the civil jury instructions rather than the criminal ones.

As to specific instructions, tendered jury instructions usually begin with the pattern jury instructions that are generally applicable to all trials. If criminal Illinois Jury Pattern Instructions are used, then examples include those from the 1.00 series, Function of Court, Jury, and Counsel. If civil Illinois Jury Pattern Instructions are used, then examples are those from the 1.00, 2.00, and 3.00 series, General and Cautionary Instructions.

Thereafter, counsel and the Court craft instructions that set out definitions, issues, burden of proof, and verdict forms, along with any other instructions appropriate for a particular jury trial.

Give no jury instruction that suggests there is a presumption of fitness. The presumption that a defendant is fit to stand trial, to plead or to be sentenced extinguishes upon the

finding that a *bona fide* doubt as to fitness exists. *People v. Baldwin*, 185 Ill. App. 3d 1079, 1086 (1989).

W. Procedure after the findings are made or verdict is rendered:

If the finding or verdict is that the defendant is fit to stand trial, to plead or to be sentenced, then the criminal case may then proceed.

If the finding or verdict is that the defendant is unfit with a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year, go to Section III of this Fitness portion of the Forensic Handbook, *The Initial Period of Treatment*.

If the finding or verdict is that the defendant is unfit but the finder of fact is unable to determine if there is a substantial probability, if provided with a course of treatment, that the defendant will attain attaining fitness within 1 year, go to Section III of this Fitness portion of the Forensic Handbook: *The Initial Period of Treatment*.

If the finding or verdict is that the defendant is unfit with no substantial probability, if provided with a course of treatment, of attaining fitness within 1 year, go to Section IV of this Fitness portion of the Forensic Handbook: *The Extended Period of Treatment and Other Options*.

X. Appealability: An order finding the defendant **unfit** is a final order for purposes of appeal by the State or the defendant. 725 ILCS 5/104-16(e).

The statute and cases are silent as to the immediate appealability of a finding that the defendant is **fit** to stand trial. An order or verdict finding the defendant fit at the initial fitness hearing may be appealed by the defendant as part of an appeal of the conviction or sentence. As examples, see *People v. Mahaffey*, 166 Ill.2d 1 (1995); *People v. McCallister*, 193 Ill.2d 63 (2000).

Y. Proceeding with the criminal case after a finding of unfitness: After a finding of unfitness (as opposed to finding a *bona fide* doubt as to fitness), the statute suggests the Court has some discretion on whether to hear motions. "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 5/104-11(d).

It is noted here because of its eventual significance that several courts have held or commented that once fitness proceedings have reached a Discharge Hearing stage, the Court must hear motions to suppress evidence. *People v. Braggs*, 302 Ill.App.3d 602, 606 (1998); *People v. Lavold*, 262 Ill.App.3d 984, 1003-004 (1994) (McNulty, J., dissenting); *People v. Fuhrman*, 233 Ill.App.3d 503, 507 (1992); *People v. Burt*, 142 Ill.App.3d 833, 837 (1986). *See* IV(C)(1)(b) of this Fitness portion of the Forensic Handbook: *Duty to first hear pending motions*.

Z. Proceeding with a restoration hearing and the criminal case while fitness matter is on appeal: If a fitness hearing is held, if there is a finding of unfitness over the objection of the defendant, and

if the defendant appeals the finding, may a restoration hearing be held while the fitness matter is on appeal? And, if so, and if the Court finds that defendant has been restored to fitness, may the criminal case proceed while the fitness matter is on appeal?

The answers are "yes" to a restoration hearing being held while the fitness matter is on appeal and "no" to the criminal case proceeding. The trial court lacks jurisdiction in the latter situation. A simple motion to dismiss appeal would remedy the situation. *People v. Elsholtz*, 136 Ill.App.3d 209, 210-211 (1985). See also *People v. Mutesha*, --Ill.App.3d--, 980 N.E.2d 764, 766-768, 366 Ill.Dec. 671, 673-675 (2012).

III. The Initial Period of Treatment

A. Applicability: The Initial Period of Treatment applies to those defendants who:

- Have been found unfit with a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year 725 ILCS 5/104-16(d)
- Have been found unfit, but the trier of fact is unable to determine if there is a substantial probability, if provided with a course of treatment, that the defendant will attaining fitness within 1 year 725 ILCS 5/104-16(d)

The discussion in this section begins at the moment the original finding of unfitness has been made by the judge or the jury.

This section is not applicable to defendants who:

- Have been found "unfit with no substantial probability, if provided with a course of treatment, of attaining fitness within 1 year." Those defendants fall under the Extended Period of Treatment procedural rules 725 ILCS 5/104-16(d) [See Section IV of this Fitness portion of the Forensic Handbook: *The Extended Period of Treatment and Other Options*.]
- Were found unfit with a substantial probability of attaining fitness within 1 year but who, in fact, end the year without attaining fitness. These defendants will then fall under the Extended Period of Treatment 725 ILCS 5/104-16(d) [See Section IV of this Fitness portion of the Forensic Handbook: *The Extended Period of Treatment and Other Options*.]

B. The initial order for treatment: At the conclusion of the fitness hearing in which the defendant was found unfit with a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year, the Court shall order the defendant to undergo treatment for the purpose of rendering him or her fit. 725 ILCS 5/104-16(d).

1. Duration of treatment: The Initial Period of Treatment is never longer than 1 year from the date of the original finding of unfitness. 725 ILCS 5/104-23(b).

Also see 725/ ILCS 5/104-17 (e) - For a defendant charged with a felony, the period of time shall be one year. For a defendant charged with a misdemeanor, the period of time shall be no longer than the sentence if convicted of the most serious offense.

2. Least form of physically restrictive treatment: If the defendant is eligible to be or has been released on bail or on his or her own recognizance, the Court shall select the least physically restrictive form of treatment therapeutically appropriate and consistent with the treatment plan. 725 ILCS 5/104-17(a). Treatment during the Initial Period of Treatment is either on an inpatient or outpatient basis. 725 ILCS 5/104-17(a,b,c).

3. If a mental condition: If the basis for the finding of unfitness is a mental condition, the Court may order the defendant placed for treatment in the custody of DHS or any other appropriate public or private mental health 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. 725 ILCS 5/104-17(b).

If the placement is with DHS as an inpatient, then 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 required by DHS to determine the appropriate placement within DHS, a 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. 725 ILCS 5/104-17(b).

a. Problems with DHS placing unfit defendants for treatment: In some parts of the State, delays have occurred between (1) the time the defendant is found unfit and ordered placed with DHS for treatment and (2) the time DHS actually places the defendant for treatment. In some instances, the delay was reportedly as much as a couple of months.

DHS has a statutory duty to file its first report within 30 days of the entry of the order for treatment. 725 ILCS 5/104-17(e). The first 90-Day Hearing is, as the term implies, within 90 days of the order for treatment. 725 ILCS 5/104-20. DHS has a statutory duty to file a progress report 7 days prior to that hearing. 725 ILCS 5/104-18(a)(1). If a defendant is not placed promptly by DHS, DHS cannot comply with its statutory duties and the scheduling scheme of the Fitness Statutes is significantly thwarted. Perhaps more importantly, a defendant's treatment has been delayed.

In some locales, the delays have been recently reduced as the result of the filing civil contempt petitions against the Director for Forensic Services in the Illinois Department of Human Services. While rules to show cause have sometimes issued, matters reportedly have settled before the contempt hearing.

Efforts have begun to formulate procedures and policies to reduce delays. Publicity of these joint efforts should be forthcoming in 2014.

b. Location status for a defendant released on bond awaiting placement: The Fitness Statutes do not specifically address the before-admitted-for-treatment status of a defendant out on bond whom the Court finds unfit, remands to DHS as an inpatient, and orders to be placed in a secure setting. The unaddressed matter is where the released-on-bond defendant is physically to be while awaiting admission.

Until there is further clarification from the statutes or case law, during the period required by DHS to determine the appropriate placement within DHS, it seems that the Court has the discretion to:

- Allow the defendant to continue to be released on bond, with appropriate bond conditions, such as cooperating with DHS, or
- Ordering the defendant held in jail while DHS makes its placement determination

The rationale for the discretion to order the released-on-bail defendant held in jail while awaiting placement is that the statute specifically states that, for a defendant already in jail, "the defendant shall remain in jail." 725 ILCS 5/104-17(b). There is

no indication in the statute that a jailed defendant is allowed at this point to post bail. It follows that a defendant released on bond is also subject to the same hold in jail, in the interest of protecting the public and protecting the defendant.

The problem with the rationale is that at the time the statute was enacted, holds were generally a matter of a few days and, at times, just a matter of hours. There may be *due process* implications now that holds are often much, much longer.

4. If a physical condition: If the basis for the finding of unfitness is a physical condition, the Court may order the defendant placed under the supervision of DHS in a suitable treatment facility or program or under the supervision of any other appropriate public or private mental health 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. 725 ILCS 5/104-17(c).

5. Additional contents of the written order: Besides the finding of unfitness and the treatment provisions, the written order usually contains terms requiring the filing of reports and the setting of the next hearing, as discussed below. The statute requires the clerk of the Court to transmit to DHS or other treatment provider the following (and the Court order sometimes recites that requirement):

(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;

(4) a copy of the arrest report, criminal charges, arrest record, jail record, and the report prepared under Section 104-15 (the fitness evaluation); and

(5) all additional matters which the court directs the clerk to transmit.

725 ILCS 5/104-17(d).

C. Immediate duty of DHS of notification to the Court: Upon completion of the placement process, if DHS "determines that the defendant is currently fit to stand trial, it shall immediately notify the court and shall submit a written report in 7 days." 725 ILCS 5/104-17(a).

D. Reports during the Initial Period of Treatment

1. 30-Day Report per 725 ILCS 5/104-17(e):

a. Names of the report: This report is commonly called a "30-Day Report, as well as an "Admission Report," a "17(e) Report," or a "Treatment Plan. Actually, according to the statute, a Treatment Plan is filed <u>with</u> a 30-Day Report.

b. Due date for the report:

- **30 days:** Filing is to be within 30 days of entry of an order to undergo treatment

- **7 days:** Along with the statutory requirement that DHS is to immediately notify the Court if it determines that the defendant is currently fit to stand trial, there is also a duty to submit the report within 7 days of that notification

c. Only report not associated with a hearing: All other reports in the Fitness Statute, including the Fitness Exam Report (725 ILCS 5/104-15) and Progress Reports (725 ILCS 5/104-18), are statutorily followed by a prompt hearing. Ordinarily after a 30-Day Report is filed, the next hearing is a 90-Day Hearing by which time another report would have been filed, that is, a Progress Report. 725 ILCS 5/104-18. Both reports can then be considered.

On the other hand, if DHS makes either a determination that the defendant has been restored to fitness or will not be restored to fitness in a year, the 30-Day Report may well be the only report on file because of the prompt hearing requirement. 725 ILCS 5/104-20(a). It could also be used at the hearing that promptly follows the original Fitness Hearing when there was an inability to determine if there is a substantial probability, if provided with a course of treatment, that the defendant will attaining fitness within 1 year 725 ILCS 5/104-16(d)

d. Contents: 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 an 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 5/104-17(e)

e. Recommendation upon receipt of a 30-Day Report: When the Court, the State, and the Defense receive the 30-Day Report, the next regularly scheduled hearing is not until the first 90-Day Hearing, which presumably would not be for another 60 days (if the 30-Day Report was filed in timely fashion). Nonetheless, the Court, the

State, and the Defense should immediately review the 30-Day Report to see if the accelerated hearing provision has been triggered by the contents of the report. (*See* Section III(F) of the Fitness portion of this Forensic Handbook: *Accelerated hearing provision.*)

Acceleration is required if the report contains an opinion that the defendant has attained fitness or that there is no substantial probability that, even if provided with a course of treatment, the defendant will attain fitness within a year of the date of the original finding of unfitness.

2. Progress Reports: During the Initial Period of Treatment, the treatment supervisor shall submit a written report, that is a *Progress Report,* to the Court, the State, and the Defense. 725 ILCS 5/104-18.

a. Due date for the Reports: Progress Reports are to be filed:

(1) At least 7 days prior to the date for any hearing on the issue of the defendant's fitness;

(2) Whenever the treatment supervisor believes that the defendant has attained fitness;

(3) Whenever the treatment supervisor 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. 725 ILCS 5/104-18(a).

b. Contents: 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 5/104-18(b)

c. Recommendation upon receipt of a Progress Report: Just as with the 30-Day Report, the Court, the State, and the Defense should immediately review the Progress Report to see if the accelerated hearing provision has been triggered by the contents of the report. But if the hearing is scheduled within 14 days, the matter is moot as long as the hearing is not continued. (*See* Section III(F) of the Fitness portion of this Forensic Handbook: *Accelerated hearing provision.*)

E. Hearing and procedure if unable to determine if will be fit within 1 year: The Initial Period of Treatment provisions also apply to those defendants found unfit at the original Fitness Trial but the trier of fact was unable to determine if there is a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year 725 ILCS 5/104-16(d).

1. Order: As with a defendant expected to attain fitness within one year, the Court shall order the defendant to undergo treatment for the purpose of rendering him or her fit. 725 ILCS 5/104-16(d). The contents of the order are substantially the same as for a defendant expected to attain fitness within one year.

2. Prompt hearing: If the trier of fact at the fitness hearing is unable to determine if there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year, then the Court should "as soon as possible following the receipt of the [30-Day] report" conduct a hearing to make that determination. 725 ILCS 5/104-16(d).

3. Waiver of hearing: The statute provides that this hearing to determine whether fitness is expected within one year may be waived by the defense. 725 ILCS 5/104-16(d). See Section I(C) of the Fitness portion of this Forensic Handbook: *Waiver of hearings* regarding the recommendation that this hearing not be waived and, instead, that the Court and counsel consider an abbreviated hearing instead.

4. Conduct of the hearing: In practice, this hearing often consists of the trial court accepting a stipulation to the admission of the report(s), that the author of the report(s) is an expert, that the expert would testify in accordance with the information in the report(s). The possible findings at that hearing are the same that could have been made at the original Fitness Trial:

a. Finding that the defendant will become fit within 1 year: If the determination at the hearing is that the defendant, if provided with a course of treatment, will attain fitness with one year, the fitness procedure continues to be governed by the Fitness Statutes that apply to the Initial Period of Treatment. The Court should order that treatment continue, subject to any modifications the Court deems appropriate.

The first 90-Day Hearing should be set, with the ninety day date calculated from date of the original finding of unfitness. The Court should not set the first 90-Day Hearing ninety days from the date of this hearing (that resolved whether fitness was expected within one year) because DHS and other treatment providers file their periodic reports on a ninety day schedule that starts from the original finding of unfitness (or possibly from the original date of admission to their program).

b. Finding that the defendant will not become fit within 1 year: If the determination at the hearing is that there is not a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year, the fitness procedure is then governed by the Fitness Statutes that apply to the Extended Period of Treatment. [See Section IV of this Fitness portion of the Forensic Handbook: *The Extended Period of Treatment and Other Options*.]

Succinctly stated, the next step at this point is for the State to choose (1) to dismiss the charge with prejudice, (2) to ask for a Discharge Hearing, or (3) to ask the Court to remand the defendant to DHS for an attempt at civil commitment. 725 ILCS 5/104-23(b).

F. 90-Day Hearings: During the Initial Period of Treatment, as well as during the Extended Period of Treatment, 90-Day Hearings are held within every ninety days of an order to undergo or continue treatment. The 90-Day Hearing is to "reexamine the issue of defendant's fitness" and to consider continuing or modifying treatment. 725 ILCS 5/104-20.

The Court, sitting without a jury, shall conduct the 90-Day Hearing. 725 ILCS 5/104-20(a).

In the Fitness portion of this Forensic Handbook, see the following sections all relevant to 90-Day Hearings: Section I(B): *Presence of the defendant at hearings*; Section I(C): *Waiver of Hearings*, and Section I(E): *No stipulations to fitness or the lack of fitness*.

The Court will consider, at a minimum, any filed report by the treatment supervisor. If the report has not been filed, the Court should grant a short continuance for the State or Defense to contact the treatment supervisor to immediately file the report. At the first 90-Day Hearing, the Court, the State, and the Defense will have already received the 30-Day Report, filed within the first 30 days, and the first Progress Report, usually filed 7 days prior to the 90-Day Hearing. Thereafter at the 90-Day Hearings, the Court, the State, and the Defense will have received a Progress Report, which is to be filed 7 days prior to the hearing. 725 ILCS 5/104-15 and 5/104-18.

In practice, 90-Day Hearings are usually short and uncontested. The Court should receive any offered evidence in addition to the Progress Report.

The Court shall determine whether the defendant is fit to stand trial, to plead or to be sentenced. 725 ILCS 5/104-20(a).

While it is always a good idea for the Court to state at 90-Day Hearings any basis in addition to the report in reaching its determination as to continuing unfitness of the defendant, such a finding is expressly required at a restoration hearing, that is, at a hearing the Court finds the defendant has been restored to fitness. "When a defendant has previously been found unfit, a finding of restored fitness must be based not only upon a stipulation to the conclusion of psychiatric reports, but upon an affirmative exercise of the court's discretion to determine the defendant's mental state." *People v. Esang*, 396 Ill.App.3d 833, 839 (2009)

For defendants in the Initial Period of Treatment and if the Court determines that the defendant remains unfit, the Court shall determine whether the defendant is making progress under treatment toward attainment of fitness within one year from the date of the original finding of unfitness. 725 ILCS 5/104-20(a)(2). (For defendants in the Extended Period of Treatment, courts sometimes make this same finding as to progress, but it has less legal significance. See Section IV(C)(1)(h)(ii)(I): References to "not progressing.")

Possible findings and resulting orders at a 90-Day Hearing during the Initial Period of Treatment:

1. Finding of fit: If at the 90-Day Hearing the Court finds the defendant to be fit, the Court shall set the matter for trial or other hearing; 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. 725 ILCS 5/104-20(b).

A finding of fitness includes proceeding in cases where the defendant is developmentally or physically disabled pursuant to the statute on "Trial with special provisions and assistance" and where special provisions or assistance will render the defendant fit. 725 ILCS 5/104-22.

2. Finding of unfit and progressing: If at the 90-Day Hearing the Court finds that a defendant in the Initial Period of Treatment:

- Is still unfit but that he or she is making progress toward attaining fitness within one year from the date of the original finding of unfitness and
- The one year Initial Period of Treatment has not ended

Then the Court may continue or modify its current treatment order. 725 ILCS 5/104-20(c).

The Court should also set a date for the next 90-Day Hearing.

3. Finding of unfit and not progressing: If at the 90-Day Hearing the Court finds that a defendant in the Initial Period of Treatment remains unfit and that he or she is not making progress toward attaining fitness in that there is not a substantial probability that the defendant will attain fitness within one year from the date of the original finding of unfitness, the Court shall proceed according to the procedural Fitness Statutes that govern the Extended Period of Treatment. 725 ILCS 5/104-20(d), 725 ILCS 5/104-23(b). [See Section IV of this Fitness portion of the Forensic Handbook: *The Extended Period of Treatment and Other Options*.]

4. Finding of unfit at the end of the Initial Period of Treatment: At the end of the one year Initial Period of Treatment, if the Court finds the defendant still unfit and that no special provisions or assistance can compensate for the defendant's disabilities and render the defendant fit, the Court shall proceed according to the procedural statutes that govern the extended period of treatment. 725 ILCS 5/104-20(b). [See Section IV of this Fitness portion of the Forensic Handbook: *The Extended Period of Treatment and Other Options*.]

G. Accelerated hearing provision: In addition to the regularly scheduled 90-Day Hearings in any of the treatment periods, a hearing must commence within 14 days of the receipt of a 30-Day Report or a Progress Report (or a Treatment Plan) that states the treatment supervisor believes that the defendant has attained fitness or that in the Initial Period of Treatment states 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. 725 ILCS 5/104-20(a), 725 ILCS 5/104-18(a)(2) and (3).

Of course, if any of the reports triggers the acceleration provision of the UST statute but the hearing is already set within the next 14 days, the matter is moot, except to the extent that continuances should be avoided.

The 14-day deadline for an accelerated hearing may be continued for good cause. 725 ILCS 5/104-20(a).

A statutory amendment provides where DHS determines during the placement process that an unfit defendant has already become it, DHS must file a written report within 7 days. 725 ILCS 5/104-17(b). The amendment does not appear to affect the 14-day deadline from the date of receipt of the report to the date of accelerated hearing. 725 ILCS 5/104-20(a).

> **1. Inapplicability to g(2) treatment:** The statute does not specifically state this 14-day rule applies to the g(2) Period of Treatment. There is no statutory or case law requirement that a prompt hearing (or a hearing at any time) be held to consider restoration, notwithstanding the report opining the g(2) defendant has been restored to fitness. 725 ILCS 5/104-20(a), *People v. Olsson*, --Ill.App.3d--, 979 N.E.2d 982, 990-991, 366 Ill.Dec. 181, 190 (2012). A hearing to consider fitness should be set upon motion of the State or Defense or on the Court's own motion.

Of course, if any of the reports triggers the acceleration provision of the UST statute but the hearing is already set within the next 14 days, the matter is moot, except to the extent that continuances should be avoided.

The 14-day deadline for an accelerated hearing may be continued for good cause. 725 ILCS 5/104-20(a).

A statutory amendment provides where DHS determines during the placement process that an unfit defendant has already become fit, DHS must file a written report within 7 days. 725 ILCS 5/104-17(b). The amendment does not appear to affect the 14-day deadline from the date of receipt of the report to the date of accelerated hearing. 725 ILCS 5/104-20(a).

IV. The Extended Period of Treatment And Other Options

A. Scope: This section covers options and procedures for an unfit defendant for whom:

1. The Court or jury has determined that there is not a substantial probability that the defendant will attain fitness within one year from the date of the original finding of unfitness

   a. This determination may be made contemporaneously with or soon after the initial finding of unfitness by the Court or jury. 725 ILCS 5/104-16(d)

   b. This determination may be made by the Court at some point subsequent to the initial finding of unfitness during the Initial Period of Treatment (that never exceeds one year), most commonly at a 90-Day Hearing. 725 ILCS 5/104-20(d)

2. Regardless if previous findings of the Court or jury have been that there is a substantial probability that the defendant will attain fitness within one year from the date of the original finding of unfitness, that year has come to an end and the Court finds the defendant remains unfit and for whom no special provisions or assistance can compensate for the defendant's disabilities and render the defendant fit. 725 ILCS 5/104-23(b).

At this point in the fitness procedure, there are three options, all of which are discussed in more detail below:

(1) Continue, modify, or enter anew a treatment order and grant the State's or Defense's motion to set the matter for a Discharge Hearing, unless there has already been a Discharge Hearing or its equivalent. 725 ILCS 5/104-23(a) and (b)(1)
(2) Grant the State's motion to release the defendant from custody and to dismiss the case with prejudice. 725 ILCS 5/104-23(b)(2)
(3) Grant the State's motion to remand the defendant to DHS for a civil commitment hearing. 725 ILCS 5/104-23(b)(3)

B. Options for the Defense at end of Initial Period of Treatment (or earlier): Upon the conclusion of the Initial Period of Treatment or earlier if the Court or a jury finds that there is not a substantial probability that the defendant will attain fitness within one year from the date of the original finding of unfitness, "A defendant or the attorney for the defendant may move for a discharge hearing." 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. 725 ILCS 5/104-23(a).

If the defendant demands a Discharge Hearing and the State opts for a different option (*see* the next Section), the State probably prevails because, if for no other reason, the other choices both contemplate forms of dismissal. 725 ILCS 5/104-23(b)(2) and (b)(3).

The Defense also has the option of not requesting a Discharge Hearing and awaiting the State's choice of options.

C. Options for the State at end of Initial Period of Treatment (or earlier): Upon the conclusion of the Initial Period of Treatment or earlier if the Court or a jury finds that there is not a substantial

probability that the defendant will attain fitness within one year from the date of the original finding of unfitness, the State must request the Court:

(1) To set the matter for a Discharge Hearing, unless one was already held upon the defendant's request (725 ILCS 5/104-23(b)(1)) or its functional equivalent was already held (Note: as discussed below, this also includes continuing, modifying, or entering anew a treatment order) or

(2) To release the defendant from custody and dismiss charges with prejudice, 725 ILCS 5/104-23(b)(2), or,

(3) To remand the defendant to DHS and order a civil commitment hearing pursuant to the provisions of the Mental Health and Developmental Disabilities Code (MHDDC), 405 ILCS 5/1-100 *et seq*. 725 ILCS 5/104-23(b)(3).

1. Discharge Hearing option: For a defendant who remains unfit at the end of the Initial Period of Treatment or for a defendant with no substantial probability, with treatment, of attaining fitness within one year of the original finding of unfitness, the State's first option is to request the Court to set the matter for a Discharge Hearing. 725 ILCS 5/104-23(b)(1). It is only this option that can trigger entry into the Extended Period of Treatment.

A "discharge hearing" is also known as an "innocent only hearing," an "innocence only hearing," and a "not not-guilty hearing." The concept "allows an unfit defendant or his attorney to test the sufficiency of the State's evidence of the crime with which the defendant is charged." *People v. Lang*, 113 Ill. 2d 407, 445-446 (1986).

A Discharge Hearing is not a criminal prosecution. *People v. Waid* 221 Ill.2d 464, 470 (2006). A Discharge Hearing under section 104–25 is an "innocence only" hearing, that is to say, a proceeding to determine only whether to enter a judgment of acquittal, not to make a determination of guilt. *Waid*, 221 Ill. 2d at 470; *People v. Rink*, 97 Ill.2d 533, 543, (1983). The question of guilt is to be deferred until the defendant is fit to stand trial. *Waid*, 221 Ill. 2d at 471; *Rink*, 97 Ill.2d at 543.

Failure of the State to prove the defendant guilty beyond a reasonable doubt results in the defendant's acquittal of the crime. 725 ILCS 5/104-25(b). If the State sustains its burden of proof, the defendant may be remanded for further treatment for an extended period. *People v. Lang*, 113 Ill. 2d at 445-446. Depending on the felony charge, the maximum extended period of treatment is 15 months, 2 years, or 5 years. 725 ILCS 5/104-25(d). As explained below, an accused misdemeanant may be ordered into the Extended Period of Treatment, but the original initial period of treatment cannot be lengthened or extended. (*See* Par. "l" as in "L" below.)

a. Mootness of a Discharge Hearing: In deciding upon its options, if the State opts for the Discharge Hearing and if there has already been a bench or jury trial on the underlying charge, there is authority for the proposition that actually holding the Discharge Hearing is unnecessary. Due process rights have been already been satisfied. *Lang*, 113 Ill. 2d at 446.

This most commonly occurs if a *bona fide* doubt as to fitness arises after the defendant's trial but before sentencing. If the State has selected this discharge option and trial has already occurred, the Court may remand the defendant for treatment with the entry of an order for an Extended Period of Treatment, as discussed below.

b. Order treatment while awaiting a Discharge Hearing:

On its face, the Fitness Statutes appear to make no provision for any treatment for a defendant found at the fitness trial as (1) unfit and (2) with no substantial probability of attaining fitness within one year, until a Discharge Hearing results in a "not not-guilty" finding. This is odd, especially in light of the 120 days allowed to hold the Discharge Hearing, which would delay treatment. 725 ILCS 5/104-23(a).

A defendant found at the <u>initial</u> Fitness Hearing as having no substantial probability of attaining fitness within one year from the date of the original finding of unfitness is an unfit defendant with serious mental or physical issues and presumably an unfit defendant most in need of treatment. There is strong implicit authority to order treatment immediately as the defendant awaits a Discharge Hearing based on:

- The theme in the Fitness Statutes to provide prompt and continual treatment as evidenced by the provision for interim treatment if the trier-of-fact at the initial Fitness Hearing is unable to determine if there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year. 725 ILCS 5/104-16(d).
- The overall intent of the Fitness Statutes to provide prompt and continual treatment for the purpose of rendering a defendant fit as evidenced by several deadlines in the statutes, and
- The first reference to treatment for a defendant in this situation is termed as "<u>further</u> treatment." (725 ILCS 5/104-23(a), emphasis added.) Treatment is assumed by that language and, in fact, treatment usually would have begun during the Initial Period of Treatment, has there been an Initial Period.

While the Fitness Statutes provide for application of certain rules and procedures during an Extended Period of Treatment that may be immediately applicable for the more seriously mentally or physically impaired defendants at the moment of the initial determination of unfitness, the actual treatment for the impairment is intended to be the same throughout those periods, with the "Extended Period" treatment being just that, that is, treatment for a period that began with the one year Initial Period and continuing on through the applicable Extended Period.

For the minority of unfit defendants who were initially found as having no substantial probability of attaining fitness within one year, the Court should immediately enter the first treatment order as the case awaits a Discharge Hearing.

c. Duty to hear pending motions before the Discharge Hearing: While there may be some discretion during the Initial Period of Treatment for the Court to decline to hear and rule on any pretrial motions or motions where the defendant's presence is not essential to a fair determination of the issues [725 ILCS 5/104-11(d)], several courts have held that once fitness proceedings have reached the Discharge Hearing stage, the court must hear motions to suppress evidence. *People v. Braggs*, 302 Ill.App.3d 602, 606 (1998); *People v. Lavold*, 262 Ill.App.3d 984, 1003-004 (1994) (McNulty, J., dissenting); *People v. Fuhrman*, 233 Ill.App.3d 503, 507 (1992); *People v. Burt*, 142 Ill.App.3d 833, 837 (1986).

d. Deadline for Discharge Hearing: Within 120 days (except for delays occasioned by defendant), Court (not jury) shall hold a Discharge Hearing. 725 ILCS 5/104-23(a).

e. Evidence: The State and the defendant may introduce evidence relevant to the question of the 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. 725 ILCS 5/104-25(a).

> **i. Hearsay regarding children and the disabled:** Even though a Discharge Hearing is not a criminal trial, the State is not prohibited from asking the Court to admit hearsay evidence pursuant to the "Certain Hearsay Exceptions" statute regarding children and the disabled at 725 ILCS 5/115-10. *People v. Orengo,* --Ill.App.3d--, 982 N.E.2d 917, 923-924, 367 Ill.Dec. 767, 773 - 774 (2012)

f. Presence of the defendant at a Discharge Hearing: Because the Discharge Hearing determination clearly affects a substantial right of the defendant, namely, his or her liberty interest, a defendant should be given the opportunity to be present at the hearing. While the right is not absolute, if it is not given or exercised, the record must clearly support a valid basis for the defendant's absence. *People v. Williams*, 312 Ill. App. 3d 232, 235 (2000).

In an appropriate case to excuse the presence of the defendant for a mental condition, the Court should not accept a waiver of the defendant's presence without the physician's certificate stating that the defendant is physically unable to be present and the reasons for that inability. 725 ILCS 5/104-16(c). There is authority that a disruptive defendant at a Discharge Hearing may be removed from the courtroom. *People v. Williams*, 312 Ill.App.3d 232 at 235.

g. Judgment at the Discharge Hearing: Upon the conclusion of a Discharge Hearing, there are three possible judgments by the Court.

> **i. Not guilty:** If the evidence does not prove the defendant guilty beyond a reasonable doubt, the Court shall enter a judgment of acquittal. Acquittal shall not prevent the State from requesting the civil courts to commit the defendant to the Department of Human Services under the provisions of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 *et seq*.]. 725 ILCS 5/104-25(b).
>
> **ii. Not guilty by reason of insanity:** If the defendant is found not guilty by reason of insanity, the Court shall enter a judgment of acquittal. The "Proceedings after Acquittal by Reason of Insanity" found at 730 ILCS 5/5-2-4 of the Unified Code of Corrections shall apply. 725 ILCS 5/104-25(c).
>
> **iii. "Not not-guilty":** If the evidence is sufficient to prove the defendant guilty beyond a reasonable doubt, the Court does not enter a "guilty" finding or judgment. The question of guilt is to be deferred until the defendant is fit to stand trial. *Waid*, 221 Ill. 2d at 471; *Rink*, 97 Ill.2d at 543. Instead, the Court finds, in essence, that the defendant is "not not-guilty."

h. Defendant's immediate right to appeal "not not-guilty": If the Court fails to enter an order of acquittal, the defendant may appeal from the judgment in the same manner provided for an appeal from a conviction in a criminal case. 725 ILCS 5/104-25(f). Among other rulings, reviewing courts may "reverse the trial court's finding of '"not not guilty' and acquit defendant." *People v. Peterson* 404 Ill.App.3d 145, 154, 935 N.E.2d 1123, 1131 (2010)

i. Entry of a treatment order: If the Discharge Hearing does not result in an acquittal of the charge, the defendant may be remanded for treatment or for further treatment. 725 ILCS 5/104-25(d). The Extended Period of Treatment of an unfit defendant is now statutorily authorized.

In most instances, the treatment order is a continuation or modification of either the last treatment order coming out of the Initial Period of Treatment or, for an unfit defendant at the original Fitness Trial who was found as having no substantial probability of attaining fitness within one year, the treatment order that was entered immediately upon the finding of unfitness as the case awaited the Discharge Hearing.

The wording of the statute contemplates the possibility that no treatment order would have ever been entered until the conclusion of the Discharge Hearing, but such a delay could have due process violation implications and is otherwise very unlikely. If this is the very first treatment order, see Section III(B) in this Fitness portion of the Forensic Handbook: The initial order for treatment.

j. Contents of the order: The form of the court's written order for an Extended Period of Treatment is similar to that which would have issued or did issue for the Initial Period of Treatment. The only difference concerns the term or period of treatment. The order should specify the period of time the defendant is subject to extended treatment. See paragraph "k" below for specific lengths of extensions.

Any treatment order, regardless of the Period, should contain the date and time of the next (or first) 90 or 180-Day Hearing.

i. References to "not progressing" during the Extended and g(2) Periods: The Fitness Statutes on treatment orders, 30-Day Report, Progress Reports, and 90-Day Hearings make frequent references to whether the defendant is making progress under treatment toward attainment of fitness within one year from the date of the original finding of unfitness. 725 ILCS 5/104-17(e), 104-18, 104-20. The reasons for these references during the Initial Period of Treatment are clear. Court procedure in the Initial Period of Treatment is dependent upon how the defendant is progressing.

In the Extended Period of Treatment and the g(2) period of treatment, the reasons for these references are less apparent and legally irrelevant. Nonetheless, the practice during the Extended Period of Treatment is that orders, reports, and findings often continue to include references to whether the defendant is expected to attain fitness within one year. The information or finding is sometimes used as an indicator whether the defendant is moving toward attaining fitness.

In practice, some preparers of reports are aware of this statute and accommodate for it. Instead of offering an opinion in the Progress Report as to whether the defendant will attain fitness within one year, they offer an opinion as to whether the defendant is expected to attain fitness within the Extended Period of Treatment. That opinion, too, is largely informational only.

k. Maximum extension of treatment applicable to the Extended Period: The one year time limit for treatment referred to in the "Unfit defendants" statute (725 ILCS 5/104-23), which is the maximum time of treatment during the Initial Period of Treatment, may be extended as follows:

- If the most serious charge upon which the State sustained its burden of proof was a charge of first degree murder, the treatment period may be extended up to a maximum treatment period of 5 years. 725 ILCS 5/104-25(d)(2).

- 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. 725 ILCS 5/104-25(d)(1).

- If the most serious charge upon which the State sustained its burden of proof was a Class 2, 3, or 4 felony, the treatment period may be extended up to a maximum of 15 months. 725 ILCS 5/104-25(d)(1).

i. Applicable extension is an extension of one year of treatment: There is little question that the maximum extension authorized by the Discharge Hearing statute (725 ILCS 5/104-25) is determined by a full one year initial treatment period plus the applicable extension period. The statute authorizing extensions specifically refers to "treatment... [of] one year... extended as follows..." and what follows are the 15 months, 2 years, and 5 years extension periods. 725 ILCS 5/104-25(d).

There is no "lost" treatment time, as when the Extended Period of Treatment begins during the middle of the Initial Period of Treatment. The applicable extension is from the end of the initial year.

ii. No requirement to order entire authorized extension: Because the "Discharge hearing" statute states that "further treatment… may be extended <u>up to</u> a maximum treatment period…" of 5 years, 2 years, or 15 months (725 ILCS 5/104-25(d), *emphasis added*), the limitations on the length of the extended periods of treatment are just maximums and not "required length." *People v. Waid*, 221 Ill.2d 464, 472 (2006). The Court may order whatever length of treatment the Court deems appropriate up to the statutory limits.

The Court also retains the authority to terminate that order if the Court deems it appropriate. (See 725 ILCS 5/104(g)(2)1st par., *In re Evelyn S.*, 337 Ill.App.3d 1096, 1104 (2003).)

l. Lack of clarity for misdemeanors: The term "misdemeanor" is not found in the Fitness Statutes, and that gives rise to several questions. But the Illinois Supreme Court has left no doubt that the Fitness Statutes apply to misdemeanors as well as felonies. *People v. Waid*, 221 Ill.2d 464, 471 (2006).

i. Treatment for a Class A misdemeanor may never exceed one year (364 days): This is the easier of the misdemeanor matters. The statute limits treatment in all fitness cases to "the maximum sentence to which a defendant would have been subject had he or she been convicted." 725 ILCS 5/104-25(g) (4), *Waid*, 221 Ill.2d at 471.

ii. **Maximum term of treatment for Class B and C misdemeanors is unsettled:** All that can be reported here is the practice rather than the law because there is no law on the maximum length of treatment for Class B and C misdemeanors. The question is whether treatment for a Class B

misdemeanant is for up to one year or merely 6 months. Similarly, the question is whether treatment for Class C misdemeanants is for up to one year or merely 30 days.

The practice is as unsettled as any in the criminal courts of Illinois.

Arguments for the shorter period: Those that operate under the 6 month and 30 days maximum periods of treatment cite the statute that says, "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." 725 ILCS 5/104-25(g)(4).

They point out that felons may be held for treatment no longer than the maximum criminal sentence, even if they are subject to involuntary admission or are a "serious threat to public safety." 725 ILCS 5/104-25(g)(2). They cite language from *Waid,* "The potential maximum prison sentence thus serves as a ceiling rather than a floor. Contrary to defendant's assertion, this sentence represents the upper limit of a commitment term rather than its required length." (*Waid* at 472.)

Arguments for the longer period: Those that operate under the one year maximum period of treatment for Class B and C misdemeanors point out that *Waid* was a Illinois Supreme Court case involving Class A misdemeanors and does not address Class B and C.

They argue that the Fitness Statutes should be read literally, that is, limiting treatment by the maximum criminal sentence term is in reference to Extended Period of Treatment only, 725 ILCS 5/104-25(g)(4), and no other statutory language limits treatment.

They point out that pre-trial detention that exceeds the maximum jail sentence regularly occurs with accused misdemeanants who are unable to post bail. They may be held in jail awaiting trial beyond the maximum sentence for the offense.

They stress the practical aspect of their approach. At a time that the Criminal Justice System struggles to get an unfit defendant placed as an inpatient at DHS within 30 days, those on the other side of the issue advocate that an entire course of treatment is limited to 30 days for Class C misdemeanants. This has the practical effect of immunizing from prosecution most unfit Class C misdemeanants from prosecution because there is never enough time to restore them to fitness.

Finally, legal counsel for DHS reports that DHS does accept these orders and provide treatment to defendants charged with Class B and Class C misdemeanors beyond the respective 6 month and 30 day periods and for up to one year.

iii. Are Discharge Hearings ever required in misdemeanor cases?

One could easily conclude that because fitness treatment in misdemeanor cases can never exceed one year, there is no statutory or due process requirement to ever conduct a Discharge Hearing. Discharge Hearings only come into play when treatment beyond one year becomes a "substantial probability" or actually becomes necessary. 725 ILCS 5/104-23. Arguably, all that is irrelevant to misdemeanants who can never be treated for longer than 364 days.

But in an Illinois Supreme Court case involving fitness in a misdemeanor case, the court ruled only on the issues raised, that is, whether the admission of hearsay or affidavit evidence at a misdemeanor Discharge Hearing violated the confrontation clause or the due process clause. The court was not asked, and it did not address, whether there is any requirement of conducting Discharge Hearings in fitness misdemeanor cases.

One way of dealing with this issue is as follows. First, the issue never arises for misdemeanants, as it does for felons, that the one year Initial Period of Treatment has ended and the defendant remains unfit with the possibility of further treatment. In that circumstance, the unfit misdemeanant defendant must always be released. 725 ILCS 5/104-25(g)(4).

Next, the only way the matter arises is that an examiner opined and a trier-of-fact found that that there is **no** "substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year." 725 ILCS 5/104-16(d).

This means that before proceeding with the Fitness Trial the Court could inquire of counsel whether either side wants a determination at trial whether there is a "substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year." If not and if the case is before a jury, jury instructions should be modified.

m. Procedure during the Extended Period of Treatment: The procedure during the Extended Period of Treatment is substantially the same as during the Initial Period of Treatment.

90-Day Hearings will be held every ninety days. 725 ILCS 5/104-20. Progress Reports will be filed at least 7 days prior to the hearing. 725 ILCS 5/104-18. The defendant's presence at the 90-Day Hearings may be waived with the physician's certificate. 725 ILCS 5/104-16(c). The Court is to determine if unfitness continues and, if so, whether the current treatment should continue or be modified. 725 ILCS 5/104-20(c). See Section III: *The Initial Period of Treatment* of the Fitness portion of this Forensic Handbook for more details on procedure during treatment.

If the Court determines that the defendant has been restored to fitness, the criminal charge shall be set for trial or other hearing. 725 ILCS 5/104-20(b). If the defendant has been restored to fitness, then with the treatment supervisor's agreement, the Court may order continuing care or treatment until the conclusion of the criminal case. 725 ILCS 5/104-20(b). The Extended Period of Treatment is not to exceed the extension allotted by statute.

i. Acceleration provision: Within 14 days of receipt of a Progress Report indicating that the defendant has attained fitness, a hearing must be held. 725 ILCS 5/104-20(a),104-18(a)(2). For this reason, the Court, the State, and the Defense should immediately review Progress Reports when they are received.

The Initial Period acceleration provision in 725 ILCS 5/104-20(a) triggered upon the filing of a report with the opinion that "the defendant is not expected to attain fitness within one year" is not applicable in the Extended Period.

ii. Due process right to subsequent Discharge Hearings: Because of the "unusual circumstances" in the *Lang* case," the Supreme Court allowed a subsequent Discharge Hearing for that particular civilly committed defendant even though the Fitness Statutes contemplate, at most, only one Discharge Hearing. In doing so, the language in *Lang* suggests any unfit defendant has a due process right to additional Discharge Hearings upon the discovery of "exculpatory evidence." *People v. Lang*, 113 Ill. 2d 407, 447 (1986). (See the discussion regarding the ramifications of *Lang* beginning at IV(C)(3)(f): *Due process rights in criminal court during civil commitment*.

n. Expiration of the Extended Period of Treatment: At the expiration of the Extended Period of Treatment, if the Court finds the defendant remains unfit, the Court shall proceed according to the procedural statutes that govern the involuntary admission of the defendant to DHS. 725 ILCS 5/104-25(g)(2). See Section V: *The g(2) Period of Treatment and Other Options*.

This finding is usually made at the last of the 90-Day Hearings during the extended period or at a specially set hearing at or near the end of the Extended Period of Treatment.

o. Warning about inadvertent dismissal after a Discharge Hearing: Once a Discharge Hearing has been held, there is no statutory provision for the criminal court to remand the defendant to DHS for a civil commitment proceeding. But see *People v. Christy*, 206 Ill. App. 3d 361 (1990) where this is, in fact, what happened. After a Discharge Hearing, the Court remanded the defendant to DHS for an attempt at a civil commitment rather than remanding to DHS for extended treatment. When the civil court did not civilly commit the defendant and returned the defendant to the criminal court, the trial and appellate courts both ruled that

there was no choice but to dismiss the charges with prejudice because a Discharge Hearing had already been conducted.

While the language and legislative history of the Fitness Statutes contemplate no dismissal with prejudice except on motion of the State or upon an acquittal at a Discharge Hearing, the *Christy* court ruled otherwise. An unintended dismissal with prejudice may be avoided by the Court (and the State) if an unfit defendant is never remanded to DHS for civil commitment proceedings after a Discharge Hearing and during the Extended Period of Treatment. Instead, a remand to DHS after a Discharge Hearing should be for extended treatment. This does seem like a technical distinction, but in view of the *Christy* holding, it must be considered.

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Note: The context of this section (*The Extended Period of Treatment and Other Options)* began with a discussion of the three options the State has at the end of the Initial Period of Treatment. Here's the Outline:

IV. The Extended Period of Treatment and Other Options

A. Scope

B. Options for the Defense upon the start of the Extended Period of Treatment

C. Options for the State upon the start of the Extended Period of Treatment

1. Discharge Hearing option

(...with many subsections)

2. Dismissal option

(...the next section)

3. Attempt at civil commitment option (later)

***

2. Dismissal option: The State's second option for a defendant who remains unfit at the end of the Initial Period of Treatment or for a defendant with no substantial probability, with treatment, of attaining fitness in one year is to dismiss the case, with prejudice. Dismissal with prejudice needs no further explanation. 725 ILCS 5/104-23(b)(2). The criminal court has no jurisdiction to enter a treatment order upon the defendant if the case is dismissed with prejudice.

3. Attempt at civil commitment option: The State's third option for a defendant who remains unfit at the end of the Initial Period of Treatment or for a defendant with no substantial probability, with treatment, of attaining fitness in one year is to ask the Court to remand the defendant to DHS and to order a civil commitment hearing pursuant to the

provisions of the Mental Health and Developmental Disabilities Code (MHDDC), 405 ILCS 5/1-100 *et seq*. 725 ILCS 5/104-23(b)(3). This hearing is held by the civil courts.

a. Rarity of this option: This option is rarely exercised. The burden of proof in the civil courts for a civil commitment to DHS is by clear and convincing evidence. The burden of proof in the criminal courts for inpatient treatment at DHS for an unfit defendant during the Extended Period of Treatment is by a preponderance of the evidence. For that reason, the State generally opts for this civil commitment route only for reasons specific to a particular case.

b. Procedure to attempt civil commitment: When the State requests the Court to remand the defendant to the custody of the DHS and to order that a hearing to be conducted pursuant to the provisions of the MHDDC, 405 ILCS 5/1-100 *et seq*., the hearing is not held by the criminal court where the charges were filed, but, instead, in those civil courts DHS and its patients routinely appear. For many counties in the state of Illinois, this civil court will not be located in the county that the offense was charged.

DHS has 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 MHDDC, 405 ILCS 5/1-100 *et seq*. 725 ILCS 5/104-23(b)(3). In a civil commitment, the State must establish by clear and convincing evidence that the respondent is subject to involuntary admission. 405 ILCS 5/3-808.

The criminal court should not dismiss the case with leave to reinstate until the civil court has ruled that the defendant is subject to involuntary admission.

c. Treatment for the civilly committed defendant: A former defendant committed pursuant to this procedure 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. 725 ILCS 5/104-23(b)(3).

d. Periodic reports to the criminal court will cease: With dismissal of the criminal case, there is no statutory provision for the criminal court to be sent periodic reports, other than the notification of discharge from the facility. 725 ILCS 5/104-23(b)(3).

e. Dismissal of criminal charges with leave to reinstate if civil commitment occurs: If the defendant is committed to the DHS (and not before then), the court having jurisdiction over the criminal matter shall dismiss the charges against the defendant, with the leave to reinstate. 725 ILCS 5/104-23(b)(3). Under the Fitness Statutes, 725 ILCS 5/104-10 *et seq*., this is the only provision for dismissal with leave to reinstate. Any other attempt to dismiss a charge with leave to reinstate for a defendant who has been found unfit would be pursuant to other law apart from the Fitness Statutes, if any exists.

f. Due process rights in criminal court during civil commitment (very rare): During the period that the defendant is civilly committed and the charges remain dismissed with a right of reinstatement, the former criminal defendant has no statutory rights to subsequent determinations of fitness (i.e. 90 Day Hearings) or to an initial or additional Discharge Hearings. But the Illinois Supreme Court in *People v. Lang* ruled that civilly committed defendants have a constitutional due process right to subsequent periodic fitness hearings and may have a due process right to an initial or subsequent Discharge Hearings. *People v. Lang*, 113 Ill 2d 407 (1986). These are very rare hearings.

i. Periodic due process fitness hearings (rare): These are rare. A former criminal defendant civilly committed through the statutory procedure in 725 ILCS 5/104-23(b)(3) has a due process right to fitness hearings on an annual basis or "sooner" if the former defendant is making faster progress toward fitness. *People v. Lang*, 113 Ill 2d at 444-445.

The *Lang* court was specific in that these hearings are not automatic and are upon the request of the defendant. *People v. Lang,* 113 Ill.2d at 442.

Reportedly, criminal defense attorneys generally choose not to file these petitions. A determination of fitness would not work to release the civilly-committed defendant from DHS. But a determination of fitness may force the refiling of a dismissed charge, with the case proceeding to trial notwithstanding the defendant's involuntary commitment to DHS. Forcing the State to refile a murder or other serious charge is a situation that the defense would invite only for specific tactical or other well-thought out reasons.

ii. Due process Discharge Hearings: These hearings, too, are rare. The statutory scheme in the Fitness Statutes do not contemplate any Discharge Hearing for an unfit defendant who is committed civilly pursuant to 725 ILCS 5/104-23(b)(3). But the Illinois Supreme Court said in *Lang* that such a defendant is "entitled" to a subsequent (or, presumably, an initial) Discharge Hearing if new exculpatory evidence is discovered and the defendant is not expected to attain fitness within 1 year. *Lang*, 113 Ill 2d at 447.

iii. Logistics for due process fitness and Discharge Hearings: Logistics problems arise because if a defendant's request for a due process Fitness Hearing or Discharge Hearing is granted, the criminal court file has been closed.

Recommendations:

Prior to hearing:

- Reopen the criminal court file for these hearings. Do not have the committing civil court conduct the hearings because

the matters are largely criminal in nature. Also, the criminal court is in the county of venue for the criminal offense while civil commitment cases are often in the county of the DHS facility.

- Once the criminal file is reopened, allow the State to amend charges if it wishes, as it would have been able if there had been no dismissal.

If a Discharge Hearing is held:

- If the defendant is found "not guilty," a judgment of acquittal should be entered in this original criminal file. The defendant should be remanded to DHS because he has already been civilly committed there.
- If the defendant is found "not guilty by reason of insanity," the Court should enter a judgment of acquittal by reason of insanity. The Court must then follow the statutory steps found in *Proceedings after Acquittal by Reason of Insanity* [730 ILCS 5/5-2-4] which direct the Court to begin the process of a determination whether the defendant should be committed to DHS. But, this defendant has already been committed to DHS by the civil courts. It is probable that the State will want the jurisdiction of the defendant and his or her treatment to move from the civil court to this criminal court. It is probable, then, that this case should proceed as any other case in which the defendant has been found not guilty by reason of insanity. In the meantime, the Court should remand the defendant to DHS.
- If a Discharge Hearing is held and the defendant is found "not not-guilty," remand the defendant to DHS and reclose the criminal file with leave to the State to reinstate.

If a Fitness Hearing is held:

- If a Fitness Hearing is held and the defendant has been restored to fitness, regardless of defendant's civil commitment status the "State is no longer justified in preventing him from obtaining a trial on the dormant charge." *People v. Lang*, 113 Ill.2d 407, 444, (1986).
- If a Fitness Hearing is held and the defendant remains unfit, the Court should reclose the criminal file. The defendant should be remanded to DHS. The case may be reclosed with leave to reinstate.

g. Notification upon discharge from civil commitment: DHS shall notify the Court, the State's attorney and the defense attorney upon the discharge of the defendant.

725 ILCS 5/104-23(b)(3). The State will then have the option of reinstating the criminal charge. 725 ILCS 5/104-23(c). The practice in some counties is for the State to open a new criminal file rather than reopening the dismissed file.

i. Release does not mean fit: Discharge from a DHS civil commitment does not necessarily mean the defendant has attained fitness. See *People v. Bocik*, 211 Ill. App. 3d 801, 807-809 (1991), which is a pure fitness case and not a fitness/civil commitment case. But *Bocik* is an example that issues of continued treatment are different from issues of continuing unfitness. If the State wants to proceed with the prosecution after the civil commitment discharge, the State will have to await the defendant's restoration to fitness.

ii. Upon release, a fitness hearing will be needed before proceeding: The statute is not precise that upon the reinstatement of charges after a civil commitment, a fitness hearing must be held to determine whether the defendant has been restored to fitness. See 725 ILCS 5/104-23(b)(3).

But the need for such a hearing is implicit by the statute's reference to the defendant being "restored to fitness" in this situation (725 ILCS 5/104-23(c)).and would be required under any standard because restoration to fitness is never assumed and always subject to adjudication. See *People v. Lewis*, 103 Ill. 2d 111, 116 (1984); *People v. Greene*, 102 Ill.App.3d 639, 643 (1981) for the proposition that even a stipulation as to fitness would not be acceptable.

The need for a redetermination of the defendant's fitness is emphasized by the fact that the defendant's civil commitment release was judged by standards of involuntary commitment under the Mental Health and Developmental Disabilities Code (405 ILCS 5/1-100 et seq.), per 725 ILCS 5/104-23(b)(3), and not by the standards of fitness under the Code of Criminal Procedure, Fitness to Stand Trial, to Plead or to be Sentenced (725 ILCS 5/104-10 et seq).

iii. Speedy trial upon release: Speedy trial provisions do not commence to run until the defendant has been restored to fitness and the original charges are reinstated. 725 ILCS 5/104-23(c).

h. If not civilly committed by the civil courts: If the civil court does not commit the defendant under the MHDDC, the defendant shall be remanded back to the court having jurisdiction of the criminal matter for the State to exercise one of the two remaining options, namely, dismissal with prejudice or a Discharge Hearing with the possibility of extended treatment. 725 ILCS 5/104-23(b)(1) and (2)

i. Attempt at a civil commitment AFTER a Discharge Hearing has legal risks: As discussed above at Section IV(C)(1)(n): *Warning about inadvertent dismissal after a Discharge Hearing*, it has been held (perhaps incorrectly) that <u>after</u> a Discharge Hearing has been conducted, there is no statutory provision for the criminal court

to remand an unfit defendant to DHS for a civil commitment proceeding. In other words, the initial choices are Discharge Hearing OR civil commitment proceeding OR dismissal with prejudice. Choices do not include a Discharge Hearing followed by an attempt at a civil commitment.

See *People v. Christy*, 206 Ill. App. 3d 361 (1990) where after a Discharge Hearing, the court remanded the defendant to DHS for an attempt at a civil commitment rather than remanding to DHS for extended treatment. When the civil court did not civilly commit the defendant and returned the defendant to the criminal court, the trial and appellate courts both ruled that there was no choice but to dismiss the charges with prejudice because a Discharge Hearing had already been conducted.

While the language and legislative history of the Fitness Statutes contemplate no dismissal with prejudice except on motion of the State or upon an acquittal at a Discharge Hearing, the *Christy* courts ruled otherwise. An unintended dismissal with prejudice may be avoided if an unfit defendant is never remanded to DHS <u>for civil commitment proceedings</u> **after** a Discharge Hearing and during the Extended Period of Treatment. Instead, a remand to DHS after a Discharge Hearing should be <u>for extended treatment</u>.

V. The "g(2)" Period of Treatment And Other Options

A. Hearing at the expiration of the Extended Period of Treatment: At the final 90-Day Hearing during the Extended Period of Treatment or at a specially set hearing at or near the end of the Extended Period of Treatment, the options are:

(1) Proceed with trial (or sentencing or other hearing) upon a finding that the defendant is fit [725 ILCS 5/104-25(g)(1)]
(2) Proceed with trial (or sentencing or other hearing) upon a finding that the defendant can be rendered fit to stand trial with "special provisions and assistance" pursuant to 725 ILCS 5/104-22, [725 ILCS 5/104-25(g)(1)]
(3) A determination whether the defendant is subject to involuntary admission under the MHDDC or constitutes a serious threat to the public safety [725 ILCS 5/104-25(g)(2)] or
(4) Release of the defendant [725 ILCS 5/104-25(g)(3)]

The term "g(2) period of treatment" comes from the third option, which, if pursued, then results in a remand of the defendant to DHS for further treatment in the same manner as a civilly committed patient. 725 ILCS 5/104-25(g)(2). The unfit defendant is said to be in the "g(2) Period of Treatment. " It may have been clearer to those who are new and unfamiliar with mental health and fitness issues if this final period of treatment was called just that, i.e., "the Final Period of Treatment." But the "g(2) Period of Treatment" is the common descriptive term for this last period of treatment as used by court, law-related, and DHS personnel who regularly deal with fitness matters.

As with any hearing after a defendant has been found unfit, an attorney must represent the defendant at the hearing held at the expiration of the Extended Period of Treatment. If the defendant does not have an attorney, the Court must appoint one at the county expense. 725 ILCS 5/104-25(g)(2)(i). See also *People v. Rath*, 121 Ill. App. 3d 548, 551 (1984).

1. Finding of fit and proceeding with trial, etc: The burden of proof of proving the defendant fit remains upon the State, and it continues to be by a preponderance of evidence. If the burden is met, the Court shall proceed with trial, sentencing, or other hearing. 725 ILCS 5/104-25(g)(1).

Included as part of this option of resuming the criminal case is the situation where mental disabilities had previously prevented a finding of fitness, but medication has helped restore fitness and the Court fears the defendant will regress back into unfitness if treatment does not continue. In that case, if the supervisor of the defendant's treatment agrees to continue to provide continued care or treatment, 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.

725 ILCS 5/104-20(b). Presumably the State or the Defense will have already obtained the agreement of the supervisor.

2. Finding of fit and proceeding with special provisions and assistance: If the Court determines that a developmentally disabled and/or physically defendant is fit or can be rendered fit consistent with the *Trial with special provisions and assistance* statute [725 ILCS 5/104-22], "the court may proceed with trial or other hearing." 725 ILCS 5/104-25(g)(1).

If a trial with special provisions and assistance is conducted and the defendant is convicted, special presentence and sentencing provisions apply. 725 ILCS 5/104-26. The statute contemplates assisting the developmentally disabled and/or physically disabled defendant. *People v. Cundiff*, 322 Ill.App.3d 426, 437-438 (2001).

It is recommended that based upon due process concerns, the Court specifically address the second option for the developmentally disabled and/or physically disabled defendant at this point in the proceedings (at the expiration of the Extended Period of Treatment), that is, that the Court affirmatively consider whether the "Trial with special provisions and assistance" statute is or is not feasible (725 ILCS 5/104-22). See Section I(J): *Trial with special provisions and assistance* in the Fitness portion of this Forensic Handbook for additional details.

3. Finding of unfit and options on treatment: As stated above, the burden of proof of proving the defendant fit remains upon the State, and it continues to be by a preponderance of evidence. If the burden is not met, the Court shall make a commitment determination. 725 ILCS 5/104-25(g)(2). The standard of proof for a g(2) involuntary admission is by clear and convincing evidence. See 725 ILCS 5/104-25(g)(2)(i) last paragraph and 405 ILCS 5/3-808.

As for the options after a finding of continued unfitness at the hearing upon the termination of the Extended Period, under the existing statutory provisions and case law the options are:

- Determine the unfit defendant is subject to involuntary admission under the MHDDC or constitutes a serious threat to the public safety and remand the defendant to Department of Human Services for further treatment. 725 ILCS 5/104-25(g)(2)par 1. Additionally and as subcategories of this option are these rarely-used alternatives:

    a. **1st rarely-used option:** Determine the unfit defendant is subject to involuntary admission under the MHDDC or constitutes a serious threat to the public safety, remand the defendant to Department of Human Services for further treatment, and make a finding that there are compelling reasons why placement in a secure setting is not necessary. 725 ILCS 5/104-25(g)(2)

4th sentence. In practice, this alerted DHS that the court is receptive to a relatively prompt conditional release or other outpatient treatment.

b. **2nd presumably-rarely-to-be-used option:** Determine the unfit defendant is subject to involuntary admission under the MHDDC or constitutes a serious threat to the public safety, remand the defendant to Department of Human Services for further treatment, make a finding that there are compelling reasons why placement in a secure setting is not necessary, and order the defendant into outpatient treatment. 725 ILCS 5/104-25(g)(2). *People v. Taylor*, --Ill.App.3d--, 984 N.E.2d 580, 582-583, 368 Ill.Dec. 634, 636 - 637 (2013)

- Determine the unfit defendant is not subject to involuntary admission under the MHDDC [405 ILCS 5/1-100 et seq.] and does not constitutes a serious threat to the public safety and release the defendant from treatment. 725 ILCS 5/104-25(g)(3).

4. Discussion of rarely-used treatment options that effectuate outpatient treatment:

a. Short commitment to DHS followed by other treatment: This option is based upon two findings. The first finding must be that the defendant is subject to involuntary admission or constitutes a serious threat to the public safety. 725 ILCS 5/104-25(g)(2) 1st sentence.

The second finding is that there are compelling reasons why placement in a secure setting is <u>not</u> necessary. 725 ILCS 5/104-25(g)(2) 4th sentence. In practice, this alerts DHS that the Court is receptive to a prompt subsequent hearing and to ordering conditional release or other outpatient treatment. This is one way to avoid a complete termination of treatment for the unfit defendant.

b. Commitment to DHS with an order of immediate outpatient treatment: In the recent case of *People v. Taylor*, --Ill.App.3d--, 984 N.E.2d 580, 582-583, 368 Ill.Dec. 634, 636 - 637 (2013), the appellate court directed the trial court to consider at the initial commitment hearing "the appropriateness of defendant's placement in a less secure setting," that is, not at DHS facility but in a nursing home.

In rejecting the approach of a short commitment followed by a subsequent prompt hearing, the appellate court stated, "We find no reason for the court to wait for another hearing to make this determination," that is, to wait until the first or subsequent g(2) hearing to make the determination that inpatient treatment should terminate and the unfit defendant should be ordered to undergo outpatient treatment. *People v. Taylor,* 984 N.E.2d at 538.

Implicit in the *Taylor* court decision is that for the Court to order outpatient treatment, it may do so only after a finding that the unfit defendant is subject to involuntary admission under the MHDDC or constitutes a serious threat to the public safety. Such a finding has been called a "threshold requirement." *People v. Olsson,* --Ill.App.3d, 979 N.E.2d 982, 986, 366 Ill.Dec. 181, 185 (Ill.App. 2 Dist.,2012) Equally implicit is that the appellate court was not saying that an initial g(2) treatment order did not need to include a commitment to DHS; a commitment was necessary along with an order of outpatient treatment.

The conclusions of the need to find a basis to commit and of the need to order commitment are compelled by the statutory provisions that, first, authorize g(2) treatment only upon a commitment [725 ILCS 5/104-25(g)(2)1st par.] and, second, that specifically and simply states, "If the defendant is not committed pursuant to this Section, he or she shall be released." 725 ILCS 5/104-25(g)(3). "Released" from further treatment is unconditional because the prior section of the statute refers to the "conditional release" of the defendant. 725 ILCS 5/104-25(g)(2)1st par.

DHS reports that the few times that they have received an order of commitment that requires outpatient treatment at a facility, they have worked cooperatively with the local mental health offices, as well as the staff at the facilities, for assistance with DHS administering a commitment where there is no inpatient placement.

Discussion with the local DHS office may be prudent before such an order is entered.

5. Statutory basis and evidence standards to determine commitment to DHS:

If the Court determines that the defendant continues to be unfit to stand trial, the Court shall determine whether the defendant "is subject to involuntary admission under the MHDDC [405 ILCS 5/1-100 et seq.] or constitutes a serious threat to the public safety". 725 ILCS 5/104-25(g)(2)par 1.

For a determination either of "subject to involuntary admission" or "constitutes a serious threat to the public safety," the standard of proof is by clear and convincing evidence. See 725 ILCS 5/104-25(g)(2)(i) last paragraph and 405 ILCS 5/3-808. This means fitness uses a preponderance of the evidence standard and a g(2) commitment uses a clear and convincing standard.

6. Definition of "involuntary admission:" As for the definition of "involuntary admission," it is suggested in this Forensic Handbook that the definition is:

> An unfit defendant 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. 730 ILCS 5/5-2-4(a-1)(B).

This definition is arrived by the following analysis:

- The definition for "involuntary admission" is <u>not</u> that contained in the first sentence of g(2). That first sentence says the Court should make the "involuntary admission" determination "under the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100]," but the statute subsequently states at g(2)(ii) "involuntary admission" has the meaning "ascribed" to it in "Proceedings after Acquittal by Reason of Insanity" (NGRI) statute at 730 ILCS 5/5-2-4.
- The definition cannot be "involuntary admission" in the "Proceedings after Acquittal by Reason of Insanity" statute at 730 ILCS 5/5-2-4 because that statute has been amended and there is no "involuntary admission" defined in that statute.
- The replacement for "involuntary admission" in the NGRI statutes and most probably the current basis for g(2) commitment is "In need of mental health services on an inpatient basis" 730 ILCS 5/5-2-4(a-1)(B). The NGRI statutory definition states:

> "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. 730 ILCS 5/5-2-4(a-1)(B).

If a Court determines that the proper definition of "involuntary admission" is that in the Mental Health Code rather than that for the replacement of "involuntary admission" in the NGRI statute, then for reference the Mental Health Code definition at 405 ILCS 5/1-119 is:

> "Person subject to involuntary admission on an inpatient basis" means:
>
> (1) A person with mental illness who because of his or her illness is reasonably expected, unless treated on an inpatient basis, to engage in conduct placing such person or another in physical harm or in reasonable expectation of being physically harmed;
>
> (2) A person with mental illness 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 others, unless treated on an inpatient basis; or

(3) A person with mental illness who:

(i) refuses treatment or is not adhering adequately to prescribed treatment;

(ii) because of the nature of his or her illness, is unable to understand his or her need for treatment; and

(iii) if not treated on an inpatient basis, is reasonably expected, based on his or her behavioral history, to suffer mental or emotional deterioration and is reasonably expected, after such deterioration, to meet the criteria of either paragraph (1) or paragraph (2) of this Section.

7. Alternative commitment basis of "serious threat to the public safety:"

The phrase "or constitutes a serious threat to the public safety" adds an additional basis for commitment beyond what the MHDDC provides. The MHDDC applies only to those individuals with a mental illness while the Fitness Statutes also applies to defendants who may be unfit for reasons other than due to mental illness. The additional phrase extends the court's power to commit dangerous unfit defendants who have no mental illness. *People v. Young*, 287 Ill. App. 3d 394, 398 (1997).

In practice, the "constitutes a serious threat to the public safety" basis for a commitment to DHS sometimes makes a difference as to whether treatment in DHS will continue at this point. For example, an unfit defendant charged with murder who has completed initial treatment, completed extended treatment, remains unfit, and would not otherwise be committed to DHS (found "not subject to involuntary admission"), may be found as constituting a serious threat to the public safety and remanded to DHS for treatment. An unfit defendant in the same legal posture except charged with a nonforcible felony, such as felony deceptive practice, perhaps would not be found as constituting a serious threat to the public safety and would be released per 725 ILCS 5/104-25(g)(3).

8. Upon a finding of subject to involuntary admission or constitutes a serious threat to the public safety: If the defendant is found to be subject to involuntary admission or a serious threat to public safety by clear and convincing evidence, then the Court shall remand the defendant to DHS for further treatment. The defendant shall be treated as any other civilly committed patient. 725 ILCS 5/104-25(g)(2)par 1.

The Fitness Statutes do not contemplate a dismissal of the charge with leave to reinstate at this point in the fitness proceedings. The criminal file remains open for subsequent periodic reviews or statuses or other hearings.

Upon a commitment, the criminal court keeps jurisdiction over the defendant to approve any conditional release or discharge. This jurisdiction continues for the period of time equal to the maximum sentence the defendant could have received upon a conviction on the criminal charges. 725 ILCS 5/104-25(g)(2)par 1.

If the criminal court has remanded the defendant to DHS, the defendant shall be place in a secure setting unless the court determines that there are compelling reasons why it is not necessary. 725 ILCS 5/104-25(g)(2)par 1. *People v. Taylor*, --Ill.App.3d--, 984 N.E.2d 580, 582-583, 368 Ill.Dec. 634, 636 - 637 (2013)

9. If a determination of unfit but not subject to involuntary admission or constitute a serious threat to the public safety: If the Court determines the unfit defendant is not subject to involuntary admission under the MHDDC nor constitutes a serious threat to the public safety [725 ILCS 5/104-25(g)(2)], the defendant must be released from treatment. 725 ILCS 5/104-25(g)(3).

a. Determination of release: An order of release at the conclusion of the Extended Period of Treatment could occur in these two ways:

- The defendant is found to remain unfit to stand trial, and the State attempts and fails to show the defendant should be committed per g(2).
- The defendant is found to remain unfit to stand trial, and the State intentionally makes no attempt to seek further treatment. The State might opt for this status in order to keep the defendant subject to the court's jurisdiction while awaiting the defendant's restoration to fitness.
    - Much of fitness procedure and law focuses on <u>mental</u> unfitness at this point in treatment, but unfitness can also be based on a long lasting yet non-permanent <u>physical</u> condition. 725 ILCS 5/104-10. In such a situation (a coma), it is not difficult to imagine on particularly heinous charges for the State to ask that the Court's jurisdiction over the defendant to continue.

b. Extent of "release:" If an unfit defendant is not "committed" pursuant to this section, then that defendant shall be released from any further order of treatment. 725 ILCS 5/104-25(g)(3). "Release" from further treatment is unconditional here because the prior section of the statute refers to the "conditional release" of the defendant. 725 ILCS 5/104-25(g)(2)1st par.

There is no statutory or case authority for the proposition that "release" necessarily means "release and dismissal of all charges with prejudice." The statute [725 ILCS 5/104-25(g)(3)] refers only to a "release" and not to any dismissal. Elsewhere when the Fitness Statutes contemplated a dismissal with

prejudice, the phrase "dismiss with prejudice the charges" is used. *See:* 725 ILCS 5/104-23(b)(3).

Termination of the court's jurisdiction over the defendant, in cases such as *People v. Bocik*, is distinguishable because that defendant was not only no longer subject to involuntary commitment, there also was "no prospect of retaining fitness" and he had "been released from the obligation of his bailbond." *People v. Bocik*, 211 Ill. App. 3d 801, 807-809 (1991) .

See Section V(F)(2): *Procedure for unfit defendant with treatment expired or terminated* in the Fitness portion of this Forensic Handbook for a discussion of the limited options available per 725 ILCS 5/104-25 when an unfit defendant is released from treatment but jurisdiction continues.

B. Treatment plan reports during the g(2) period of treatment:

1. Current treatment plan: In the event that 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 filed that includes [725 ILCS 5/104-25(g)(2)2nd par]:

(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

2. Periodic treatment plan reports: Every 90 days after the initial g(2) admission, the facility director shall file a "treatment plan report" with the criminal court. (This statutory 90-day requirement continues from the Initial and Extended Periods of Treatment even though it is possible, as discussed below, for hearings in the g(2) Period to be held every 180-days rather than 90-days.) The treatment plan report shall include [725 ILCS 5/104-25(g)(2)3rd par]:

a) An opinion as to whether the defendant is fit to stand trial
b) 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
c) The basis for those findings, and
d) A current summary of the 5 items required in a treatment plan (see above section)

3. Prompt physical review of filed treatment plan reports: The Court, State, and Defense should review the treatment plan reports upon receipt for two reasons.

a. Need for more frequent hearings: The first reason for a prompt physical review of the treatment plan report (in other words, "read it") is that the Court, State, and Defense all have the option to cause hearings to be held on a 90 day basis rather than every 180 days. 725 ILCS 5/104-25(g)(2)par 4 and (g)(2)(i). Presumably the treatment plan report is the primary basis that would motivate such a request.

b. Restoration of fitness: The second reason for immediate review upon receipt of the treatment plan report is that the report requires that opinion be given as to the fitness of the defendant, and it may opine that the defendant has become fit.

The provision for the Initial and Extended Periods of Treatment that a hearing must be held within 14 days of the filing of a treatment plan report opining fitness is not applicable. 725 ILCS 5/104-20(a), *People v. Olsson*, -Ill.App.3d, 979 N.E.2d 982, 990-991, 366 Ill.Dec. 181, 190 (2012). But a reason for the report is that it "helps the Defense reach an informed decision whether to seek a fitness hearing." *People v. Olsson*, 979 N.E.2d at 990-991. Furthermore, the State, as well as the Court, may have reason to want a prompt hearing on fitness. Only by reading the report will anyone be aware of the change in fitness status. Beyond that, the possibility of restoration to fitness is hardly inconsequential to the Court and counsel, and may determine future steps.

c. Recommended steps upon receipt of 90-Day Treatment Plan Reports when on a 180-day hearing frequency:

Treatment plan reports will be filed every 90 days, but the Court is required to hold periodic g(2) hearings only every 180 days. The Court, State, and Defense have the option of requiring periodic hearings to be held every 90 days. 725 ILCS 5/104-25(g)(2) and (g)(2)(i).

Some judges reportedly opt in all fitness cases to hold the hearings every 90 days during the g(2) period of treatment. This avoids possible confusion as to whether the defendant is in the Initial or Extended Period of Treatment when 90-Day Hearings are required as opposed to the g(2) period of treatment when hearings may be every 180 days. These judges follow a simple rule that if an unfit defendant is in treatment, hearings are held every 90 days until restoration to fitness or treatment otherwise ends.

If the Court, the State, and the Defense are satisfied with hearings every 180 days during the g(2) period of treatment, the treatment plan reports will continue to be received every 90 days, just as in the initial and the extended periods of treatment. The practice varies throughout the State as to what a judge does when the report is received on the "no hearing necessary" 90-day dates.

Some judges merely read the report and, if no action is required, they make sure it is filed. Some judges read the report and enter an order or a record sheet entry (a.k.a. docket sheet entry) that shows the report was reviewed and that no action is required. If the report includes a new opinion that the defendant has been restored to fitness, the Court may want to make certain the State and Defense are aware.

And finally, in some instances, the reports are filed without having been examined by the judge who, instead, relies on the State, Defense , or DHS to alert the Court if the next hearing needs to be accelerated or if other action is necessary. This practice is probably not the preferred one.

C. Periodic g(2) hearings: The Court, State, or the defendant may cause periodic g(2) hearings to be held as often as every 90 days. 725 ILCS 5/104-25(g)(2)par 4. Periodic g(2) hearings must be held at least every 180 days. 725 ILCS 5/104-25(g)(2)(i).

The periodic g(2) hearings have some similarity to the 90-Day Hearings that are held during the Initial Period and the Extended Period of Treatment. Fitness, though, is only to be heard upon motion. *People v. Olsson*, --Ill.App.3d--, 979 N.E.2d 982, 991, 366 Ill.Dec. 181, 190 (2012). *See also People v. Lang*, 113 Ill 2d 407, 442 (1986) where in another context there is a similar rule for unfit defendants who were found unfit, that is, fitness is only heard upon motion of the Court, State, or Defense . The mandatory purpose of the hearings is to consider whether the basis to treat continues and the form of that treatment. 725 ILCS 5/104-25(g)(2)(i), *People v. Olsson*, 979 N.E.2d at 991.

The statute provides that the State's Attorney and the defendant's attorney are to be given notice of the hearing, as well as the facility director. 725 ILCS 5/104-25(g)(2)(i). In practice, the State and the Defense are usually given notice in open court by being present at the prior periodic g(2) hearing when the Court announces the next hearing date. And the facility director gets notice by being given a copy of the order that issues upon the conclusion of the g(2) hearing.

1. Fitness aspect of the periodic g(2) hearing: If the Court, the State, or the Defense request fitness is to be considered at a g(2) hearing, the State is to go forward with the evidence and to carry the burden of proving fitness by a preponderance of the evidence. 725 ILCS 5/104-25(g)(2)(i). The Court is to determine if unfitness continues.

a. Trigger of fitness consideration: Fitness is considered upon the motion of the State or Defense or upon the Court's own motion. While the *Olsson* case specifically addressed the Defense requesting a motion, that was in the context of the defendant's due process right to fitness being considered. *People v. Olsson*, 979 N.E.2d at 991. The State or the Court may cause fitness to be heard as well. 725 ILCS 5/104-25(g)(2)(4th par.) plus (i).

The Illinois Supreme Court in *People v. Lang* said that a committed defendant/ respondent has a due process right to fitness hearings on an annual basis or "sooner" if the former defendant is making faster progress toward fitness. *People v. Lang*, 76 Ill.2d 311, 444-445 (1979). The Defense may exercise this right by simply asking the Court to consider fitness at a regularly scheduled periodic g(2) hearing or at a hearing just for that issue. *People v. Olsson*, 979 N.E.2d at 991.

b. Defendant's right to be present: If fitness is going to be considered, the general statutory rule that the defendant has a right to be present at every hearing on the issue of fitness applies. The defendant's presence may be waived with the physician's certificate. 725 ILCS 5/104-16(c).

c. Determination of fit if special provisions and assistance: As at any hearing on the defendant's fitness, if the Court finds that a developmentally disabled and/or physically disabled unfit defendant may become fit consistent with the statute on "Trial with special provisions and assistance," 725 ILCS 5/104-22, then the case proceeds to trial or other hearing.

d. Does restored to fitness mean no longer subject to involuntary admission? Under the law, restoration to fitness is something different from no longer subject to involuntary admission or in need of inpatient mental health services. *People v. Lang*, 113 Ill.2d 407, 440 (1986). But in practice, it is an extremely rare situation that DHS will indicate that a defendant is restored to fitness while continuing to opine that the defendant continues to be subject to involuntary admission. Upon the Court finding that a defendant has been restored to fitness, DHS will generally expect to be discharged from further duties, subject to the next section regarding regression.

e. Determination of fit with concern of regression: For a defendant who has been restored to fitness, but for whom the Court fears will regress into unfitness without continued treatment, there is a provision that allows for the continued treatment until the matter is concluded.

If 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. 725 ILCS 5/104-20(b). In other words, the Court may order a restored-to-fitness defendant to continue to receive treatment at DHS while the case proceeds through trial or other conclusion.

2. Treatment aspect of the periodic g(2) hearing: If the defendant remains unfit to stand trial, the court must determine if it should continue, modify, or discontinue treatment. The burden of proof and the burden of going forward with the evidence shall rest with the State. The court's findings that some kind of treatment is necessary shall be established by clear and convincing evidence. The court is to enter its findings and an appropriate order. 725 ILCS 5/104-25(g)(2)last par.

At a periodic g(2) hearing, the Court shall review the current treatment plan to determine whether the plan complies with the requirements of the statute. 725 ILCS 5/104-25(g)(2)par 4 and 725 ILCS 5/104-25(g)(2)(i).

a. Independent examination: An independent examination may be ordered by the Court on its own initiative or on motion by the defendant or the State's Attorney upon demonstration that the treatment plan cannot be effectively reviewed by the Court without such an examination. But only one independent examination per year may be ordered pursuant to this section. A psychiatrist or clinical psychologist not in the employ of DHS shall conduct the independent examination. 725 ILCS 5/104-25(g)(2)par 4 and 725 ILCS 5/104-25(g)(2)(i).

b. Defendant has no right to be present: The statutory provision giving a defendant the right to be present specifically says it is in regard to "every hearing on the issue of fitness." 725 ILCS 5/104-16(c). If the 90 or 180-Day Hearing is only in regard to a review of the treatment plan report and fitness will not be considered, the statute provides that if the defendant is "confined in a secure setting," the Court may enter "an order that requires the defendant to appear." 725 ILCS 5/104-25(g)(2)(par 5). See *People v. Olsson*, --Ill.App.3d--, 979 N.E.2d 982, 989, 366 Ill.Dec. 181, 190 (2012).

Recommendation: Defense counsel may want to proceed cautiously about representing unfit-committed-defendants over long periods without either face-to-face contact or at least telephone contact with the defendants. Criminal defense attorneys and public defenders should realize that while there are similar 180-day hearings when a respondent is civilly committed in the civil courts, those hearings are held at the DHS facilities, which means those attorneys generally have easy personal and consistent access to their clients at least every 180 days.

c. Findings regarding treatment: At a periodic g(2) hearing, the Court shall make one of the following findings:

- The defendant is currently subject to involuntary admission or inpatient care, [See the discussion below how this includes a finding that the defendant constitutes a serious threat to the public safety], 725 ILCS 5/104-25(g)(2)(i)(A)&(B)
- The defendant is in need of mental health services in the form of inpatient care, 725 ILCS 5/104-25(g)(2)(i)(B)
- The defendant is in need of mental health services but not subject to involuntary admission nor inpatient care, 725 ILCS 5/104-25(g)(2)(i)(C)
- This is also referred to at 725 ILCS 5/104-25(g)(2)par 3 and 730 ILCS 5/5-2-4(a-1)(C) as "in need of mental health services on an outpatient basis"
- None of the above, that is, the defendant is not subject to involuntary admission and is no longer in need of mental health services in the form of inpatient care or on an outpatient basis, 725 ILCS 5/104-25(g)(2)(i)

d. Definitions of standards: The statute provides that the standards "shall have the meanings as ascribed to them in clause (d)(3) of Section 5-2-4 of the 'Unified Code of Corrections' [730 ILCS 5/5-2-4]." 725 ILCS 5/104-25(g)(2)(ii)

i. Subject to involuntary admission: As discussed at some length in this Forensic Handbook at V(A)(5): *Definition of "involuntary admission*," the Fitness Statutes directs to a definition in the NGRI statute that has been repealed. For reasons previously stated in this Manual, the appropriate definition is more likely:

> An unfit defendant 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. 730 ILCS 5/5-2-4(a-1)(B).

It is possible that reviewing court someday might instead opt for the involuntary admission definition in the Mental Health Code at 405 ILCS 5/1-119. See the Manual at V(A)(5): *Definition of "involuntary admission*" for that definition.

ii. In need of mental health services on an inpatient basis: "In need of mental health services on an inpatient basis" is defined as 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 him or herself or another and who would benefit from inpatient care or is in need of inpatient care. 730 ILCS 5/5-2-4(a-1)(B).

iii. In need of mental health services on an outpatient basis: "In need of mental health services on an outpatient basis" is defined as 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. 730 ILCS 5/5-2-4(a-1)(C).

e. Additional standard for continuing treatment based on "constitutes a serious threat to the public safety":

The statute at 725 ILCS 5/104-25(g)(2)(i)(A) provides only that "subject to involuntary admission" is a basis for further g(2) treatment.

At the original hearing at the end of the Extended Period of Treatment, there are two bases to order treatment: subject to involuntary admission a serious threat to the public safety. 725 ILCS 5/104-25(g)(2) 1st par. The continuing treatment statute [725 ILCS 5/104-25(g)(2)(i)(A)] makes no mention of "constitutes a serious threat to the public safety" as a basis to continue treatment. But that standard is implicitly included as a basis to continue treatment in the g(2) period.

Without that construction, only those unfit as the result of mental illness would be subject to outpatient treatment orders during the g(2) Period of Treatment. Those unfit for reasons of physical disability would not be subject to the court's order to continue to undergo treatment to be rendered fit, and that is not what the statute contemplates. See *People v. Young*, 287 Ill. App. 3d 394, 398 (1997) where a deaf mute not subject to involuntary admission was committed to DHS to undergo g(2) inpatient treatment based on constituting a serious threat to the public safety.

f. Written order: If the Court orders treatment to continue in some form, "the court shall enter its findings and an appropriate order." 725 ILCS 5/104-25(g)(2)(i). The order should include the date of the next periodic g(2) hearing, which is usually in another 180 days, unless 90-day hearings have been requested.

3. Discharge Hearing aspect of the periodic g(2) hearing (rare):

The Illinois Supreme Court in *People v. Lang* ruled that an unfit defendant civilly-committed per 725 ILCS 5/104-23(b)(3) has a constitutional due process right to an

initial or subsequent Discharge Hearings upon the discovery of new exculpatory evidence. *People v. Lang*, 113 Ill 2d 407 (1986).

It seems extremely likely that if the State instead pursues the companion statute route, that is, 725 ILCS 5/104-23(b)(1) with 5/104-25(g)(2), an unfit defendant committed by a criminal court is also entitled to the same rights to a subsequent Discharge Hearing upon the discovery of exculpatory evidence. Note that in the g(2) framework there will be much fewer procedural problems in holding a new Discharge Hearing because g(2) matters take place in an open criminal file.

D. Conditional release or discharge of an unfit defendant remanded to DHS for treatment: The Fitness Statutes specifically provide that the conditional release of a defendant from DHS or a discharge of a defendant from DHS must be approved by the "original court having jurisdiction over the defendant," that is, the criminal court in which the charges were filed. 725 ILCS 5/104-25(g)(2)par 1.

The terms "conditional release," "discharge," and "release" are used in 725 ILCS 5/104-25. In addition, the case law has references to "unconditional discharge," "conditional discharge," and "unconditional release." See *People v. Bocik*, 211 Ill.App.3d 801 (1991) where all of these terms are used, with reasonable clarity.

1. Discharge: "Discharge," used in 725 ILCS 5/104-25(g)(2)1st par, is not defined in the Fitness Statutes or in the "Proceedings after Acquittal by Reason of Insanity" (NGRI) statute in the Unified Code of Corrections.

In one instance in the Fitness Statutes, the term "discharge" is used in the specific context of the defendant's discharge from a commitment and the State being allowed to reinstate charges that were previously dismissed without prejudice. 725 ILCS 5/104-23(b)(3).

There is a definition of "discharge" in the definition section of the MHDDC. "Discharge" is defined in that code as the full release of any person admitted or otherwise detained under the provisions of the MHDDC from treatment, habilitation, or care and custody. 405 ILCS 5/1-109. That definition of "discharge" as a "full release" seems consistent with the use of the term elsewhere in the Fitness Statutes. 725 ILCS 5/104-26(c)(5) & (6).

2. Conditional release: "Conditional release" is used in 725 ILCS 5/104-25(g)(2)1st paragraph. It is not defined in the Fitness Statutes.

The g(2) statute (725 ILCS 5/104-25(g)(2)(ii)) states that certain terms, including "subject to involuntary admission," "in need of mental health services in the form of inpatient care," and "in need of mental health services" shall have the meanings found in "Proceedings after Acquittal by Reason of Insanity" (NGRI) statute in the Unified Code of

Corrections, 730 ILCS 5/5-2-4. But the g(2) statute does not include "conditional release" as one of those terms, even though the "Proceedings after Acquittal by Reason of Insanity" statute includes a definition for that term.

Regardless if due to legislative oversight or otherwise, the "Proceedings after Acquittal by Reason of Insanity" statute would appear to be the best place to find the definition of "conditional release" since it is the source of other definitions.

"Conditional release" in the "Proceedings after Acquittal by Reason of Insanity" statute is defined as the release from the custody of DHS under such conditions as the Court may impose which reasonably assures the defendant's satisfactory progress in treatment or habilitation and the safety of the defendant and others. 730 ILCS 5/5-2-4(a-1)(D).

a. Terms and conditions of a conditional release: 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 monitor medications, periodic checks with the legal authorities and/or DHS, and no contact with the victim. 730 ILCS 5/5-2-4(a-1)(D).

b. Reports during conditional release: The person or facility rendering the outpatient care shall be required to periodically report to the Court on the progress of the defendant. The Department may contract with any public or private agency in order to discharge any responsibilities imposed under this Section. 730 ILCS 5/5-2-4(a-1)(D).

c. Length of conditional release: Conditional release shall be for a maximum period of five years. 730 ILCS 5/5-2-4(a-1)(D).

In a case of a defendant charged with forcible felony, the defendant, the treatment provider, or the State may petition the Court for extensions of the conditional release period for increments of five years. 730 ILCS 5/5-2-4(a-1)(D).

The length of any conditional release is further subject to the provision that limits the total of all treatment to a duration not to exceed the maximum sentence to which a defendant would have been subject had he or she been convicted in a criminal proceeding. 725 ILCS 5/104-25(g)(4).

d. Do periodic g(2) hearings continue? The statute contains no requirement that periodic g(2) hearings be held once a defendant is no longer confined. Hearings are only required "for so long as the defendant is confined under the order." 725 ILCS 5/104-25(g)(2)(i).

e. Recommendation of status hearings for unfit defendants on conditional release: Regardless of any statutory requirement for periodic hearings during the conditional release of the defendant, several factors weigh in favor of scheduling, at a minimum, status hearings.

The posture of the case at this point is that criminal charges remain pending as the defendant's restoration to fitness is awaited. The defendant is subject to a conditional release order with conditions that are intended, in part, to work toward the restoration of fitness. Periodic reports are being filed by the agency providing outpatient services or otherwise monitoring the conditional release.

Status hearings will serve the purposes of:

- Monitoring the defendant's compliance with the terms of the conditional release order
- Determining if the conditional release order should be terminated, modified, or extended
- Alerting the Court (and counsel) whether a hearing should be held as to whether the defendant has been restored to fitness
- Causing the defendant's attorney to review with the defendant whether a request should be made concerning modification or termination of the conditional release and/or a request for a hearing to determine if fitness has been restored
- Upon the expiration or termination of conditional release, providing an opportunity to the Court to set the criminal case for further status hearings as the defendant's fitness restoration is awaited.

As always, the State has the burden of proving fitness by a preponderance of the evidence. See 725 ILCS 5/104-11(c).

As is always the case during the g(2) Period of Treatment, the State has the burden of proving the need for treatment by clear and convincing evidence. 725 ILCS 5/104-25(g)(2)(i) last sentence.

f. Revocation of conditional release: Conditional release in the "Proceedings after Acquittal by Reason of Insanity" statute may be revoked and the defendant recommitted based the Illinois Supreme Court case of *People v. Jurisec*, 199 Ill.2d 108 (2002), a NGRI case.

The threshold question is whether the terms of conditional release have been violated (*Jurisec* at 122-123) based on an implicit preponderance of evidence standard. See *Jurisec*, 199 Ill.2d at 120-121.

> The trial court next determines whether the conditional discharge should be terminated and the defendant recommitted based on a clear and convincing evidence standard. The court is to determine whether defendant is "subject to involuntary admission" or "in need of mental health services on an inpatient basis" or, instead, whether conditional release should be continued, with or without modification of the original release conditions. *Jurisec*, 199 Ill.2d at 122-124.

E. Maximum duration of treatment, including the g(2) period: 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.

1. Natural Life and Extended Term are not included in duration: For purposes of the Fitness Statutes, the maximum sentence shall be determined by the "Sentence of Imprisonment for Felony" statute in the "Unified Code of Corrections" [730 ILCS 5/5-8-1], with the exclusion of any sentence of natural life. 725 ILCS 5/104-25(g)(4). That particular statute in the Unified Code of Corrections does not contain provisions for extended term sentences; therefore, calculation of the maximum sentence for purposes of duration of g(2) treatment may not include the period of an extended term sentence.

2. "Treatment" is all forms: In regard to the maximum duration of treatment, the Fitness Statutes do not distinguish between inpatient, outpatient, or other non-custodial treatment. Any form of treatment ordered pursuant to the Fitness Statutes must terminate when the duration has reached the length of the maximum sentence.

3. No "good time" in determining maximum treatment period: Calculation of the maximum term of treatment does not include credit for "good time." *People v. Williams*, 142 Ill. App. 3d 858, 863 (1986).

But a formerly unfit defendant who is subsequently convicted is entitled to any "good time" credit on the sentence of incarceration that is applicable to the charge or charges. *Williams*, 142 Ill. App. 3d at 864.

In other words, "good time" credit does not reduce the maximum term of treatment for an unfit defendant, but "good time" credit does later apply to a sentence of incarceration for the same defendant who has subsequently become fit and was convicted of the charge.

4. *Thiem* date: In practice, attorneys and DHS personnel sometime refer to a "*Thiem* date" in regard to the maximum period of commitment for an unfit defendant in treatment. *Thiem* was a NGRI case and not a UST case. *People v. Thiem*, 82 Ill. App. 3d 956 (1980).

The concept of a *Thiem* date is that the maximum period of commitment in a NGRI case is determined by reference to the maximum sentence permitted under the existing sentencing scheme reduced by the maximum potential credit for good behavior, and the date ending the maximum period of involuntary commitment is referred to as the "*Thiem* date."

To the extent that a "*Thiem* date" refers to determining the maximum period of commitment in a UST context, there is no problem. But the NGRI context differs from the UST context because a *Thiem* date for a NGRI may utilize an extended term sentence [*People v. Larson*, 132 Ill. App. 3d 594, 598 (1985)] and must incorporate credit for good behavior. Neither an extended term sentence nor credit for good behavior applies to the maximum period of commitment for an unfit defendant.

Reportedly, some DHS personnel restrict any reference to a "*Thiem* date" to NGRI cases only, while others do use that term for UST cases.

5. Credit on sentence for time served in treatment: If the defendant is restored to fitness and is subsequently convicted, time spent in custody pursuant to the Fitness Statutes or pursuant to a civil commitment to DHS following a finding of unfitness shall be credited against any sentence imposed in the criminal case. 725 ILCS 5/104-24

F. Termination of treatment for an unfit defendant per 725 ILCS 5/104-25: Treatment for the purpose of restoring fitness for an unfit defendant at the end of the Extended Term of Treatment or in the g(2) Period of Treatment terminates if:

- At a Discharge Hearing, the evidence does not prove the defendant guilty beyond a reasonable doubt and the charge is dismissed. (The State does have the option of seeking a commitment under the provisions of the MHDDC.) 725 ILCS 5/104-25(b).
- "At a discharge hearing, the defendant is found not guilty by reason of insanity." "The proceedings after acquittal by reason of insanity under Section 5-2-4 of the Unified Code of Corrections [730 ILCS 5/5-2-4] shall apply." 725 ILCS 5/104-25(c).
- The Court finds at the expiration of the Extended Period of Treatment that an unfit defendant is not subject to involuntary admission under the MHDDC and does not constitute a serious threat to the public safety. 725 ILCS 5/104-25(g)(3).
- The Court finds during the g(2) period of treatment that an unfit defendant is no longer subject to involuntary admission, does not constitute a serious threat to the public safety, and is not in need of any mental health services, including outpatient services. 725 ILCS 5/104(g)(2)(i).
- The Court finds during a conditional release of an unfit defendant during the g(2) period of treatment that the defendant will never attain fitness. *Bocik*, 211 Ill. App. 3d at 807-809, or

- An unfit defendant has undergone treatment for a period equal to the maximum sentence he or she would have been subject had he or she have been convicted in a criminal proceeding [725 ILCS 5/104-25(g)(4)], in other words, the g(2) period of treatment has expired. 725 ILCS 5/104-25(g)(3).

1. No automatic dismissal of the charge: The criminal case is not automatically dismissed upon the termination of treatment for an unfit defendant, but the State's options are limited. The State may not proceed with the case until the defendant is restored to fitness. The due process clause of the United States Constitution (U.S. Const., amend. XIV) prohibits the conviction and sentencing of a person who is incompetent to stand trial. See *Drope v. Missouri*, 420 U.S. 162, 172, 43 L. Ed. 2d 103, 113, 95 S. Ct. 896, 904 (1975); *People v. Mitchell*, 189 Ill. 2d 312, 328-29, 245 Ill. Dec. 1, 727 N.E.2d 254 (2000).

As stated above, there is no statutory or case authority for the proposition that "release" of the defendant from all treatment necessarily means "release and dismissal of all charges with prejudice." The statute in question, 725 ILCS 5/104-25(g)(3), refers only to a "release" and not to any dismissal. Elsewhere where the Fitness Statutes contemplate a dismissal with prejudice, the phrase "dismiss with prejudice the charges" is used. 725 ILCS 5/104-23(b)(3).

As restoration to fitness is awaited, the State may have the option to seek a *nolle prosequi* or dismissal with leave to reinstate. Many of the serious felony offenses are not subject to any statute of limitations. 720 ILCS 5/3-5(a).

> **a. Prosecution may wish to proceed even if incarceration prohibited:** The fact that the defendant is not subject to further incarceration upon conviction with application of credit for time-served for the years of initial, extended, and g(2) treatment would not appear to prohibit prosecution upon restoration to fitness. Judgment of conviction might be sought by the State because of its potential impact in later prosecutions against the same defendant. For example, to seek a mandatory life sentence against an habitual criminal, the State must show two prior convictions for specified offenses. 720 ILCS 5/33B-1.

2. Procedure for unfit defendant with treatment expired or terminated: The Fitness Statutes give little guidance as to the procedure when treatment has expired or has been terminated for the unfit defendant and the State does not wish to dismiss the charge.

There are these questions. May the Court require the defendant to appear upon notice at a reasonable frequency, such as semi-annually, until fitness is attained? May the Court require the defendant to immediately inform the clerk of any change of address?

May the court order fitness examinations from time-to-time to see if fitness has been restored? May the Court require the defendant to remain subject to bond conditions?

Based generally on the fact that a criminal charge is pending against the defendant, that prosecution has been halted to protect the rights of the defendant, and that there is no express statutory or case law that prohibits the State from proceeding when the defendant eventually attains fitness, the answer may be "yes" to all of these questions.

a. Limitation on proceeding: The appellate court in *People v. Bocik* held where:

- An unfit defendant on conditional release in the g(2) period of treatment was not subject to involuntary admission under the UST and MHDDC statutes,
- The defendant did not constitute a serious threat to public safety,
- The defendant had previously been released from "the obligation of his bailbond," and
- The defendant "had no prospect of retaining [*sic*, "regaining?] fitness,"

Then outpatient treatment should be terminated, the defendant should be granted unconditional release from treatment, and the Court should relinquish jurisdiction over him. *People v. Bocik*, 211 Ill. App. 3d at 807-809 (1991).

SECTION III: THE INSANITY DEFENSE AND SUBSEQUENT PROCEEDINGS: STANDARDS, PROCEDURES AND PRACTICES

See http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=072000050K6-2

OVERVIEW

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 flowchart for the legal proceedings for NGRI. The flowchart follows the procedure for NGRI finding.

B. Summary of the Insanity Defense and Subsequent Proceedings

C. The statue for Not Guilty by Reason of Insanity. (Appendix D)

D. Sample Orders: (Appendix G)

E. An overview of the reports required in the NGRI Proceedings.

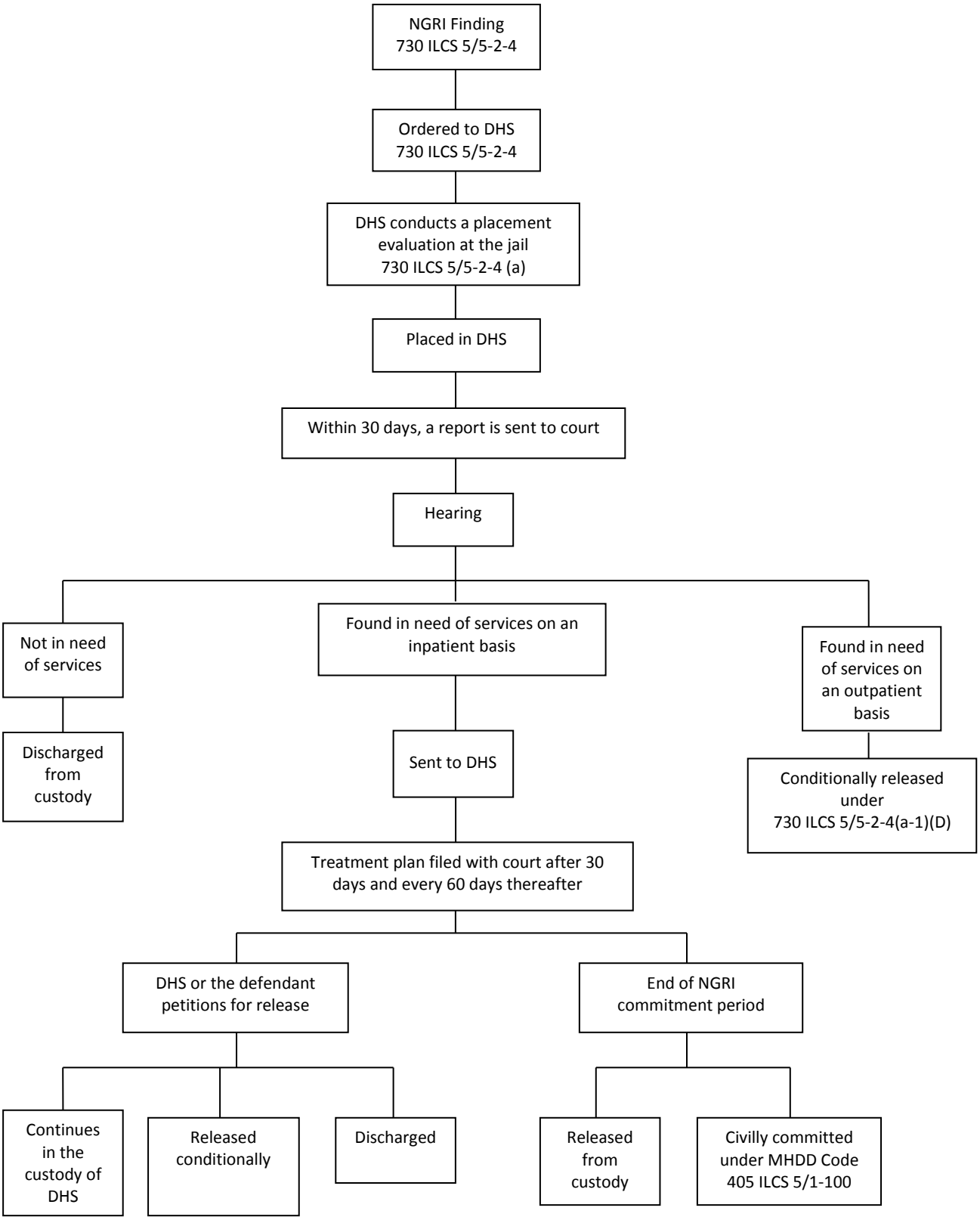
F. Sample Cover Letters and Reports: (Appendix H)

G. A Review of Facility Initiated Privileges with the following:

H. Recipient Initiated Privilege Request, the Henderson Information includes the following: general information, reference to relevant statue, specific instructions, commonly asked questions, cover letter to the clerk, cover letter to the Judge, and petition for transfer, conditional release or discharge.

I. This subsection outlines the Community Agencies Responsibilities for patients who are conditionally released in a letter to the Local Provider, and provides a template and sample of both a letterhead and status report.

NOT GUILTY BY REASON OF INSANITY (730 ILCS 5/5-2-4) FLOWCHART



I. The Insanity Defense

A. Insanity Defense Standard–720 ILCS 5/6-2

1. "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." 720 ILCS 5/6-2(a)

2. "The terms "mental disease or mental defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct." 720 ILCS 5/6-2(b).

3. There are literally hundreds of Illinois decisions applying the above standard to particular facts. A detailed discussion of these cases is beyond the scope of this outline. It is important to note that the insanity defense in Illinois is limited to cognitive disability (capacity to appreciate the criminality of conduct), and no longer includes a "volitional" prong ("inability to conform one's conduct to the requirement of the law").

B. Procedural and Practice Issues

1. Assertion of insanity defense, permits the State to assert, or the Court to find on its own, that the defendant is not insane, but rather "guilty but mentally ill". 725 ILCS 5/115-3(c). The "guilty but mentally ill" disposition will be discussed in Section VIII below.

2. Assertion of insanity defense may waive the defendant's right to confidentiality concerning *all* mental health records. 740 ILCS 110/10(a)(1).

3. Counsel should consider whether a defendant charged with a less serious offense (Class 2, 3 and 4 felonies) may spend less time confined if *convicted* of these offenses than if found not guilty by reason of insanity (NGRI). See Section IV(B) below.

4. Insanity is an affirmative defense, 720 ILCS 5/6-4, and the defendant must prove his insanity by "clear and convincing evidence". 720 ILCS 5/6-2(e).

5. A finding of not guilty by reason of insanity is a full acquittal, not a sentencing alternative. *Jones v. United States,* 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1982) ("As he was not convicted, he may not be punished. His confinement rests on his continuing illness and dangerousness"); *People v. Harrison,* 226 Ill. 2d 427 (2007).

6. No appeal may be taken from an acquittal by reason of insanity. *People v. Harrison*, 226 Ill. 2d 427 (2007). However, if the defendant is subsequently committed under 730 ILCS 5/5-2-4(a), s/he may appeal that order. See Section III (L) below.

7. It is important to specify what crime the defendant has been acquitted of, since it is likely to have a substantial effect on the duration of a subsequent commitment. See Section IV (B) below.

8. The Court (or jury) must make a specific finding of an acquittal by reason of insanity. 725 ILCS 5/115-3(b); 725 ILCS 5/115-4(j).

II. Post Acquittal Procedures

A. In Illinois, due to the substantial differences between the standard for acquittal by reason of insanity and the standard for involuntary commitment, commitment of insanity acquitees is not automatic. A defendant found not guilty by reason of insanity may be confined in a mental hospital if, an only if, s/he is civilly committed under the special commitment law which applies to NGRIs–730 ILCS 5/5-2-4.

B. Following an acquittal by reason of insanity, the Court must order that the defendant be evaluated by the Department. That order should specify whether the evaluation is done on an inpatient or outpatient basis. If the evaluation is to be conducted on an inpatient basis, the defendant will be placed in a "secure setting" within the Department unless the Court orders otherwise. 730 ILCS 5/5-2-4(a). See Section IV(C) below for a detailed discussion of provisions regarding placement in secure settings and other placements within the Department.

C. Following acquittal, the defendant will remain in jail until the Department conducts a placement evaluation (to determine in which of its facilities the commitment evaluation should take place) and then notifies the sheriff to transport the defendant to that facility. 730 ILCS 5/5-2-4(a).

D. DHS must evaluate Defendant and determine in writing to the Court whether defendant meets the inpatient or outpatient commitment standards set forth in . 730 ILCS 5/5-2-4(a-1). This evaluation must be completed within 30 days of the evaluation order described in section II(B). (In order to insure that the evaluation is completed with 30 days, counsel may need to monitor whether the defendant has been transported promptly under Section II(C) above. Confinement of insanity acquittees in a jail may violate Due Process. (*Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1982); *Bell v. Wolfish,* 461 U.S. 520,99 S.Ct. 1861, 60 L.Ed. 447 (1979)).

III. Commitment Hearing

A. Following the examination, a hearing must be held under the Mental Health and Developmental Disabilities Code ("the Mental Health Code"), 405 ILCS 5/1-100, *et seq*., to determine whether the Defendant is:

1. "in need of mental health services on an inpatient basis." If the Court makes this finding, the defendant must be committed to the custody of the Department and will be

confined in one of its inpatient facilities.

Or

2. "in need of mental health services on an outpatient basis" If the Court makes this finding, the defendant must be conditionally released. See Section V below.

Or

3. "a person not in need of mental health services." If the Court makes this finding the defendant must be unconditional discharged 730 ILCS 5/5-2-4(a).

B. "In need of mental health services on an inpatient basis" is defined as:

"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." 730 ILCS 5/5-2-4(a-1)(B)

C. "In need of mental health services on an outpatient basis" is defined as:

"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." 730 ILCS 5/5-2-4(a-1)(C).

D. The NGRI commitment law incorporates all of the provisions of the Mental Health Code. (The "admission, detention, care, treatment or habilitation, treatment plans, review proceedings, including review of treatment and treatment plans, and discharge of the defendant...shall be under the [Mental Health] Code") 730 ILCS 5/5-2-4(b). However, if there is a conflict between the Mental Health Code and the NGRI commitment law, the NGRI law governs. 730 ILCS 5/5-2-4(j).

E. The finding that the defendant meets the standard for commitment must be based upon "clear and convincing evidence". 405 ILCS 5/3-808.

F. The defendant is entitled to be represented by counsel, and, if indigent, to the appointment of counsel in all proceedings under the NGRI commitment law. 730 ILCS 5/5-2(c); 405 ILCS 5/3-805.

G. The defendant is entitled to an independent examination by a mental health expert. 405 ILCS 5/3-804. *People v. Williams*, 133 Ill. App. 3d. 232, 88 Ill. Dec. 376 (3rd Dist. 1985).

H. The defendant is entitled to a six-person jury. 405 ILCS 5/3-802.

I. The defendant is entitled to be present at the hearing unless defendant's "attendance would subject him to substantial risk of serious physical or emotional harm." 405 ILCS 5/3-806(a). *People v. Carlso*n 221 Ill. App. 3d 445, 164 Ill. Dec. 7 (5th Dist. 1991)

J. At least one psychiatrist, clinical social worker, clinical psychologist or qualified examiner, who has examined the defendant, must testify in person at the hearing, unless this testimony is waived by the defendant and the waiver is approved by the court. 405 ILCS 5/3-807. The Mental Health Code defines who qualifies as a psychiatrist, clinical social worker, etc. for the purposes of this requirement. 405 ILCS 5/1-103, 5/1-121, 5/1-122, 5/1-122.1.

K. An order committing the defendant must be in writing and "accompanied by a statement on the record of the court's findings of fact and conclusions of law." 405 ILCS 5/3-816(a*). In re James S*., 388 Ill. App. 3d 1102 (5th Dist. 2009).

L. A defendant has a right to appeal her/his commitment and the right to a free transcript and to the appointment of counsel if indigent. The Court must advise the defendant orally and in writing of these rights. 405 ILCS 5/3-816(b).

IV. Inpatient Commitment

A. Standard for inpatient commitment:

If the defendant is found "in need of mental health services on an inpatient basis" as defined in 730 ILCS 5/5-2-4(a-1)(B), s/he must be remanded to the custody of the Department for treatment. 730 ILCS 5/5-2-4(a).

B. Duration of confinement–*Thiem* dates.

1. If Defendant is found to need inpatient care, the Court must determine the maximum length of confinement under the NGRI law–called a *Thiem* date. This date must be included in a written order. 730 ILCS 5/5-2-4(b); *People v. Thiem*, 82 Ill. App. 3d 956; 38 Ill. Dec. 416 (1st Dist, 1980)

2. The *Thiem* date:

"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." 730 ILCS 5/5-2-4(b).

3. Consecutive sentences for multiple offenses are not permitted. *People v. Hampton,* 121 Ill. App. 3d 273, 76 Ill. Dec. 850 (1st Dist. 1983).

4. The *Thiem* date is set once and cannot be extended due to subsequent behavior of the Defendant. *People v. Guy*, 126 Ill. App. 3d 267, 81 Ill. Dec. 450 (1st Dist. 1984).

5. The *Thiem* date may be based upon the extended term provisions in 730 ILCS 5/5-8-2. *People v. Cochran,* 167 Ill. App. 3d 830, 118 Ill. Dec. 806 (5th Dist. 1988); *People v. Winston*, 191 Ill. App. 3d 948, 139 Ill. Dec. 21 (1st Dist. 1989)

6. There is a split in authority concerning whether a *Thiem* date can be "natural life". *People v. Larson*, 132 Ill. App. 3d 594, 88 Ill. Dec. 124 (1st Dist. 1985)("We find that natural life is not a permissible "maximum sentence" under section 5-2-4(b)."); People v. Cochran, 167 Ill. App. 3d 830, 118 Ill. Dec. 806 (5th Dist. 1988)("[M]aximum period of criminal commitment under section 5-2-4(b) can include natural life")

7. A conditional release cannot extend beyond the *Thiem* date. *Williams v. Staples*, 208 Ill. 2d 480, 281 Ill. Dec. 524 (2004)

8. The *Thiem* date merely defines the maximum length of the special NGRI commitment. A defendant is entitled to release whenever s/he no longer meets the commitment requirements irrespective of the length of this commitment. *Jones v. United States,* 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1982).

9. A defendant whose *Thiem* date has passed may be committed under the Mental Health Code, 405 ILCS 5/1-100, et seq, for so long as s/he continues to meet the standard for commitments set forth in Section 1-119 of that Code. However, the jurisdiction of the criminal court is terminated and the special restrictions placed upon NGRIs may no longer be imposed. *People v. Hampton*, 121 Ill. App. 3d 273, 76 Ill. Dec. 850 (1st Dist. 1983)

C. Secure confinement.

1. Persons committed to the Department "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).

2. "If the facility director determines that the defendant no longer requires placement in a secure setting, the facility director shall give written notice [of this determination] to the Court, State's Attorney and defense counsel." Within 30 days of the notification, the matter must be set for hearing. 730 ILCS 5/5-2-4(d)(3).

3. The defendant may file a petition for transfer to a non-secure setting within the Department. A hearing on this petition must be held within 120 days. 730 ILCS 5/5-2-4(e).

4. The procedural requirements for hearings to determine whether a defendant should be transferred to a non-secure setting are set forth in 730 ILCS 5/5-2-4(c), (f) and (g) and described in detail in Section VI(C) below.

D. Passes.

1. Among the special restrictions imposed upon NGRIs is that the Department does not have the discretion to allow them to be outside of their living area without a specific court order. 730 ILCS 5/5-2-4(b).

2. If the Department believes it to be appropriate, the facility director must make a specific written request to the Court for permission to allow an NGRI to leave her/his living area. These "passes" include unaccompanied on grounds passes and accompanied and unaccompanied off-grounds passes. 730 ILCS 5/5-2-4(b).

3. Hearings on such passes are governed by the same procedures as hearings for transfer to a non-secure setting, conditional release and unconditional discharge. See Section VI(C) below.

4. The conditions of any pass "must reasonably assure the defendant's satisfactory progress in treatment and the safety of the defendant and others." 730 ILCS 5/5-2-4(b)

E. Right to treatment

1. The facility director must file a treatment plan with the Court, and send copies to the State's Attorney and counsel for defendant, within 30 days of admission and every 60 days thereafter. This report must include an opinion about whether the defendant remains in need of mental health services on an inpatient basis as well as the following:

   a. "An assessment of the defendant's treatment needs,
   b. A description of the services recommended for treatment,
   c. The goals of each type of treatment,
   d. An anticipated timetable for the accomplishment of the goals, and
   e. A designation of the qualified professional responsible for the implementation of the plan." 730 ILCS 5/5-2-4(b).

2. Judicial review of treatment. The written treatment plan is provided to the court and counsel for defendant in order to insure that the defendant does not remain confined any longer than necessary and that the treatment being provided is accomplishing the goal of preparing the defendant for release. Thus the defendant is entitled to petition the court for review of the treatment plan. 730 ILCS 5/5-2-4.

3. Although the treatment review process is set forth in the same section (730 ILCS 5/5-2-4(e) which governs hearings for conditional release and unconditional discharge, a defendant "does not have a right to a hearing to modify the treatment plan [or an independent psychiatric examination.]" *People v. Chiakulas*, 288 Ill. App. 3d 248, 224 Ill.

Dec. 53 (1st Dist. 1997). The Court must, however, review the treatment plan and has the discretion to conduct a hearing and order an independent examination. 224 Ill. Dec. at 57.

V. Outpatient Treatment/Conditional Release

A. Standard for outpatient commitment:

1. "If the defendant is found in need of mental health services but not an an inpatient basis the Court shall conditionally release the defendant under such conditions... as will reasonable assure the defendant's satisfactory progress and participation in treatment or habilitation and the safety of the defendant and others." 730 ILCS 5/5-2-4(a).

2. An NGRI may be conditionally released to outpatient treatment if she 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." 730 ILCS 5/5-2-(a-1)(C).

B. Outpatient commitment or conditional release may be ordered at the initial commitment hearing (See Section III above) or may be requested by either the Department or the defendant at any time after a defendant has been committed on an inpatient basis. The procedures for requesting outpatient commitment are set forth in Section VI below.

C. Duration of outpatient commitment/conditional release.

1. Outpatient commitment is for 5 years. 730 ILCS 5/5-2-4(a-1)(D).

2. Outpatient commitment may be extended for additional 5-year periods following a hearing. 730 ILCS 5/5-2-4(a-1)(D).

3. The defendant is entitled to all of the procedural protections set forth in Section III above in any extension hearing. 730 ILCS 5/5-2-4(a-1)(D).

4. Outpatient commitment cannot extend beyond the *Thiem* date. *Williams v. Staples,* 208 Ill. 2d. 480 (2004)

5. A petition for an extension must be filed *before* the outpatient commitment period expires. *People v. Marshall*, 273 Ill. App. 3d 969, 210 Ill. Dec. 318, 324 (1st Dist. 1995). (Court loses jurisdiction over NGRI when conditional release period expires.)

D. Conditions of outpatient commitment/conditional release.

1. "Conditions...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." 730 ILCS 5/5-2-4(a-1)(D).

2. "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. 730 ILCS 5/5-2-4(a-1)(D).

3. There is no Illinois case law specifying the extent of the Court's power to order the Department to provide treatment under this Section.

4. Under *Olmstead v. L.C.*, 527 U.S. 581, 119 S. Ct. 2176, 1999 U.S. LEXIS 4368 (1999), the Court may be authorized to order any treatment that does not cost the Department more than would be spent on the defendant on an inpatient basis. This scope of this obligation is unclear.

5. "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." 730 ILCS 5/5-2-4(a-1)(D).

VI. Conditional Release and Unconditional Discharge of Persons Initially Committed on an Inpatient Basis

A. Most persons found to be in need of inpatient care and committed to the Department are eventually found appropriate for conditional release or unconditional discharge. A conditional release or unconditional discharge may be initiated in either of two ways:

1. Notice from facility director. "When the facility director determines that defendant is no longer in need of mental health services on an inpatient basis and… may be conditionally released…or may be discharged as not in need of mental health services…the facility director shall give written notice to the Court, State's Attorney and defense attorney…" The Court must set the matter for a hearing with 30 days. 730 ILCS 5/5-2-4(d).

2. Petition filed by defendant. The defendant may file a petition for conditional release or unconditional discharge. A hearing on a petition filed by the defendant must be held within 120 days. *Radazewski v. Cawley*, 159 Ill. 2d. 372, 203 Ill. Dec. 102 (1994)(Time period for conducting a hearing on defendant's petition is mandatory). Defendants are prohibited from filling a successive petition within 180 days of the first petition. It is unclear whether this 180-day period runs from the filing of the first petition or the hearing on that petition.

B. Hearing Procedures

1. Right to impartial examination. The defendant, the State's Attorney or the Court may obtain "an impartial examination of the defendant by a psychiatrist or clinical psychologist…who is not in the employ of the Department of Human Services" 730 ILCS 5/5-2-4(f).

2. The defendant is entitled to counsel and appointed counsel if indigent. 730 ILCS 5/5-2-4(c). *People v. Shelton*, 281 Ill. App. 3d 1027, 217 Ill. Dec. 473 (1st Dist. 1996).

3. The burden of proof is on the defendant to establish his entitlement to release by clear and convincing evidence. 730 ILCS 5/5-2-4(g).

4. At the hearing, the Court must first determine whether the defendant remains in need of mental health services on an inpatient basis" as defined in 730 ILCS 5/5-2-4(a-1)(B). If the defendant continues to meet the standard for inpatient treatment, then no further proceeding are necessary and the defendant is remanded to the Department for further inpatient care.

5. The statute spells out some of the evidence which the Court may consider:

a. "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;

b. whether the person appreciates the criminality of conduct similar to the conduct for which he or she was originally charged in this matter;

c. the current state of the defendant's illness;

d. what, if any, medications the defendant is taking to control his or her mental illness;

e. what, if any, adverse physical side effects the medication has on the defendant;

f. the length of time it would take for the defendant's mental health to deteriorate if the defendant stopped taking prescribed medication;

g. the defendant's history or potential for alcohol and drug abuse;

h. the defendant's past criminal history;

i. any specialized physical or medical needs of the defendant;

j. any family participation or involvement expected upon release and what is the

willingness and ability of the family to participate or be involved;

k. the defendant's potential to be a danger to himself, herself, or others; and

l. any other factor or factors the Court deems appropriate." 730 ILCS 5/5-2-4(g).

6. If the Court finds that the defendant no longer meets the standard for inpatient commitment, the Court must then consider whether there are conditions under which defendant may be safely released.

7. The Court cannot deny conditional release solely because it is dissatisfied with the conditions proposed by the Department. *People v. Smith,* 126 Ill. App. 3d 5, 81 Ill. Dec. 424 (1st Dist. 1984). Rather, the Court has the power to direct the Department to prepare a new discharge plan. 730 ILCS 5/5-2-4(h).

8. Similarly, if conditional release has been initiated by the defendant rather than by the facility director, there ordinarily will not be a discharge plan available to the court at the time of the hearing. Thus, if the Court determines that the defendant is not "in need of mental health services on an inpatient basis", the Court should order the department to prepare a conditional release plan for the Court's consideration.

C. Conditional release orders. A detailed discussion of conditional release orders, their duration and effects is in Section V above.

VII. Revocation of outpatient commitment/conditional release

A. If the State's Attorney determines that the defendant has violated the conditions of her/his conditional release, s/he may file a petition for revocation under 730 ILCS 5/5-2-4(i)

B. The defendant may, but need not be, remanded to the custody of the Department pending disposition of the revocation petition. Unlike 730 ILCS 5/5-2-4(a), which governs initial commitments (See Section II(C) above), 730 ILCS 5/5-2-4(i), which governs revocations, does not authorize the defendant to be placed in a jail pending resolution of the revocation petition.

C. Two step process

1. The Court must first "determine, after hearing evidence, that the defendant has not fulfilled the conditions of release."

2. If so, the Court must order a hearing to determine whether "the defendant is in need of mental health services on an inpatient basis." 730 ILCS 5/5-2-4(i). This standard is defined in 730 ILCS 5/5-2-4(a-1)(B). If the Court determines that the defendant meets this standard, "the Court shall enter an order remanding him or her to the Department…or other facility." 730 ILCS 5/5-2-4(i). Alternatively, "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…" 730 ILCS 5/5-2-4(i).

3. Evaluation by Department prior to hearing. Ordinarily, once the Court determines that the defendant has not fulfilled the conditions of his release, the Court will direct the Department to prepare a written evaluation of whether the defendant is in need of mental health services on an inpatient basis or may continue to be treated on an outpatient basis.

4. Hearing procedures. All of the procedural requirements of the Mental Health Code apply to revocation hearings. These are set forth in Section III above.

VIII. Guilty But Mentally Ill (GBMI) Disposition

A. "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." 720 ILCS 5/6-2(c).

B. For the purposes of the GBMI law, mental illness 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." 720 ILCS 5/6-2(d).

C. A defendant may plead GBMI. Alternative, if the defendants pleads insanity, the State may request that this alternative be considered by the Court and obtain a jury instruction in an jury trial. The Court may also make a finding of GBMI without a plea or request.

D. Persons found GBMI are generally not treated any differently than those who are simply found guilty

1. The length of confinement is the same. "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." 730 ILCS 5/5-2-6(a). *People v. Crews*, 122 Ill. 2d 266, 522 N.E.2d 1167, 119 Ill. Dec. 308 (1988)(Defendant found GBMI may be sentenced to death.)

2. The placement is the same. "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…" 730 ILCS 5/5-2-6(b). Persons found GBMI may be transferred to the Department of Human Services. 730 ILCS 5/5-2-6(b). However, such transfers are rare. Moreover, the provisions governing the transfer of GBMIs to the Department of Human Services, 730 ILCS 5/3-8-5 and 3-8-6, also govern persons who have been found guilty. Thus, the GBMI disposition is not a mechanism for avoiding imprisonment.

3. The right to treatment is the same. Persons found GBMI have no greater right to mental health treatment than those found guilty. *People v. Manning*, 227 Ill. 2d 403, 318 Ill. Dec. 261 (2008).

4. However, persons found GBMI have a statutory right to a periodic evaluation concerning their need for mental health treatment. 730 ILCS 5/5-2-6(a). This statutory provision does not apply to persons found guilty.

IX. Overview of Facility Initiated Privileges

Forensic recipients within the 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.

5. 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

X. Recipient Initiated Privilege Request

Henderson Information Packet

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. III.) 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, 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.

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.

XI. RELEVANT STATUTES

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

SPECIFIC INSTRUCTIONS

You will need to:

Complete the Petition for Discharge or Conditional Release form (located in the appendix) as follows;
Print your name wherever it says your name on the Petition;
Include your case number and judge's name where indicated at the top of the Petition;
Sign the Petition; and
Fill in your name, address, telephone number, and date you completed the Petition at the bottom of the Petition.

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:

Print your name and address at the top of the form cover letter where indicated;
Fill in the date you completed the cover letter (today's date);
Fill in the judge's name; and Sign the cover letter.

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:

Print your name and address at the top of the form cover letter where indicated;
Fill in the date you completed the cover letter (today's date);
Fill in the clerk's name; and
Sign the cover letter.

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?

The Court should set the matter for hearing within 120 days of receiving your petition.

If you are indigent, the Court shall appoint an attorney to represent you for purposes of conducting a hearing regarding your petition.

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.

SECTION IV: FORENSIC OUTPATIENT PROCEDURES

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

Sample Forensic Outpatient Reports are in Appendix I.

FORENSIC OUTPATIENT PROCEDURES

I. Court Refers Forensic Outpatient to the Illinois Department of Human Services

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), referring defendant to the Illinois Department of Human Services, and requesting an evaluation to be conducted 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, Elgin Mental Health Center, 750 South State Street, Elgin, Illinois 60123, or other DHS facility.

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 to attend the 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 nonconfidential 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. Mentally Ill and/or Substance Abuser.

1. Identify community agency through the Geocode Book.
2. Contact Network Manager if problems identifying appropriate agency.
3. Forward court materials and outpatient evaluation outline to identified agency.
4. Request agency to schedule intake appointment with defendant.
5. Provide consultation services if necessary.

B. Developmentally Disabled.

1. Forward court materials and outpatient evaluation outline to Tammie Benjamin at 312-814-8338.
2. Ms. Benjamin identifies community agency and arranges appropriate services.

V. Complete the 30 Day Court Report

Verify that defendant attended intake appointment at community agency.

Finalize treatment plan with identified agency (i.e., treatment modalities, treatment supervisor, psychiatrist, counselor, case manager, etc.).

Notify treatment agency that staff must supervise the defendant and send progress reports to the court (i.e., every 90 days).

Prepare court report with treatment recommendations.

Once completed, court report sent to the Judge, Public Defender/Private Attorney,
State's Attorney, and treatment agency.

VI. Monitor Outpatients in the Community

A. Contact community agency and remind agency to submit a progress report prior to next status hearing.

B. Provide technical support if needed.

SECTION V: MAXIMUM SECURITY REFERRAL

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. This Section outlines a DHS internal procedure for triage and transfer.

FORENSIC SERVICE CHESTER MHC EMERGENCY REFERRAL PROCEDURES

A. Referral Initiation

- State hospital staff refers a Management case for transfer to Chester MHC by completing the Chester Referral Form (see below) and faxing or e-mailing it to the Forensic Director. The referral form must be signed by the referring hospital Medical Director.

B. Review Panel

- The Director of Forensic Services convenes a panel that includes the Forensic Director, DMH Medical Director or designee*, and Associate Forensic Director and…
  1.) Reviews the referral information,
  2.) Schedules a phone review with the referring facility within 8 hours.

  (*A Designee is a non-referring hospital Medical Director identified to replace the Medical Director when he/she is unavailable)
- If deemed necessary by any panel member, the Director of Forensic assigns the case to Metro Forensic staff for an on-site review.
- Metro staff may conduct a review without being requested if they receive a written referral request directly from a Metro area hospital or Elgin Hospital Medical Director.
- After an on-site review is conducted, the reviewer shares their findings & recommendation with the Forensic Director or designee, DMH Medical Director, or Associate Forensic Director. The transfer may be approved at this point or a phone meeting will be scheduled with the referring facility to further review the transfer.

On-site Review Procedure

1. Staff reviews referral form 2. Staff goes to the patient's unit 3. Review chart 4. Interview staff 5. Interview patient	6. Complete risk assessment (Factors to consider) - Why referred to Chester MHC? - Staff/Patient injury (i.e., severity, frequency, etc.)? - Restraints (i.e., length, frequency, etc.)? - Any insight? - History of violence? - Patient's clinical condition (e.g., command hallucinations)? - Exhausted medication options? - Tried behavioral program?

C. Review Process with Referring Hospital

The Director of Forensic Services and panel members review the case with the referring facility (If the entire panel is not available the review process can continue with any available panel member)

- After the review with facility staff the panel or panel member will decide whether a transfer to Chester MHC is warranted and inform the facility staff immediately.
- If a transfer is approved the panel or panel member will inform the requesting facility and Chester, MHC by e-mail to coordinate the transfer as an emergency transfer within 48 hours.

D. Emergency Transfer without a Panel Review.

- If a behavior management problem (i.e., attempted elopement, *serious injury caused by a weapon or object used as a weapon, arson, sexual assault) occurs after central office normal working hours (5:00PM), or on holidays or weekends, the Director of Forensic Services or Department Medical Director should be contacted immediately to approve an expedited emergency transfer to Chester based on a phone review of the incident.
- Both the cell and home numbers of the Forensic and Medical are listed at each facility for 24hr emergency contacts during holidays and weekends.

*Life threatening and/or needing immediate medical attention.

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:_____
ADMISSION STATUS AND CIRCUMSTANCES:_____
_____
_____

CURRENTDIAGNOSIS:
Axis I:
Axis II:
Axis III:

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 (Any medical issues Chester staff should be aware of):_____

_____

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, milieu)

_____

_____

What specific aggressive and other accompanying behaviors were shown?_____

_____

What were the resulting injuries/damages?_____

_____

What kind of emotions were displayed before and after the act?_____

_____

_____

Other Factors to Consider:

Previous tx history/medications/interventions:_____

_____

Trauma History: _____

_____

Vulnerabilities to a Chester placement:_____

_____

Previous Forensic History:_____

_____

HISTORY OF OTHER VIOLENT BEHAVIOR:

_____

_____

CRIMINAL HISTORY (DATES, CHARGES, CONVICTIONS, DISPOSITIONS):_____

_____

CHRONOLOGY OF RESTRAINT AND SECLUSION DURING CURRENT INPATIENT STAY:

_____

_____

COMMUNITY CONTACT: _____

METRO FORENSIC REVIEWERS COMMENTS AND CONCLUSIONS: _____

_____

_____

SIGNATURE OF REFERRING PERSON _____

REFERRAL PROCEDURES:

All REFERRING FACILITIES PLEASE SCAN OR FAX COPY OF COMPLETED REFERRAL FORM TO:

DR. ANDERSON FREEMAN
DIRECTOR FORENSIC BUREAU
anderson.freeman@illinois.gov
OFFICE PHONE (312) 814-1646
FAX (312) 814-4832

DR. SHARON COLEMAN
ASSOCIATE DIRECTOR, FORENSIC BUREAU
sharon.coleman@illinois.gov
OFFICE PHONE (312) 814-4909
FAX (312) 814-4832

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

Dr. TIMA SMITH	708-338-7015
BOB HAVENS, LCSW	847-742-3368
CARLA JOINER-HERROD, LCSW	708-338-7002

DURING NORMAL WEEK DAY HOURS ALL REFERRALS FROM METRO AREA FACILITIES (Chicago Read, Elgin & Madden) 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.

SECTION VI: SEXUALLY VIOLENT PERSONS AND SEXUALLY DANGEROUS PERSONS

This section consists of the Sexually Violent Persons Commitment Act and referral form and the Sexually Dangerous Persons Act. Both acts attempt to deal with a similar population by creating a civil commitment process that requires that its elements be proved beyond a reasonable doubt.

The Sexually Violent Persons Commitment Act requires the petitioner to prove that the person committed a prior act of sexual violence and is predisposed to commit further acts of sexual violence due to a mental disorder. The petition is filed at the end of an individual's sentence in the Department of Corrections, their period of confinement with the Department of Human Services after being adjudicated not guilty by reason of insanity or the end of their confinement in the Department of Juvenile Justice. In each situation the respective Department is required to assess the person to determine if the person meets the criteria for commitment under the Sexually Violent Persons Commitment Act. The referral form is used by the Department of Human Services when it determines that the person meets the criteria. If the court determines that the person meets the criteria the court would send the person to the Treatment and Detention Facility operated by the Department of Human Services. (SEE Appendix K)

The Sexually Dangerous Persons Act requires the petitioner to prove that the person committed a prior act of sexual violence and is predisposed to commit further acts of sexual violence due to a mental disorder. Unlike the Sexually Violent Persons Commitment Act, the petition is filed simultaneously with the filing of another criminal charge and is a civil commitment alternative to a criminal conviction. The committed person is placed in the custody of the Department of Corrections. (SEE Appendix L)

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: ILLINOIS OFFENDER REGISTRATION ACTS

This section consists of other Illinois Offender Registration Acts including the Sex Offender Registration Act, the Arsonist Registration Act and the Murderer and Violent Offender Against Youth Registration Act. When an arsonist, sex offender, sexual predator, first degree murder of an adult or violent offender against youth is discharged from the Department of Human Services (DHS) Center/Program it is the policy of DHS that the Center/Program shall inform the individual and/or guardian of the individual of his or her responsibility to register under the Arsonist Registration Act, Sex Offender Registration Act, or Murderer and Violence against Youth Registration Act.

PROCEDURES

I. When a sex offender, sexual predator, first degree murder of an adult or violent offender against youth is to be discharged from a Department of Human Services (DHS) Center/Program, the Center/Program shall:

A. Prior to discharge or release, or prior to a court hearing that may result in the individual's release, the Center/Program shall inform and explain to the individual his or her duty to register and the procedure to register under the **Sex Offender Registration Act** or the **Murder and Violent Offender Against Youth Act** as required for the individual's offense.

B. Inform the individual that if he or she establishes a residence outside of the State of Illinois, is employed outside the State of Illinois, or attends school outside the State of Illinois, he or she must register in the new state within 10 days after establishing such residence, accepting employment or attending school in the new state.

C. If the individual is to be placed on Conditional Release, explain to the service provider the need for the individual to maintain the appropriate offender registration and document the request for the service provider to assist the individual in maintaining registration.

D. Require the individual to read and sign the **Sex Offender Registration Act Notification Form (ISP 4-84e)** provided by the Illinois State Police. This form states that the duty to register and the procedure for registering have been explained, and the individual understands the duty to register and the procedure for registration;

E. Obtain the address where the individual expects to reside after discharge, and record the address on the form;

F. Give one (1) copy of the **Sex Offender Registration Act Notification form (ISP 4-84e)** to the individual, service provider, guardian, place one copy in the individual's clinical record, send one copy to the VCN and forward within three (3) days the original signed form with the individual's address to the Illinois State Police S.O.R.T;

II. When an arsonist is to be discharged from a Department of Human Services (DHS) Center/Program, the Center/Program shall:

A. Prior to discharge or release, or prior to a court hearing that may result in the individual's release, inform and explain to the individual his or her duty to register and the procedure to register under the **Arsonist Registration Act**, as required for the individual's offense.

B. Inform the individual that if he or she establishes a residence outside of the State of Illinois, is employed outside the State of Illinois, or attends school outside the State of Illinois, he or she must

register in the new state within 10 days after establishing such residence, accepting employment or attending school in the new state.

C. If the individual is to be placed on Conditional Release, explain to the service Provider the need for the individual to maintain the appropriate offender registration and document the request for the service provider to assist the individual in maintaining registration.

D. All arsonist discharges to the City of Chicago are required to register in person with their local Police Department.

E. For Arsonists discharged to residences other than in the City of Chicago, DHS shall have the individual complete the **Notification of the Discharge and NGRI Individual Charged with an Arson Offices (APPENDIX I),** and forward a copy to the appropriate law enforcement agencies, the service provider, the individual's medical record and the DHS Criminal Justice Liaison.

III. The DHS Victim Notification Coordinator shall be notified at least seven (7) days prior to the discharge of individuals who are required to register under the provisions of **the Arsonist Registration ACT, Sex Offender Registration Act,** or **Murderer and Violent Offender Against Youth Registration Act.**

IV. If there are questions concerning to whom and when the Arsonist Registration Act, Sex Offender Registration Act and the Murderer and Violent Offender Against Youth Registration Act apply, the Center/Program should contact its assigned attorney in DHS' Office of the General Counsel or the Illinois State Police S.O.R.T.

APPENDIX A

FITNESS FOR TRIAL, TO PLEAD OR TO BE SENTENCED
(725 ILCS 5/104)

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.

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.

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.

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.

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.

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 therefore. 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.

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 there for. 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 to 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.

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. If upon the completion of the placement process the Department of Human Services determines that the defendant is currently fit to stand trial, it shall immediately notify the court and shall submit a written report within 7 days. In that circumstance the placement shall be held pending a court hearing on the Department's report. Otherwise, upon completion of the placement process, the sheriff shall be notified and shall transport the 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.

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.

<u>(c) Whenever the court is sent a report from the supervisor of the defendant's treatment under paragraph (2) of subsection(a) of this Section, the treatment provider shall arrange with the court for the return of the defendant to the county jail before the time frame specified in subsection (a) of Section</u>

<u>104-20. This subsection (c) is inoperative on and after January 1, 2014.</u>

(Source: P.A. 81-1217.)

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.

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 a first hearing within 14 ~~21~~ days unless good cause is demonstrated why the hearing cannot be held. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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. Whenever the court receives a report from the supervisor of the defendant’s treatment recommending the defendant for any off-grounds or unsupervised on-grounds privileges, or placement in a non-secure setting, the court shall set the matter for a first hearing within 21 days unless good cause is demonstrated why the hearing cannot be held. The changes made to this Section by this amendatory Act of the 96th General Assembly are declarative of existing law and shall not be construed as a new enactment.

APPENDIX B
FITNESS SAMPLE COURT ORDERS
List of Orders

The Period Leading up to the Fitness Determination

1. *Order for Fitness Evaluation*: Includes evaluation upon a *bona fide* doubt and evaluation to see if a *bona fide* doubt exists

Upon the Finding that the Defendant is Unfit:

2. *Finding of Unfitness with Fitness Expected within 1 Year and Order for Treatment (With provisions if trier of fact is unable to determine if fitness is expected within 1 year)*: Includes physical and mental unfitness

3. *Order Upon Initial Finding of Unfitness and with Fitness Not Expected Within 1 Year*: Note: This finding immediately moves the case to The Extended Period of Treatment

The Initial Period of Treatment:

4. *Ninety-Day Hearing Order During the Initial Period of Treatment:* Includes continued treatment, moving to The Extended Period of Treatment, and restoration to fitness

The Extended Period of Treatment:

5. *Order at Conclusion of Discharge hearing with Provisions for Acquittal or Extended Treatment*: Includes findings of "Not Guilty," "Not Guilty by Reason of Insanity," and "Not 'Not Guilty.'"

6. *Ninety-Day Hearing Order During the Extended Period of Treatment*: Includes continued treatment and restoration to fitness provisions

7. *Order at the Expiration of the Extended Period of Treatment*: Includes continued treatment including commitment to DHS awaiting fitness and restoration to fitness provisions

The g(2) Period of Treatment :

See #7 above: *Order at the Expiration of the Extended Period of Treatment* which includes provisions moving matter into The g(2) Period of Treatment

8. *Periodic Review Hearing Order During the "(g)(2)" Period of Treatment*: Includes continued treatment, end of treatment with defendant remaining unfit, and restoration to fitness

9. *Order Upon "In Camera" Review of Progress Report During the "(g)(2)" Period of Treatment*: Note: upon receipt of a Progress Report when the next periodic review hearing is not scheduled for another 90 days

10. *Order at the End of the "(g)(2)" Period of Treatment*: Includes end of treatment with defendant remaining unfit and restoration to fitness

Restoration Order:

11. *Restoration Order Language*: a list of the above orders that contain that language

12. *Restoration Order*

13. *Order of Restoration (In the form as requested by some DHS facilities):* For some Chicago area DHS facilities as they have requested

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
vs.) No. _____
)
_____,)
Defendant.)

ORDER FOR FITNESS EVALUATION

***Bona fide* Doubt Matter**

☐ 1. This court finds that a *bona fide* doubt as to the defendant's fitness for trial, to plead, or to be sentenced has been raised. A fitness examination must be conducted. 725 ILCS 5/104-13. A fitness hearing must be held. 725 ILCS 5/104-16. Speedy trial is tolled. 725 ILCS 5/103-5(a).

-or-

☐ 1. Pursuant to 725 ILCS 5/104-11(a), the defense has requested that a qualified expert be appointed to examine the defendant to determine is a *bona fide* doubt as to fitness may be raised. There has been no finding by the court that a *bona fide* doubt as to fitness has actually been raised, however, the court, in its discretion, finds that there is a basis to grant the motion for an examination. Speedy trial is tolled. 725 ILCS 5/103-5(a). *People v. Sonntag* 128 Ill. App. 3d 548 (1984).

Appointment of Examiner

☐ 2. The court appoints the following licensed physician, clinical psychologist, or psychiatrist (who is not employed by the Department of Human Services) to examine the defendant:
_____

Arrangements for Examination

☐ 3. The defendant is not in custody or jail. The defendant is ordered to appear for the examination at the time and place designated by the person (or agency) who has been appointed to conduct the examination.

-or-

☐ The defendant is in custody or jail.

☐ The examiner shall examine at the location the defendant is being held.

☐ The sheriff shall deliver the defendant at the time and place agreed to by the sheriff and the person conducting the examination.

Payment of Examiner

☐ 4. Any costs and fees associated with the examiner's examination, report(s), and any testimony shall be paid by:

☐ The defendant. ☐ The county.

Fitness Report

☐ 5. The examiner shall submit a written report to the court, the State, and the defense within 30 days of the date of this order. The report shall include:

a. A diagnosis and an explanation as to how it was reached and the facts upon which it is based.

b. 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 the defendant or to assist in the defense, or both.

c. If the report indicates that the defendant is not fit 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 preparing the report is 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.

d. 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.

Other

☐ 6. Additional provisions: _____

_____.

Hearing Date

☐ 7. This case is set for status on the ____ day of _____, 20___ at _____:____ ___.m. for the purpose of seeing if the fitness report has been received. [*Note: the report is due in 30 days.*]

A fitness hearing must be held within 45 days of the receipt of the fitness report if a *bona fide* doubt as to the defendant's fitness has been raised. If a *bona fide* doubt was already raised in this case or if the report raises a *bona fide* doubt, a date for the fitness hearing will be given at this status hearing.

Notice of this Order

☐ 8. The ☐ clerk ☐ prosecutor ☐ defense attorney is to provide a copy of this order to the

☐ examiner/evaluator ☐ sheriff.

Dated: _____, 20___

Entered: _____
Judge of the Circuit Court

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	**No. _____**
	)	
_____,	)	
Defendant.	)	

FINDING OF UNFITNESS
WITH FITNESS EXPECTED WITHIN 1 YEAR and ORDER FOR TREATMENT
(With provisions if trier of fact is unable to determine if fitness is expected within 1 year)

This cause having been heard pursuant to 725 ILCS 5/104-16 on the issue of the defendant's fitness to stand trial or to plead and to be sentenced, and the COURT/JURY having returned a verdict of:

☐ Unfit with a finding that a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year

-or-

☐ Unfit but unable to make a finding whether there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year

This Court hereby orders:

TREATMENT PROVISIONS

☐ 1. The defendant is to undergo treatment for the purpose of being rendered fit to stand trial or to plead and to be sentenced. The initial period of treatment is not to exceed 1 year from the date of the original finding of unfitness.

[Check 2A or 2B.]

☐ 2. A. Due to physical unfitness, the defendant is placed under the supervision of:

☐ The Department of Human Services (DHS)

☐ (other facility or treatment program) _____

_____

-or-

☐ 2. B. Due to mental unfitness, the defendant is placed for treatment in the custody of:

☐ the Department of Human Services (DHS)

☐ (other facility or treatment program) _____

_____

[Check a box in #3. Check #4 if it applies. Check #5A or #5B.]

☐ 3. The provider of treatment shall place and maintain the defendant in a suitable treatment facility or program as an: [check one:]

☐ inpatient ☐ outpatient

☐ 4. *[This must be checked if mental unfitness AND if placement is ordered with DHS.]* The court has considered the issue of a secure setting and orders:

☐ Defendant shall be placed in a secure setting.

☐ Due to compelling reasons, the defendant is not ordered to be placed in a secure setting.

☐ 5.A. The defendant shall remain in jail during the period of time required to determine the appropriate placement by the provider of treatment. Upon the completion of placement determination, the provider of treatment shall notify the sheriff who shall transport the defendant to the designated facility.

-or-

☐ 5.B. For a defendant not currently in jail:

☐ The defendant shall report as directed by the provider of treatment to the facility designated by the provider and on the date and time specified by the provider.

☐ The defendant shall immediately be taken into jail during the period of time required to determine the appropriate placement by the provider of treatment. Upon the completion of placement determination, the provider of treatment shall notify the sheriff who shall transport the defendant to the designated facility.

REPORTS

☐ 6. Pursuant to 725 ILCS 5/104-17(e) and within 30 days of the entry of this order, DHS or other facility or treatment program shall file with court, the State, and the defense a 30-Day Report (also called an "Admission Report" or a "17(e) Report").

☐ 7. Pursuant to 725 ILCS 5/104-18, the treatment supervisor shall submit timely written progress reports to the court while the defendant is receiving treatment.

OTHER PROVISIONS

☐ 8. Other: _____

_____.

HEARING DATE:

#9 or #10 must be checked

☐ 9. *[Only for those unfit defendants the court or jury was unable to determine if there is a substantial probability of attaining fitness within one year.]* This case is set on the ____ day of _____, 20___ at _____:___ __.m. (a date "as soon as possible following the receipt of the report" that is due in 30 days). At this hearing, the court shall determine whether a substantial probability exists that, if provided with a course of treatment, the defendant will attain fitness within 1 year.

☐ 10. This case is set on the _____ day of _____, 20___ at _____:_____ ___.m. for the first "Ninety-Day Hearing" to reexamine the issue of the defendant's fitness. *[Per statute: not more than 90 days from the date of the finding of unfitness. 725 ILCS 5/104-20.]*

COPY OF ORDER TO PROVIDER OF TREATMENT and SHERIFF

☐ 11. **Re: Treatment Provider:** Per 725 ILCS 5/104-17(d), the clerk of the circuit court shall transmit to the provider of treatment (1) a certified copy of the order to undergo treatment; (2) information as to the county and municipality in which the offense was committed; (3) information as to the county and municipality in which the arrest took place; (4) a copy of the arrest report, criminal charges, arrest record, jail record, and the report prepared under Section 104-15; and these additional items (if any):

_____

☐ 12. The ☐ clerk ☐ prosecutor ☐ defense attorney is to provide a copy of this order to the ☐ sheriff.

Date: _____, 20___

Entered: _____

Judge of the Circuit Court

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	**No. _____**
	)	
_____,	)	
Defendant.	)	

ORDER UPON INITIAL FINDING OF UNFITNESS
AND WITH FITNESS NOT EXPECTED WITHIN 1 YEAR

This cause having been heard pursuant to 725 ILCS 5/104-16 on the issue of the defendant's fitness to stand trial or to plead and to be sentenced, and the COURT/JURY having returned a verdict of:

Unfit with a finding that there is not a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year.

Section I:

Pursuant to 725 ILCS 5/104-23, the State has opted as follows:

[*Only one section, A or B or C or D, should be completed.*]

☐ A. That a discharge hearing be held. [*Go to Section II regarding treatment pending discharge hearing.]*

☐ B. That this case be dismissed with prejudice. State to submit a separate order.

☐ C. That the defendant be remanded to the Department of Human Services (DHS) for a civil commitment hearing. This Court orders DHS to file a petition with the civil courts within 7 days for involuntary admission to DHS. If the petition is denied, the defendant is to be remanded to this Court. If the petition is granted, this case is to be dismissed with leave to reinstate. (See status date setting in Section III.)

☐ D. The case is set for status to allow the State to decide which option to exercise. (See status date setting in Section III.)

Section II (relevant only if case is proceeding to a discharge hearing and treatment is ordered in interim):

This Court notes that:

a. The defendant has been found unfit to stand trial.

Note #1: If verdict was "Unfit" and likely to "attain fitness within one year," or "Unfit" but unable to determine if likely to "attain fitness within one year," use *Order of Treatment Upon Initial Finding of Unfitness and with Fitness Expected Within 1 Year or That Determination Yet to be Made.* .

Note #2: Use this order only if the finding that fitness is not expected within 1 year was made at the original trial on fitness. Use "Ninety-Day Hearing Order" if that finding is made subsequent to the original trial.

Note #3: Authority to order treatment while awaiting discharge hearing is inferred from the UST statutes. 12/11

b. A discharge hearing is pending, with the statute allowing up to 120 days to conduct the hearing and longer for good cause shown. 725 ILCS 5/104-23(a).
c. It is in the interest of justice that treatment to render the defendant fit begin immediately.
d. A treatment order to render the defendant fit will be the first treatment order in this case

This Court orders that defendant to undergo a course of treatment to render him or her fit as the discharge hearing is awaited, with the following provisions:

☐ 1. [*Check if treatment ordered*] The defendant is placed: ☐ under the supervision of: ☐ in the custody of:

☐ The Department of Human Services (DHS)
☐ (other facility or treatment program) _____

_____

☐ 2. [*Check if treatment ordered*] The provider of treatment shall place and maintain the defendant in a suitable treatment facility or program as an: ☐ inpatient ☐ outpatient

☐ 3. [*This must be checked if mental unfitness AND if placement is ordered with DHS.*] The court has considered the issue of a secure setting and orders:

☐ Defendant shall be placed in a secure setting.
☐ Due to compelling reasons, the defendant is not ordered to be placed in a secure setting.

☐ 4. The defendant shall remain in jail during the period of time required to determine the appropriate placement by the provider of treatment. Upon the completion of placement determination, the provider of treatment shall notify the sheriff who shall transport the defendant to the designated facility.

☐ 5. For a defendant not in jail:

☐ The defendant shall report as directed by the provider of treatment.
☐ The defendant shall be held in the jail during the period of time required to determine the appropriate placement by the provider of treatment. Upon the completion of placement determination, the provider of treatment shall notify the sheriff who shall transport the defendant to the designated facility.

☐ 6. [*Check if treatment ordered*] Pursuant to 725 ILCS 5/104-17(e) and within 30 days of the entry of this order, DHS or other facility or treatment program shall file with court, the State, and the defense a 30-Day

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Note #1: If verdict was "Unfit" and likely to "attain fitness within one year," or "Unfit" but unable to determine if likely to "attain fitness within one year," use *Order of Treatment Upon Initial Finding of Unfitness and with Fitness Expected Within 1 Year or That Determination Yet to be Made.* .

Note #2: Use this order only if the finding that fitness is not expected within 1 year was made at the original trial on fitness. Use "Ninety-Day Hearing Order" if that finding is made subsequent to the original trial.

Note #3: Authority to order treatment while awaiting discharge hearing is inferred from the UST statutes. 12/11

Report (also called an "Admission Report" or a "17(e) Report"). Pursuant to 725 ILCS 5/104-18, the treatment supervisor shall submit timely written progress reports to the court while the defendant is receiving treatment.

☐ 7. [*Check if treatment ordered*] Per 725 ILCS 5/104-17(d), the clerk of the circuit court shall transmit to the provider of treatment a (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; (4) a copy of the arrest report, criminal charges, arrest record, jail record, and the report prepared under Section 104-15; and these additional items (if any):

_____

☐ 8. The ☐ clerk ☐ prosecutor ☐ defense attorney is to provide a copy of this order to the sheriff.

Section III: Court date(s). (Multiple court dates may be set, depending on posture of the case):

☐ Status is set _____, 20_____ at _____:_____ ___.m. on the matter of:

☐ State's decision regarding its choice of discharge hearing, dismissal with prejudice, or civil commitment in the civil courts

☐ Discharge hearing (status)

☐ Progress of civil commitment proceeding by DHS to be instituted in the civil courts

☐ Discharge hearing is set _____, 20_____ at _____:_____ ___.m.

☐ 90-Day Hearing regarding treatment is set _____, 20_____ at _____:_____ ___.m.

☐ Other hearing: _____ is set _____, 20___ at ____:____ ___.m.

Date: _____, 20___

Entered: _____

Judge of the Circuit Court

Note #1: If verdict was "Unfit" and likely to "attain fitness within one year," or "Unfit" but unable to determine if likely to "attain fitness within one year," use *Order of Treatment Upon Initial Finding of Unfitness and with Fitness Expected Within 1 Year or That Determination Yet to be Made*. .

Note #2: Use this order only if the finding that fitness is not expected within 1 year was made at the original trial on fitness. Use "Ninety-Day Hearing Order" if that finding is made subsequent to the original trial.

Note #3: Authority to order treatment while awaiting discharge hearing is inferred from the UST statutes.

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
vs.) No. _____
_____,)
Defendant.)

NINETY-DAY HEARING ORDER DURING THE INITIAL PERIOD OF TREATMENT

This cause having been heard at a "Ninety-Day Hearing" pursuant to 725 ILCS 5/104-20, with:

☐ The defendant present ☐ State's Attorney/assistant present ☐ Defendant's attorney present
☐ The defendant's presence waived pursuant to 725 ILCS 5/104-20(a) and 725 ILCS 5/104-16(c),

And the court having considered any 30-day report (a/k/a "17(e) report"), treatment plan, and/or Progress Report submitted by the treatment supervisor, and any other evidence submitted by the parties, this court has determined that:

1. On the issue of fitness:
   ☐ The defendant remains unfit. [*Go to paragraph 2.*]
   ☐ By a preponderance of the evidence, Court finds the defendant has attained fitness. Case is to proceed.
   ☐ The defendant is ordered released from treatment. [*Go to paragraph 4.*] [*DHS may require separate Order for Restoration.*]
   ☐ Per 725 ILCS 5/104-20(b), treatment for the defendant (now fit) shall continue until this criminal case is concluded. [*Go to paragraph 4. The treatment provider may need continuing orders to treat.*]

2. On the issue of making progress toward attainment of fitness within 1 year of the original finding of unfitness:
   ☐ The defendant is making progress under treatment toward attainment of fitness within 1 year. The initial period of treatment has not exceeded 1 year from the date of the original finding of unfitness. [*Go to paragraph 3.*]
   ☐ The Court finds that: ☐ There is a substantial probability that the defendant will not attain fitness within 1 year of the original finding of unfitness or ☐ the defendant has remained unfit for 1 year from the date of the original finding of unfitness. Pursuant to 725 ILCS 5/104-23, the State has opted as follows:
   ☐ That the matter be set for discharge hearing. Until the discharge hearing is held, the defendant is to remain in treatment. [*Go to paragraph 3 re further treatment. See paragraph 4 for court date(s).*]
   ☐ That this case be dismissed with prejudice. State to submit a separate order. [*End of order.*]
   ☐ That the defendant be remanded to DHS for a civil commitment hearing. This Court orders DHS to file a petition with the civil courts within 7 days for involuntary admission to DHS. If the petition is denied, the defendant is to be remanded to this Court. If the petition is granted, this case is to be dismissed with leave to reinstate. [*See paragraph 4 for court date.*]
   ☐ The setting of a status date to allow the State time to decide which option to exercise. Defendant is to remain in treatment until the next hearing. [*Go to par 3. See par 4 for court date.*]

3. Per 725 ILCS 5/104-20(c), the current treatment order is:
   ☐ Continued [*Go to paragraph 4.*]
   ☐ Continued with the following modifications: _____
_____[*Go to paragraph 4.*]

4. This case is set on the _____ day of _____, 20_____ at _____:_____ ___.m. for:

☐ The next 90-Day Hearing to reexamine the issue of defendant's fitness. Progress report is to be filed 7 days prior to the hearing.

☐ A discharge hearing ☐ A status hearing to see if the civil courts committed the defendant to DHS

☐ _____, a hearing which resumes this criminal case.

☐ 5. The clerk shall provide a copy of this order to DHS or other treatment provider.

Date: _____, 20___

Entered: _____
Judge of the Circuit Court

_____

Per 725 ILCS 5/104-23, the initial period of treatment may be for up to 1 year.

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	**No. _____**
	)	
_____,	)	
Defendant.	)	

ORDER AT CONCLUSION OF DISCHARGE HEARING WITH PROVISIONS FOR ACQUITTAL OR EXTENDED TREATMENT

This cause having been heard at a Discharge Hearing pursuant to 725 ILCS 5/104-25 for the purpose of determining the sufficiency of the evidence with:

☐ The defendant present ☐ State's Attorney/assistant present ☐ Defendant's attorney present
☐ The defendant's presence waived pursuant to 725 ILCS 5/104-20(a) and 725 ILCS 5/104-16(c),

And this Court having heard the evidence hereby finds:

Not Guilty

☐ The evidence does not prove the defendant guilty beyond a reasonable doubt. Judgment of acquittal is granted. The defendant is ordered released from treatment. This finding and order does not prevent the State from requesting the civil courts to commit the defendant to the Department of Human Services under the provisions of the Mental Health and Developmental Disabilities Code [405 ILCS 5/100 et seq.].

Not Guilty By Reason of Insanity

☐ The defendant is not guilty by reason of insanity. Judgment of acquittal is granted.

Further proceedings are governed by the statute on *Proceedings after Acquittal by Reason of Insanity*. 730 ILCS 5/5-2-4.

The defendant is remanded to the Department of Human Services (DHS) for an evaluation as to whether he or she is subject to involuntary admission or in need of mental health services. DHS shall provide the Court with a report of its evaluation within 30 days of the date of this order.

☐ The evaluation shall be conducted on an inpatient basis. The defendant shall be placed in a secure setting until and during the evaluation process. 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 evaluation shall be conducted on an outpatient basis. The Court determines that there are compelling reasons why placement in a secure setting is not necessary. The defendant shall report for the evaluation as the Department of Human Services directs. The defendant must appear in court upon notice.

A hearing under the Mental Health and Developmental Disabilities Code to determine if the defendant is subject to involuntary admission, in need of mental health services on an inpatient basis, in need of mental health services on an outpatient basis, or not in need of mental health services shall be held on: _____, 20____ at ____:____ __.m.

Not "Not Guilty"

☐ The Court finds that the evidence is sufficient to prove the defendant guilty beyond a reasonable doubt on the charge(s) of:

_____

The defendant is not found "not guilty." No judgment of acquittal is entered.

The defendant is ordered to undergo an extended term of treatment. Pursuant to 725 ILCS 5/104-25(d), the maximum period of extended treatment (although the court may order less) is calculated as 1 year from the date of the original finding of unfitness plus the extension authorized by the statute. Defendant is ordered to undergo treatment for a period that shall not exceed:

_____, 20_____.
[*insert specific date*]

If Not "Not Guilty," complete A or B.

A. If this is an extension of an existing order of treatment:

1. The current treatment order is:
   - ☐ Continued
   - ☐ Continued with the following modifications: _____

_____

2. This case is set on the _____ day of _____, 20_____ at _____:_____ ___.m. for:
   - ☐ The next "Ninety-Day Hearing" to reexamine the issue of the defendant's fitness. A progress report is to be filed 7 days prior to the hearing.
   - ☐ A status or pretrial hearing
   - ☐ Other hearing: _____

B. If this order of extended treatment is the first order for treatment:

☐ 1. The defendant is placed: ☐ under the supervision of: ☐ in the custody of:
- ☐ The Department of Human Services (DHS)
- ☐ (other facility or treatment program) _____

_____

☐ 2. The provider of treatment shall place and maintain the defendant in a suitable treatment facility or program as an: ☐ inpatient ☐ outpatient

☐ 3. [*This must be checked if mental unfitness AND if placement is ordered with DHS.*] The court has considered the issue of a secure setting and orders:
- ☐ Defendant shall be placed in a secure setting.
- ☐ Due to compelling reasons, the defendant is not ordered to be placed in a secure setting.

☐ 4. The defendant shall remain in jail during the period of time required to determine the appropriate placement by the provider of treatment. Upon the completion of placement determination, the provider of treatment shall notify the sheriff who shall transport the defendant to the designated facility.

☐ 5. For a defendant not in jail:
- ☐ The defendant shall report as directed by the provider of treatment.
- ☐ The defendant shall be held in the jail during the period of time required to determine the appropriate placement by the provider of treatment. Upon the completion of placement determination, the provider of treatment shall notify the sheriff who shall transport the defendant to the designated facility.

☐ 6. Pursuant to 725 ILCS 5/104-17(e) and within 30 days of the entry of this order, DHS or other facility or treatment program shall file with court, the State, and the defense a 30-Day Report (also called an "Admission Report" or a "17(e) Report"). Pursuant to 725 ILCS 5/104-18, the treatment supervisor shall submit timely written progress reports to the court while the defendant is receiving treatment.

☐ 7. This case is set on the _____ day of _____, 20___ at _____:_____ ___.m. for the first "Ninety-Day Hearing" to reexamine the issue of the defendant's fitness. [*Per statute: not more than 90 days from the date of the finding of unfitness. 725 ILCS 5/104-20.*]

☐ 8. Per 725 ILCS 5/104-17(d), the clerk of the circuit court shall transmit to the provider of treatment a (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; (4) a copy of the arrest report, criminal charges, arrest record, jail record, and the report prepared under Section 104-15; and these additional items (if any):

_____

☐ The clerk is to provide a certified copy of this order to ☐ DHS ☐ Other treatment provider:

_____

Date: _____, 20___

Entered: _____

Judge of the Circuit Court

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	**No. _____**
	)	
_____,	)	
Defendant.	)	

NINETY-DAY HEARING ORDER
DURING THE EXTENDED PERIOD OF TREATMENT

This cause having been heard at a "Ninety-Day Hearing" pursuant to 725 ILCS 5/104-20, 25(d) with:

☐ The defendant present ☐ State's Attorney/assistant present ☐ Defendant's attorney present
☐ The defendant's presence waived pursuant to 725 ILCS 5/104-20(a) and 725 ILCS 5/104-16(c),

And this Court having previously extended treatment per 725 ILCS 5/104-25(d) to: _____, 20___,
[insert date]

And the Court having considered any 30-day report (a/k/a "17(e) report"), treatment plan, and/or Progress Report submitted by the treatment supervisor, and any other evidence submitted by the parties, this court has determined that:

1. On the issue of fitness:
   ☐ The defendant remains unfit. [*Go to paragraph 2.*]
   ☐ By a preponderance of the evidence, the Court finds the defendant has attained fitness. Case is to proceed.
      ☐ The defendant is ordered released from treatment. [*Go to paragraph 4.*]
      ☐ Per 725 ILCS 5/104-20(b), treatment for the defendant (now fit) shall continue until this criminal case is concluded. [*Go to par. 4. Also, provider of treatment may need continuing orders to treat.*] [*DHS may require separate Order for Restoration.*]
2. On the issue of making progress under treatment toward attainment of fitness within one year [*note: in the extended period of treatment, this finding is primarily informational only and, therefore, is an optional finding.*]:
   ☐ The defendant is making progress and is expected to attain fitness
      ☐ Within one year. [*Go to paragraph 3.*]
      ☐ Within the extended period of treatment. [*Go to paragraph 3.*]
   ☐ The defendant is not making significant progress toward attaining fitness. [*Go to par. 3.*]
3. Per 725 ILCS 5/104-20(c), the current treatment order is:
   ☐ Continued [*Go to paragraph 4.*]
   ☐ Continued with the following modifications: _____
   _____[*Go to paragraph 4.*]
4. This case is set on the _____ day of _____, 20_____ at _____:_____ ___.m. for:
   ☐ The next "Ninety-Day Hearing" to reexamine the issue of the defendant's fitness. A progress report is to be filed 7 days prior to the hearing.
   ☐ _____, a hearing which resumes the criminal case.

☐ 5. The clerk shall provide a copy of this order to DHS or other treatment provider.

Date: _____, 20___

Entered: _____
Judge of the Circuit Court

_____

Per 725 ILCS 5/104-25, from the date of unfitness finding, the extended period must expired within 1 year plus the authorized extension period.

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	**No. _____**
	)	
_____,	)	
Defendant.	)	

ORDER AT THE EXPIRATION OF THE EXTENDED PERIOD OF TREATMENT

This cause having come on to be heard at the expiration of the extended period of treatment pursuant to 725 ILCS 5/104-25(g)(2) for the purpose of determining whether the defendant is fit and, if not, whether the defendant is subject to commitment to the Department of Human Services, with:

☐ The defendant present ☐ State's Attorney/assistant present ☐ Defendant's attorney present
☐ The defendant's presence waived pursuant to 725 ILCS 5/104-20(a) and 725 ILCS 5/104-16(c),

And this Court having heard the evidence hereby finds:

I. Issue of Fitness:

[*Must check A or B*]

☐ A. (**If fit)** The State has proven by a preponderance of the evidence that:

[*Check 1 or 2 if A is checked*]

☐ 1. The defendant has attained fitness. The criminal case shall resume.

☐ The defendant is ordered released from treatment. [*DHS may require separate Order for Restoration.*]

☐ Pursuant to 725 ILCS 5/104-20(b), treatment for the defendant (now fit) shall continue until this criminal case is concluded. [*The treater may need continuing orders to treat.*]

☐ 2. Consistent with the *Trial with special provisions and assistance* statute [725 ILCS 5/104-22], the defendant may be rendered fit to stand trial as defined in Section 104-10 [725 ILCS 5/104-10].

☐ If checked, the State is to prepare a separate order that contains the specific provisions or assistance regarding qualified translators, experts in assisting the disabled with understanding proceedings or communicating with his or her attorney, or other specific provisions or assistance. [*If "A" is checked, go to Section III.*]

☐ B. **(If not fit)** The evidence does not establish by a preponderance that the defendant has become fit. Furthermore, the defendant may not be rendered fit consistent with the *Trial with special provisions and assistance* statute [725 ILCS 5/104-22]. [*If "B" is checked, go to Section II.*]

II. If the Defendant Remains Unfit, Issue of Commitment:

[*Check A or B*]

☐ A. Pursuant to 725 ILCS 5/104-25(g)(2), by clear and convincing evidence, the defendant is:

[*May check one or both*]

☐ Subject to involuntary admission under the Mental Health and Developmental Disabilities Code [per 725 ILCS 5/104-25(g)(2)(ii)].

☐ Constitutes a serious threat to the public safety

[Paragraphs 1 through 4 are ordered if "A" is checked.]

1. 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 this

Court of original jurisdiction over the defendant shall be required to approve any conditional release or discharge of the defendant, for the period of commitment.

☐ The defendant shall be place in a secure setting by the Department of Human Services.
☐ The Court has determined that there are compelling reasons not to order the Department of Human Services to place the defendant in a secure setting.

2. The term of this treatment shall expire on _____, 20____, which is equal to or less than the maximum sentence to which the defendant would have been subject had he or she been convicted in a criminal proceeding.

3. Every 90 days after the initial admission, the facility director shall file a treatment plan report with this criminal court. The report shall state an opinion, first, whether the defendant is fit to stand trial, and second, 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. 725 ILCS 5/104-25(g)(2) par 3.

The treatment plan report is to summarize the basis for findings and provide a current summary of the statutory items required to be in a treatment plan. A copy shall be sent to the court clerk, the State's Attorney, and to the defendant's attorney. 725 ILCS 5/104-25(g)(2)par 3.

4. Unless the defendant or the State's Attorney requests or unless this Court on its own subsequent motion orders a treatment plan review hearing every 90 days, periodic treatment plan review hearings shall be held every 180 days after the remand of the defendant to the Department of Human Services, for so long as the defendant is confined or treated under this order.

☐ B. It has not been shown by clear and convincing evidence that the defendant is subject to involuntary admission under the Mental Health and Developmental Disabilities Code or constitutes a serious threat to the public safety.

1. Pursuant to 725 ILCS 5/104-25(g)(3), the defendant is released from any treatment order.
2. Because this Court has found at this hearing that the defendant remains unfit, the State may not proceed with the prosecution until the defendant has attained fitness. This case shall remain pending until the State obtains a *nolle prosequi* of the charge(s), or until the defendant attains fitness and the case resumes and is concluded, or until other order of the Court.
3. While this case remains pending, the defendant shall immediately notify the clerk of any change of address. The defendant shall appear in court when given notice to do so.

III. Next Hearing Date

This case is set _____, 20_____ at _____:_____ __.m for:

☐ _____, a hearing which resumes the criminal case.
☐ The first periodic g(2) treatment plan review hearing (90-Day or 180-Day Hearing).
☐ Status.
☐ Other hearing: _____

The ☐ clerk ☐ prosecutor ☐ defense attorney is to provide a copy of this order to the:
☐ treatment provider ☐ sheriff ☐ DHS.

Dated: _____, 20_____

_____
Judge of the Circuit Court

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
vs.) No. _____
_____,)
Defendant.)

PERIODIC REVIEW HEARING ORDER
DURING the "(g)(2)" PERIOD of TREATMENT

This cause having come on for hearing upon a 725 ILCS 5/104-25(g)(2) periodic review hearing with:
☐ The defendant present ☐ State's Attorney/assistant present ☐ Defendant's attorney present
☐ The defendant's presence waived pursuant to 725 ILCS 5/104-20(a) and 725 ILCS 5/104-16(c),

And this Court having previously remanded the defendant pursuant to 725 ILCS 5/104-25(g)(2) to the Department of Human Services after finding that the defendant is subject to involuntary admission under the MHDDC, per 705 ILCS 5/1-100, or constitutes a serious threat to the public safety, and with the Court having ordered either inpatient or outpatient treatment that will terminate no later than:_____, 20_____,

And the Court having considered any treatment plan or Progress Report submitted by the treatment supervisor, and any other evidence submitted by the parties, this court makes the following findings and enters the following orders:

1. On the issue of fitness which the State must prove by a preponderance of the evidence, the Court finds:
   ☐ The defendant remains unfit. *[Go to paragraph 2.]*
   ☐ The defendant has attained fitness. The criminal case is to proceed. The Court orders that:
      ☐ The defendant is to be released from treatment. [*DHS may require separate Order for Restoration.*]
      ☐ Per 725 ILCS 5/104-20(b), treatment for the defendant (now fit) shall continue until this criminal case is concluded. *[The treatment provider may need a separate continuing order to treat.]* *[Because defendant is fit, go to paragraph 3.]*

2. On the issue of treatment (with any finding that treatment is needed being established by clear and convincing evidence):
   A. The Court finds the defendant is:
      ☐ Subject to involuntary admission *[Go to paragraph 2B.]*
      ☐ In need of mental health services in the form of inpatient care *[Go to paragraph 2B.]*
      ☐ In need of mental health services but not subject to involuntary admission nor inpatient care *[Go to paragraph 2B.]*
      ☐ Not in need of mental health services. The defendant is released from further treatment. This case shall remain pending until the State obtains a *nolle prosequi* of the charge(s), or until the defendant attains fitness and the case resumes and is concluded, or until other order of the Court. The defendant must immediately notify the clerk of any change of address. The defendant must appear in this court when given notice to do so. *[Go to paragraph 3.]*

[If some form of treatment is ordered, a box in B must be checked.]

   B. The current treatment order is: ☐ continued with the same terms ☐ modified as follows:
_____
_____
[Go to paragraph 3.]

3. This case is set on the _____ day of _____, 20_____ at _____:_____ ____.m. for:
   ☐ The next 725 ILCS 5/104-25(g)(2) periodic review hearing (in 90 or 180 days). A timely report is to be filed.
   ☐ Status or other hearing:_____.

4. ☐ The ☐ clerk ☐ prosecutor ☐ defense attorney is to provide a copy of this order to the ☐ treatment provider ☐ DHS ☐ sheriff.

Date: _____, 20___

Entered: _____
Judge of the Circuit Court

During the 725 ILCS 5/104-25(g)(2) period of treatment, progress reports per 725 ILCS 5/104-18 and 25(g)(2) must be filed every 90 days. But review hearings per 725 ILCS 5/104-25(g)(2)(i) must be held only every 180 days, unless the Court, State, or defendant move for hearings every 90 days. 12/11

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	**No. _____**
_____,	)	
Defendant.	)	

ORDER UPON *IN CAMERA* REVIEW OF PROGRESS REPORT
DURING THE "(g)(2)" PERIOD of TREATMENT

This Court hereby finds that:

The defendant was previously found unfit to stand trial or to plead and be sentenced. The defendant completed the initial and extended periods of treatment. The Court did not acquit the defendant at a discharge hearing.

Pursuant to 725 ILCS 5/104-25(g)(2), the Court remanded the defendant to the Department of Human Services after finding that the defendant was subject to involuntary admission under the MHDDC, per 705 ILCS 5/1-100, or constituted a serious threat to the public safety. The defendant is currently in the 725 ILCS 5/104-25(g)(2) period of treatment, being treated either as an inpatient or an outpatient.

During the 725 ILCS 5/104-25(g)(2) period of treatment, Treatment Plan Reports must be filed every 90 days. 725 ILCS 5/104-25(g)(2). But review hearings must be held only every 180 days, unless the Court, the State, or the defendant move for hearings every 90 days. 725 ILCS 5/104-25(g)(2)(i). In this case, the Court, the State, and the defendant have not requested that periodic review hearings during the 725 ILCS 5/104-25(g)(2) period of treatment be conducted every 90 days; therefore the hearings are conducted every 180 days.

The Court has reviewed the Treatment Plan Report filed by the Department of Human Services. The Court notes from the file that the next periodic hearing scheduled is approximately 90 days away.

It is hereby ordered that:

[*Check either "A" or "B."*]

☐ A. The Court is satisfied that the Treatment Plan Report complies with the requirements of 725 ILCS 5/104-25(g)(2). No further legal action is required at this time. The case already has a setting for a 180-Day Hearing, and that setting remains.

☐ B. The Treatment Plan Report indicates a belief that the defendant has attained fitness. A hearing should be held within 21 days to determine if the defendant has been restored to fitness. 725 ILCS 5/104-20(a).

This case is set _____, 20____ at ____:____ ___.m. for:

☐ Status hearing ☐ Already pending 90-Day or 180-Day Hearing

☐ C. Other: _____

_____

The Clerk is to file and seal the treatment plan report. The Clerk is to provide the treatment provider, the State and the defense with a copy of this order.

Date: _____, 20___

Entered: _____
Judge of the Circuit Court

_____

Per 725 ILCS 5/104-25(g)(4), from the date of unfitness finding, length of treatment may not exceed the sentence had defendant been convicted. There is some debate as to whether all misdemeanants may be treated up to 1 year or just up to the maximum sentence. 12/11

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	**No. _____**
	)	
_____,	)	
Defendant.	)	

ORDER AT THE END OF THE "(g)(2)" PERIOD of TREATMENT

This cause having come on for hearing upon the final 725 ILCS 5/104-25(g)(2) periodic review hearing with:

☐ The defendant present ☐ State's Attorney/assistant present ☐ Defendant's attorney present
☐ The defendant's presence is waived pursuant to 725 ILCS 5/104-20(a) and 725 ILCS 5/104-16(c),

And this Court having previously remanded the defendant pursuant to 725 ILCS 5/104-25(g)(2) to the Department of Human Services after finding that the defendant is subject to involuntary admission under the MHDDC, per 705 ILCS 5/1-100, or constitutes a serious threat to the public safety, and with the Court having ordered treatment, either as an inpatient or outpatient, for a total period that will not exceed the maximum sentence had the defendant been convicted in a criminal proceeding,

And the Court having considered any treatment plan report or progress report submitted by the treatment supervisor, and any other evidence submitted by the parties, this court makes the following findings and enters the following orders:

1. The treatment period for the defendant has reached the maximum sentence to which the defendant would have been subject had he or she been convicted in a criminal proceeding as determined by 730 ILCS 5/5-2-4. The defendant must be and is released from treatment.

2. On the issue of fitness:

☐ The defendant has attained fitness. The criminal case is to proceed. [*DHS may require separate Order for Restoration.*]

☐ The defendant remains unfit. The State is prohibited from proceeding with the prosecution until the defendant has attained fitness. *Drope v. Missouri*, 420 U.S. 162, 172 (1975); *People v. Mitchell*, 189 Ill. 2d 312, 328-329 (2000); U.S. Const., due process clause, amend. XIV.

☐ The State moves for a *nolle prosequi* of the case. The case is dismissed without prejudice. The State has the right to refile the case within the limitations prescribed by law.

☐ The State asks that the case remain pending. The defendant is to immediately report any change of address to the circuit clerk. The defendant is to appear in court upon being given notice to do so.

3. This case is set on the _____ day of _____, 20_____ at _____:_____ _____.m. for:

☐ _____ , a hearing which resumes the criminal case.
☐ Status
☐ Defendant must appear on this court date
☐ Defendant need not appear on this court date unless sent notice that appearance is required or the defendant's attorney instructs the defendant to be present.

☐ 4. The ☐ clerk ☐ prosecutor ☐ defense attorney is to provide a copy of this order to the:
☐ treatment provider ☐ sheriff ☐ DHS.

Date: _____, 20___

Entered: _____
Judge of the Circuit Court

Order of Restoration Language

Besides the form order on the next page, "restoration order" language is part of the following orders:

1. During the Initial Period of Treatment, see the second box of paragraph #1 of the *Ninety-Day Hearing Order during the Initial Period of Treatment*.

2. During the Extended Period of Treatment, see the second box of paragraph #1 of the *Ninety-Day Hearing Order during the Extended Period of Treatment*.

3. Upon the Expiration of the Extended Period of Treatment, see section I.A. of the *Order at the Expiration of the Extended Period of Treatment*.

4. During the g(2) Period of Treatment, see the second box of paragraph #1 of the *Periodic Review Hearing Order During the "(g)(2)" Period of Treatment*.

Note: The Department of Human Services of the State of Illinois in the Chicago area has requested that a particular "Order For Restoration" be utilized.

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
vs.) **No. _____**
)
_____,)
Defendant.)

RESTORATION ORDER

This cause having come on for hearing upon the question as to whether the defendant has been restored to fitness, with:

☐ The defendant present ☐ State's Attorney/assistant present ☐ Defendant's attorney present
☐ The defendant's presence waived pursuant to 725 ILCS 5/104-20(a) and 725 ILCS 5/104-16(c),

And the Court having considered any treatment plan or Progress Report submitted by the treatment supervisor, and any other evidence submitted by the parties, this court makes the following findings and enters the following orders:

1. On the issue of fitness, the Court finds by a preponderance of the evidence that the defendant has attained fitness. The criminal case is to proceed.

2. Regarding any treatment for this defendant who has been restored to fitness, the Court orders that:

☐ A. The defendant is to be released from treatment.

☐ The bail previously set in this case:

☐ Shall remain in effect

☐ Is lowered to $_____

☐ Is raised to $_____

☐ Is converted to a recognizance bond in the amount of $_____

☐ The bond conditions previously set in this case:

☐ Shall remain in effect

☐ Are modified as follows:

_____

_____

☐ B. The defendant is remanded to the custody of the sheriff until bail is posted.

☐ C. Per 725 ILCS 5/104-20(b), treatment for the defendant (now fit) shall continue until this criminal case is concluded. *[The treater may need a separate continuing order to treat.]*

3. This case is set on the _____ day of _____, 20_____ at _____:_____ ____.m. for:

☐ Status

☐ Other hearing, namely: _____

☐ 4. The ☐ clerk ☐ prosecutor ☐ defense attorney is to provide a copy of this order to the ☐ treatment provider ☐ sheriff ☐ DHS. *[DHS may desire a separate certified "Order for Restoration" be entered and delivered to them.]*

Date: _____, 20___

Entered: _____
Judge of the Circuit Court

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF _____ COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	**No. _____**
	)	
_____,	)	
Defendant.	)	

ORDER FOR RESTORATION

(In the form as requested by some DHS facilities)

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

And the Court, having heard the evidence adduced in support of said petition, and having returned a finding that the petitioner is Fit to Stand Trial.

IT IS NOW FURTHER ORDERED AND ADJUDGED THAT, Judgment be entered on the 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 remanded to stand trial or be released by operation of law.

3. A certified copy of the 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:

Date:

_____

Judge of the Circuit Court Judge's No.

APPENDIX C
FITNESS 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.

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.

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

Psychological Summary

Name:
Date of Report:
Chart #:
Court Date:

Identifying Information:
Mr. Doe is a 55-year-old Black male who was referred to Forensic Clinical Services to evaluate his Fitness to Stand Trial and Sanity. According to the referral order, he is charged with Harassment by Telephone. At the time of the evaluation, he was free on bond.

Prior to initiating the examination, the non-confidential nature of the evaluation process was carefully explained. He was informed that the evaluation would not be confidential, the results would be forwarded to the court and that this examiner could be subpoenaed to testify to the results as well. He acknowledged an understanding of the advisory and communicated a willingness to participate. The interview lasted approximately 2 hours.

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

1) Misdemeanor Referral Order dated 5/10/11
2) Chicago Police Department Original Incident Report
3) Misdemeanor Complaint dated February 4, 2011
4) Psychiatric Records from Elgin Mental Health Center (2/18/11 to 3/11/11); Chester Mental Health Center (4/6/07 to 9/26/07)
5) Copies of writing provided by the defendant

Mental Status Examination:
Mr. Doe arrived on time for his scheduled appointment and was unaccompanied. He is an average height and weight male who appeared his stated age. He was dressed appropriately to context in slacks, shirt and jacket and wore glasses. His appearance was notable for missing teeth. His hygiene and grooming were adequate. His level of eye contact was variable but he was generally alert and oriented. He evinced an agitated and anxious mood and displayed a mildly labile affect. He did not report any symptoms of a clinical depression.

Mr. Doe evinced pressured speech, flight of ideas and marked loosening of associations. That is, he spoke very rapidly, was difficult to interrupt and he abruptly changed topics and at times was void of any meaningful connections between his ideas. He did not report any active hallucinations but he was quite delusional. He has longstanding grandiose delusions (per records) about his ability to translate the Bible and his belief that he is the son of God. He also manifests significant persecutory delusions regarding others who are trying to interfere with his work, including the alleged victim. He did not voice any current homicidal or suicidal ideations. He did not report any sleep or appetite disturbances. His levels of insight, judgment and impulse control were limited.

Clinical Inquiry:
When asked about his charge, he stated "he claimed I called him and threatened to kill him on the phone". He understands the charge to be a "misdemeanor" and was aware of his next court date. He indicated that he has a Public Defender whose role is "supposed to represent me…I just met her and that Judge said (I'm) gone be evaluated". He described the ASA as "the prosecutor" and indicated that the Judge "hears the case and go from there." When asked what kind of decision can the Judge make he stated "it's a racist case". With some education he was able to understand that the Judge would decide on sentencing if he was found guilty.

He was able to distinguish the trial options adequately, indicating in a Bench Trial "the Judge decides" and in a Jury Trial "…the people on the other side of the bench vote you guilty or not guilty". He indicated that a witness is "somebody who come in and testify for you…against you" and evidence is "like what you said on the phone…if he got the phone conversation of that". He could distinguish the plea options including a plea bargain which he explained is to "wait to get a deal for a lesser sentence". He was aware that a plea bargain requires a plea of guilty and a waiver of one's right to trial. Mr. Doe seemed to understand that jail time could be a potential penalty if he is found guilty.

Issues Related to Sanity:
When asked very closed ended questions about court procedure and restricted to providing responses to those inquiries, Mr. Doe was able to comply. However, when asked open-ended questions and to explain his arrest and understanding of the offense, he became increasingly tangential and disorganized.

He indicated in part that in 1995 he worked for the National Wrecking Company and he filed a 10 million dollar lawsuit and lost. In a very confusing report, he claimed that he took a translation of the Bible to the alleged victim, gave it to him and asked for a copy of the previous law suit he filed. He reportedly called the alleged victim's law firm at that time (in 1995) and "threatened him". Mr. Doe reportedly re-filed the lawsuit on his own for 10 million dollars. At

one point he indicated that the case is still pending and then stated that he "dismissed it". He denies that he called the alleged victim and threatened him but acknowledged that he "called the office multiple times trying to track down proof that I'm the one translating this stuff" (referring to the Bible). He indicated that he thinks the alleged victim is "holding it against me". Mr. Doe then went on to discuss very delusional topics about "German Jews…they fired me in August of 1995 in the holy land…there had been no rain for 15 years". He also became increasingly disorganized and was insistent on showing this writer how his name is related to the Bible and how "everything coming out of my mouth has to line up with the Bible".

Background History:
Mr. Doe was an unreliable historian and also guarded about some of his personal history. The following was gathered in part from available DHS records He is a single male with 2 adult children with whom he is not in contact. He lives with his mother in Aurora, Illinois. He has worked in construction in the past but currently receives SSI income and is his own payee.

Legal History:
He denied any prior arrests or convictions but records indicate that he was charged with aggravated battery and domestic battery in Kane County in 2006, the outcome of which is unknown. It is noted however that he was adjudicated Unfit to Stand Trial at the time and remanded to Chester Mental Health Center.

Medical History:
He denied any significant medical issues and available records did not indicate any.

Substance Use History:
He denied any recent history of illicit drug or alcohol use although he reportedly consumed alcohol in the past. Records suggest that he has been treated for a drug-induced disorder in the past, allegedly being cocaine.

Mental Health History:
According to records, he was hospitalized at Madden MHC in 1990 and lastly in 2002 with a diagnosis of Drug Induced Mood Disorder. He was adjudicated UST in 2006 and received treatment at Chester MHC and diagnosed with Schizophrenia, Chronic, Paranoid type. He was taken to Provena Mercy Hospital by Aurora Police Department in February 2011 for making threatening phone calls to a lawyer's office and later transferred to Elgin Mental Health Center. He presented there with agitation and psychosis, including grandiose, religious and persecutory delusions. At each admission, he was prescribed a number of psychotropic medications. He had marginal compliance and was noted to have little insight into his mental illness. He was also unlikely to participate in follow-up treatment in the community.

Mr. Doe denied to this writer that he had any mental health problems or symptoms. He indicated that the previous hospitalizations were part of a conspiracy; "everybody got together in Washington, DC…they flew out to Springfield and said 'set him up'…"

He is not currently taking any psychotropic medication.

Diagnostic Impressions:
Axis I: Schizophrenia, Paranoid type
R/O Cocaine Abuse vs. Dependence
Axis II: Deferred

Forensic Formulation:
Mr. Doe is **UNFIT TO STAND TRIAL**. While he has a factual understanding of the roles of court personnel and basic courtroom procedure, he suffers from an acute psychotic disorder which impairs his rational understanding of the nature and purpose of the proceedings against him and his ability to assist counsel in his defense. It is further my opinion that there is a reasonable likelihood that he could be restored to fitness within the statutory time frame. The least restrictive and most therapeutic setting would be a secure inpatient facility where he could receive clinical intervention.

It is my opinion that Mr. Doe was **LEGALLY INSANE.** He has a longstanding history of psychosis, including grandiose, religious and persecutory delusions, of which he was suffering at the time of the alleged offense. As such, he would not have appreciated the wrongfulness of the alleged conduct.

Thank you for the opportunity to evaluate this defendant. If I can be of further service to the court, please contact me at Forensic Clinical Services.

Respectfully submitted,

_____
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 [EXAMPLE]

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/
Docket #	Violation of Probation (Domestic Battery)

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
Choose an item. **MENTAL HEALTH CENTER**
UNIT/PROGRAM
REPORT TYPE.

Date of Evaluation: Click here to enter a date.

I. IDENTIFYING INFORMATION
Patient Name: Name Legal Status: UST/NGRI Docket#: #
DMHDD ID#: ID# Unit: Unit Date of Birth: DOB Sex: M/F
Admit Date: Admit

II.CONFIDENTIALITY
Mr/MsPatient Name was informed of the purpose and the non-confidential nature of this evaluation in that the findings would be reported to the judge, the state's attorney and the defense attorney. He/She acknowledged his/her understanding of limited confidentiality and agreed to proceed with an interview.

III. RESPONSE TO TREATMENT AND CLINICAL FINDINGS

Hospital Course:
Condition on Admission: Brief statement on condition at the time of admission (remain the same across reports)
Intervention: Medications: (name, dosage & purpose and the effect of the medication on the defendant's appearance, actions, and demeanor)
Treatment: (fitness classes, groups, etc) related to Fitness Restoration treatment
Response to Interventions: Medication (current meds, dosage, purpose, any adjustments) & Compliance with Treatment (attendance/participation) * INCLUDE WHETHER SYMPTOMS RE RESOLVED*
Unusual Occurrences: pos & neg; compliance, seclusion/restraint, elopement, etc.

Mental Status:
Present Condition: Click here to enter text.
Mental Status Exam: Click here to enter text.

IV. DIAGNOSIS:
AXIS I: Click here to enter text.
AXIS II: Click here to enter text.
AXIS III: Click here to enter text.

V. THE ISSUE OF FITNESS
Reason for a Finding of UST: (From the Examiner's Report) – (should remain the same across reporting)
Fitness Examination: (Using direct quotes if appropriate)
Assessment – R/O malingering where appropriate and if applicable

VI. STATUTE & OPINION
(725 ILCS 5/104-10) 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.

Statement of Opinion:
This should include the ability/capacity of the patient with respect to the statutory language above and/or the impairment in the patient that prevents the ability/capacity in the statute.

VII. RESPONSIBLE STAFF
Psychiatrist/Treatment Coordinator & Social Worker/Psychologist

ILLINOIS DEPARTMENT OF HUMAN SERVICES
ALTON MENTAL HEALTH CENTER

90-DAY PROGRESS REPORT (UNFIT)

Date of Evaluation: 12/4/2013

I. IDENTIFYING INFORMATION

Patient Name: Name Legal Status: UST Docket#: #
DMHDD ID#: ID# Unit: Unit Date of Birth: DOB Sex: Male
Admit Date: Admit

II.CONFIDENTIALITY

Mr. Doe was informed of the purpose and the non-confidential nature of this evaluation in that the findings would be reported to the judge, the state's attorney and the defense attorney. He acknowledged his understanding of limited confidentiality and agreed to proceed with an interview.

III. RESPONSE TO TREATMENT AND CLINICAL FINDINGS

Hospital Course:

Condition on Admission: Mr. Doe is a 34 year old single white man who was admitted to Alton Mental Health Center (date) from Madison County as Unfit to Stand Trial on charges of Violation of an Order of Protection. Upon admission, Mr. Doe 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.

Intervention: Medications: Olanzapine, an anti-psychotic, 10 mg by mouth twice daily to reduce psychotic symptoms, to induce and maintain remission of the symptoms of mental illness leading to restoration of coherent thinking and predictable conduct.
Treatment: He has been attending individual fitness sessions with his therapist and will be integrated into weekly groups as he becomes more psychiatrically stable.

Response to Interventions: Olanzapine, an anti-psychotic, 10 mg by mouth twice daily. He is still experiencing disorganized thinking and medication will be adjusted as necessary. His symptoms have not yet fully resolved.

Unusual Occurrences: There have been no restraints, seclusions or elopement attempts. He denies suicidal or homicidal ideation.

Mental Status:

Present Condition: 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.

Mental Status Exam: 24 out of 30. He still evidences some mild cognitive impairment.

IV. DIAGNOSIS:

AXIS I: 295.30 Schizophrenia, Paranoid Type
305.00 Alcohol Abuse by history
AXIS II: Deferred
AXIS III: None

V. THE ISSUE OF FITNESS

Reason for a Finding of UST: He was found unfit due to the severity of his psychosis. Per the examiner's report, "his paranoid, confused and disorganized thinking impairs his ability to understand the pending charge or assist counsel in his defense"

Fitness Examination: Mr. Doe was able to describe his charge and provide a basic understanding of courtroom procedure. However, he continues to evidence disorganized thinking and had difficulty expressing himself in a rational manner when discussing the possible outcomes of his case.

VI. STATUTE & OPINION

(725 ILCS 5/104-10) 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.

Statement of Opinion:

Mr. Doe has an understanding of the court terminology, court process and his charges but lacks an awareness of the possible outcomes of trial and an 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

VII. RESPONSIBLE STAFF

_____

Psychiatrist/Treatment Coordinator

_____

Social Worker/Psychologist

ILLINOIS DEPARTMENT OF HUMAN SERVICES
ELGIN MENTAL HEALTH CENTER
XXX Unit/ FTP PROGRAM
90-DAY PROGRESS REPORT (FIT)

Date of Evaluation: March 11, 2014

I. IDENTIFYING INFORMATION

Patient Name: XXXXXXXX
Legal Status: Unfit to Stand Trial
Docket#:
DMHDD ID#:
Unit: XXX
Date of Birth: XX/XX/XXXX
Sex: Male
Admit Date: XX/XX/XXXX
Charge: Residential burglary

II.CONFIDENTIALITY

Mr. XXX was informed of the purpose and the non-confidential nature of this evaluation in that the findings would be reported to the judge, the state's attorney and the defense attorney. He acknowledged his understanding of limited confidentiality and agreed to proceed with an interview.

III. RESPONSE TO TREATMENT AND CLINICAL FINDINGS

Hospital Course:

Condition on Admission:

At the time of admission from XXX County jail, Mr. XXX presented as a 21 year old single Mexican-American male who is bilingual but whose primary language is Spanish. He was oriented to person and place but unsure of time and situation. His speech was coherent with appropriate rate and volume but he exhibited alterations in mood and affect by inappropriately smiling during the admission process.

Intervention:

Medications: Olanzapine 20 mg. and 5 mg. at 20:00 for treatment of psychosis. Mr. XXX is cooperative with prescribed medication and has stated that it helps him. Use of medication has resulted in marked decrease in psychotic symptoms such as thought blocking, confusion and illogical thoughts. There has been a reduction in auditory hallucinations and no incidence of suicidal or homicidal ideation. Hygiene is adequate and Mr. XXX is able to socialize with other Spanish speaking peers.

Treatment: Mr. XXX engages in individual Fitness counseling with his bilingual therapist 4 times per week. He also attends Fitness Restoration groups in English 7 times per week as well as Relapse Prevention and Chemical Dependence groups on the unit. He does not choose to attend Leisure activity groups.

Response to Interventions:

Olanzapine 20 mg. and 5 mg. at 20:00 for the treatment of psychosis. Mr. XXX is compliant with medication and stated that he plans to continue taking medication as prescribed.

Unusual Occurrences:

Mr. XXX has benefited from out multidisciplinary team's effort to engage him and he has responded to education and counseling to attain fitness. He is currently psychiatrically stable, and is expected to remain stable with medication. There have been no restraints, seclusions or elopement attempts. He denies suicidal or homicidal ideation.

Mental Status**:**
Present Condition: Hygiene and grooming are fair. Mood appears stable and he is interacting socially with peers. He is oriented in all spheres, speech is logical and goal directed. He is appropriate and cooperative.
Mental Status Exam: 27 of 30. He demonstrates relatively intact mental status.

IV. DIAGNOSIS:

AXIS I: 295.20 Schizoaffective Disorder, Bipolar Type
304.80 Polysubstance Dependence (in a controlled environment)
AXIS II: 301.7 Antisocial Personality Disorder
AXIS III: No current Medical problems

V. THE ISSUE OF FITNESS
Reason for a Finding of UST: From the Examiner's Report, at the time of initial examination in the jail: "Mr. XXX was unable to describe anything that transpired during his most recent court trial. He has a long history of severe mental illness and is currently presenting in an acutely psychotic state." "He suffers from a psychotic disorder and his symptoms impede his ability to understand the nature and purpose of the proceedings against him as well as his ability to assist in his defense."

Fitness Examination (xx/xx/xxxx): Mr. XXX was interviewed by his bilingual therapist. He demonstrated adequate knowledge of roles of the various court officials, possible outcomes of a trial, the concept of plea bargain and the differences between a bench trial and a jury trial. He understands the court process and understands that the court is and adversary entity. He knows that if he is found guilty of his charges he could go to prison and expressed appropriate concern for this outcome. He has expressed his desire to cooperate with his attorney in his defense. He continues to struggle with names of specific verdicts. He has requested that future court interviews or evaluations be conducted with bilingual services as he is able to understand some concepts better in Spanish.

Assessments: Fitness test, BPRS scores, Malingering assessment: None

VI. STATUTE & OPINION
According to statute (725 ILCS 5/104-10) 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.

Statement of Opinion:
It is the opinion of this treatment team that Mr. XXX has responded to medication and fitness restoration training, is psychiatrically stable on medication, and is now able to understand the nature and purpose of the charges against him. He is able and willing to cooperate with his attorney and assist in his own defense. He is **FIT TO STAND TRIAL**.

VII. RESPONSIBLE STAFF

_____
Psychiatrist/Treatment Coordinator

_____
Social Worker/Psychologist

ILLINOIS DEPARTMENT OF HUMAN SERVICES
McFARLAND MENTAL HEALTH CENTER
Lincoln South
90-DAY PROGRESS REPORT (Unlikely to Attain Fitness)

Date of Evaluation:

I. IDENTIFYING INFORMATION

Patient Name: Name | Legal Status: UST | Docket#: #
DMHDD ID#: ID# | Unit: Unit | Date of Birth: DOB | Sex: Male
Admit Date: Admit

II.CONFIDENTIALITY

Mr. Doe was informed of the purpose and the non-confidential nature of this evaluation in that the findings would be reported to the judge, the state's attorney and the defense attorney. He acknowledged his understanding of limited confidentiality and agreed to proceed with an interview.

III. RESPONSE TO TREATMENT AND CLINICAL FINDINGS

Hospital Course:

Condition on Admission: Mr. Doe is a 46 year old single African- American man from Sangamon County, IL. He was admitted to McFarland Mental Health Center after adjudication as Unfit to Stand Trial (UST) on 11/25/2003. 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 judgment 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.

Intervention: Medications: Olanzapine; an anti-psychotic, 10 mg: two times per day2. Divalproex; a mood stabilizer used to augment the anti- psychotic, 1000mg, two times per day.
Treatment: The patient attends rehabilitative programming off unit with staff supervision. 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.

Response to Interventions: 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.

Unusual Occurrences: 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.

Mental Status:

Present Condition: 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.

Mental Status Exam: 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, and happy that God is with me". He denies auditory hallucinations or delusional ideas. He denies any paranoid ideas. His affect is restricted. Judgment 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.

IV. DIAGNOSIS:

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

V. THE ISSUE OF FITNESS

Reason for a Finding of UST: The forensic evaluator 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.

Fitness Examination: 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 Sangamon 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 gets 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 lesser 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.

VI. STATUTE & OPINION

(725 ILCS 5/104-10) 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.

Statement of Opinion:

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. Therefore, it is our opinion that Mr. Doe is **Unlikely to Attain Fitness to Stand Trial** within the mandated statutory time period with further treatment.

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. Should Mr. Doe be released from custody, the *facility* could provide housing, psychiatric follow up and other rehabilitative services. The treatment team at McFarland feels that *facility* could likely provide an appropriate level of care for Mr. Doe when he does return to the community.

VII. RESPONSIBLE STAFF

_____

Psychiatrist/Treatment Coordinator

_____

Social Worker/Psychologist

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

June 14, 2012

Treatment Plan Report for **Mr. Bob Doe (Docket # 00CR000)** a Person found Unfit to Stand Trial under 725 ILCS 5/104-25(G)(2).

I. IDENTIFYING INFORMATION

Patient Name: Bob Doe
DHS ID#:123456
Date of Birth: 05/06/1941
Sex: Male
Unit: N Unit
Admission Date: 10/02/08
Charge: Attempted Murder

Mr. Bob Doe is a 70-year old African-American widowed man, admitted to Elgin Mental Health Center (EMHC) on 04/30/2002 as Unfit to Stand Trial (UST) on a charge of Attempted Murder. Mr. Doe stabbed and struck his victim with a brick on the back of his head. Mr. Doe has stated that he is innocent of the alleged charges and that he was acting in self defense. His current legal status is G-2. His maximum commitment date is 06/23/2037. Mr. Doe's father, Chester Doe, is his legal guardian.

II. RESPONSE TO TREATMENT AND PRESENT LEVEL OF FUNCTIONING

Mr. Doe remains UNFIT to STAND TRIAL, and is subject to involuntary admission as he currently poses a threat to public safety; therefore, he is in need of mental health services on an inpatient basis.

Basis for finding:
Mr. Doe lacks sustained improvement in his mental illness (psychotic, mood disorder symptoms), and has impaired understanding as to his mental illness, alcohol abuse and its relationship with the crime. Therefore, he is reasonably expected to inflict serious physical injury upon himself and others in near future if he were discharged and treated in less structured and/or less secure setting.

During this reporting period:

Mr. Doe's progress was reviewed for this reporting period. Mr. Doe participates in recommended treatment including groups and medication. There have not been any behavioral incidents. He has denied having hallucinations and delusions, and has reported that his sleep and appetite are good.

Mr. Doe attended the recommended treatment groups of the consumer morning meeting, afternoon wrap up meeting, the daily walking group, Coping Skills, Relapse Prevention, Chemical Dependency Group and Basic Recovery. As Mr. Doe frequently forgets his schedule, his attendance is best when he is prompted to attend.

Mr. Doe demonstrates a lack of understanding as to his charges and the court process. He depends heavily on a very strict routine so that he remembers to complete his activities of daily living, and requires prompting to complete non-routine tasks due to his dementia and cognitive impairment. He becomes fearful and anxious when presented with any real or anticipated change in his routine.

III. CURRENT DIAGNOSES

Axis Ia: (295.90) Schizophrenia, Undifferentiated type, episodic with interepisode residual symptoms.
Axis Ib: (311.0) Post-psychotic Depressive disorder of Schizophrenia. (Depressive disorder, Not Otherwise Specified), in remission.
Axis Ic: (294.10) Dementia, Secondary to Head Trauma with behavioral disturbances.
Axis Id: (305.00) Alcohol Abuse, in remission, in a controlled environment.
Axis II: No Diagnosis.
Axis III: History of Remitted Tardive Dyskinesia and Extrapyramidal Syndrome.
Hyperlipidemia, Hypertriglyceridemia
Past history of head injury
Axis IV: Chronic mental illness, involuntary hospitalization.
Axis V: GAF: 45.

Current Psychotropic Medications:

Clozapine: 25mg q am and 75mg q pm for psychosis (began 09/10/10)
Haloperidol: 5 mg PO q 6 hours prn for psychosis
Diphenhydramine: 50mg q 21:00 hs prn for sleeplessness
Hydroxyzine: 100mg q q 20:00 for sleeplessness

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

IV. FITNESS ISSUE

Mr. Doe was adjudicated (G) (2) with a maximum date of 6-23-2037. He is unable to fully understand the court process. He is confused about his charges. He has cognitive impairments which makes learning of new material difficult. He has a limited understanding of his mental illness.

V. CURRENT TREATMENT NEEDS

(1) Problem: Psychotic disturbance as manifested by positive & negative signs and symptoms: loose associations, poverty of speech, suspiciousness, guardedness, auditory hallucinations, paranoid delusions leading to charge of attempted homicide.

Goal: Remission or significant improvement of psychotic symptoms for twelve consecutive months.

Intervention: Psychopharmacotherapy:

Clozapine: 25mg in the morning and 75mg in the evening for psychosis (began 09/10/10)

Haloperidol: (antipsychotic) 5 mg every 6 hours as needed for psychotic agitation.

Timetable: Achieved, ongoing as of 06/12

(2) Problem: Disordered affect or mood (depression). Depressed, anxious, labile affect and mood, sleeplessness.

Goal: Patient's depressed, labile and anxious mood, sleeplessness will significantly improve for 12 consecutive months.

Intervention:

1. Individual Psychotherapy.
2. Psychopharmacotherapy with Diphenhydramine, 50mg at 21:00 daily as needed for sleeplessness, Hydroxyzine, 100mg at 20:00 for sleeplessness

Timetable: Achieved, ongoing

(3) Problem: History of alcohol abuse, contributing to exacerbation of psychiatric illness.

Intervention: Chemical Dependency Group, Individual Counseling, patient has completed MISA program.

Goal: Understanding of the harmful effects of alcohol use on his behavior. All random drug and alcohol screens have been negative.

Timetable: Achieved, Ongoing.

(4) Problem: Cognitive Impairment: impaired abstract reasoning, memory & judgment.
Goal: Patient will function at his optimum level of social and self care skills.
Patient will be able to do basic activities of daily living without supervision.
Patient will follow unit rules and display pro-social behavior
Patient will have improved attention, concentration & judgment.
Intervention: Life Skills Program, assistance with ADLs, individual counseling as needed
Timetable: Achieved, Ongoing.

(5). Problem: Unfit to stand trial (G2).
Goal: Patient will become fit to stand trial.
Mr. Doe continues to be Unfit to Stand Trial, and in my opinion is unlikely to be restored to fitness in the foreseeable future. His legal status currently is an UST G2 patient as there has been essentially no progress in Mr. Doe's fitness nor is any likely. Due to his cognitive limitations and his chronic and unremitting dementia it is unlikely that he will ever be fit for Trial.
Intervention: Individual Counseling, psychosocial therapeutic groups.
Timetable: Unlikely that he will ever be Fit for Trial, adjudicated G2 on 2/27/97.

(6) Problem: Continuing Care Planning Issues: In need of reintegration in to the community.
Goal: Reintegration in to the community.
Intervention: Individual counseling, psycho social therapeutic groups. Mr. Doe had successfully participated in several supervised community trips in the past. He retains his building and unsupervised grounds pass, however, only uses this with a buddy. He has a supervised off grounds pass, and participates in community trips.
Timetable: 10/12

VI. PRIVILEGE STATUS

Mr. Doe has a court approved supervised off grounds pass and unsupervised grounds pass, in addition to a building pass.

VII. CONCLUSION:

Mr. Doe is Unfit to Stand Trial, pursuant to 725 I.L.C.S. 5/104-25. Mr. Doe lacks fundamental skills related to court procedures. He has a limited ability to fully assist counsel in his defense. His psychosis and mood have stabilized he has not shown a durable remission. Therefore the treatment team at Elgin Mental Health Center is continuing with

treatment efforts as he is a defendant who would continue to benefit and is **In Need Of Mental Health Services On An Inpatient Basis.**

VIII. DESIGNATED STAFF RESPONSIBLE FOR IMPLEMENTING THE PLAN:

, LCSW , Activity Therapist
, M.D. , LCSW, CADC
RN , MA, LCPC

_____ _____
LCSW, CADC MD
Social Worker Covering Psychiatrist

APPENDIX D

NOT GUILTY BY REASON OF INSANITY
(720 ILCS 5/6-2)

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 June19, 1998.)

APPENDIX E

GUILTY BUT MENTALLY ILL

(Underscores added for emphasis.)
(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) (1) 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.}

APPENDIX F

DIVERSION FOR SPECIALIZED TREATMENT

(730 ILCS 5/5-2-4)

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.

APPENDIX G

SAMPLE COURT ORDERS

STATE OF ILLINOIS
COUNTY OF _____
IN THE CIRCUIT COURT OF _____ JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS	**)**	
-VS-	**)**	**NO.**
	)	
	)	

ORDER

This matter coming before the Court pursuant to 730 ILCS 5/5-2-4(b), the Court having jurisdiction over the parties and being fully advised in the premises,

The Court hereby finds that on _____. 20__,the Defendant was found NOT GUILTY BY REASONS OF INSANITY for the charge of _____ and that a hearing was held pursuant to 730 ILCDS 5/5-2-4(b) on _____, 20__. Based upon the evidence presented at that hearing, the Court finds that:

__ The Defendant is not in need of mental health services. The Defendant is ordered to be unconditionally discharged.

or

__The Defendant is in need of mental health services but not on an inpatient basis. The Court hereby orders that:
__The Defendant shall be released on the following conditions:

or

__The Department shall prepare a written plan for the conditional release of the Defendant. Such plan shall be provided to the Court and to the parties no later than_____,20__. This matter is set for a hearing on _____, 20__, to determine whether the conditional release plan provides reasonable assurance for the safety of the Defendant and others and for the Defendant's continued progress in treatment.

or

__The Defendant is in need of mental health services on an inpatient basis. The maximum sentence the defendant would be required to serve is _____ years from_____ (the date originally taken into custody), less credit of_____ years _____months. The Defendant is ordered to the Department of Human Services (DHS) for treatment. This order expires by operation of the law on _____, unless the Defendant is released earlier pursuant to 730 ILCS 5/5-2-4(d) or (h).

IT IS FURTHER ORDERED that:
___The Department is authorized to issue
___ Unsupervised On-Grounds Passes
and/or
___Supervised Off-Grounds Passes to the Defendant
at the discretion of the treatment staff.
or
__No passes are authorized pending further order of the Court

IT IS FURTHER ORDERED that:
___The Defendant may be placed in a non-secure setting within one of the Department's inpatient facilities
or
___The Defendant shall be confined in a secure setting pending further order of this Court

ENTER: _____ 20_____

_____
Judge/Judge's No.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.:
	)	
_____,	)	
Defendant.	)	

ORDER

The Court having found Defendant not guilty by reason of insanity

IT IS NOW HEREBY ORDERED THAT**:**

1. The defendant is hereby committed into the custody of the Department of Human Services "for an evaluation as to whether he is in need of mental health services" pursuant to 730 ILCS 5/5-2-4(a).

2. The Department of Human Services shall provide to this Court its written "evaluation as to whether the defendant is in need of mental health services" no later than _____, (30 days from today's date) as required by 730 ILCS 5/5-2-4(a).

3. The Department of Human Services shall give timely notice to the sheriff to transfer Defendant from Cook County Jail to the facility designated by the Department of Human Services' previous placement evaluation as required by 730 ILCS 5/5-2-4(a).

4. The notice referred to in paragraph (3.) shall be provided to the sheriff at such time as will permit the transfer of the defendant to a facility in time for the Department of Human Services to complete its evaluation referred to in paragraph (2.) within 30 days of the Court's order for a evaluation.

5. This matter is set for a status hearing on _____, (31 days from today).

6. After the status hearing, a commitment hearing will be held within 15 days (45 days from today) in accordance with 405 ILCS 5/3-800.

DATE: _____ **ENTER:_____**

CIRCUIT JUDGE

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.

IN THE CIRCUIT OF COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT

CRIMINAL DIVISION

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

PETITION FOR TRANSFER TO A NON-SECURE SETTING. DISCHARGE OR CONDITIONAL RELEASE

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.

Petitioner _____(your name)_____, hereby petitions this Court, pursuant to 730 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 _____(facility name)_____ Mental Health Center,

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 I11.2d 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 #

IN THE CIRCUIT COURT FOR THE ___CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
V.	)	No._____
	)	
_____,	)	
	)	
Defendant.	)	

ORDER

A Petition having been filed pursuant to 730 ILCS 5/5-2-4(i) alleging that Defendant has not fulfilled the conditions of his release,

IT IS HEREBY ORDERED that:

____ Defendant is remanded to the custody of the Department of Human Services

____ Defendant is remanded to _____ (a mental health facility designated by the Department of Human Services)

_____ Defendant may continue to receive mental health services on an outpatient basis pending further order of the Court subject to the following conditions:

_____ The Department/_____ is directed to prepare a written report within 30 days specifying whether:

(a) Defendant is in need of mental health services on an inpatient basis as defined in 730 ILCS 5/5-2-4(a-1)(B); or

(b) Whether he continues to be in need of mental health services which can be provided on an outpatient basis and whether the conditions of his release may be modified to provide reasonable assurances for the safety of the Defendant and others and for Defendant's continued progress in treatment

_____ This matter is set for a hearing pursuant to 730 ILCS 5/5-2-4(i) to be held on_____

DATE:_____

ENTERED:_____
Judge

IN THE CIRCUIT COURT FOR THE _____CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
V.	)	No._____
	)	
_____,	)	
	)	
Defendant.	)	

ORDER

The Court, having heard evidence pursuant to 730 ILCS 5/5-2-4(i), hereby finds that the Defendant has not fulfilled the conditions of his release.

_____ Defendant is hereby remanded to the custody of the Department of Human Services. The Department is directed to prepare a written report within 30 days specifying whether:
(a) Defendant is in need of mental health services on an inpatient basis as defined in 730 ILCS 5/5-2-4(a-1)(B); or
(b) Whether he continues to be in need of mental health services which can be provided on an outpatient basis and whether the conditions of his release may be modified to provide reasonable assurances for the safety of the Defendant and others and for Defendant's continued progress in treatment

____ Defendant may continue to receive treatment on an outpatient basis pending further order of the Court. _____is directed to examine the Defendant and prepare a written report within 30 days specifying whether:
(a) Defendant is in need of mental health services on an inpatient basis as defined in 730 ILCS 5/5-2-4(a-1)(B); or
(b) Whether he continues to be in need of mental health services which can be provided on an outpatient basis and whether the conditions of his release may be modified to provide reasonable assurances for the safety of the Defendant and others and for Defendant's continued progress in treatment

_____ This matter is set for a hearing pursuant to 730 ILCS 5/5-2-4(I) to be held on_____

DATE:_____

ENTERED:_____
Judge

IN THE CIRCUIT COURT FOR THE ___CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
V.	)	No._____
	)	
_____,	)	
	)	
Defendant.	)	

ORDER

The Court, having determined that the Defendant has not fulfilled the conditions of his release and having heard evidence pursuant to 730 ILCS 5/5-2-4(i), further finds that:

____ There is clear and convincing evidence that Defendant is in need of mental health services on an inpatient basis as defined in 730 ILCS 5/5-2-4(a-1)(B). Defendant's conditional release is revoked and Defendant is remanded to the custody of the Department of Human Services.

____ Defendant continues to be in need of mental health services which can be provided on an outpatient basis. The conditions of Defendant's release are modified as follows:

_____ Defendant continued to be in need of mental health services which can be provided on an outpatient basis. The Department of Human Services is hereby ordered to create a modified written plan for conditional release which provides reasonable assurances for the safety of the Defendant and others and for Defendant's continued progress in treatment. This matter is continued until_____ for a hearing on the Department's proposed plan.

DATE:_____

ENTERED:_____
Judge

APPENDIX H

SAMPLE REPORTS

NGRI 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 form 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 if 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 reports 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 experiences 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.

Staff Psychiatrist

30 Day Report [NGRI 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

NGRI 30 Day Sample Report

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 (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 11" grade, but failed to obtain his degree or General Equivalence Degree ED). 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 7/10100 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 mar 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 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 l: 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 severally. 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 (8131/04) 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

NGRI COVER LETTER EXAMPLE

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 [NGRI 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:_____

60 DAY TREATMENT PLAN REPORT [NGRI EXAMPLE]
ILLINOIS DEPARTMENT OF HUMAN SERVICES

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 cause 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.) _____

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 Radazewski 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 fining 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)

(Nurse Manager's name)

Treating Psychiatrist 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, overabundance 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 predischarge 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. Judgment 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 in 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_____

Psychiatrist_____

TEMPLATE
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 Radazewski v. Cawley, 159 I11.2d 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

TEMPLATE
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 Radazewski v. Cawley,, 159 I11.2d 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 and 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

[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 Judge's Name
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)

APPENDIX I
Forensic Outpatient Reports

COMMUNITY AGENCY

DATE
RE: John Doe
CASE #:
D.O.B.:
Charge:

I. IDENTIFYING INFORMATION

II. PRESENTING PROBLEM

An Outpatient Evaluation was conducted on Mr. John Doe at *ABC Community Agency* on *Date*. They were advised that the content of the evaluation was not confidential and would be used as part of a Court report. The following documents were reviewed as part of the evaluation process:

III. RELEVANT HISTORY

IV. MENTAL STATUS

V. DIAGNOSIS

Axis I:
Axis II:
Axis III:

VI. CONCLUSION

Mr. John Doe was ordered by ____ County Court to report for an Outpatient Evaluation to be conducted by the *Community Agency*. It is our opinion that he is:

1. (Not) Subject to Involuntary Admission.
2. (Not) in need of inpatient mental health services.
3. In need of services on an **OUTPATIENT BASIS**. It is recommended that Mr. Doe:
4. He is (**Un)Likely to be restored to fitness** within the statutory period of one year…

_____

Forensic Outpatient Clinician

OUTPATIENT LETTER TO COURT (FIT SAMPLE)

ILLINOIS DEPARTMENT OF HUMAN SERVICES

CHICAGO METROPOLITAN FORENSIC SERVICES
1200 South First Avenue
Hines, Illinois 60141

October 7, 2013

The Honorable Judge's Name
Juvenile Court of Cook County
1100 South Hamilton Avenue
Chicago, Illinois 60612
RE: Jane Doe
13 JD 0000
Dear Judge Judge's Last Name:

Pursuant to Your Honor's Order dated June 19, 2013, Jane Doe has been receiving outpatient treatment for fitness restoration at Chicago Metropolitan Forensic Services. The details of her progress in treatment are enclosed. At this time, we consider Jane **Fit to Stand Trial**.

If you require additional information, please do not hesitate to contact me at (708) 338-7301.

Sincerely,

Ray S. Kim, Ph.D.
Forensic Outpatient Director

cc: - Cook County Public Defender's Office, 2245 W. Ogden Avenue, 7th Floor, Chicago, Illinois 60612
- Cook County State's Attorney's Office, 1100 South Hamilton Avenue, Chicago, Illinois 60612
- Cook County Juvenile Court Clinic, 2245 West Ogden Avenue, 5th Floor, Chicago, Illinois 60612
Anderson Freeman, Ph.D. - Deputy Director of Forensic Services, 401 S. Clinton St., Chicago, Illinois 60607
Sharon Coleman, Psy.D. – Associate Deputy Director of Forensic Services, 401 S. Clinton St., Chicago, Illinois 60607
Charlene Brown - Division of Forensic Mental Health, 319 E. Madison Street, Suite 3B Springfield, IL 62701

ILLINOIS DEPARTMENT OF HUMAN SERVICES

CHICAGO METROPOLITAN FORENSIC SERVICES
1200 South First Avenue
Hines, Illinois 60141

October 7, 2013

RE: Jane Doe
13 JD 0000

D.O.B.: August 20, 1998

Charge: Criminal Trespass to a Motor Vehicle (2 counts),
Criminal Damage to Property (2 counts)

I IDENTIFYING INFORMATION

Jane Doe is a 15-year-old African-American female. She was adjudicated Unfit to Stand Trial on charges of Criminal Trespass to a Motor Vehicle (2 counts) and Criminal Damage to Property (2 counts) by Judge Terrence Sharkey in Cook County Juvenile Court on June 19, 2013. An Outpatient Evaluation was ordered and conducted on Jane at Madden Mental Health Center, 1200 South First Avenue, Hines, Illinois 60141 on July 1, 2013. It was assessed that Jane had a fair understanding of her charges, but lacked an adequate understanding of the court process. Consequently, she was considered unable to adequately assist in her defense.

Given Jane participated in fitness restoration services on an outpatient basis, it was opined that she had a fair chance of being restored to fitness within the statutory period of one year. Jane was then linked with Chicago Metropolitan Forensic Services, and has been receiving fitness restoration services from Ray S. Kim, Ph.D. on an outpatient basis.

II RESPONSE TO TREATMENT AND PRESENT LEVEL OF FUNCTIONING

It was recommended that Jane Doe attend fitness restoration and individual counseling services on a weekly basis or as needed from Ray S. Kim, Ph.D. in order to improve her understanding of the court process and ability to assist in her defense. It was also recommended that she receive medication management services on a monthly basis or as needed from Dr., M.D. at Center, Main Boulevard, Chicago, Illinois 60623. Jane has

complied with her treatment recommendations and has responded well to fitness restoration services. She was re-evaluated for fitness to stand trial on September 30, 2013.

Jane was casually dressed for her evaluation. Her hygiene and grooming were good. She was only minimally verbal and slightly distractible. Motor activity was within normal limits. Rapport and eye contact were fair. Jane was oriented to person, time, and situation. She was partially oriented to place. Her mood was described as "good," while her affect was irritable.

Jane's contact with reality was good. She did not exhibit any significant symptoms of a thought or perceptual disturbance at his interview. Jane's impulse control, frustration tolerance, and insight were fair, while her judgment was good. Her memory was fair, and her estimated intellectual functioning was in the Low Average range. Jane denied having any suicidal or homicidal ideation. Based on the results of a structured risk assessment for violence, she is considered a low risk for violence.

Jane has an adequate understanding of her charges. She stated that she is charged with "Criminal Damage to Property (2 counts) and Criminal Trespass to Motor Vehicle (2 counts)." The arrest incident was described as "they said I went into someone's car and got something." Jane was also assessed to have an adequate understanding of the court process. She stated that the Judge "makes the decision if I'm guilty or not." Jane knows that the Public Defender is "on my side, protects my rights, and is trying to find me not guilty" and that the State's Attorney "tries to find me guilty." She was also able to correctly indicate that she is the defendant.

Jane was able to describe the difference between a jury trial and a bench trial. She said that a jury trial " is a group of 12 people, and their job is to find me guilty or not." Jane stated that in a bench trial, "nobody decides if I'm guilty but the Judge." Evidence was explained as "stuff they found, like your fingerprints, witnesses, or weapons." She said the verdict "is the outcome of guilty or not guilty; you get to go home if not guilty; you get community service or probation if guilty." Jane said that a sentence "is a punishment if found guilty, like community service, probation, juvenile detention center, or house arrest." She described a plea bargain as "a deal between the Public Defender and State's Attorney; may give you a better punishment; have to plead guilty." Regarding her behavior in the courtroom, Jane said she would "sit down, listen, and be quiet."

Jane is considered clinically and behaviorally stable at this time. According to her mother, she is taking her medication as prescribed and not getting into trouble. Jane has not been exhibiting any behavior problems at school or home. She is listening, following directions, and being respectful. Jane trusts her attorney, and is able to

adequately assist in her defense. Consequently, she is considered Fit to Stand Trial at this time.

III DIAGNOSIS

Axis I:	296.90	Mood Disorder Not Otherwise Specified
	314.01	Attention-Deficit/Hyperactivity Disorder, Combined Type
	315.9	Learning Disorder, NOS

Axis II: V71.09 No Diagnosis on Axis II

Axis III: None

IV THE ISSUE OF FITNESS

Jane understands her charges, the role functions of the court officers, court proceedings, and is now able to adequately assist in her defense. She understands the reason for her charges and is appropriate for return to Court. Therefore, Jane is considered psychologically **FIT TO STAND TRIAL**.

V QUALIFIED PROFESSIONALS RESPONSIBLE FOR TREATMENT

Ray S. Kim, Ph.D.
Forensic Outpatient Director

OUTPATIENT LETTER TO COURT (UNLIKELY)

ILLINOIS DEPARTMENT OF HUMAN SERVICES

CHICAGO METROPOLITAN FORENSIC SERVICES
1200 South First Avenue
Hines, Illinois 60141

October 25, 2013

The Honorable Judge's Name
Judge of the Circuit Court of Cook County
Criminal Courts Building
2600 South California Avenue
Chicago, Illinois 60608

RE: John Doe
000001000
000001000

Dear Judge Judge's Lase Name:

Pursuant to Your Honor's Order dated October 2, 2013, an outpatient evaluation was performed on the above stated defendant. It is our opinion that Mr. John Doe is **Unlikely to Attain Fitness to Stand Trial** in the future due to significant cognitive deficits. Please advise.

If you require additional information, please do not hesitate to contact me at (708) 338-7301.

Sincerely,

Ray S. Kim, Ph.D.
Forensic Outpatient Director

cc:

- Cook County State's Attorney's Office, 2650 South California Avenue, Chicago, Illinois 60608
- Anderson Freeman, Ph.D. - Deputy Director of Forensic Services, 401 S. Clinton St., Chicago, Illinois 60607
- Sharon Coleman, Psy.D. - Associate Deputy Director of Forensic Services, 401 S. Clinton St., Chicago, Illinois 60607
- Charlene Brown - Division of Forensic Mental Health, 100 South Grand Ave East, 2nd Floor, Springfield, Illinois 62762
- Tammie Benjamin - Division of Developmental Disabilities, 100 West Randolph, Suite 6-400, Chicago, Illinois 60601

OUTPATIENT REPORT (UNLIKELY SAMPLE)

ILLINOIS DEPARTMENT OF HUMAN SERVICES

CHICAGO METROPOLITAN FORENSIC SERVICES
1200 South First Avenue
Hines, Illinois 60141

October 25, 2013

RE: John Doe
000001000
000001000
D.O.B.: May 4, 1989

Charge: Battery, Harassment by Electronic Communication

I. IDENTIFYING INFORMATION

Mr. John Doe is a 24-year-old Hispanic male. He was adjudicated Unfit to Stand Trial on charges of Battery and Harassment by Electronic Communication by Judge Paul Biebel, Jr. in Cook County Court on October 2, 2013. He was ordered to present himself for an Outpatient Evaluation to be conducted by the Illinois Department of Human Services.

II. PRESENTING PROBLEM

An Outpatient Evaluation was conducted on Mr. John Doe at Madden Mental Health Center, 1200 South First Avenue, Hines, Illinois 60141 on October 21, 2013. He was accompanied by his father. They were advised that the content of the evaluation was not confidential and would be used as part of a Court report. Both of them indicated that they understood and agreed to proceed with the evaluation. However, due to significant cognitive deficits, it did not appear that Mr. Doe fully understood or appreciated the limits of confidentiality which were explained to him. The following documents were reviewed as part of the evaluation process:

1. Court Order signed by Judge Judge's Name. adjudicating John Doe Unfit to Stand Trial and remanding him to the Illinois Department of Human Services to complete an evaluation on an outpatient basis, dated October 2, 2013.

2. Psychiatric Evaluation prepared by Doctor, M.D., Ph.D. from Forensic Clinical Services, dated August 27, 2013.

3. Letter prepared by Doctor, M.D. at Rush University Medical Center regarding John Doe, dated April 2, 2013.

4. Police Report from the City Name Police Department regarding the arrest of John Doe on February 19, 2013.

According to the police report, Mr. John Doe was arrested for allegedly posting threatening messages on Facebook, as well as kicking a police officer in the leg and spitting in the direction of a police officer's face.

III. RELEVANT HISTORY

Due to Mr. Doe's cognitive deficits, his father provided most of the historical information. Mr. Doe was born and raised in Chicago by his mother and father. His parents have been separated for the past 6 years. No history of physical or sexual abuse was indicated. Mr. Doe has an older brother and an older sister. He has never been married, and has no children. Currently, he resides with his father, aunt, and stepsister at 1234 South Main St., Cicero, Illinois 60804.

Mr. Doe stated that he graduated from high school in 2008, and was enrolled in special education classes due to learning difficulties. He has no vocational history. Mr. Doe receives Social Security benefits, including Medicaid. His father is employed as well.

Mr. Doe has high cholesterol for which he takes medication. No other medical history was indicated. He has never been psychiatrically hospitalized. Mr. Doe currently receives mental health services on an outpatient basis. He has been diagnosed with Autistic Disorder, Mental Retardation, Tourette's Disorder, and Obsessive-Compulsive Disorder. Mr. Doe has no history of substance abuse. No prior arrests were indicated.

IV. MENTAL STATUS

Mr. Doe was casually dressed for his interview. His hygiene and grooming were good. Mr. Doe appeared confused at times. His father described him as inattentive and easily distracted. Mr. Doe was cooperative and only minimally verbal. He appeared restless, and had difficulty sitting still. His father described him as being hyperactive. Mr. Doe also exhibited facial tics related to Tourette's Disorder. Rapport and eye contact were fair. Mr. Doe was oriented to person and time, partially oriented to place, and not oriented to situation. He described his mood as "happy." However, his father believes that Mr. Doe is depressed and anxious; according to his father, he tends to sleep excessively. Mr. Doe's affect was inappropriate; he smiled inappropriately throughout the interview.

Contact with reality was good. No significant symptoms of a thought disturbance or perceptual disturbance were observed. However, his father stated that Mr. Doe tends to talk to himself. Mr. Doe's judgment, impulse control, frustration tolerance, and insight were poor. His estimated intellectual functioning was in the Mild Mental Retardation range. Mr. Doe's long-term memory appeared intact, while his short-term memory was poor. He denied any past or current homicidal or suicidal ideation. Based on the results of a structured risk assessment for violence, he is considered to be a low risk for violent behavior at this time. His father agreed that he is not an imminent danger to himself or others.

Mr. Doe's understanding of his charges was marginal, and he lacked an adequate understanding of the court process. His severe cognitive deficits interfere with his ability to participate in court proceedings in a meaningful manner. Mr. Doe is considered unlikely to attain fitness to stand trial within the statutory period of one year. His ability to retain and recall learned information is severely impaired, posing a serious barrier for attaining fitness.

V. DIAGNOSIS

Axis I:	299.00	Autistic Disorder
	307.23	Tourette's Disorder
	311	Depressive Disorder NOS
	300.3	Obsessive-Compulsive Disorder
Axis II:	317	Mild Mental Retardation
Axis III:		High Cholesterol

VI. CONCLUSION

Mr. John Doe was ordered by Cook County Court to report for an Outpatient Evaluation to be conducted by the Illinois Department of Human Services. It is our opinion that he is:

1. Not Subject to Involuntary Admission.

2. Not in need of inpatient mental health services.

3. In need of services on an **OUTPATIENT BASIS**. It is recommended that Mr. Doe continue his current treatment plan. He should receive medication management services every other month or as needed from Doctor, M.D. at Rush University Medical Center. Doctor can be reached at 312-123-4567. Mr. Doe should also contact Tammie Benjamin who can assist in linking him with developmental disability services. Ms. Benjamin is the Forensic Liaison for the Division of Developmental Disabilities, and can be reached at 312-814-8338.

4. He is **Unlikely to be restored to fitness** within the statutory period of one year due to cognitive deficits, which significantly impair his ability to understand the court process and assist in his defense. Due to the extent of his impaired cognitive functioning, it is considered unlikely that he will be able to be restored to fitness within the statutory time period.

_____

Ray S. Kim, Ph.D.
Forensic Outpatient Director

APPENDIX J

Notification of the Discharge of an NGRI Individual Charged with an Arson Offense

To:

Re: **Arsonist Registration Act (730 ILCS 148/1)**

Your signature on this document verifies that you have received a copy of the **Arsonist Registration Act** (730 ILCS 148/1), and that you understand the reporting requirements of this Act and the penalties for failing to register.

Additionally, that you understand that you may be contacted by a Criminal Justice Agency to appear in person in order to complete the Arsonist registration procedure that may include fingerprints. You further understand that a copy of this document along with your photograph shall be sent to the Chief of Police and the County Sherriff who have jurisdiction in your residential area.

I, (*Individual's Name)* have received a copy of the **Arsonist Registration Act (730 ILCS 148/1).** The content of this Act has been explained to me. I understand that in the future I may be contacted by a Criminal Justice Agency to complete the registration process under the Arsonist Registration Act (730 ILCS 148/1).

Individual's Signature: _____ **Date:** _____

_____

(Type Individual's Name)

Staff/Witness Signature: _____ **Date:** _____

_____

(Type Staff/Witness Name)

Cc: Medical Records
DHS Criminal Justice Liaison
Service Provider
County Sheriff
Chief of Police

(Form No.)

APPENDIX K

SEXUALLY VIOLENT PERSONS COMMITMENT ACT

(Underscores added for emphasis.)
(725 ILCS 207/)

(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 11-1.20, 11-1.30, 11-1.40, 11-1.60, 11-6, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14, 12-14.1, or 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012; 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 11-4.1 (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. 96-292, eff. 1-1-10; 96-328, eff. 8-11-09; 96-1551, eff. 7-1-11; 97-1150, eff. 1-25-13.)

(725 ILCS 207/9)
Sec. 9. Sexually violent person review; written notification to State's Attorney. The Illinois Department of Corrections or the Department of Juvenile Justice, not later than 6 months prior to the anticipated release from imprisonment or the anticipated entry into mandatory

supervised release of a person who has been convicted or adjudicated delinquent of a sexually violent offense, shall send written notice to the State's Attorney in the county in which the person was convicted or adjudicated delinquent of the sexually violent offense informing the State's Attorney of the person's anticipated release date and that the person will be considered for commitment under this Act prior to that release date.
(Source: P.A. 94-992, eff. 1-1-07.)

(725 ILCS 207/10)
(Text of Section before amendment by P.A. 97-1098)
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.)

(Text of Section after amendment by P.A. 97-1098)
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 licensed under the Sex Offender Evaluation and Treatment Provider Act; 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. 97-1098, eff. 1-1-14.)

(725 ILCS 207/15)
Sec. 15. Sexually violent person petition; contents; filing.
(a) A petition alleging that a person is a sexually violent person must be filed before the release or discharge of the person or within 30 days of placement onto parole, aftercare release, or mandatory supervised release for an offense enumerated in paragraph (e) of Section 5 of this Act. A petition may be filed by the following:
(1) The Attorney General on his or her own motion, after consulting with and advising 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; or

(2) The State's Attorney of the county referenced in paragraph (1)(a)(1) of this Section, on his or her own motion; or

(3) The Attorney General and the State's Attorney of the county referenced in paragraph (1)(a)(1) of this Section may jointly file a petition on their own motion; or

(4) A petition may be filed at the request of the agency with jurisdiction over the person, as defined in subsection (a) of Section 10 of this Act, by:

(a) the Attorney General;

(b) the State's Attorney of the county referenced in paragraph (1)(a)(1) of this Section; or

(c) the Attorney General and the State's Attorney 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 no more than 90 days before discharge or entry into mandatory supervised release from a Department of Corrections or the Department of Juvenile Justice correctional facility for a sentence that was imposed upon a conviction for a sexually violent offense. For inmates sentenced under the law in effect prior to February 1, 1978, the petition shall be filed no more than 90 days after the Prisoner Review Board's order granting parole pursuant to Section 3-3-5 of the Unified Code of Corrections.

(b-6) The petition must be filed no more than 90 days before discharge or release:

(1) from a Department of Juvenile Justice 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

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

(b-7) A person convicted of a sexually violent offense remains eligible for commitment as a sexually violent person pursuant to this Act under the following circumstances: (1) the person is in custody for a sentence that is being served concurrently or consecutively with a sexually violent offense; (2) the person returns to the custody of the Illinois Department of Corrections or the Department of Juvenile Justice for any reason during the term of parole, aftercare release, or mandatory supervised release being served for a sexually violent offense; or (3) the person is convicted or adjudicated delinquent for any offense committed during the term of parole, aftercare release, or mandatory supervised release being served for a sexually violent offense, regardless of whether that conviction or adjudication was for 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 a Department of Juvenile Justice juvenile correctional facility, or a commitment order.
(e) The filing of a petition under this Act shall toll the running of the term of parole or mandatory supervised release until:
(1) dismissal of the petition filed under this Act;
(2) a finding by a judge or jury that the respondent is not a sexually violent person; or
(3) the sexually violent person is discharged under Section 65 of this Act.
(f) The State has the right to have the person evaluated by experts chosen by the State. The agency with jurisdiction as defined in Section 10 of this Act shall allow the expert reasonable access to the person for purposes of examination, to the person's records, and to past and present treatment providers and any other staff members relevant to the examination.
(Source: P.A. 98-558, eff. 1-1-14.)

(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 207/21)
Sec. 21. Service of petitions. If a person alleged to be a sexually violent person is in the custody of or is being supervised on parole or mandatory supervised release by the Department of Corrections or Department of Juvenile Justice, a petition filed under this Act may be served on the person by personnel of the Department of Corrections or Department of Juvenile Justice. Service may be proved by affidavit of the person making service. The affidavit shall be returned to the Attorney General or State's Attorney of the county where the petition is pending for filing with the court. Service provided for in this Section is in addition to other manners of service provided for in Section 20 of this Act and the Code of Civil Procedure.
(Source: P.A. 97-1075, eff. 8-24-12.)

(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. The State has the right to have the person evaluated by an expert chosen by the State. All examiners retained by or appointed for any party 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. 96-1128, eff. 1-1-11.)

(725 ILCS 207/30)
(Text of Section from P.A. 98-79)
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. The Department may elect to place persons who have been ordered by the court to be detained in a State-operated mental health facility or a portion of that facility. Persons placed in a State-operated mental health facility under this Act shall be separated and shall not comingle with the recipients of the

mental health facility. The portion of a State-operated mental health facility that is used for the persons detained under this Act shall not be a part of the mental health facility for the enforcement and implementation of the Mental Health and Developmental Disabilities Code nor shall their care and treatment be subject to the provisions of the Mental Health and Developmental Disabilities Code. The changes added to this Section by this amendatory Act of the 98th General Assembly are inoperative on and after June 30, 2015. 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. 98-79, eff. 7-15-13.)

(Text of Section from P.A. 98-558)
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 aftercare release, 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. 98-558, eff. 1-1-14.)

(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. If the Department's examining evaluator previously rendered an opinion that the person who is the subject of a petition under Section 15 does not meet the criteria to be found a sexually violent person, then another evaluator shall conduct the predisposition investigation and/or supplementary mental examination. A supplementary mental examination under this Section shall be conducted in accordance with Section 3-804 of the Mental Health and Developmental Disabilities Code. The State has the right to have the person evaluated by experts chosen by the State.

(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, 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 licensed under the Sex Offender Evaluation and Treatment Provider Act. 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. Notwithstanding any other provision in the Act, the person being supervised on conditional release shall not reside at the same street address as another sex offender being supervised on conditional release under this Act, mandatory supervised release, parole, aftercare release, probation, or any other manner of supervision. 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 jurisdiction;

(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, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection 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, theaters, 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. 97-1098, eff. 1-1-14; 98-558, eff. 1-1-14.)

(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 at least once every 12 months after an initial commitment under Section 40 for the purpose of determining whether: (1) the person has made sufficient progress in treatment to be conditionally released and (2) the person's condition has so changed since the most recent periodic reexamination (or initial commitment, if there has not yet been a periodic reexamination) that he or she is no longer a sexually violent person. 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 licensed under the Sex Offender Evaluation and Treatment Provider Act.
(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. 97-1075, eff. 8-24-12; 97-1098, eff. 1-1-14; 98-463, eff. 8-16-13.)

(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 12 months have elapsed since the initial commitment order was

entered, an order continuing commitment was entered pursuant to Section 65, 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. If the evaluator on behalf of the Department recommends that the committed person is appropriate for conditional release, then the director or designee shall, within 30 days of receipt of the evaluator's report, file with the committing court notice of his or her intention whether or not to petition for conditional release on the committed person's behalf.

(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, upon the request of the committed person or on the court's own motion, the court may appoint an examiner 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 licensed under the Sex Offender Evaluation and Treatment Provider Act. The court shall set a probable cause hearing as soon as practical after the examiners' reports are filed. The probable cause hearing shall consist of a review of the examining evaluators' reports and arguments on behalf of the parties. If the court finds probable cause to believe the person has made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release, the court shall set a hearing on the issue.

(d) The court, without a jury, shall hear the petition as soon as practical after the reports of all examiners are filed with the court. The court shall grant the petition unless the State proves by clear and convincing evidence that the person has not made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release. 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, 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. 97-1075, eff. 8-24-12; 97-1098, eff. 1-1-14; 98-463, eff. 8-16-13.)

(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. If the evaluator on behalf of the Department recommends that the committed person is no longer a sexually violent person, then the Secretary or designee shall, within 30 days of receipt of the evaluator's report, file with the committing court notice of his or her determination whether or not to authorize the committed 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 as soon as practical 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. The State has the right to have the 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 licensed under the Sex Offender Evaluation and Treatment Provider Act. 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 to believe that since the most recent periodic reexamination (or initial commitment, if there has not yet been a periodic reexamination), the condition of the committed person has so changed that he or she is no longer a sexually violent person. 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 reasonably find that the condition of the person had so changed that a hearing was warranted. 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 as soon as practical after 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 since the most recent periodic reexamination (or initial commitment, if there has not yet been a periodic reexamination), the condition of the committed person has so changed that he or she 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 licensed under the Sex Offender Evaluation and Treatment Provider Act. 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.

(c) This Section applies to petitions pending on the effective date of this amendatory Act of the 97th General Assembly and to petitions filed on or after that date. This provision is severable from the other provisions of this Section under Section 1.31 of the Statute on Statutes.

(Source: P.A. 97-1075, eff. 8-24-12; 97-1098, eff. 1-1-14; 98-463, eff. 8-16-13.)

(725 ILCS 207/70)

Sec. 70. (Repealed).

(Source: P.A. 91-227, eff. 1-1-00. Repealed by P.A. 97-1075, eff. 8-24-12.)

(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 or the Department of Juvenile Justice.

(c) The notice under subsection (b) of this Section shall inform the Department of Corrections or the Department of Juvenile Justice 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 60 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 or the Department of Juvenile Justice 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. 94-696, eff. 6-1-06; 95-896, eff. 1-1-09.)

(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 Healthcare and Family Services 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. 95-331, eff. 8-21-07.)

(725 ILCS 207/99)
Sec. 99. Effective date. This Act takes effect January 1, 1998.
(Source: P.A. 90-40, eff. 1-1-98.)

APPENDIX L

SEXUALLY DANGEROUS PERSONS ACT
(725 ILCS 205/)

(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 evaluators to make a personal examination of the alleged sexually dangerous person, to ascertain whether the person is sexually dangerous, and the evaluators 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: P.A. 98-88, eff. 7-15-13.)

(725 ILCS 205/4.01) (from Ch. 38, par. 105-4.01)
Sec. 4.01. "Qualified evaluator" means a reputable physician or psychologist licensed in Illinois or any other state to practice medicine or psychology, or any other licensed professional who specializes in the evaluation of sex offenders.
(Source: P.A. 98-88, eff. 7-15-13.)

(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 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: P.A. 98-88, eff. 7-15-13.)

(725 ILCS 205/4.03)
Sec. 4.03. Mental disorder. "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.
(Source: P.A. 94-705, eff. 6-1-06.)

(725 ILCS 205/4.04)
Sec. 4.04. Examination. "Examination" means an examination conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator licensed under the Sex Offender Evaluation and Treatment Provider Act.
(Source: P.A. 98-88, eff. 7-15-13.)

(725 ILCS 205/4.05)
Sec. 4.05. Criminal propensities to the commission of sex offenses. For the purposes of this Act, "criminal propensities to the commission of sex offenses" means that it is substantially probable that the person subject to the commitment proceeding will engage in the commission of sex offenses in the future if not confined.
(Source: P.A. 98-88, eff. 7-15-13.)

(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. The cost of representation by counsel for an indigent respondent shall be paid by the county in which the proceeding is brought. 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: P.A. 98-88, eff. 7-15-13.)

(725 ILCS 205/8) (from Ch. 38, par. 105-8)
(Text of Section before amendment by P.A. 97-1098)
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.)

(Text of Section after amendment by P.A. 97-1098)
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 licensed under the Sex Offender Evaluation and Treatment Provider Act. 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. 97-1098, eff. 1-1-14.)

(725 ILCS 205/9) (from Ch. 38, par. 105-9)
Sec. 9. Recovery; examination and hearing.
(a) An application in writing setting forth facts showing that the 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 an evaluator licensed under the Sex Offender Evaluation and Treatment Provider Act. The court shall set a date for the hearing upon the 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 the applicant.
(b) At a hearing under this Section, the Attorney General or State's Attorney who filed the original application shall represent the State. The sexually dangerous 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 applicant is still a sexually dangerous person.
(c) If the applicant refuses to speak to, communicate with, or otherwise fails to cooperate with the State's examiner, the applicant may only introduce evidence and testimony from any expert or professional person who is retained to conduct an examination based upon 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 under this Act and all Illinois Department of Corrections treatment records shall be admissible at all proceedings held under this Act.
(d) If a person has previously filed an application in writing setting forth facts showing that the sexually dangerous person or criminal sexual psychopathic person has recovered and the court determined either at a hearing or following a jury trial that the applicant is still a sexually dangerous person, or if the application is withdrawn, no additional application may be filed for 2 years after a finding that the person is still sexually dangerous or after the application is withdrawn, except if the application is accompanied by a statement from the treatment provider that the applicant has made exceptional progress and the application contains facts upon which a court could find that the condition of the person had so changed that a hearing is warranted.
(e) If the person is found to be no longer dangerous, the court shall order that he or she 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 the person has fully recovered, the court shall enter an order permitting the person to go at large subject to the conditions and 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 the order, the court shall revoke the conditional release and recommit the person under 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. 98-88, eff. 7-15-13.)

(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.)

APPENDIX M

SEX OFFENDER REGISTRATION ACT

(Underscores added for emphasis.)
(730 ILCS 150/)

(730 ILCS 150/1) (from Ch. 38, par. 221)
Sec. 1. Short title. This Article may be cited as the Sex Offender Registration Act.
(Source: P.A. 89-8, eff. 1-1-96.)

(730 ILCS 150/2) (from Ch. 38, par. 222)
Sec. 2. Definitions.
(A) As used in this Article, "sex offender" means any person who is:

(1) charged pursuant to Illinois law, or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, with a sex offense set forth in subsection (B) of this Section or the attempt to commit an included sex offense, and:

(a) is convicted of such offense or an attempt to commit such offense; or

(b) is found not guilty by reason of insanity of such offense or an attempt to commit such offense; or

(c) is found not guilty by reason of insanity pursuant to Section 104-25(c) of the Code of Criminal Procedure of 1963 of such offense or an attempt to commit such offense; or

(d) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to Section 104-25(a) of the Code of Criminal Procedure of 1963 for the alleged commission or attempted commission of such offense; or

(e) is found not guilty by reason of insanity following a hearing conducted pursuant to a federal, Uniform Code of Military Justice, sister state, or foreign country law substantially similar to Section 104-25(c) of the Code of Criminal Procedure of 1963 of such offense or of the attempted commission of such offense; or

(f) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to a federal, Uniform Code of Military Justice, sister state, or foreign country law substantially similar to Section 104-25(a) of the Code of Criminal Procedure of 1963 for the alleged violation or attempted commission of such offense; or

(2) declared as a sexually dangerous person pursuant to the Illinois Sexually Dangerous Persons Act, or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law; or

(3) subject to the provisions of Section 2 of the Interstate Agreements on Sexually Dangerous Persons Act; or

(4) found to be a sexually violent person pursuant to the Sexually Violent Persons Commitment Act or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law; or

(5) adjudicated a juvenile delinquent as the result of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in item

(B), (C), or (C-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, or found guilty under Article V of the Juvenile Court Act of 1987 of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law.

Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this Article as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this Article.

For purposes of this Section, "convicted" shall have the same meaning as "adjudicated".

(B) As used in this Article, "sex offense" means:

(1) A violation of any of the following Sections of the Criminal Code of 1961 or the Criminal Code of 2012:

11-20.1 (child pornography),
11-20.1B or 11-20.3 (aggravated child pornography),
11-6 (indecent solicitation of a child),
11-9.1 (sexual exploitation of a child),
11-9.2 (custodial sexual misconduct),
11-9.5 (sexual misconduct with a person with a disability),
11-14.4 (promoting juvenile prostitution),
11-15.1 (soliciting for a juvenile prostitute),
11-18.1 (patronizing a juvenile prostitute),
11-17.1 (keeping a place of juvenile prostitution),
11-19.1 (juvenile pimping),
11-19.2 (exploitation of a child),
11-25 (grooming),
11-26 (traveling to meet a minor),
11-1.20 or 12-13 (criminal sexual assault),
11-1.30 or 12-14 (aggravated criminal sexual assault),
11-1.40 or 12-14.1 (predatory criminal sexual assault of a child),
11-1.50 or 12-15 (criminal sexual abuse),
11-1.60 or 12-16 (aggravated criminal sexual abuse),
12-33 (ritualized abuse of a child).

An attempt to commit any of these offenses.

(1.5) A violation of any of the following Sections of the Criminal Code of 1961 or the Criminal Code of 2012, when the victim is a person under 18 years of age, the defendant is not a parent of the victim, the offense was sexually motivated as defined in Section 10 of the Sex Offender Evaluation and Treatment Act, and the offense was committed on or after January 1, 1996:

10-1 (kidnapping),

10-2 (aggravated kidnapping),

10-3 (unlawful restraint),

10-3.1 (aggravated unlawful restraint).

If the offense was committed before January 1, 1996, it is a sex offense requiring registration only when the person is convicted of any felony after July 1, 2011, and paragraph (2.1) of subsection (c) of Section 3 of this Act applies.

(1.6) First degree murder under Section 9-1 of the Criminal Code of 1961 or the Criminal Code of 2012, provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act.

(1.7) (Blank).

(1.8) A violation or attempted violation of Section 11-11 (sexual relations within families) of the Criminal Code of 1961 or the Criminal Code of 2012, and the offense was committed on or after June 1, 1997. If the offense was committed before June 1, 1997, it is a sex offense requiring registration only when the person is convicted of any felony after July 1, 2011, and paragraph (2.1) of subsection (c) of Section 3 of this Act applies.

(1.9) Child abduction under paragraph (10) of subsection (b) of Section 10-5 of the Criminal Code of 1961 or the Criminal Code of 2012 committed by luring or attempting to lure a child under the age of 16 into a motor vehicle, building, house trailer, or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose and the offense was committed on or after January 1, 1998, provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act. If the offense was committed before January 1, 1998, it is a sex offense requiring registration only when the person is convicted of any felony after July 1, 2011, and paragraph (2.1) of subsection (c) of Section 3 of this Act applies.

(1.10) A violation or attempted violation of any of the following Sections of the Criminal Code of 1961 or the Criminal Code of 2012 when the offense was committed on or after July 1, 1999:

10-4 (forcible detention, if the victim is under 18 years of age), provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act,

11-6.5 (indecent solicitation of an adult),

11-14.3 that involves soliciting for a prostitute, or 11-15 (soliciting for a prostitute, if the victim is under 18 years of age), subdivision (a)(2)(A) or (a)(2)(B) of Section 11-14.3, or Section 11-16 (pandering, if the victim is under 18 years of age),

11-18 (patronizing a prostitute, if the victim is under 18 years of age), subdivision (a)(2)(C) of Section 11-14.3, or Section 11-19 (pimping, if the victim is under 18 years of age).

If the offense was committed before July 1, 1999, is a sex offense requiring registration only when the person is convicted of any felony after July 1, 2011, and paragraph (2.1) of subsection (c) of Section 3 of this Act applies.

(1.11) A violation or attempted violation of any of the following Sections of the Criminal Code of 1961 or the Criminal Code of 2012 when the offense was committed on or after August 22, 2002:

11-9 or 11-30 (public indecency for a third or subsequent conviction).

If the third or subsequent conviction was impose before August 22, 2002, it is a sex offense requiring registration only when the person is convicted of any felony after July 1, 2011, and paragraph (2.1) of subsection (c) of Section 3 of this Act applies.

(1.12) A violation or attempted violation of Section 5.1 of the Wrongs to Children Act or Section 11-9.1A of the Criminal Code of 1961 or the Criminal Code of 2012 (permitting sexual abuse) when the offense was committed on or after August 22, 2002. If the offense was committed before August 22, 2002, it is a sex offense requiring registration only when the person is convicted of any felony after July 1, 2011, and paragraph (2.1) of subsection (c) of Section 3 of this Act applies.

(2) A violation of any former law of this State substantially equivalent to any offense listed in subsection (B) of this Section.

(C) A conviction for an offense of federal law, Uniform Code of Military Justice, or the law of another state or a foreign country that is substantially equivalent to any offense listed in subsections (B), (C), (E), and (E-5) of this Section shall constitute a conviction for the purpose of this Article. A finding or adjudication as a sexually dangerous person or a sexually violent person under any federal law, Uniform Code of Military Justice, or the law of another state or foreign country that is substantially equivalent to the Sexually Dangerous Persons Act or the Sexually Violent Persons Commitment Act shall constitute an adjudication for the purposes of this Article.

(C-5) A person at least 17 years of age at the time of the commission of the offense who is convicted of first degree murder under Section 9-1 of the Criminal Code of 1961 or the Criminal Code of 2012, against a person under 18 years of age, shall be required to register for natural life. A conviction for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (C-5) of this Section shall constitute a conviction for the purpose of this Article. This subsection (C-5) applies to a person who committed the offense before June 1, 1996 if: (i) the person is incarcerated in an Illinois Department of Corrections facility on August 20, 2004 (the effective date of Public Act 93-977), or (ii) subparagraph (i) does not apply and the person is convicted of any felony after July 1, 2011, and paragraph (2.1) of subsection (c) of Section 3 of this Act applies.

(C-6) A person who is convicted or adjudicated delinquent of first degree murder as defined in Section 9-1 of the Criminal Code of 1961 or the Criminal Code of 2012, against a person 18 years of age or over, shall be required to register for his or her natural life. A conviction for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (C-6) of this Section shall constitute a conviction for the purpose of this Article. This subsection (C-6) does not apply to those individuals released from incarceration more than 10 years prior to January 1, 2012 (the effective date of Public Act 97-154).

(D) As used in this Article, "law enforcement agency having jurisdiction" means the Chief of Police in each of the municipalities in which the sex offender expects to reside, work, or attend school (1) upon his or her discharge, parole or release or (2) during the service of his or her sentence of probation or conditional discharge, or the Sheriff of the county, in the event no Police Chief exists or if the offender intends to reside, work, or attend school in an unincorporated area. "Law enforcement agency having jurisdiction" includes the location where out-of-state students attend school and where out-of-state employees are employed or are otherwise required to register.

(D-1) As used in this Article, "supervising officer" means the assigned Illinois Department of Corrections parole agent or county probation officer.

(E) As used in this Article, "sexual predator" means any person who, after July 1, 1999, is:

(1) Convicted for an offense of federal, Uniform Code

of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (E) or (E-5) of this Section shall constitute a conviction for the purpose of this Article. Convicted of a violation or attempted violation of any of the following Sections of the Criminal Code of 1961 or the Criminal Code of 2012:

10-5.1 (luring of a minor),

11-14.4 that involves keeping a place of juvenile prostitution, or 11-17.1 (keeping a place of juvenile prostitution),subdivision (a)(2) or (a)(3) of Section 11-14.4, or Section 11-19.1 (juvenile pimping),subdivision (a)(4) of Section 11-14.4, or Section 11-19.2 (exploitation of a child),

11-20.1 (child pornography),

11-20.1B or 11-20.3 (aggravated child pornography),

11-1.20 or 12-13 (criminal sexual assault),

11-1.30 or 12-14 (aggravated criminal sexual assault),

11-1.40 or 12-14.1 (predatory criminal sexual assault of a child),

11-1.60 or 12-16 (aggravated criminal sexual abuse),

12-33 (ritualized abuse of a child);

(2) (blank);

(3) declared as a sexually dangerous person pursuant to the Sexually Dangerous Persons Act or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law;

(4) found to be a sexually violent person pursuant to the Sexually Violent Persons Commitment Act or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law;

(5) convicted of a second or subsequent offense which requires registration pursuant to this Act. For purposes of this paragraph (5), "convicted" shall include a conviction under any substantially similar Illinois, federal, Uniform Code of Military Justice, sister state, or foreign country law;

(6) (blank); or

(7) if the person was convicted of an offense set forth in this subsection (E) on or before July 1, 1999, the person is a sexual predator for whom registration is required only when the person is convicted of a felony offense after July 1, 2011, and paragraph (2.1) of subsection (c) of Section 3 of this Act applies.

(E-5) As used in this Article, "sexual predator" also means a person convicted of a violation or attempted violation of any of the following Sections of the Criminal Code of 1961 or the Criminal Code of 2012:

(1) Section 9-1 (first degree murder, when the victim was a person under 18 years of age and the defendant was at least 17 years of age at the time of the commission of the offense, provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act);

(2) Section 11-9.5 (sexual misconduct with a person with a disability);

(3) when the victim is a person under 18 years of age, the defendant is not a parent of the victim, the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act, and the offense was committed on or after January 1, 1996: (A) Section 10-1 (kidnapping), (B) Section 10-2 (aggravated kidnapping), (C) Section 10-3 (unlawful restraint), and (D) Section 10-3.1 (aggravated unlawful restraint); and

(4) Section 10-5(b)(10) (child abduction committed by luring or attempting to lure a child under the age of 16 into a motor vehicle, building, house trailer, or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose and the offense was committed on or after January 1, 1998, provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act).

(E-10) As used in this Article, "sexual predator" also means a person required to register in another State due to a conviction, adjudication or other action of any court triggering an obligation to register as a sex offender, sexual predator, or substantially similar status under the laws of that State.

(F) As used in this Article, "out-of-state student" means any sex offender, as defined in this Section, or sexual predator who is enrolled in Illinois, on a full-time or part-time basis, in any public or private educational institution, including, but not limited to, any secondary school, trade or professional institution, or institution of higher learning.

(G) As used in this Article, "out-of-state employee" means any sex offender, as defined in this Section, or sexual predator who works in Illinois, regardless of whether the individual receives payment for services performed, for a period of time of 10 or more days or for an aggregate period of time of 30 or more days during any calendar year. Persons who operate motor vehicles in the State accrue one day of employment time for any portion of a day spent in Illinois.

(H) As used in this Article, "school" means any public or private educational institution, including, but not limited to, any elementary or secondary school, trade or professional institution, or institution of higher education.

(I) As used in this Article, "fixed residence" means any and all places that a sex offender resides for an aggregate period of time of 5 or more days in a calendar year.

(J) As used in this Article, "Internet protocol address" means the string of numbers by which a location on the Internet is identified by routers or other computers connected to the Internet. (Source: P.A. 96-301, eff. 8-11-09; 96-1089, eff. 1-1-11; 96-1551, eff. 7-1-11; 97-154, eff. 1-1-12; 97-578, eff. 1-1-12; 97-1073, eff. 1-1-13; 97-1098, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

(730 ILCS 150/3)
Sec. 3. Duty to register.

(a) A sex offender, as defined in Section 2 of this Act, or sexual predator shall, within the time period prescribed in subsections (b) and (c), register in person and provide accurate information as required by the Department of State Police. Such information shall include a current photograph, current address, current place of employment, the sex offender's or sexual predator's telephone number, including cellular telephone number, the employer's telephone number, school attended, all e-mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information, extensions of the time period for registering as provided in this Article and, if an extension was granted, the reason why the extension was granted and the date the sex offender was notified of the extension. The information shall also include a copy of the terms and conditions of parole or release signed by the sex offender and given to the sex offender by his or her supervising officer or aftercare specialist, the county of conviction, license plate numbers for every vehicle registered in the name of the sex offender, the age of the sex offender at the time of the commission of the offense, the age of the victim at the time of the commission of the offense, and any distinguishing marks located on the body of the sex offender. A sex offender convicted under Section 11-6, 11-20.1, 11-20.1B, 11-20.3, or 11-21 of the Criminal Code of 1961 or the Criminal Code of 2012 shall provide all Internet protocol (IP) addresses in his or her residence, registered in his or her name, accessible at his or her place of employment, or otherwise under his or her control or custody. If the sex offender is a child sex offender as defined in Section 11-9.3 or 11-9.4 of the Criminal Code of 1961 or the Criminal Code of 2012, the sex offender shall report to the registering agency whether he or she is living in a household with a child under 18 years of age who is not his or her own child, provided that his or her own child is not the victim of the sex offense. The sex offender or sexual predator shall register:

(1) with the chief of police in the municipality in which he or she resides or is temporarily domiciled for a period of time of 3 or more days, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or

(2) with the sheriff in the county in which he or she resides or is temporarily domiciled for a period of time of 3 or more days in an unincorporated area or, if incorporated, no police chief exists.

If the sex offender or sexual predator is employed at or attends an institution of higher education, he or she shall also register:

(i) with:

(A) the chief of police in the municipality in which he or she is employed at or attends an institution of higher education, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or

(B) the sheriff in the county in which he or she is employed or attends an institution of higher education located in an unincorporated area, or if incorporated, no police chief exists; and

(ii) with the public safety or security director of the institution of higher education which he or she is employed at or attends.

The registration fees shall only apply to the municipality or county of primary registration, and not to campus registration.

For purposes of this Article, the place of residence or temporary domicile is defined as any and all places where the sex offender resides for an aggregate period of time of 3 or more days during any calendar year. Any person required to register under this Article who lacks a fixed address or temporary domicile must notify, in person, the agency of jurisdiction of his or her last known address within 3 days after ceasing to have a fixed residence.

A sex offender or sexual predator who is temporarily absent from his or her current address of registration for 3 or more days shall notify the law enforcement agency having jurisdiction of his or her current registration, including the itinerary for travel, in the manner provided in Section 6 of this Act for notification to the law enforcement agency having jurisdiction of change of address.

Any person who lacks a fixed residence must report weekly, in person, with the sheriff's office of the county in which he or she is located in an unincorporated area, or with the chief of police in the municipality in which he or she is located. The agency of jurisdiction will document each weekly registration to include all the locations where the person has stayed during the past 7 days.

The sex offender or sexual predator shall provide accurate information as required by the Department of State Police. That information shall include the sex offender's or sexual predator's current place of employment.

(a-5) An out-of-state student or out-of-state employee shall, within 3 days after beginning school or employment in this State, register in person and provide accurate information as required by the Department of State Police. Such information will include current place of employment, school attended, and address in state of residence. A sex offender convicted under Section 11-6, 11-20.1, 11-20.1B, 11-20.3, or 11-21 of the Criminal Code of 1961 or the Criminal Code of 2012 shall provide all Internet protocol (IP) addresses in his or her residence, registered in his or her name, accessible at his or her place of employment, or otherwise under his or her control or custody. The out-of-state student or out-of-state employee shall register:

(1) with:

(A) the chief of police in the municipality in which he or she attends school or is

employed for a period of time of 5 or more days or for an aggregate period of time of more than 30 days during any calendar year, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or

(B) the sheriff in the county in which he or she attends school or is employed for a period of time of 5 or more days or for an aggregate period of time of more than 30 days during any calendar year in an unincorporated area or, if incorporated, no police chief exists; and

(2) with the public safety or security director of the institution of higher education he or she is employed at or attends for a period of time of 5 or more days or for an aggregate period of time of more than 30 days during a calendar year.

The registration fees shall only apply to the municipality or county of primary registration, and not to campus registration.

The out-of-state student or out-of-state employee shall provide accurate information as required by the Department of State Police. That information shall include the out-of-state student's current place of school attendance or the out-of-state employee's current place of employment.

(a-10) Any law enforcement agency registering sex offenders or sexual predators in accordance with subsections (a) or (a-5) of this Section shall forward to the Attorney General a copy of sex offender registration forms from persons convicted under Section 11-6, 11-20.1, 11-20.1B, 11-20.3, or 11-21 of the Criminal Code of 1961 or the Criminal Code of 2012, including periodic and annual registrations under Section 6 of this Act.

(b) Any sex offender, as defined in Section 2 of this Act, or sexual predator, regardless of any initial, prior, or other registration, shall, within 3 days of beginning school, or establishing a residence, place of employment, or temporary domicile in any county, register in person as set forth in subsection (a) or (a-5).

(c) The registration for any person required to register under this Article shall be as follows:

(1) Any person registered under the Habitual Child Sex Offender Registration Act or the Child Sex Offender Registration Act prior to January 1, 1996, shall be deemed initially registered as of January 1, 1996; however, this shall not be construed to extend the duration of registration set forth in Section 7.

(2) Except as provided in subsection (c)(2.1) or

(c)(4), any person convicted or adjudicated prior to January 1, 1996, whose liability for registration under Section 7 has not expired, shall register in person prior to January 31, 1996.

(2.1) A sex offender or sexual predator, who has never previously been required to register under this Act, has a duty to register if the person has been convicted of any felony offense after July 1, 2011. A person who previously was required to register under this Act for a period of 10 years and successfully completed that registration period has a duty to register if: (i) the person has been convicted of any felony offense after July 1, 2011, and (ii) the offense for which the 10 year registration was served currently requires a registration period of more than 10 years. Notification of an offender's duty to register under this subsection shall be pursuant to Section 5-7 of this Act.

(2.5) Except as provided in subsection (c)(4), any person who has not been notified of his or her responsibility to register shall be notified by a criminal justice entity of his or her responsibility to register. Upon notification the person must then register within 3 days of notification of his or her requirement to register. Except as provided in subsection (c)(2.1), if notification is not made within the offender's 10 year registration requirement, and the Department of State Police determines no evidence exists or indicates the offender attempted to avoid registration, the offender will no longer be required to register under this Act.

(3) Except as provided in subsection (c)(4), any person convicted on or after January 1, 1996, shall register in person within 3 days after the entry of the sentencing order based upon his or her conviction.

(4) Any person unable to comply with the registration requirements of this Article because he or she is confined, institutionalized, or imprisoned in Illinois on or after January 1, 1996, shall register in person within 3 days of discharge, parole or release.

(5) The person shall provide positive identification and documentation that substantiates proof of residence at the registering address.

(6) The person shall pay a $100 initial registration fee and a $100 annual renewal fee. The fees shall be used by the registering agency for official purposes. The agency shall establish procedures to document receipt and use of the funds. The law enforcement agency having jurisdiction may waive the registration fee if it determines that the person is indigent and unable to pay the registration fee. Thirty-five dollars for the initial registration fee and $35 of the annual renewal fee shall be used by the registering agency for official purposes. Five dollars of the initial registration fee and $5 of the annual fee shall be deposited into the Sex Offender Management Board Fund under Section 19 of the Sex Offender Management Board Act. Money deposited into the Sex Offender Management Board Fund shall be administered by the Sex Offender Management Board and shall be used by the Board to comply with the provisions of the Sex Offender Management Board Act. Thirty dollars of the initial registration fee and $30 of the annual renewal fee shall be deposited into the Sex Offender Registration Fund and shall be used by the Department of State Police to maintain and update the Illinois State Police Sex Offender Registry. Thirty dollars of the initial registration fee and $30 of the annual renewal fee shall be deposited into the Attorney General Sex Offender Awareness, Training, and Education Fund. Moneys deposited into the Fund shall be used by the Attorney General to administer the I-SORT program and to alert and educate the public, victims, and witnesses of their rights under various victim notification laws and for training law enforcement agencies, State's Attorneys, and medical providers of their legal duties concerning the prosecution and investigation of sex offenses.

(d) Within 3 days after obtaining or changing employment and, if employed on January 1, 2000, within 5 days after that date, a person required to register under this Section must report, in person to the law enforcement agency having jurisdiction, the business name and address where he or she is employed. If the person has multiple businesses or work locations, every business and work location must be reported to the law enforcement agency having jurisdiction.

(Source: P.A. 97-155, eff 1-1-12; 97-333, eff. 8-12-11; 97-578, eff. 1-1-12; 97-1098, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13; 98-558, eff. 1-1-14.)

(730 ILCS 150/3-5)
(Text of Section before amendment by P.A. 97-1098)
Sec. 3-5. Application of Act to adjudicated juvenile delinquents.

(a) In all cases involving an adjudicated juvenile delinquent who meets the definition of sex offender as set forth in paragraph (5) of subsection (A) of Section 2 of this Act, the court shall order the minor to register as a sex offender.

(b) Once an adjudicated juvenile delinquent is ordered to register as a sex offender, the adjudicated juvenile delinquent shall be subject to the registration requirements set forth in Sections 3, 6, 6-5, 8, 8-5, and 10 for the term of his or her registration.

(c) For a minor adjudicated delinquent for an offense which, if charged as an adult, would be a felony, no less than 5 years after registration ordered pursuant to subsection (a) of this Section, the minor may petition for the termination of the term of registration. For a minor adjudicated delinquent for an offense which, if charged as an adult, would be a misdemeanor, no less than 2 years after registration ordered pursuant to subsection (a) of this Section, the minor may petition for termination of the term of registration.

(d) The court may upon a hearing on the petition for termination of registration, terminate registration if the court finds that the registrant poses no risk to the community by a preponderance of the evidence based upon the factors set forth in subsection (e).

Notwithstanding any other provisions of this Act to the contrary, no registrant whose registration has been terminated under this Section shall be required to register under the provisions of this Act for the offense or offenses which were the subject of the successful petition for termination of registration. This exemption shall apply only to those offenses which were the subject of the successful petition for termination of registration, and shall not apply to any other or subsequent offenses requiring registration under this Act.

(e) To determine whether a registrant poses a risk to the community as required by subsection (d), the court shall consider the following factors:

(1) a risk assessment performed by an evaluator approved by the Sex Offender Management Board;

(2) the sex offender history of the adjudicated juvenile delinquent;

(3) evidence of the adjudicated juvenile delinquent's rehabilitation;

(4) the age of the adjudicated juvenile delinquent at the time of the offense;

(5) information related to the adjudicated juvenile delinquent's mental, physical, educational, and social history;

(6) victim impact statements; and

(7) any other factors deemed relevant by the court.

(f) At the hearing set forth in subsections (c) and (d), a registrant shall be represented by counsel and may present a risk assessment conducted by an evaluator who is a licensed psychiatrist, psychologist, or other mental health professional, and who has demonstrated clinical experience in juvenile sex offender treatment.

(g) After a registrant completes the term of his or her registration, his or her name, address, and all other identifying information shall be removed from all State and local registries.

(h) This Section applies retroactively to cases in which adjudicated juvenile delinquents who registered or were required to register before the effective date of this amendatory Act of the 95th General Assembly. On or after the effective date of this amendatory Act of the 95th General Assembly, a person adjudicated delinquent before the effective date of this amendatory Act of the 95th General Assembly may request a hearing regarding status of registration by filing a Petition Requesting Registration Status with the clerk of the court. Upon receipt of the Petition Requesting Registration Status, the clerk of the court shall provide notice to the parties and set the Petition for hearing pursuant to subsections (c) through (e) of this Section.

(i) This Section does not apply to minors prosecuted under the criminal laws as adults.
(Source: P.A. 97-578, eff. 1-1-12.)

(Text of Section after amendment by P.A. 97-1098)
Sec. 3-5. Application of Act to adjudicated juvenile delinquents.

(a) In all cases involving an adjudicated juvenile delinquent who meets the definition of sex offender as set forth in paragraph (5) of subsection (A) of Section 2 of this Act, the court shall order the minor to register as a sex offender.

(b) Once an adjudicated juvenile delinquent is ordered to register as a sex offender, the adjudicated juvenile delinquent shall be subject to the registration requirements set forth in Sections 3, 6, 6-5, 8, 8-5, and 10 for the term of his or her registration.

(c) For a minor adjudicated delinquent for an offense which, if charged as an adult, would be a felony, no less than 5 years after registration ordered pursuant to subsection (a) of this Section, the minor may petition for the termination of the term of registration. For a minor adjudicated delinquent for an offense which, if charged as an adult, would be a misdemeanor, no less than 2 years after registration ordered pursuant to subsection (a) of this Section, the minor may petition for termination of the term of registration.

(d) The court may upon a hearing on the petition for termination of registration, terminate registration if the court finds that the registrant poses no risk to the community by a preponderance of the evidence based upon the factors set forth in subsection (e).

Notwithstanding any other provisions of this Act to the contrary, no registrant whose registration has been terminated under this Section shall be required to register under the provisions of this Act for the offense or offenses which were the subject of the successful petition for termination of registration. This exemption shall apply only to those offenses which were the subject of the successful petition for termination of registration, and shall not apply to any other or subsequent offenses requiring registration under this Act.

(e) To determine whether a registrant poses a risk to the community as required by subsection (d), the court shall consider the following factors:

(1) a risk assessment performed by an evaluator licensed under the Sex Offender Evaluation and Treatment Provider Act;

(2) the sex offender history of the adjudicated juvenile delinquent;

(3) evidence of the adjudicated juvenile delinquent's rehabilitation;

(4) the age of the adjudicated juvenile delinquent at the time of the offense;

(5) information related to the adjudicated juvenile delinquent's mental, physical, educational, and social history;

(6) victim impact statements; and

(7) any other factors deemed relevant by the court.

(f) At the hearing set forth in subsections (c) and (d), a registrant shall be represented by counsel and may present a risk assessment conducted by an evaluator who is licensed under the Sex Offender Evaluation and Treatment Provider Act.

(g) After a registrant completes the term of his or her registration, his or her name, address, and all other identifying information shall be removed from all State and local registries.

(h) This Section applies retroactively to cases in which adjudicated juvenile delinquents who registered or were required to register before the effective date of this amendatory Act of the 95th General Assembly. On or after the effective date of this amendatory Act of the 95th General Assembly, a person adjudicated delinquent before the effective date of this amendatory Act of the 95th General Assembly may request a hearing regarding status of registration by filing a Petition Requesting Registration Status with the clerk of the court. Upon receipt of the Petition Requesting Registration Status, the clerk of the court shall provide notice to the parties and set the Petition for hearing pursuant to subsections (c) through (e) of this Section.

(i) This Section does not apply to minors prosecuted under the criminal laws as adults.
(Source: P.A. 97-578, eff. 1-1-12; 97-1098, eff. 1-1-14.)

(730 ILCS 150/4) (from Ch. 38, par. 224)
Sec. 4. Discharge of sex offender, as defined in Section 2 of this Act, or sexual predator from Department of Corrections facility or other penal institution; duties of official in charge. Any sex offender, as defined in Section 2 of this Act, or sexual predator, as defined by this Article, who is discharged, paroled or released from a Department of Corrections or Department of Juvenile Justice facility, a facility where such person was placed by the Department of Corrections or Department of Juvenile Justice or another penal institution, and whose liability for registration has not terminated under Section 7 shall, prior to discharge, parole or release from the facility or institution, be informed of his or her duty to register in person within 3 days of release by the facility or institution in which he or she was confined. The facility or institution shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed outside of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within 3 days after establishing the residence, beginning employment, or beginning school.

The facility shall require the person to read and sign such form as may be required by the Department of State Police stating that the duty to register and the procedure for registration has been explained to him or her and that he or she understands the duty to register and the procedure for registration. The facility shall further advise the person in writing that the failure

to register or other violation of this Article shall result in revocation of parole, aftercare release, mandatory supervised release or conditional release. The facility shall obtain information about where the person expects to reside, work, and attend school upon his or her discharge, parole or release and shall report the information to the Department of State Police. The facility shall give one copy of the form to the person and shall send one copy to each of the law enforcement agencies having jurisdiction where the person expects to reside, work, and attend school upon his or her discharge, parole or release and retain one copy for the files. Electronic data files which includes all notification form information and photographs of sex offenders being released from an Illinois Department of Corrections or Illinois Department of Juvenile Justice facility will be shared on a regular basis as determined between the Department of State Police, the Department of Corrections, and Department of Juvenile Justice.
(Source: P.A. 98-558, eff. 1-1-14.)

(730 ILCS 150/5) (from Ch. 38, par. 225)
Sec. 5. Release of sex offender, as defined in Section 2 of this Act, or sexual predator; duties of the Court. Any sex offender, as defined in Section 2 of this Act, or sexual predator, as defined by this Article, who is released on probation or discharged upon payment of a fine because of the commission of one of the offenses defined in subsection (B) of Section 2 of this Article, shall, prior to such release be informed of his or her duty to register under this Article by the Court in which he or she was convicted. The Court shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed outside of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within 3 days after establishing the residence, beginning employment, or beginning school. The Court shall require the person to read and sign such form as may be required by the Department of State Police stating that the duty to register and the procedure for registration has been explained to him or her and that he or she understands the duty to register and the procedure for registration. The Court shall further advise the person in writing that the failure to register or other violation of this Article shall result in probation revocation. The Court shall obtain information about where the person expects to reside, work, and attend school upon his or her release, and shall report the information to the Department of State Police. The Court shall give one copy of the form to the person and retain the original in the court records. The Department of State Police shall notify the law enforcement agencies having jurisdiction where the person expects to reside, work and attend school upon his or her release.
(Source: P.A. 94-168, eff. 1-1-06; 95-640, eff. 6-1-08.)

(730 ILCS 150/5-5)
Sec. 5-5. Discharge of sex offender or sexual predator from a hospital or other treatment facility; duties of the official in charge. Any sex offender, as defined in Section 2 of this Act, or sexual predator, as defined in this Article, who is discharged or released from a hospital or other treatment facility where he or she was confined shall be informed by the hospital or treatment facility in which he or she was confined, prior to discharge or release from the

hospital or treatment facility, of his or her duty to register under this Article.

The facility shall require the person to read and sign such form as may be required by the Department of State Police stating that the duty to register and the procedure for registration has been explained to him or her and that he or she understands the duty to register and the procedure for registration. The facility shall give one copy of the form to the person, retain one copy for their records, and forward the original to the Department of State Police. The facility shall obtain information about where the person expects to reside, work, and attend school upon his or her discharge, parole, or release and shall report the information to the Department of State Police within 3 days. The facility or institution shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed outside of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within 3 days after establishing the residence, beginning school, or beginning employment. The Department of State Police shall notify the law enforcement agencies having jurisdiction where the person expects to reside, work, and attend school upon his or her release.

(Source: P.A. 94-168, eff. 1-1-06; 95-640, eff. 6-1-08.)

(730 ILCS 150/5-7)

Sec. 5-7. Notification and release or discharge of sex offender or sexual predator upon conviction for a felony offense committed after July 1, 2011. A person with a duty to register under paragraph (2.1) of subsection (c) of Section 3, who is released on probation or conditional discharge for conviction on a felony offense committed on or after July 1, 2011, shall, prior to release be notified of his or her duty to register as set forth in Section 5 of this Act. A person with a duty to register under paragraph (2.1) of subsection (c) of Section 3 who is discharged, paroled, or released from a Department of Corrections facility or other penal institution shall be notified of his or her duty to register as set forth in Section 4 of this Act. Any other person with a duty to register under paragraph (2.1) of subsection (c) of Section 3, who is unable to comply with the registration requirements because he or she is otherwise confined or institutionalized shall register in person within 3 days after release or discharge.

(Source: P.A. 97-578, eff. 1-1-12.)

(730 ILCS 150/5-10)

Sec. 5-10. Nonforwardable verification letters. The Department of State Police shall mail a quarterly nonforwardable verification letter to each registered person who has been adjudicated to be sexually dangerous or is a sexually violent person and is later released, or found to be no longer sexually dangerous or no longer a sexually violent person and discharged, beginning 90 days from the date of his or her last registration. To any other person registered under this Article, the Department of State Police shall mail an annual nonforwardable verification letter, beginning one year from the date of his or her last registration. A person required to register under this Article who is mailed a verification letter shall complete, sign,

and return the enclosed verification form to the Department of State Police postmarked within 10 days after the mailing date of the letter. A person's failure to return the verification form to the Department of State Police within 10 days after the mailing date of the letter shall be considered a violation of this Article.
(Source: P.A. 90-193, eff. 7-24-97; 91-48, eff. 7-1-99.)

(730 ILCS 150/6)
Sec. 6. Duty to report; change of address, school, or employment; duty to inform. A person who has been adjudicated to be sexually dangerous or is a sexually violent person and is later released, or found to be no longer sexually dangerous or no longer a sexually violent person and discharged, or convicted of a violation of this Act after July 1, 2005, shall report in person to the law enforcement agency with whom he or she last registered no later than 90 days after the date of his or her last registration and every 90 days thereafter and at such other times at the request of the law enforcement agency not to exceed 4 times a year. Such sexually dangerous or sexually violent person must report all new or changed e-mail addresses, all new or changed instant messaging identities, all new or changed chat room identities, and all other new or changed Internet communications identities that the sexually dangerous or sexually violent person uses or plans to use, all new or changed Uniform Resource Locators (URLs) registered or used by the sexually dangerous or sexually violent person, and all new or changed blogs and other Internet sites maintained by the sexually dangerous or sexually violent person or to which the sexually dangerous or sexually violent person has uploaded any content or posted any messages or information. Any person who lacks a fixed residence must report weekly, in person, to the appropriate law enforcement agency where the sex offender is located. Any other person who is required to register under this Article shall report in person to the appropriate law enforcement agency with whom he or she last registered within one year from the date of last registration and every year thereafter and at such other times at the request of the law enforcement agency not to exceed 4 times a year. If any person required to register under this Article lacks a fixed residence or temporary domicile, he or she must notify, in person, the agency of jurisdiction of his or her last known address within 3 days after ceasing to have a fixed residence and if the offender leaves the last jurisdiction of residence, he or she, must within 3 days after leaving register in person with the new agency of jurisdiction. If any other person required to register under this Article changes his or her residence address, place of employment, telephone number, cellular telephone number, or school, he or she shall report in person, to the law enforcement agency with whom he or she last registered, his or her new address, change in employment, telephone number, cellular telephone number, or school, all new or changed e-mail addresses, all new or changed instant messaging identities, all new or changed chat room identities, and all other new or changed Internet communications identities that the sex offender uses or plans to use, all new or changed Uniform Resource Locators (URLs) registered or used by the sex offender, and all new or changed blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information, and register, in person, with the appropriate law

enforcement agency within the time period specified in Section 3. If the sex offender is a child sex offender as defined in Section 11-9.3 or 11-9.4 of the Criminal Code of 1961 or the Criminal Code of 2012, the sex offender shall within 3 days after beginning to reside in a household with a child under 18 years of age who is not his or her own child, provided that his or her own child is not the victim of the sex offense, report that information to the registering law enforcement agency. The law enforcement agency shall, within 3 days of the reporting in person by the person required to register under this Article, notify the Department of State Police of the new place of residence, change in employment, telephone number, cellular telephone number, or school.

If any person required to register under this Article intends to establish a residence or employment outside of the State of Illinois, at least 10 days before establishing that residence or employment, he or she shall report in person to the law enforcement agency with which he or she last registered of his or her out-of-state intended residence or employment. The law enforcement agency with which such person last registered shall, within 3 days after the reporting in person of the person required to register under this Article of an address or employment change, notify the Department of State Police. The Department of State Police shall forward such information to the out-of-state law enforcement agency having jurisdiction in the form and manner prescribed by the Department of State Police.

(Source: P.A. 96-1094, eff. 1-1-11; 96-1104, eff. 1-1-11; 97-333, eff. 8-12-11; 97-1150, eff. 1-25-13.)

(730 ILCS 150/6-5)

Sec. 6-5. Out-of-State employee or student; duty to report change. Every out-of-state student or out-of-state employee must notify the agency having jurisdiction of any change of employment or change of educational status, in writing, within 3 days of the change. The law enforcement agency shall, within 3 days after receiving the notice, enter the appropriate changes into LEADS.

(Source: P.A. 94-168, eff. 1-1-06; 95-640, eff. 6-1-08.)

(730 ILCS 150/7) (from Ch. 38, par. 227)

Sec. 7. Duration of registration. A person who has been adjudicated to be sexually dangerous and is later released or found to be no longer sexually dangerous and discharged, shall register for the period of his or her natural life. A sexually violent person or sexual predator shall register for the period of his or her natural life after conviction or adjudication if not confined to a penal institution, hospital, or other institution or facility, and if confined, for the period of his or her natural life after parole, discharge, or release from any such facility. A person who becomes subject to registration under paragraph (2.1) of subsection (c) of Section 3 of this Article who has previously been subject to registration under this Article shall register for the period currently required for the offense for which the person was previously registered if not confined to a penal institution, hospital, or other institution or facility, and if confined, for the

same period after parole, discharge, or release from any such facility. Except as otherwise provided in this Section, a person who becomes subject to registration under this Article who has previously been subject to registration under this Article or under the Murderer and Violent Offender Against Youth Registration Act or similar registration requirements of other jurisdictions shall register for the period of his or her natural life if not confined to a penal institution, hospital, or other institution or facility, and if confined, for the period of his or her natural life after parole, discharge, or release from any such facility. Any other person who is required to register under this Article shall be required to register for a period of 10 years after conviction or adjudication if not confined to a penal institution, hospital or any other institution or facility, and if confined, for a period of 10 years after parole, discharge or release from any such facility. A sex offender who is allowed to leave a county, State, or federal facility for the purposes of work release, education, or overnight visitations shall be required to register within 3 days of beginning such a program. Liability for registration terminates at the expiration of 10 years from the date of conviction or adjudication if not confined to a penal institution, hospital or any other institution or facility and if confined, at the expiration of 10 years from the date of parole, discharge or release from any such facility, providing such person does not, during that period, again become liable to register under the provisions of this Article. Reconfinement due to a violation of parole or other circumstances that relates to the original conviction or adjudication shall extend the period of registration to 10 years after final parole, discharge, or release. Reconfinement due to a violation of parole, a conviction reviving registration, or other circumstances that do not relate to the original conviction or adjudication shall toll the running of the balance of the 10-year period of registration, which shall not commence running until after final parole, discharge, or release. The Director of State Police, consistent with administrative rules, shall extend for 10 years the registration period of any sex offender, as defined in Section 2 of this Act, who fails to comply with the provisions of this Article. The registration period for any sex offender who fails to comply with any provision of the Act shall extend the period of registration by 10 years beginning from the first date of registration after the violation. If the registration period is extended, the Department of State Police shall send a registered letter to the law enforcement agency where the sex offender resides within 3 days after the extension of the registration period. The sex offender shall report to that law enforcement agency and sign for that letter. One copy of that letter shall be kept on file with the law enforcement agency of the jurisdiction where the sex offender resides and one copy shall be returned to the Department of State Police.
(Source: P.A. 97-154, eff. 1-1-12; 97-578, eff. 1-1-12; 97-813, eff. 7-13-12.)

(730 ILCS 150/8) (from Ch. 38, par. 228)
Sec. 8. Registration and DNA submission requirements.
(a) Registration. Registration as required by this Article shall consist of a statement in writing signed by the person giving the information that is required by the Department of State Police, which may include the fingerprints and must include a current photograph of the person, to be updated annually. If the sex offender is a child sex offender as defined in Section 11-9.3 or 11-

9.4 of the Criminal Code of 1961 or the Criminal Code of 2012, he or she shall sign a statement that he or she understands that according to Illinois law as a child sex offender he or she may not reside within 500 feet of a school, park, or playground. The offender may also not reside within 500 feet of a facility providing services directed exclusively toward persons under 18 years of age unless the sex offender meets specified exemptions. The registration information must include whether the person is a sex offender as defined in the Sex Offender Community Notification Law. Within 3 days, the registering law enforcement agency shall forward any required information to the Department of State Police. The registering law enforcement agency shall enter the information into the Law Enforcement Agencies Data System (LEADS) as provided in Sections 6 and 7 of the Intergovernmental Missing Child Recovery Act of 1984.

(b) DNA submission. Every person registering as a sex offender _pursuant to this Act, regardless of the date of conviction or the date of initial registration who is required to submit specimens of blood, saliva, or tissue for DNA analysis as required by subsection (a) of Section 5-4-3 of the Unified Code of Corrections shall submit the specimens as required by that Section. Registered sex offenders who have previously submitted a DNA specimen which has been uploaded to the Illinois DNA database shall not be required to submit an additional specimen pursuant to this Section.

(Source: P.A. 97-383, eff. 1-1-12; 97-1150, eff. 1-25-13.)

(730 ILCS 150/8-5)

Sec. 8-5. Verification requirements.

(a) Address verification. The agency having jurisdiction shall verify the address of sex offenders, as defined in Section 2 of this Act, or sexual predators required to register with their agency at least once per year. The verification must be documented in LEADS in the form and manner required by the Department of State Police.

(a-5) Internet Protocol address verification. The agency having jurisdiction may verify the Internet protocol (IP) address of sex offenders, as defined in Section 2 of this Act, who are required to register with their agency under Section 3 of this Act. A copy of any such verification must be sent to the Attorney General for entrance in the Illinois Cyber-crimes Location Database pursuant to Section 5-4-3.2 of the Unified Code of Corrections.

(b) Registration verification. The supervising officer or aftercare specialist, shall, within 15 days of sentencing to probation or release from an Illinois Department of Corrections or Illinois Department of Juvenile Justice facility or other penal institution, contact the law enforcement agency in the jurisdiction in which the sex offender or sexual predator designated as his or her intended residence and verify compliance with the requirements of this Act. Revocation proceedings shall be immediately commenced against a sex offender or sexual predator on probation, parole, aftercare release, or mandatory supervised release who fails to comply with the requirements of this Act.

(c) In an effort to ensure that sexual predators and sex offenders who fail to respond to address-verification attempts or who otherwise abscond from registration are located in a timely manner, the Department of State Police shall share information with local law

enforcement agencies. The Department shall use analytical resources to assist local law enforcement agencies to determine the potential whereabouts of any sexual predator or sex offender who fails to respond to address-verification attempts or who otherwise absconds from registration. The Department shall review and analyze all available information concerning any such predator or offender who fails to respond to address-verification attempts or who otherwise absconds from registration and provide the information to local law enforcement agencies in order to assist the agencies in locating and apprehending the sexual predator or sex offender.
(Source: P.A. 98-558, eff. 1-1-14.)

(730 ILCS 150/9) (from Ch. 38, par. 229)
Sec. 9. Public inspection of registration data. Except as provided in the Sex Offender Community Notification Law, the statements or any other information required by this Article shall not be open to inspection by the public, or by any person other than by a law enforcement officer or other individual as may be authorized by law and shall include law enforcement agencies of this State, any other state, or of the federal government. Similar information may be requested from any law enforcement agency of another state or of the federal government for purposes of this Act. It is a Class B misdemeanor to permit the unauthorized release of any information required by this Article.
(Source: P.A. 94-945, eff. 6-27-06.)

(730 ILCS 150/10) (from Ch. 38, par. 230)
Sec. 10. Penalty.
(a) Any person who is required to register under this Article who violates any of the provisions of this Article and any person who is required to register under this Article who seeks to change his or her name under Article 21 of the Code of Civil Procedure is guilty of a Class 3 felony. Any person who is convicted for a violation of this Act for a second or subsequent time is guilty of a Class 2 felony. Any person who is required to register under this Article who knowingly or willfully gives material information required by this Article that is false is guilty of a Class 3 felony. Any person convicted of a violation of any provision of this Article shall, in addition to any other penalty required by law, be required to serve a minimum period of 7 days confinement in the local county jail. The court shall impose a mandatory minimum fine of $500 for failure to comply with any provision of this Article. These fines shall be deposited in the Sex Offender Registration Fund. Any sex offender, as defined in Section 2 of this Act, or sexual predator who violates any provision of this Article may be arrested and tried in any Illinois county where the sex offender can be located. The local police department or sheriff's office is not required to determine whether the person is living within its jurisdiction.
(b) Any person, not covered by privilege under Part 8 of Article VIII of the Code of Civil Procedure or the Illinois Supreme Court's Rules of Professional Conduct, who has reason to believe that a sexual predator is not complying, or has not complied, with the requirements of

this Article and who, with the intent to assist the sexual predator in eluding a law enforcement agency that is seeking to find the sexual predator to question the sexual predator about, or to arrest the sexual predator for, his or her noncompliance with the requirements of this Article is guilty of a Class 3 felony if he or she:

(1) provides false information to the law enforcement agency having jurisdiction about the sexual predator's noncompliance with the requirements of this Article, and, if known, the whereabouts of the sexual predator;

(2) harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual predator; or

(3) conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual predator.

(c) Subsection (b) does not apply if the sexual predator is incarcerated in or is in the custody of a State correctional facility, a private correctional facility, a county or municipal jail, a State mental health facility or a State treatment and detention facility, or a federal correctional facility.

(d) Subsections (a) and (b) do not apply if the sex offender accurately registered his or her Internet protocol address under this Act, and the address subsequently changed without his or her knowledge or intent.

(Source: P.A. 94-168, eff. 1-1-06; 94-988, eff. 1-1-07; 95-579, eff. 6-1-08.)

(730 ILCS 150/10.9)

Sec. 10.9. Severability. If a provision or application of this Article is held to be invalid with respect to any person or class of persons, that invalidity does not affect other persons or classes of persons whose registration obligations can be given effect without the invalid provision or application. To this end an invalid provision or application of this Article is declared to be severable.

(Source: P.A. 89-8, eff. 1-1-96.)

(730 ILCS 150/11)

Sec. 11. Sex offender registration fund. There is created the Sex Offender Registration Fund. Moneys in the Fund shall be used to cover costs incurred by the criminal justice system to administer this Article. The Department of State Police shall establish and promulgate rules and procedures regarding the administration of this Fund. Fifty percent of the moneys in the Fund shall be allocated by the Department for sheriffs' offices and police departments. The remaining moneys in the Fund shall be allocated to the Illinois State Police Sex Offender Registration Unit for education and administration of the Act.

(Source: P.A. 93-979, eff. 8-20-04.)

(730 ILCS 150/12)
Sec. 12. Access to State of Illinois databases. The Department of State Police shall have access to State of Illinois databases containing information that may help in the identification or location of persons required to register under this Article, including, but not limited to, information obtained in the course of administering the Unemployment Insurance Act. Interagency agreements shall be implemented, consistent with security and procedures established by the State agency and consistent with the laws governing the confidentiality of the information in the databases. Information shall be used only for administration of this Article.
(Source: P.A. 94-911, eff. 6-23-06.)

APPENDIX N

ARSONIST REGISTRATION ACT

(Underscores added fro emphasis.)
(730 ILCS 148/)

Section 148/5. Definitions. In this Act:

(a) "Arsonist" means any person who is:

(1) charged under Illinois law, or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, with an arson offense, set forth in subsection (b) of this Section or the attempt to commit an included arson offense, and:

(i) is convicted of such offense or an attempt to commit such offense; or
(ii) is found not guilty by reason of insanity of such offense or an attempt to commit such offense; or
(iii) is found not guilty by reason of insanity under subsection (c) of Section 104-25 of the Code of Criminal Procedure of 1963 of such offense or an attempt to commit such offense; or
(iv) is the subject of a finding not resulting in an acquittal at a hearing conducted under subsection (a) of Section 104-25 of the Code of Criminal Procedure of 1963 for the alleged commission or attempted commission of such offense; or
(v) is found not guilty by reason of insanity following a hearing conducted under a federal, Uniform Code of Military Justice, sister state, or foreign country law substantially similar to subsection (c) of Section 104-25 of the Code of Criminal Procedure of 1963 of such offense or of the attempted commission of such offense; or
(vi) is the subject of a finding not resulting in an acquittal at a hearing conducted under a federal, Uniform Code of Military Justice, sister state, or foreign country law substantially similar to subsection (a) of Section 104-25 of the Code of Criminal Procedure of 1963 for the alleged violation or attempted commission of such offense;

(2) is a minor who has been tried and convicted in an adult criminal prosecution as the result of committing or attempting to commit an offense specified in subsection (b) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law. Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this Act as one conviction. Any conviction set aside under law is not a conviction for purposes of this Act.

(b) "Arson offense" means:

(1) A violation of any of the following Sections of the Criminal Code of 1961:

(i) 20-1 (arson),
(ii) 20-1.1 (aggravated arson),
(iii) 20-1.2 (residential arson),
(iv) 20-1.3 (place of worship arson),
(v) 20-2 (possession of explosives or explosive or incendiary devices), or
(vi) An attempt to commit any of the offenses listed in clauses (i) through (v).

(2) A violation of any former law of this State substantially equivalent to any offense listed in subsection (b) of this Section.
(c) A conviction for an offense of federal law, Uniform Code of Military Justice, or the law of another state or a foreign country that is substantially equivalent to any offense listed in subsection (b) of this Section shall constitute a conviction for the purpose of this Act.

(d) "Law enforcement agency having jurisdiction" means the Chief of Police in each of the municipalities in which the arsonist expects to reside, work, or attend school (1) upon his or her discharge, parole or release or (2) during the service of his or her sentence of probation or conditional discharge, or the Sheriff of the county, in the event no Police Chief exists or if the offender intends to reside, work, or attend school in an unincorporated area. "Law enforcement agency having jurisdiction" includes the location where out-of-state students attend school and where out-of-state employees are employed or are otherwise required to register.

(e) "Out-of-state student" means any arsonist, as defined in this Section, who is enrolled in Illinois, on a full-time or part-time basis, in any public or private educational institution, including, but not limited to, any secondary school, trade or professional institution, or institution of higher learning.

(f) "Out-of-state employee" means any arsonist, as defined in this Section, who works in Illinois, regardless of whether the individual receives payment for services performed, for a period of time of 10 or more days or for an aggregate period of time of 30 or more days during any calendar year. Persons who operate motor vehicles in the State accrue one day of employment time for any portion of a day spent in Illinois.

(g) "I-CLEAR" means the Illinois Citizens and Law Enforcement Analysis and Reporting System.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/10. Duty to register.
(a) An arsonist shall, within the time period prescribed in subsections (b) and (c), register in person and provide accurate information as required by the Department of State Police. Such information shall include current address, current place of employment, and school attended. The arsonist shall register:

(1) with the chief of police in each of the municipalities in which he or she attends school, is employed, resides or is temporarily domiciled for a period of time of 10 or more days, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or
(2) with the sheriff in each of the counties in which he or she attends school, is employed, resides or is temporarily domiciled in an unincorporated area or, if incorporated, no police chief exists. For purposes of this Act, the place of residence or temporary domicile is defined as any and all places where the arsonist resides for an aggregate period of time of 10 or more days during any calendar year. The arsonist shall provide accurate information as required by the Department of State Police. That information shall include the arsonist's current place of employment.

(a-5) An out-of-state student or out-of-state employee shall, within 10 days after beginning school or employment in this State, register in person and provide accurate information as required by the Department of State Police. Such information must include current place of employment, school attended, and address in state of residence:

(1) with the chief of police in each of the municipalities in which he or she attends school or is employed for a period of time of 10 or more days or for an aggregate period of time of more than 30 days during any calendar year, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or

(2) with the sheriff in each of the counties in which he or she attends school or is employed for a period of time of 10 or more days or for an aggregate period of time of more than 30 days during any calendar year in an unincorporated area or, if incorporated, no police chief exists. The out-of-state student or out-of-state employee shall provide accurate information as required by the Department of State Police. That information shall include the out-of-state student's current place of school attendance or the out-of-state employee's current place of employment.

(b) An arsonist as defined in Section 5 of this Act, regardless of any initial, prior, or other registration, shall, within 10 days of beginning school, or establishing a residence, place of employment, or temporary domicile in any county, register in person as set forth in subsection (a) or (a-5).

(c) The registration for any person required to register under this Act shall be as follows:

(1) Except as provided in paragraph (3) of this subsection (c), any person who has not been notified of his or her responsibility to register shall be notified by a criminal justice entity of his or her responsibility to register. Upon notification the person must then register within 10 days of notification of his or her requirement to register. If notification is not made within the offender's 10 year registration requirement, and the Department of State Police determines no evidence exists or indicates the offender attempted to avoid registration, the

offender will no longer be required to register under this Act.
(2) Except as provided in paragraph (3) of this subsection (c), any person convicted on or after the effective date of this Act shall register in person within 10 days after the entry of the sentencing order based upon his or her conviction.
(3) Any person unable to comply with the registration requirements of this Act because he or she is confined, institutionalized, or imprisoned in Illinois on or after the effective date of this Act shall register in person within 10 days of discharge, parole or release.
(4) The person shall provide positive identification and documentation that substantiates proof of residence at the registering address.
(5) The person shall pay a $10 initial registration fee and a $5 annual renewal fee. The fees shall be used by the registering agency for official purposes. The agency shall establish procedures to document receipt and use of the funds. The law enforcement agency having jurisdiction may waive the registration fee if it determines that the person is indigent and unable to pay the registration fee.

(d) Within 10 days after obtaining or changing employment, a person required to register under this Section must report, in person or in writing to the law enforcement agency having jurisdiction, the business name and address where he or she is employed. If the person has multiple businesses or work locations, every business and work location must be reported to the law enforcement agency having jurisdiction.

Section 148/15. Discharge of arsonist from penal institution.
Any arsonist who is discharged, paroled or released from a Department of Corrections facility, a facility where such person was placed by the Department of Corrections or another penal institution, and whose liability for registration has not terminated under Section 45 shall, within 10 days prior to discharge, parole, or release from the facility or institution, be informed of his or her duty to register in person under this Act by the facility or institution in which he or she was confined. The facility or institution shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed outside of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within 10 days after establishing the residence, beginning employment, or beginning school. The facility shall require the person to read and sign such form as may be required by the Department of State Police stating that the duty to register and the procedure for registration has been explained to him or her and that he or she understands the duty to register and the procedure for registration. The facility shall further advise the person in writing that the failure to register or other violation of this Act shall result in revocation of parole, mandatory supervised release or conditional release. The facility shall obtain information about where the person expects to reside, work, and attend school upon his or her discharge, parole or release and shall report the information to the Department of State Police. The facility shall give one copy of the form to the person and shall send one copy to each of the law enforcement agencies having jurisdiction where the person expects to reside, work, and attend school upon his or her discharge, parole or release and retain one copy for the files. Electronic data files that include all notification form information and photographs of arsonists being released from an

Illinois Department of Corrections facility shall be shared on a regular basis as determined between the Department of State Police and the Department of Corrections.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/20. Release of arsonist on probation.
An arsonist who is released on probation shall, prior to such release, be informed of his or her duty to register under this Act by the court in which he or she was convicted. The court shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed outside of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within 10 days after establishing the residence, beginning employment, or beginning school. The court shall require the person to read and sign such form as may be required by the Department of State Police stating that the duty to register and the procedure for registration has been explained to him or her and that he or she understands the duty to register and the procedure for registration. The court shall further advise the person in writing that the failure to register or other violation of this Act shall result in probation revocation. The court shall obtain information about where the person expects to reside, work, and attend school upon his or her release, and shall report the information to the Department of State Police. The court shall give one copy of the form to the person and retain the original in the court records. The Department of State Police shall notify the law enforcement agencies having jurisdiction where the person expects to reside, work and attend school upon his or her release.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/25. Discharge of arsonist from hospital or other treatment facility.
Any arsonist who is discharged or released from a hospital or other treatment facility where he or she was confined shall be informed by the hospital or treatment facility in which he or she was confined, prior to discharge or release from the hospital or treatment facility, of his or her duty to register under this Act. The facility shall require the person to read and sign such form as may be required by the Department of State Police stating that the duty to register and the procedure for registration has been explained to him or her and that he or she understands the duty to register and the procedure for registration. The facility shall give one copy of the form to the person, retain one copy for its records, and forward the original to the Department of State Police. The facility shall obtain information about where the person expects to reside, work, and attend school upon his or her discharge, parole, or release and shall report the information to the Department of State Police within 3 days. The facility or institution shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed outside of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within 10 days after establishing the residence, beginning school, or beginning employment. The Department of State Police shall notify the law enforcement agencies having jurisdiction where the person expects to reside, work, and attend school upon his or her release.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/30. Nonforwardable verification letter.
The Department of State Police shall mail an annual nonforwardable verification letter to a person registered under this Act beginning one year from the date of his or her last registration. A person required to register under this Act who is mailed a verification letter shall complete, sign, and return the enclosed verification form to the Department of State Police postmarked within 10 days after the mailing date of the letter. A person's failure to return the verification form to the Department of State Police within 10 days after the mailing date of the letter shall be considered a violation of this Act; however it is an affirmative defense to a prosecution for failure of a person who is required to return a verification form to the Department of State Police if the post office fails to deliver the verification form to the Department of State Police or if it can be proven that the form has been lost by the Department.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/35. Duty to report change of address, school, or employment.
Any person who is required to register under this Act shall report in person to the appropriate law enforcement agency with whom he or she last registered within one year from the date of last registration and every year thereafter. If any person required to register under this Act changes his or her residence address, place of employment, or school, he or she shall, in writing, within 10 days inform the law enforcement agency with whom he or she last registered of his or her new address, change in employment, or school and register with the appropriate law enforcement agency within the time period specified in Section 10. The law enforcement agency shall, within 3 days of receipt, notify the Department of State Police and the law enforcement agency having jurisdiction of the new place of residence, change in employment, or school. If any person required to register under this Act establishes a residence or employment outside of the State of Illinois, within 10 days after establishing that residence or employment, he or she shall, in writing, inform the law enforcement agency with which he or she last registered of his or her out-of-state residence or employment. The law enforcement agency with which such person last registered shall, within 3 days notice of an address or employment change, notify the Department of State Police. The Department of State Police shall forward such information to the out-of-state law enforcement agency having jurisdiction in the form and manner prescribed by the Department of State Police.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/40. Out-of-State employee or student.
Every out-of-state student or out-of-state employee must notify the agency having jurisdiction of any change of employment or change of educational status, in writing, within 10 days of the change. The law enforcement agency shall, within 3 days after receiving the notice, enter the appropriate changes into I-CLEAR.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/45. Duration of registration.
Any person, other than a minor who is tried and convicted in an adult criminal prosecution for an offense for which the person is required to register under this Act, who is required to register under this Act shall be required to register for a period of 10 years after conviction if not confined to a penal institution, hospital or any other institution or facility, and if confined, for a period of 10 years after parole, discharge or release from any such facility. A minor who has been tried and convicted in an adult criminal prosecution for an offense for which the person is required to register under this Act shall be required to register for a period of 10 years after his or her conviction for an offense for which the person is required to register under this Act. An arsonist who is allowed to leave a county, State, or federal facility for the purposes of work release, education, or overnight visitations shall be required to register within 10 days of beginning such a program. Liability for registration terminates at the expiration of 10 years from the date of conviction if not confined to a penal institution, hospital or any other institution or facility and if confined, at the expiration of 10 years from the date of parole, discharge or release from any such facility, providing such person does not, during that period, again become liable to register under the provisions of this Act. In the case of a minor who is tried and convicted in an adult criminal prosecution, liability for registration terminates 10 years after conviction. The Director of State Police, consistent with administrative rules, shall extend for 10 years the registration period of any arsonist who fails to comply with the provisions of this Act.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/50. Registration requirements.
Registration as required by this Act shall consist of a statement in writing signed by the person giving the information that is required by the Department of State Police, which may include the fingerprints and must include a photograph of the person. The registration information must include whether the person is an arsonist. Within 3 days, the registering law enforcement agency shall forward any required information to the Department of State Police. The registering law enforcement agency shall enter the information into I-CLEAR as provided in Section 2605-378 of the Department of State Police Law of the Civil Administrative Code of Illinois.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/55. Address verification requirements.
The agency having jurisdiction shall verify the address of arsonists required to register with their agency at least once per calendar year. The verification must be documented in I-CLEAR in the form and manner required by the Department of State Police.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/60. Public inspection of registration data.
(a) Except as otherwise provided in subsection (b), the statements or any other information required by this Act shall not be open to inspection by the public, or by any person other than

by a law enforcement officer or other individual as may be authorized by law and shall include law enforcement agencies of this State, any other state, or of the federal government. Similar information may be requested from any law enforcement agency of another state or of the federal government for purposes of this Act. It is a Class B misdemeanor to permit the unauthorized release of any information required by this Act.

(b) The Department of State Police shall furnish to the Office of the State Fire Marshal the registration information concerning persons who are required to register under this Act. The Office of the State Fire Marshal shall establish and maintain a Statewide Arsonist Database for the purpose of making that information available to the public on the Internet by means of a hyperlink labeled "Arsonist Information" on the Office of the State Fire Marshal's website.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/65. Penalty.
Any person who is required to register under this Act who violates any of the provisions of this Act and any person who is required to register under this Act who seeks to change his or her name under Article 21 of the Code of Civil Procedure is guilty of a Class 4 felony. Any person who is required to register under this Act who knowingly or wilfully gives material information required by this Act that is false is guilty of a Class 3 felony. Any person convicted of a violation of any provision of this Act shall, in addition to any other penalty required by law, be required to serve a minimum period of 7 days confinement in the local county jail. The court shall impose a mandatory minimum fine of $500 for failure to comply with any provision of this Act. These fines shall be deposited in the Arsonist Registration Fund. An arsonist who violates any provision of this Act may be tried in any Illinois county where the arsonist can be located.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/70. Arsonist Registration Fund.
There is created in the State treasury the Arsonist Registration Fund. Moneys in the Fund shall be used to cover costs incurred by the criminal justice system to administer this Act. The Department of State Police shall establish and promulgate rules and procedures regarding the administration of this Fund. At least 50% of the moneys in the Fund shall be allocated by the Department for sheriffs' offices and police departments.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/75. Access to State of Illinois databases.
The Department of State Police shall have access to State of Illinois databases containing information that may help in the identification or location of persons required to register under this Act. Interagency agreements shall be implemented, consistent with security and procedures established by the State agency and consistent with the laws governing the confidentiality of the information in the databases. Information shall be used only for administration of this Act.
(Source: P.A. 93-949, eff. 1-1-05.)

Section 148/80. Applicability.
Until the Department of State Police establishes I-CLEAR throughout this State, this Act applies only to arsonists who reside, are employed, or attend school within the City of Chicago. Once I-CLEAR is established throughout this State, this Act applies throughout the State to arsonists who reside, are employed, or attend school anywhere in this State. Any duties imposed upon the Department of State Police by this Act are subject to appropriation and shall not commence until I-CLEAR is implemented throughout this State and until such time, those duties shall be imposed upon the City of Chicago.
(Source: P.A. 93-949, eff. 1-1-05.)

APPENDIX O

AN ACT concerning criminal law.

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

Section 1. This Act may be referred to as **Andrea's Law**.

Section 5. The State Finance Act is amended by changing Section 5.669 as follows:

(30 ILCS 105/5.669)

Sec. 5.669. **The Child Murderer and Violent Offender Against Youth Registration Fund**.
(Source: P.A. 94-945, eff. 6-27-06; 95-331, eff. 8-21-07.)

Section 10. The School Code is amended by changing Sections
10-21.9, 27A-5, and 34-18.5 as follows:

(105 ILCS 5/10-21.9)

Sec. 10-21.9. Criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Child Murderer and Violent Offender Against Youth Database.

(a) Certified and noncertified applicants for employment with a school district, except school bus driver applicants, are required as a condition of employment to authorize a fingerprint-based criminal history records check to determine if such applicants have been convicted of any of the enumerated criminal or drug offenses in subsection (c) of this Section or have been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State. Authorization for the check shall be furnished by the applicant to the school district, except that if the applicant is a substitute teacher seeking employment in more than one school district, a teacher seeking concurrent part-time employment positions with more than one school district (as a reading specialist, special education teacher or otherwise), or an educational support personnel employee seeking employment positions with more than one district, any such district may require the applicant to furnish authorization for the check to the regional superintendent of the educational service region in which are located the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee. Upon receipt of this authorization, the school district or the appropriate regional superintendent, as the case may be, shall submit the applicant's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers, as prescribed by the Department of State Police, to the Department. The regional superintendent submitting the requisite information to the Department of State Police shall promptly notify the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee that the check of the applicant has been requested. The Department of State Police and the Federal Bureau of Investigation shall furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until

expunged, to the president of the school board for the school district that requested the check, or to the regional superintendent who requested the check. The Department shall charge the school district or the appropriate regional superintendent a fee for conducting such check, which fee shall be deposited in the State Police Services Fund and shall not exceed the cost of the inquiry; and the applicant shall not be charged a fee for such check by the school district or by the regional superintendent, except that those applicants seeking employment as a substitute teacher with a school district may be charged a fee not to exceed the cost of the inquiry. Subject to appropriations for these purposes, the State Superintendent of Education shall reimburse school districts and regional superintendents for fees paid to obtain criminal history records checks under this Section.

(a-5) The school district or regional superintendent shall further perform a check of the Statewide Sex Offender Database, as authorized by the Sex Offender Community Notification Law, for each applicant.

(a-6) The school district or regional superintendent shall further perform a check of the Statewide Child Murderer and Violent Offender Against Youth Database, as authorized by the Child Murderer and Violent Offender Against Youth Community Notification Law, for each applicant.

(b) Any information concerning the record of convictions obtained by the president of the school board or the regional superintendent shall be confidential and may only be transmitted to the superintendent of the school district or his designee, the appropriate regional superintendent if the check was requested by the school district, the presidents of the appropriate school boards if the check was requested from the Department of State Police by the regional superintendent, the State Superintendent of Education, the State Teacher Certification Board, any other person necessary to the decision of hiring the applicant for employment, or for clarification purposes the Department of State Police or Statewide Sex Offender Database, or both. A copy of the record of convictions obtained from the Department of State Police shall be provided to the applicant for employment. Upon the check of the Statewide Sex Offender Database, the school district or regional superintendent shall notify an applicant as to whether or not the applicant has been identified in the Database as a sex offender. If a check of an applicant for employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee in more than one school district was requested by the regional superintendent, and the Department of State Police upon a check ascertains that the applicant has not been convicted of any of the enumerated criminal or drug offenses in subsection (c) or has not been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State and so notifies the regional superintendent and if the regional superintendent upon a check ascertains that the applicant has not been identified in the Sex Offender Database as a sex offender, then the regional superintendent shall issue to the applicant a certificate evidencing that as of the date specified by the Department of State Police the applicant has not been convicted of any of the enumerated criminal or drug offenses in subsection (c) or has not been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State and evidencing that as of the date that the regional superintendent conducted a check of the Statewide Sex Offender Database, the applicant has not been identified in the Database as a sex offender. The school board of any school district may rely on the certificate issued by

any regional superintendent to that substitute teacher, concurrent part-time teacher, or concurrent educational support personnel employee or may initiate its own criminal history records check of the applicant through the Department of State Police and its own check of the Statewide Sex Offender Database as provided in subsection (a). Any person who releases any confidential information concerning any criminal convictions of an applicant for employment shall be guilty of a Class A misdemeanor, unless the release of such information is authorized by this Section.

(c) No school board shall knowingly employ a person who has been convicted of any offense that would subject him or her to certification suspension or revocation pursuant to Section 21-23a of this Code. Further, no school board shall knowingly employ a person who has been found to be the perpetrator of sexual or physical abuse of any minor under 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987.

(d) No school board shall knowingly employ a person for whom a criminal history records check and a Statewide Sex Offender Database check has not been initiated.

(e) Upon receipt of the record of a conviction of or a finding of child abuse by a holder of any certificate issued pursuant to Article 21 or Section 34-8.1 or 34-83 of the School Code, the State Superintendent of Education may initiate certificate suspension and revocation proceedings as authorized by law.

(e-5) The superintendent of the employing school board shall, in writing, notify the State Superintendent of Education and the applicable regional superintendent of schools of any certificate holder whom he or she has reasonable cause to believe has committed an intentional act of abuse or neglect with the result of making a child an abused child or a neglected child, as defined in Section 3 of the Abused and Neglected Child Reporting Act, and that act resulted in the certificate holder's dismissal or resignation from the school district. This notification must be submitted within 30 days after the dismissal or resignation. The certificate holder must also be contemporaneously sent a copy of the notice by the superintendent. All correspondence, documentation, and other information so received by the regional superintendent of schools, the State Superintendent of Education, the State Board of Education, or the State Teacher Certification Board under this subsection (e-5) is confidential and must not be disclosed to third parties, except (i) as necessary for the State Superintendent of Education or his or her designee to investigate and prosecute pursuant to Article 21 of this Code,
(ii) pursuant to a court order, (iii) for disclosure to the certificate holder or his or her representative, or (iv) as otherwise provided in this Article and provided that any such information admitted into evidence in a hearing is exempt from this confidentiality and non-disclosure requirement. Except for an act of willful or wanton misconduct, any superintendent who provides notification as required in this subsection (e-5) shall have immunity from any liability, whether civil or criminal or that otherwise might result by reason of such action.

(f) After January 1, 1990 the provisions of this Section shall apply to all employees of persons or firms holding contracts with any school district including, but not limited to, food service workers, school bus drivers and other transportation employees, who have direct, daily contact with the pupils of any school in such district. For purposes of criminal history records checks and checks of the Statewide Sex Offender Database on employees of persons or firms holding contracts with more than one school district and assigned to more than one school district, the regional superintendent of the educational service region in which the contracting school districts are located may, at the request of any such

school district, be responsible for receiving the authorization for a criminal history records check prepared by each such employee and submitting the same to the Department of State Police and for conducting a check of the Statewide Sex Offender Database for each employee. Any information concerning the record of conviction and identification as a sex offender of any such employee obtained by the regional superintendent shall be promptly reported to the president of the appropriate school board or school boards.

(g) In order to student teach in the public schools, a person is required to authorize a fingerprint-based criminal history records check and checks of the Statewide Sex Offender Database and Statewide Child Murderer and Violent Offender Against Youth Database prior to participating in any field experiences in the public schools. Authorization for and payment of the costs of the checks must be furnished by the student teacher. Results of the checks must be furnished to the higher education institution where the student teacher is enrolled and the superintendent of the school district where the student is assigned. (Source: P.A. 95-331, eff. 8-21-07; 96-431, eff. 8-13-09; 96-1452, eff. 8-20-10; 96-1489, eff. 1-1-11; revised 1-4-11.)

(105 ILCS 5/27A-5)

Sec. 27A-5. Charter school; legal entity; requirements.

(a) A charter school shall be a public, nonsectarian, nonreligious, non-home based, and non-profit school. A charter school shall be organized and operated as a nonprofit corporation or other discrete, legal, nonprofit entity authorized under the laws of the State of Illinois.

(b) A charter school may be established under this Article by creating a new school or by converting an existing public school or attendance center to charter school status. Beginning on the effective date of this amendatory Act of the 93rd General Assembly, in all new applications submitted to the State Board or a local school board to establish a charter school in a city having a population exceeding 500,000, operation of the charter school shall be limited to one campus. The changes made to this Section by this amendatory Act of the 93rd General Assembly do not apply to charter schools existing or approved on or before the effective date of this amendatory
Act.

(c) A charter school shall be administered and governed by its board of directors or other governing body in the manner provided in its charter. The governing body of a charter school shall be subject to the Freedom of Information Act and the Open Meetings Act.

(d) A charter school shall comply with all applicable health and safety requirements applicable to public schools under the laws of the State of Illinois.

(e) Except as otherwise provided in the School Code, a charter school shall not charge tuition; provided that a charter school may charge reasonable fees for textbooks, instructional materials, and student activities.

(f) A charter school shall be responsible for the management and operation of its fiscal affairs including, but not limited to, the preparation of its budget. An audit of each charter school's finances shall be

conducted annually by an outside, independent contractor retained by the charter school. Annually, by December 1, every charter school must submit to the State Board a copy of its audit and a copy of the Form 990 the charter school filed that year with the federal Internal Revenue Service.
(g) A charter school shall comply with all provisions of this Article, the Illinois Educational Labor Relations Act, and its charter. A charter school is exempt from all other State laws and regulations in the School Code governing public schools and local school board policies, except the following:
(1) Sections 10-21.9 and 34-18.5 of the School Code regarding criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Child Murderer and Violent Offender Against Youth Database of applicants for employment; (2) Sections 24-24 and 34-84A of the School Code regarding discipline of students; (3) The Local Governmental and Governmental Employees Tort Immunity Act; (4) Section 108.75 of the General Not For Profit Corporation Act of 1986 regarding indemnification of officers, directors, employees, and agents; (5) The Abused and Neglected Child Reporting Act; (6) The Illinois School Student Records Act; (7) Section 10-17a of the School Code regarding school report cards; and (8) The P-20 Longitudinal Education Data System Act.
The change made by Public Act 96-104 to this subsection (g) is declaratory of existing law.

(h) A charter school may negotiate and contract with a school district, the governing body of a State college or university or public community college, or any other public or for-profit or nonprofit private entity for: (i) the use of a school building and grounds or any other real property or facilities that the charter school desires to use or convert for use as a charter school site, (ii) the operation and maintenance thereof, and (iii) the provision of any service, activity, or undertaking that the charter school is required to perform in order to carry out the terms of its charter. However, a charter school that is established on or after the effective date of this amendatory Act of the 93rd General Assembly and that operates in a city having a population exceeding 500,000 may not contract with a for-profit entity to manage or operate the school during the period that commences on the effective date of this amendatory Act of the 93rd General Assembly and concludes at the end of the 2004-2005 school year. Except as provided in subsection (i) of this Section, a school district may charge a charter school reasonable rent for the use of the district's buildings, grounds, and facilities. Any services for which a charter school contracts with a school district shall be provided by the district at cost. Any services for which a charter school contracts with a local school board or with the governing body of a State college or university or public community college shall be provided by the public entity at cost.

(i) In no event shall a charter school that is established by converting an existing school or attendance center to charter school status be required to pay rent for space that is deemed available, as negotiated and provided in the charter agreement, in school district facilities. However, all other costs for the operation and maintenance of school district facilities that are used by the charter school shall be subject to negotiation between the charter school and the local school board and shall be set forth in the charter.

(j) A charter school may limit student enrollment by age or grade level.
(Source: P.A. 96-104, eff. 1-1-10; 96-105, eff. 7-30-09; 96-107, eff. 7-30-09; 96-734, eff. 8-25-09; 961000, eff. 7-2-10.)
(105 ILCS 5/34-18.5) (from Ch. 122, par. 34-18.5)

Sec. 34-18.5. Criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Child Murderer and Violent Offender Against Youth Database.

(a) Certified and noncertified applicants for employment with the school district are required as a condition of employment to authorize a fingerprint-based criminal history records check to determine if such applicants have been convicted of any of the enumerated criminal or drug offenses in subsection (c) of this Section or have been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State. Authorization for the check shall be furnished by the applicant to the school district, except that if the applicant is a substitute teacher seeking employment in more than one school district, or a teacher seeking concurrent part-time employment positions with more than one school district (as a reading specialist, special education teacher or otherwise), or an educational support personnel employee seeking employment positions with more than one district, any such district may require the applicant to furnish authorization for the check to the regional superintendent of the educational service region in which are located the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee. Upon receipt of this authorization, the school district or the appropriate regional superintendent, as the case may be, shall submit the applicant's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers, as prescribed by the Department of State Police, to the Department. The regional superintendent submitting the requisite information to the Department of State Police shall promptly notify the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee that the check of the applicant has been requested. The Department of State Police and the Federal Bureau of
Investigation shall furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until expunged, to the president of the school board for the school district that requested the check, or to the regional superintendent who requested the check. The Department shall charge the school district or the appropriate regional superintendent a fee for conducting such check, which fee shall be deposited in the State Police Services Fund and shall not exceed the cost of the inquiry; and the applicant shall not be charged a fee for such check by the school district or by the regional superintendent. Subject to appropriations for these purposes, the State Superintendent of Education shall reimburse the school district and regional superintendent for fees paid to obtain criminal history records checks under this Section.

(a-5) The school district or regional superintendent shall further perform a check of the Statewide Sex Offender Database, as authorized by the Sex Offender Community Notification Law, for each applicant.

(a-6) The school district or regional superintendent shall further perform a check of the Statewide Child Murderer and Violent Offender Against Youth Database, as authorized by the Child Murderer and Violent Offender Against Youth Community Notification Law, for each applicant.

(b) Any information concerning the record of convictions obtained by the president of the board of education or the regional superintendent shall be confidential and may only be transmitted to the general superintendent of the school district or his designee, the appropriate regional superintendent if the check was requested by the board of education for the school district, the presidents of the

appropriate board of education or school boards if the check was requested from the Department of State Police by the regional superintendent, the State Superintendent of Education, the State Teacher Certification Board or any other person necessary to the decision of hiring the applicant for employment. A copy of the record of convictions obtained from the Department of State Police shall be provided to the applicant for employment. Upon the check of the Statewide Sex Offender Database, the school district or regional superintendent shall notify an applicant as to whether or not the applicant has been identified in the Database as a sex offender. If a check of an applicant for employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee in more than one school district was requested by the regional superintendent, and the Department of State Police upon a check ascertains that the applicant has not been convicted of any of the enumerated criminal or drug offenses in subsection (c) or has not been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State and so notifies the regional superintendent and if the regional superintendent upon a check ascertains that the applicant has not been identified in the Sex Offender Database as a sex offender, then the regional superintendent shall issue to the applicant a certificate evidencing that as of the date specified by the Department of State Police the applicant has not been convicted of any of the enumerated criminal or drug offenses in subsection (c) or has not been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State and evidencing that as of the date that the regional superintendent conducted a check of the Statewide Sex Offender Database, the applicant has not been identified in the Database as a sex offender. The school board of any school district may rely on the certificate issued by any regional superintendent to that substitute teacher, concurrent part-time teacher, or concurrent educational support personnel employee or may initiate its own criminal history records check of the applicant through the Department of State Police and its own check of the Statewide Sex Offender Database as provided in subsection (a). Any person who releases any confidential information concerning any criminal convictions of an applicant for employment shall be guilty of a Class A misdemeanor, unless the release of such information is authorized by this Section.

(c) The board of education shall not knowingly employ a person who has been convicted of any offense that would subject him or her to certification suspension or revocation pursuant to Section 21-23a of this Code. Further, the board of education shall not knowingly employ a person who has been found to be the perpetrator of sexual or physical abuse of any minor under 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987.

(d) The board of education shall not knowingly employ a person for whom a criminal history records check and a Statewide Sex Offender Database check has not been initiated.

(e) Upon receipt of the record of a conviction of or a finding of child abuse by a holder of any certificate issued pursuant to Article 21 or Section 34-8.1 or 34-83 of the School
Code, the State Superintendent of Education may initiate certificate suspension and revocation proceedings as authorized by law.

(e-5) The general superintendent of schools shall, in writing, notify the State Superintendent of Education of any certificate holder whom he or she has reasonable cause to believe has committed an intentional act of abuse or neglect with the result of making a child an abused child or a neglected child, as defined in Section 3 of the Abused and Neglected Child Reporting Act, and that act resulted in the certificate holder's dismissal or resignation from the school district. This notification must be submitted within 30 days after the dismissal or resignation. The certificate holder must also be contemporaneously sent a copy of the notice by the superintendent. All correspondence, documentation, and other information so received by the State Superintendent of Education, the State Board of Education, or the State Teacher Certification Board under this subsection (e-5) is confidential and must not be disclosed to third parties, except (i) as necessary for the State Superintendent of Education or his or her designee to investigate and prosecute pursuant to Article 21 of this Code, (ii) pursuant to a court order, (iii) for disclosure to the certificate holder or his or her representative, or (iv) as otherwise provided in this Article and provided that any such information admitted into evidence in a hearing is exempt from this confidentiality and non-disclosure requirement. Except for an act of willful or wanton misconduct, any superintendent who provides notification as required in this subsection (e-5) shall have immunity from any liability, whether civil or criminal or that otherwise might result by reason of such action.

(f) After March 19, 1990, the provisions of this Section shall apply to all employees of persons or firms holding contracts with any school district including, but not limited to, food service workers, school bus drivers and other transportation employees, who have direct, daily contact with the pupils of any school in such district. For purposes of criminal history records checks and checks of the Statewide Sex Offender Database on employees of persons or firms holding contracts with more than one school district and assigned to more than one school district, the regional superintendent of the educational service region in which the contracting school districts are located may, at the request of any such school district, be responsible for receiving the authorization for a criminal history records check prepared by each such employee and submitting the same to the Department of State Police and for conducting a check of the Statewide Sex Offender Database for each employee. Any information concerning the record of conviction and identification as a sex offender of any such employee obtained by the regional superintendent shall be promptly reported to the president of the appropriate school board or school boards.

(g) In order to student teach in the public schools, a person is required to authorize a fingerprint-based criminal history records check and checks of the Statewide Sex Offender Database and Statewide Child Murderer and Violent Offender Against Youth Database prior to participating in any field experiences in the public schools. Authorization for and payment of the costs of the checks must be furnished by the student teacher. Results of the checks must be furnished to the higher education institution where the student teacher is enrolled and the general superintendent of schools.
(Source: P.A. 95-331, eff. 8-21-07; 96-431, eff. 8-13-09; 96-1452, eff. 8-20-10.)

Section 15. The Intergovernmental Missing Child Recovery Act of 1984 is amended by changing Section 6 as follows:

(325 ILCS 40/6)
Sec. 6. The Department shall:

(a) Establish and maintain a statewide Law Enforcement

Agencies Data System (LEADS) for the purpose of effecting an immediate law enforcement response to reports of missing children. The Department shall implement an automated data exchange system to compile, to maintain and to make available for dissemination to Illinois and out-of-State law enforcement agencies, data which can assist appropriate agencies in Public Act 097-0154 recovering missing children.

(b) Establish contacts and exchange information regarding lost, missing or runaway children with nationally recognized "missing person and runaway" service organizations and monitor national research and publicize important developments.
(c) Provide a uniform reporting format for the entry of pertinent information regarding reports of missing children into LEADS.

(d) Develop and implement a policy whereby a statewide or regional alert would be used in situations relating to the disappearances of children, based on criteria and in a format established by the Department. Such a format shall include, but not be limited to, the age and physical description of the missing child and the suspected circumstances of the disappearance.

(e) Notify all law enforcement agencies that reports of missing persons shall be entered as soon as the minimum level of data specified by the Department is available to the reporting agency and that no waiting period for entry of such data exists.

(f) Provide a procedure for prompt confirmation of the receipt and entry of the missing child report into LEADS to the parent or guardian of the missing child.

(g) Compile and retain information regarding missing children in a separate data file, in a manner that allows such information to be used by law enforcement and other agencies deemed appropriate by the Director, for investigative purposes. Such files shall be updated to reflect and include information relating to the disposition of the case.

(h) Compile and maintain an historic data repository relating to missing children in order (1) to develop and improve techniques utilized by law enforcement agencies when responding to reports of missing children and (2) to provide a factual and statistical base for research that would address the problem of missing children.

(i) Create a quality control program to monitor timeliness of entries of missing children reports into LEADS and conduct performance audits of all entering agencies.

(j) Prepare a periodic information bulletin concerning missing children who it determines may be present in this State, compiling such bulletin from information contained in both the National Crime Information Center computer and from reports, alerts and other information entered into LEADS or otherwise compiled and retained by the Department pursuant to this Act. The bulletin shall indicate the name, age, physical description, suspected circumstances of disappearance if that information is available, a photograph if one is available, the name of the law enforcement agency investigating the case, and such other information as the Director considers appropriate concerning each missing child who the Department determines may be present in this State. The Department shall send a copy of each periodic information bulletin to the State Board of Education for its use in accordance with Section 2-

3.48 of the School Code. The Department shall provide a copy of the bulletin, upon request, to law enforcement agencies of this or any other state or of the federal government, and may provide a copy of the bulletin, upon request, to other persons or entities, if deemed appropriate by the Director, and may establish limitations on its use and a reasonable fee for so providing the same, except that no fee shall be charged for providing the periodic information bulletin to the State Board of Education, appropriate units of local government, State agencies, or law enforcement agencies of this or any other state or of the federal government.

(k) Provide for the entry into LEADS of the names and addresses of sex offenders as defined in the Sex Offender Registration Act who are required to register under that Act. The information shall be immediately accessible to law enforcement agencies and peace officers of this State or any other state or of the federal government. Similar information may be requested from any other state or of the federal government for purposes of this Act.

(l) Provide for the entry into LEADS of the names and addresses of violent offenders against youth as defined in the Child Murderer and Violent Offender Against Youth Registration Act who are required to register under that Act. The information shall be immediately accessible to law enforcement agencies and peace officers of this State or any other state or of the federal government. Similar information may be requested
from any other state or of the federal government for purposes of this Act.
(Source: P.A. 94-945, eff. 6-27-06.)

Section 20. The Unified Code of Corrections is amended by changing Section 5-5.5-5 as follows:

(730 ILCS 5/5-5.5-5)
Sec. 5-5.5-5. Definitions and rules of construction. In this Article:
"Eligible offender" means a person who has been convicted of a crime that does not include any offense or attempted offense that would subject a person to registration under the Sex Offender Registration Act, the Arsonist Registration Act, or the Child Murderer and Violent Offender Against Youth Registration Act, but who has not been convicted more than twice of a felony. "Eligible offender" does not include a person who has been convicted of committing or attempting to commit a Class X felony, aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, aggravated domestic battery, or a forcible felony.

"Felony" means a conviction of a felony in this State, or of an offense in any other jurisdiction for which a sentence to a term of imprisonment in excess of one year was authorized.

For the purposes of this Article the following rules of construction apply:
(i) two or more convictions of felonies charged in separate counts of one indictment or information shall be deemed to be one conviction;
(ii) two or more convictions of felonies charged in 2 or more indictments or informations, filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction; and
(iii) a plea or a verdict of guilty upon which a sentence of probation, conditional discharge, or supervision has been imposed shall be deemed to be a conviction.

"Forcible felony" means first degree murder, second degree murder, aggravated arson, arson, aggravated kidnapping, kidnapping, aggravated battery that resulted in great bodily harm or permanent disability, and any other felony which involved the use of physical force or violence against any individual that resulted in great bodily harm or permanent disability.
(Source: P.A. 96-852, eff. 1-1-10.)

Section 25. The Sex Offender Registration Act is amended by changing Sections 2 and 7 as follows:
(730 ILCS 150/2) (from Ch. 38, par. 222)

(Text of Section after amendment by P.A. 96-1551)

Sec. 2. Definitions.

(A) As used in this Article, "sex offender" means any person who is:

(1) charged pursuant to Illinois law, or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, with a sex offense set forth in subsection (B) of this Section or the attempt to commit an included sex offense, and:

(a) is convicted of such offense or an attempt to commit such offense; or
(b) is found not guilty by reason of insanity of such offense or an attempt to commit such offense; or
(c) is found not guilty by reason of insanity pursuant to Section 104-25(c) of the Code of Criminal Procedure of 1963 of such offense or an attempt to commit such offense; or
(d) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to Section 104-25(a) of the Code of Criminal Procedure of 1963 for the alleged commission or attempted commission of such offense; or
(e) is found not guilty by reason of insanity following a hearing conducted pursuant to a federal, Uniform Code of Military Justice, sister state, or foreign country law substantially similar to Section 104-25(c) of the Code of Criminal Procedure of 1963 of such offense or of the attempted commission of such offense; or
(f) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to a federal,
Uniform Code of Military Justice, sister state, or foreign country law substantially similar to Section
104-25(a) of the Code of Criminal Procedure of 1963 for the alleged violation or attempted commission of such offense; or

(2) certified as a sexually dangerous person pursuant to the Illinois Sexually Dangerous Persons Act, or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law; or

(3) subject to the provisions of Section 2 of the Interstate Agreements on Sexually Dangerous Persons Act; or

(4) found to be a sexually violent person pursuant to the Sexually Violent Persons Commitment Act or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law; or

(5) adjudicated a juvenile delinquent as the result of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, or found guilty under Article V of the Juvenile Court Act of 1987 of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law. Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this Article as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this Article.

For purposes of this Section, "convicted" shall have the same meaning as "adjudicated".

(B) As used in this Article, "sex offense" means:

(1) A violation of any of the following Sections of the Criminal Code of 1961:

11-20.1 (child pornography),
11-20.1B or 11-20.3 (aggravated child pornography),
11-6 (indecent solicitation of a child),
11-9.1 (sexual exploitation of a child),
11-9.2 (custodial sexual misconduct),
11-9.5 (sexual misconduct with a person with a disability),
11-14.4 (promoting juvenile prostitution),
11-15.1 (soliciting for a juvenile prostitute),
11-18.1 (patronizing a juvenile prostitute),
11-17.1 (keeping a place of juvenile prostitution),
11-19.1 (juvenile pimping),
11-19.2 (exploitation of a child),
11-25 (grooming),
11-26 (traveling to meet a minor),
11-1.20 or 12-13 (criminal sexual assault),
11-1.30 or 12-14 (aggravated criminal sexual assault),
11-1.40 or 12-14.1 (predatory criminal sexual assault of a child),
11-1.50 or 12-15 (criminal sexual abuse),
11-1.60 or 12-16 (aggravated criminal sexual abuse),
12-33 (ritualized abuse of a child).
An attempt to commit any of these offenses.

(1.5) A violation of any of the following Sections of the Criminal Code of 1961, when the victim is a person under 18 years of age, the defendant is not a parent of the victim, the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act, and the offense was committed on or after January 1, 1996:

10-1 (kidnapping),
10-2 (aggravated kidnapping),
10-3 (unlawful restraint),
10-3.1 (aggravated unlawful restraint).

(1.6) First degree murder under Section 9-1 of the Criminal Code of 1961, when the victim was a person under 18 years of age and the defendant was at least 17 years of age at the time of the commission of the offense, provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act.
(1.7) (Blank).
(1.8) A violation or attempted violation of Section 11-11 (sexual relations within families) of the Criminal Code of 1961, and the offense was committed on or after June 1, 1997.
(1.9) Child abduction under paragraph (10) of subsection (b) of Section 10-5 of the Criminal Code of 1961 committed by luring or attempting to lure a child under the age of 16 into a motor vehicle, building, house trailer, or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose and the offense was committed on or after January 1, 1998, provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act.
(1.10) A violation or attempted violation of any of the following Sections of the Criminal Code of 1961 when the offense was committed on or after July 1, 1999:

10-4 (forcible detention, if the victim is under 18 years of age), provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act,

11-6.5 (indecent solicitation of an adult), 11-14.3 that involves soliciting for a prostitute, or 11-15 (soliciting for a prostitute, if the victim is under 18 years of age), subdivision (a)(2)(A) or (a)(2)(B) of Section 11-14.3, or Section 11-16 (pandering, if the victim is under 18 years of age), 11-18 (patronizing a prostitute, if the victim is under 18 years of age), subdivision (a)(2)(C) of Section 11-14.3, or Section 11-19 (pimping, if the victim is under 18 years of age).

(1.11) A violation or attempted violation of any of the following Sections of the Criminal Code of 1961 when the offense was committed on or after August 22, 2002: 11-9 or 11-30 (public indecency for a third or subsequent conviction).
(1.12) A violation or attempted violation of Section 5.1 of the Wrongs to Children Act or Section 11-9.1A of the Criminal Code of 1961 (permitting sexual abuse) when the offense was committed on or after August 22, 2002.
(2) A violation of any former law of this State substantially equivalent to any offense listed in subsection (B) of this Section. (C) A conviction for an offense of federal law, Uniform Code of Military Justice, or the law of another state or a foreign country that is substantially equivalent to any offense listed in subsections (B), (C), (E), and (E-5) of this Section shall constitute a conviction for the purpose of this Article. A finding or adjudication as a sexually dangerous person or a sexually violent person under any federal law, Uniform Code of Military Justice, or the law of another state or foreign country that is substantially equivalent to the Sexually Dangerous Persons Act or the Sexually Violent Persons Commitment Act shall constitute an adjudication for the purposes of this Article.

(C-5) A person at least 17 years of age at the time of the commission of the offense who is convicted of first degree murder under Section 9-1 of the Criminal Code of 1961, against a person under 18 years of age, shall be required to register for natural life. A conviction for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (C-5) of this Section shall constitute a conviction for the purpose of this Article. This subsection (C-5) applies to a person who committed the offense before June 1, 1996 only if the person is incarcerated in an Illinois Department of Corrections facility on August 20, 2004 (the effective date of Public Act 93-977).

(C-6) A person who is convicted or adjudicated delinquent of first degree murder as defined in Section 9-1 of the Criminal Code of 1961, against a person 18 years of age or over, shall be required to register for his or her natural life. A conviction for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (C-6) of this Section shall constitute a conviction for the purpose of this Article. This subsection (C-6) does not apply to those individuals released from incarceration more than 10 years prior to the effective date of this amendatory Act of the 97th General Assembly.

(D) As used in this Article, "law enforcement agency having jurisdiction" means the Chief of Police in each of the municipalities in which the sex offender expects to reside, work, or attend school (1) upon his or her discharge, parole or release or (2) during the service of his or her sentence of probation or conditional discharge, or the Sheriff of the county, in the event no Police Chief exists or if the offender intends to reside, work, or attend school in an unincorporated area. "Law enforcement agency having jurisdiction" includes the location where out-of-state students attend school and where out-of-state employees are employed or are otherwise required to register.

(D-1) As used in this Article, "supervising officer" means the assigned Illinois Department of Corrections parole agent or county probation officer.

(E) As used in this Article, "sexual predator" means any person who, after July 1, 1999, is:

(1) Convicted for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (E) or (E-5) of this Section shall constitute a conviction for the purpose of this Article. Convicted of a violation or attempted violation of any of the following Sections of the Criminal Code of 1961, if the conviction occurred after July 1, 1999:

11-14.4 that involves keeping a place of juvenile prostitution, or 11-17.1 (keeping a place of juvenile prostitution), subdivision (a)(2) or (a)(3) of Section 11-14.4, or Section 11-19.1 (juvenile pimping), subdivision (a)(4) of Section 11-14.4, or Section

11-19.2 (exploitation of a child),
11-20.1 (child pornography),
11-20.1B or 11-20.3 (aggravated child pornography),
11-1.20 or 12-13 (criminal sexual assault),
11-1.30 or 12-14 (aggravated criminal sexual assault),
11-1.40 or 12-14.1 (predatory criminal sexual assault of a child),
11-1.60 or 12-16 (aggravated criminal sexual abuse),
12-33 (ritualized abuse of a child);

(2) (blank);
(3) certified as a sexually dangerous person pursuant to the Sexually Dangerous Persons Act or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law;
(4) found to be a sexually violent person pursuant to the Sexually Violent Persons Commitment Act or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law;
(5) convicted of a second or subsequent offense which requires registration pursuant to this Act. The conviction for the second or subsequent offense must have occurred after July 1, 1999. For purposes of this paragraph (5), "convicted" shall include a conviction under any substantially similar Illinois, federal, Uniform Code of Military Justice, sister state, or foreign country law; or
(6) convicted of a second or subsequent offense of luring a minor under Section 10-5.1 of the Criminal Code of 1961.

(E-5) As used in this Article, "sexual predator" also means a person convicted of a violation or attempted violation of any of the following Sections of the Criminal Code of 1961:

(1) Section 9-1 (first degree murder, when the victim was a person under 18 years of age and the defendant was at least 17 years of age at the time of the commission of the offense, provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act);
(2) Section 11-9.5 (sexual misconduct with a person with a disability);
(3) when the victim is a person under 18 years of age, the defendant is not a parent of the victim, the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act, and the offense was committed on or after January 1, 1996:
(A) Section 10-1 (kidnapping),
(B) Section 10-2 (aggravated kidnapping),
(C) Section 10-3 (unlawful restraint), and
(D) Section 10-3.1 (aggravated unlawful restraint); and (4) Section 10-5(b)(10) (child abduction committed by luring or attempting to lure a child under the age of 16 into a motor vehicle, building, house trailer, or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose and the offense was committed on or after January 1, 1998, provided the offense was sexually motivated as defined in Section 10 of the Sex Offender Management Board Act).

(F) As used in this Article, "out-of-state student" means any sex offender, as defined in this Section, or sexual predator who is enrolled in Illinois, on a full-time or part-time basis, in any public or private educational institution, including, but not limited to, any secondary school, trade or professional institution, or institution of higher learning.

(G) As used in this Article, "out-of-state employee" means any sex offender, as defined in this Section, or sexual predator who works in Illinois, regardless of whether the individual receives payment for services performed, for a period of time of 10 or more days or for an aggregate period of time of 30 or more days during any calendar year. Persons who operate motor vehicles in the State accrue one day of employment time for any portion of a day spent in Illinois.

(H) As used in this Article, "school" means any public or private educational institution, including, but not limited to, any elementary or secondary school, trade or professional institution, or institution of higher education.

(I) As used in this Article, "fixed residence" means any and all places that a sex offender resides for an aggregate period of time of 5 or more days in a calendar year.

(J) As used in this Article, "Internet protocol address" means the string of numbers by which a location on the Internet is identified by routers or other computers connected to the Internet.
(Source: P.A. 95-331, eff. 8-21-07; 95-579, eff. 6-1-08; 95-625, eff. 6-1-08; 95-658, eff. 10-11-07; 95-876, eff. 8-21-08; 96-301, eff. 8-11-09; 96-1089, eff. 1-1-11; 96-1551,
eff. 7-1-11.)

(730 ILCS 150/7) (from Ch. 38, par. 227)

Sec. 7. Duration of registration.
A person who has been adjudicated to be sexually dangerous and is later released or found to be no longer sexually dangerous and discharged, shall register for the period of his or her natural life. A sexually violent person or sexual predator shall register for the period of his or her natural life after conviction or adjudication if not confined to a penal institution, hospital, or other institution or facility, and if confined, for the period of his or her natural life after parole, discharge, or release from any such facility. A person who becomes subject to registration under this Article who has previously been subject to registration under this Article or under the Child Murderer and Violent Offender Against Youth Registration Act or similar registration requirements of other jurisdictions shall register for the period of his or her natural life if not confined to a penal institution, hospital, or other institution or facility, and if confined, for the period of his or her natural life after parole, discharge, or release from any such facility. Any other person who is required to register under this Article shall be required to register for a period of 10 years after conviction or adjudication if not confined to a penal institution, hospital or any other institution or facility, and if confined, for a period of 10 years after parole, discharge or release from any such facility. A sex offender who is allowed to leave a county, State, or federal facility for the purposes of work release, education, or overnight visitations shall be required to register within 3 days of beginning such a program. Liability for registration terminates at the expiration of 10 years from the date of conviction or adjudication if not confined to a penal institution, hospital or any other institution or facility and if confined, at the expiration of 10 years from the date of parole, discharge or release from any such facility, providing such person does not, during that period, again become liable to register under the provisions of this Article. Reconfinement due to a violation of parole or other circumstances that relates to the original conviction or adjudication shall extend the period of registration to 10 years after final parole, discharge, or release. Reconfinement due to a violation of parole or other circumstances that do not relate to the original conviction or adjudication shall toll the running of the balance of the 10-year period of registration, which shall not commence running until after final parole, discharge, or release. The Director of State Police, consistent with administrative rules, shall extend for 10 years the registration period of any sex offender, as defined in Section 2 of this Act, who fails to comply with the provisions of this Article. The registration period for any sex offender who fails to comply with any provision of the Act shall extend the period of registration by 10 years beginning from the first date of registration after the violation. If the registration period is extended, the Department of State Police shall send a registered letter to the law enforcement agency where the sex

offender resides within 3 days after the extension of the registration period. The sex offender shall report to that law enforcement agency and sign for that letter. One copy of that letter shall be kept on file with the law enforcement agency of the jurisdiction where the sex offender resides and one copy shall be returned to the Department of State Police.
(Source: P.A. 94-166, eff. 1-1-06; 94-168, eff. 1-1-06; 95-169, eff. 8-14-07; 95-331, eff. 8-21-07; 95-513, eff. 6-1-08; 95-640, eff. 6-1-08; 95-876, eff. 8-21-08.)

Section 30. The Child Murderer and Violent Offender Against Youth Registration Act is amended by changing Sections 1, 5, 10, 11, 55, 60, 65, 75, 85, and 86 as follows:

(730 ILCS 154/1)

Section 154/1. Short title.
This Act may be cited as the Child Murderer and Violent Offender Against Youth Registration Act.
(Source: P.A. 94-945, eff. 6-27-06.)

Section 154/5. Definitions.
(a) As used in this Act, "violent offender against youth" means any person who is:

(1) charged pursuant to Illinois law, or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, with a violent offense against youth set forth in subsection (b) of this Section or the attempt to commit an included violent offense against youth, and:

(A) is convicted of such offense or an attempt to commit such offense; or
(B) is found not guilty by reason of insanity of such offense or an attempt to commit such offense; or
(C) is found not guilty by reason of insanity pursuant to subsection (c) of Section 104-25 of the Code of Criminal Procedure of 1963 of such offense or an attempt to commit such offense; or
(D) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to subsection (a) of Section 104-25 of the Code of Criminal Procedure of 1963 for the alleged commission or attempted commission of such offense; or
(E) is found not guilty by reason of insanity following a hearing conducted pursuant to a federal, Uniform Code of Military Justice, sister state, or foreign country law substantially similar to subsection (c) of Section 104-25 of the Code of Criminal Procedure of 1963 of such offense or of the attempted commission of such offense; or
(F) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to a federal, Uniform Code of Military Justice, sister state, or foreign country law substantially similar to subsection (c) of Section 104-25 of the Code of Criminal Procedure of 1963 for the alleged violation or attempted commission of such offense; or

(2) adjudicated a juvenile delinquent as the result of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in subsection (b) or (c-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, or found guilty under Article V of the Juvenile Court Act of 1987 of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in subsection (b) or (c-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law.

Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this Act as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this Act. For purposes of this Section, "convicted" shall have the same meaning as "adjudicated". For the purposes of this Act, a person who is defined as a violent offender against youth as a result of being adjudicated a juvenile delinquent under paragraph (2) of this subsection (a) upon attaining 17 years of age shall be considered as having committed the violent offense against youth on or after the 17th birthday of the violent offender against youth. Registration of juveniles upon attaining 17 years of age shall not extend the original registration of 10 years from the date of conviction.

(b) As used in this Act, "violent offense against youth" means:

(1) A violation of any of the following Sections of the Criminal Code of 1961, when the victim is a person under 18 years of age and the offense was committed on or after January 1, 1996:

10-1 (kidnapping),
10-2 (aggravated kidnapping),
10-3 (unlawful restraint),
10-3.1 (aggravated unlawful restraint),
12-3.2 (domestic battery),
12-3.3 (aggravated domestic battery),
12-4 (aggravated battery),
12-4.1 (heinous battery),
12-4.3 (aggravated battery of a child),
12-4.4 (aggravated battery of an unborn child),
12-33 (ritualized abuse of a child).
An attempt to commit any of these offenses.

(2) First degree murder under Section 9-1 of the Criminal Code of 1961, when the victim was a person under 18 years of age and the defendant was at least 17 years of age at the time of the commission of the offense. (3) Child abduction under paragraph (10) of subsection (b) of Section 10-5 of the Criminal Code of 1961 committed by luring or attempting to lure a child under the age of 16 into a motor vehicle, building, house trailer, or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose and the offense was committed on or after January 1, 1998. (4) A violation or attempted violation of any of the following Section Sections of the Criminal Code of 1961 when the offense was committed on or after July 1, 1999: 10-4 (forcible detention, if the victim is under 18 years of age).

(4.1) Involuntary manslaughter under Section 9-3 of the Criminal Code of 1961 where baby shaking wasthe proximate cause of death of the victim of the offense.
(4.2) Endangering the life or health of a child under Section 12-21.6 of the Criminal Code of 1961 that results in the death of the child where baby shaking was the proximate cause of the death of the child.
(5) A violation of any former law of this State substantially equivalent to any offense listed in this subsection (b).

(b-5) For the purposes of this Section, "first degree murder of an adult" means first degree murder under Section 9-1 of the Criminal Code of 1961 when the victim was a person 18 years of age or older at the time of the commission of the offense.

(c) A conviction for an offense of federal law, Uniform Code of Military Justice, or the law of another state or a foreign country that is substantially equivalent to any offense listed in subsections (b) and (c-5) of this Section shall constitute a conviction for the purpose of this Act.

(c-5) A person at least 17 years of age at the time of the commission of the offense who is convicted of first degree murder under Section 9-1 of the Criminal Code of 1961, against a person under 18 years of age, shall be required to register for natural life. A conviction for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in this subsection (c-5) shall constitute a conviction for the purpose of this Act. This subsection (c-5) applies to a person who committed the offense before June 1, 1996 only if the person is incarcerated in an Illinois Department of Corrections facility on August 20, 2004.

(c-6) A person who is convicted or adjudicated delinquent of first degree murder of an adult shall be required to register for a period of 10 years after conviction or adjudication if not confined to a penal institution, hospital,
or any other institution or facility, and if confined, for a period of 10 years after parole, discharge, or release from any such facility. A conviction for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (c-6) of this Section shall constitute a conviction for the purpose of this Act. This subsection (c-6) does not apply to those individuals released from incarceration more than 10 years prior to the effective date of this amendatory Act of the 97th General Assembly.

(d) As used in this Act, "law enforcement agency having jurisdiction" means the Chief of Police in each of the municipalities in which the violent offender against youth expects to reside, work, or attend school (1) upon his or her discharge, parole or release or (2) during the service of his or her sentence of probation or conditional discharge, or the Sheriff of the county, in the event no Police Chief exists or if the offender intends to reside, work, or attend school in an unincorporated area. "Law enforcement agency having jurisdiction" includes the location where out-of-state students attend school and where out-of-state employees are employed or are otherwise required to register.

(e) As used in this Act, "supervising officer" means the assigned Illinois Department of Corrections parole agent or county probation officer.

(f) As used in this Act, "out-of-state student" means any violent offender against youth who is enrolled in Illinois, on a full-time or part-time basis, in any public or private educational institution, including, but not limited to, any secondary school, trade or professional institution, or institution of higher learning.

(g) As used in this Act, "out-of-state employee" means any violent offender against youth who works in Illinois, regardless of whether the individual receives payment for services performed, for a period of time of 10 or more days or for an aggregate period of time of 30 or more days during any calendar year. Persons who operate motor vehicles in the State accrue one day of employment time for any portion of a day spent in Illinois.

(h) As used in this Act, "school" means any public or private educational institution, including, but not limited to, any elementary or secondary school, trade or professional institution, or institution of higher education.

(i) As used in this Act, "fixed residence" means any and all places that a violent offender against youth resides for an aggregate period of time of 5 or more days in a calendar year.

(j) As used in this Act, "baby shaking" means the vigorous shaking of an infant or a young child that may result in bleeding inside the head and cause one or more of the following conditions: irreversible brain damage; blindness, retinal hemorrhage, or eye damage; cerebral palsy; hearing loss; spinal cord injury, including paralysis; seizures; learning disability; central nervous system injury; closed head injury;rib fracture; subdural hematoma; or death.
(Source: P.A. 96-1115, eff. 1-1-11; 96-1294, eff. 7-26-10;revised 9-2-10.)

Section 154/10. Duty to register.
(a) A violent offender against youth shall, within the time period prescribed in subsections (b) and (c), register in person and provide accurate information as required by the Department of State Police. Such information shall include a current photograph, current address, current place of employment, the employer's telephone number, school attended, extensions of the time period for registering as provided in this Act and, if an extension was granted, the reason why the extension was granted and the date the violent offender against youth was notified of the extension. A person who has been adjudicated a juvenile delinquent for an act which, if committed by an adult, would be a violent offense against youth shall register as an adult violent offender against youth within 10 days after attaining 17 years of age. The violent offender against youth shall register:

(1) with the chief of police in the municipality in which he or she resides or is temporarily domiciled for a period of time of 5 or more days, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or (2) with the sheriff in the county in which he or she resides or is temporarily domiciled for a period of time of 5 or more days in an unincorporated area or, if incorporated, no police chief exists.

If the violent offender against youth is employed at or attends an institution of higher education, he or she shall register:

(i) with the chief of police in the municipality in which he or she is employed at or attends an institution of higher education, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or

(ii) with the sheriff in the county in which he or she is employed or attends an institution of higher education located in an unincorporated area, or if incorporated, no police chief exists.

For purposes of this Act, the place of residence or temporary domicile is defined as any and all places where the violent offender against youth resides for an aggregate period of time of 5 or more days during any calendar year. Any person required to register under this Act who lacks a

fixed address or temporary domicile must notify, in person, the agency of jurisdiction of his or her last known address within 5 days after ceasing to have a fixed residence.

Any person who lacks a fixed residence must report weekly, in person, with the sheriff's office of the county in which he or she is located in an unincorporated area, or with the chief of police in the municipality in which he or she is located. The agency of jurisdiction will document each weekly registration to include all the locations where the person has stayed during the past 7 days.

The violent offender against youth shall provide accurate information as required by the Department of State Police. That information shall include the current place of employment of the violent offender against youth.

(a-5) An out-of-state student or out-of-state employee shall, within 5 days after beginning school or employment in this State, register in person and provide accurate information as required by the Department of State Police. Such information will include current place of employment, school attended, and address in state of residence. The out-of-state student or out-of-state employee shall register:

(1) with the chief of police in the municipality in which he or she attends school or is employed for a period of time of 5 or more days or for an aggregate period of time of more than 30 days during any calendar year, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or (2) with the sheriff in the county in which he or she attends school or is employed for a period of time of 5 or more days or for an aggregate period of time of more than 30 days during any calendar year in an unincorporated area or, if incorporated, no police chief exists. The out-of-state student or out-of-state employee shall provide accurate information as required by the Department of State Police. That information shall include the out-of-state student's current place of school attendance or the out-of-state employee's current place of employment.

(b) Any violent offender against youth regardless of any initial, prior, or other registration, shall, within 5 days of beginning school, or establishing a residence, place of employment, or temporary domicile in any county, register in person as set forth in subsection (a) or (a-5).

(c) The registration for any person required to register under this Act shall be as follows:

(1) Except as provided in paragraph (3) of this subsection (c), any person who has not been notified of his or her responsibility to register shall be notified by a criminal justice entity of his or her responsibility to register. Upon notification the person must then register within 5 days of notification of his or her requirement to register. If notification is not made within the offender's 10 year registration requirement, and the Department of State Police determines no evidence exists or indicates the offender attempted to avoid registration, the offender will no longer be required to register under this Act.

(2) Except as provided in paragraph (3) of this subsection (c), any person convicted on or after the effective date of this Act shall register in person within 5 days after the entry of the sentencing order based upon his or her conviction.

(3) Any person unable to comply with the registration requirements of this Act because he or she is confined, institutionalized, or imprisoned in Illinois on or after the effective date of this Act shall register in person within 5 days of discharge, parole or release.

(4) The person shall provide positive identification and documentation that substantiates proof of residence at the registering address.

(5) The person shall pay a $20 initial registration fee and a $10 annual renewal fee. The fees shall be deposited into the Child Murderer and Violent Offender Against Youth Registration Fund. The fees shall be used by the registering agency for official purposes. The agency shall establish procedures to document receipt and use of the funds. The law enforcement agency having jurisdiction may waive the registration fee if it determines that the person is indigent and unable to pay the registration fee.

(d) Within 5 days after obtaining or changing employment, a person required to register under this Section must report, in person to the law enforcement agency having jurisdiction, the business name and address where he or she is employed. If the person has multiple businesses or work locations, every business and work location must be reported to the law enforcement agency having jurisdiction.
(Source: P.A. 94-945, eff. 6-27-06.)

Section 154/11. Transfer from the sex offender registry.
(a) The registration information for a person registered under the Sex Offender Registration Act who was convicted or adjudicated for an offense listed in subsection (b) of Section 5 of this Act may only be transferred to the Child Murderer and Violent Offender Against Youth Registry if all the following conditions are met:

(1) The offender's sole offense requiring registration was a conviction or adjudication for an offense or offenses listed in subsection (b) of Section 5 of this Act.

(2) The State's Attorney's Office in the county in which the offender was convicted has verified, on a form prescribed by the Illinois State Police, that the person's crime that required or requires registration was not sexually motivated as defined in Section 10 of the Sex Offender Management Board Act.

(3) The completed form has been received by the registering law enforcement agency and the Illinois State Police's Sex Offender Registration Unit.

(b) Transfer under this Section shall not extend the registration period for offenders who were registered under the Sex Offender Registration Act.
(Source: P.A. 94-945, eff. 6-27-06.)

Section 154/55. Public inspection of registration data.
Except as provided in the Child Murderer and Violent Offender Against Youth Community Notification Law, the statements or any other information required by this Act shall not be open to inspection by the public, or by any person other than by a law enforcement officer or other individual as may be authorized by law and shall include law enforcement agencies of this State, any other state, or of the

federal government. Similar information may be requested from any law enforcement agency of another state or of the federal government for purposes of this Act. It is a Class B misdemeanor to permit the unauthorized release of any information required by this Act. (Source: P.A. 94-945, eff. 6-27-06.)

Section 154/60. Penalty.
Any person who is required to register under this Act who violates any of the provisions of this Act and any person who is required to register under this Act who seeks to change his or her name under Article 21 of the Code of Civil Procedure is guilty of a Class 3 felony. Any person who is convicted for a violation of this Act for a second or subsequent time is guilty of a Class 2 felony. Any person who is required to register under this Act who knowingly or wilfully gives material information required by this Act that is false is guilty of a Class 3 felony. Any person convicted of a violation of any provision of this Act shall, in addition to any other penalty required by law, be required to serve a minimum period of 7 days confinement in the local county jail. The court shall impose a mandatory minimum fine of $500 for failure to comply with any provision of this Act. These fines shall be deposited into the Child Murderer and Violent Offender Against Youth Registration Fund. Any violent offender against youth who violates any provision of this Act may be arrested and tried in any Illinois county where the violent offender against youth can be located. The local police department or sheriff's office is not required to determine whether the person is living within its jurisdiction.
(Source: P.A. 94-945, eff. 6-27-06.)

Section 154/65. Child Murderer and Violent Offender Against Youth Registration Fund.
There is created the Child Murderer and Violent Offender Against Youth Registration Fund. Moneys in the Fund shall be used to cover costs incurred by the criminal justice system to administer this Act. The Department of State Police shall establish and promulgate rules and procedures regarding the administration of this Fund. Fifty percent of the moneys in the Fund shall be allocated by the Department for sheriffs' offices and police departments. The remaining moneys in the Fund shall be allocated to the Illinois State Police for education and administration of the Act.
(Source: P.A. 94-945, eff. 6-27-06.)

(730 ILCS 154/75)

Section 154/75. Child Murderer and Violent Offender Against Youth Community Notification Law.
Sections 75 through 105 of this Act may be cited as the Child Murderer and Violent Offender Against Youth Community Notification Law.
(Source: P.A. 94-945, eff. 6-27-06.)

Section 154/85. Child Murderer and Violent Offender Against Youth Database.
(a) The Department of State Police shall establish and maintain a Statewide Child Murderer and Violent Offender Against Youth Database for the purpose of identifying violent offenders against youth and making that information available to the persons specified in Section 95. The Database shall be created from the Law Enforcement Agencies Data System (LEADS) established under Section 6 of the Intergovernmental Missing Child Recovery Act of 1984. The Department of State Police shall examine its LEADS database for persons registered as violent offenders against youth under this Act and shall identify those who are violent offenders against youth and shall add all the information, including

photographs if available, on those violent offenders against youth to the Statewide Child Murderer and Violent Offender Against Youth Database.

(b) The Department of State Police must make the information contained in the Statewide Child Murderer and Violent Offender Against Youth Database accessible on the Internet by means of a hyperlink labeled "Child Murderer and Violent Offender Against Youth Information" on the Department's World Wide Web home page. The Department of State Police must update that information as it deems necessary. The Department of State Police may require that a person who seeks access to the violent offender against youth information submit biographical information about himself or herself before permitting access to the violent offender against youth information. The Department of State Police must promulgate rules in accordance with the Illinois Administrative Procedure Act to implement this subsection (b) and those rules must include procedures to ensure that the information in the database is accurate.

(c) The Department of State Police must develop and conduct training to educate all those entities involved in the Child Murderer and Violent Offender Against Youth Registration Program.
(d) The Department of State Police shall commence the duties prescribed in the Child Murderer and Violent Offender Against Youth Registration Act within 12 months after the effective date of this Act.

(Source: P.A. 94-945, eff. 6-27-06.)

Section 154/86. Verification that offense was not sexually motivated.
Any person who is convicted of any of the offenses listed in subsection (b) of Section 5 of this Act on or after the effective date of this Act, shall be required to register as an offender on the Child Murderer and Violent Offender Against Youth Registry if, at the time of sentencing, the sentencing court verifies in writing that the offense was not sexually motivated as defined in Section 10 of the Sex Offender Management Board Act. If the offense was sexually motivated, the offender shall be required to register pursuant to the Sex Offender Registration Act.
(Source: P.A. 94-945, eff. 6-27-06.)

Section 99. Effective date. This Act takes effect January 1, 2012.

APPENDIX P

MENTAL HEALTH AND DEVELOPMENT DISABILITIES CODE
(405 ILCS 5/)

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CHAPTER I
SHORT TITLE AND DEFINITIONS

(405 ILCS 5/1-100) (from Ch. 91 1/2, 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 1/2, 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 1/2, par. 1-101.1)
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 1/2, 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 1/2, par. 1-103)
Sec. 1-103. "Clinical psychologist" means a person licensed by the Department of Financial and Professional Regulation under the Clinical Psychologist Licensing Act.
(Source: P.A. 98-75, eff. 7-15-13.)

(405 ILCS 5/1-104) (from Ch. 91 1/2, 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, clinical professional counselor, or nurse.
(Source: P.A. 97-753, eff. 7-6-12.)

(405 ILCS 5/1-104.5)
Sec. 1-104.5. (Repealed).
(Source: P.A. 95-602, eff. 6-1-08. Repealed by P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/1-105) (from Ch. 91 1/2, 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 1/2, par. 1-106)
Sec. 1-106. "Developmental disability" means a disability which is attributable to: (a) an intellectual disability, cerebral palsy, epilepsy or autism; or (b) any other condition which results in impairment similar to that caused by an intellectual disability and which requires services similar to those required by intellectually disabled persons. Such disability must originate before the age of 18 years, be expected to continue indefinitely, and constitute a substantial handicap.
(Source: P.A. 97-227, eff. 1-1-12; 97-813, eff. 7-13-12.)

(405 ILCS 5/1-107) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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. 91-726, eff. 6-2-00.)

(405 ILCS 5/1-111) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, par. 1-116)
Sec. 1-116. "Intellectual disability" means significantly subaverage general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of 18 years.
(Source: P.A. 97-227, eff. 1-1-12.)

(405 ILCS 5/1-117) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, par. 1-119)
Sec. 1-119. "Person subject to involuntary admission on an inpatient basis" means:
(1) A person with mental illness who because of his or her illness is reasonably expected, unless treated on an inpatient basis, to engage in conduct placing such person or another in physical harm or in reasonable expectation of being physically harmed;

(2) A person with mental illness 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 others, unless treated on an inpatient basis; or

(3) A person with mental illness who:
(i) refuses treatment or is not adhering adequately to prescribed treatment;

(ii) because of the nature of his or her illness, is unable to understand his or her need for treatment; and

(iii) if not treated on an inpatient basis, is reasonably expected, based on his or her behavioral history, to suffer mental or emotional deterioration and is reasonably expected, after such deterioration, to meet the criteria of either paragraph (1) or paragraph (2) of this Section.

In determining whether a person meets the criteria specified in paragraph (1), (2), or (3), 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. 95-602, eff. 6-1-08; 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/1-119.1)
Sec. 1-119.1. "Person subject to involuntary admission on an outpatient basis" means:
(1) A person who would meet the criteria for admission on an inpatient basis as specified in Section 1-119 in the absence of treatment on an outpatient basis and for whom treatment on an outpatient basis can only be reasonably ensured by a court order mandating such treatment; or

(2) A person with a mental illness which, if left untreated, is reasonably expected to result in an increase in the symptoms caused by the illness to the point that the person would meet the criteria for commitment under Section 1-119, and whose mental illness has, on more than one occasion in the past, caused that person to refuse needed and appropriate mental health services in the community.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/1-120) (from Ch. 91 1/2, 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 1/2, 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 1/2, par. 1-121.1)
Sec. 1-121.1. "Psychotropic medication" means medication whose use for antipsychotic, antidepressant, antimanic, antianxiety, 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. (Repealed).
(Source: P.A. 90-538, eff. 12-1-97. Repealed by P.A. 95-172, eff. 8-14-07.)

(405 ILCS 5/1-122) (from Ch. 91 1/2, 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,
(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 post-master's clinical professional counseling experience that includes the provision of mental health services for the evaluation, treatment, and prevention of mental and emotional disorders, or
(d) a licensed marriage and family therapist with a master's or doctoral degree in marriage and family therapy from a regionally accredited educational institution or a similar master's program or from a program accredited by either the Commission on Accreditation for Marriage and Family Therapy or the Commission on Accreditation for Counseling Related Educational Programs, who has at least 3 years of supervised post-master's experience as a marriage and family therapist 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. 96-1357, eff. 1-1-11; 97-333, eff. 8-12-11.)

(405 ILCS 5/1-122.1) (from Ch. 91 1/2, 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 post-master'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. 97-333, eff. 8-12-11.)

(405 ILCS 5/1-122.4) (from Ch. 91 1/2, par. 1-122.4)
Sec. 1-122.4. "Qualified intellectual disabilities 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. 97-227, eff. 1-1-12.)

(405 ILCS 5/1-123) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

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 1/2, 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 1/2, 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 5/2-101.1)
Sec. 2-101.1. Counseling services; consent; costs.
(a) Any adult under guardianship may request and receive counseling services or psychotherapy. The consent of the guardian shall not be necessary to authorize counseling or psychotherapy. The adult's guardian shall not be informed, without the consent of the adult, of such counseling or psychotherapy unless the counselor or therapist believes such disclosure is necessary. If the counselor or therapist intends to disclose the fact of counseling or psychotherapy, the adult shall be so informed. However, until the consent of the adult's guardian has been obtained, counseling or psychotherapy provided to an adult under guardianship shall be limited to not more than 5 sessions, a session lasting not more than 45 minutes.
(b) The adult's guardian shall not be liable for the costs of counseling or psychotherapy which is received by the adult without the consent of the adult's guardian.
(Source: P.A. 97-165, eff. 1-1-12.)

(405 ILCS 5/2-102) (from Ch. 91 1/2, 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 electroconvulsive therapy or psychotropic medication, 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 electroconvulsive therapy or psychotropic medication. A surrogate may, however, petition for administration of such treatment pursuant to this Act. If the recipient is under guardianship and the guardian is authorized to consent to the administration of electroconvulsive therapy or psychotropic medication 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. 95-172, eff. 8-14-07.)

(405 ILCS 5/2-103) (from Ch. 91 1/2, 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.
(e) Whenever, as the result of the closing or the reduction in the number of units or available beds of any mental health facility operated by the Department of Human Services, the State determines to enter into a contract with any mental health facility to provide hospitalization to persons who would otherwise be served by the State-operated mental health facility, the resident shall be entitled to the same rights under this Section.
(Source: P.A. 97-1007, eff. 8-17-12.)

(405 ILCS 5/2-104) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 or electroconvulsive therapy. 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 or electroconvulsive therapy. 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) Psychotropic medication or electroconvulsive therapy may be administered 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) Administration of medication or electroconvulsive therapy 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) Neither psychotropic medication nor electroconvulsive therapy may 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 psychotropic medication and electroconvulsive therapy are 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 psychotropic medication and electroconvulsive therapy are 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 psychotropic medication and electroconvulsive therapy do not apply to facilities licensed under the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act of 2013, or the ID/DD Community Care Act.
(g) Under no circumstances may long-acting psychotropic medications be administered under this Section.
(h) Whenever psychotropic medication or electroconvulsive therapy is refused pursuant to subsection (a) of this Section at least once that day, the physician shall determine and state in writing the reasons why the recipient did not meet the criteria for administration of medication or electroconvulsive therapy under subsection (a) and whether the recipient meets the standard for administration of psychotropic medication or electroconvulsive therapy under Section 2-107.1 of this Code. If the physician determines that the recipient meets the standard for administration of psychotropic medication or electroconvulsive therapy under Section 2-107.1, the facility director or his or her designee shall petition the court for administration of psychotropic medication or electroconvulsive therapy pursuant to that Section unless the facility director or his or her designee states in writing in the recipient's record why the filing of such a petition is not warranted. This subsection (h) applies only to State-operated mental health facilities.
(i) The Department shall conduct annual trainings for all physicians and registered nurses working in State-operated mental health facilities on the appropriate use of emergency administration of psychotropic medication and electroconvulsive therapy, standards for their use, and the methods of authorization under this Section.
(Source: P.A. 97-38, eff. 6-28-11; 97-227, eff. 1-1-12; 97-813, eff. 7-13-12; 98-104, eff. 7-22-13.)

(405 ILCS 5/2-107.1) (from Ch. 91 1/2, par. 2-107.1)
Sec. 2-107.1. Administration of psychotropic medication and electroconvulsive therapy upon application to a court.
(a) (Blank).
(a-5) Notwithstanding the provisions of Section 2-107 of this Code, psychotropic medication and electroconvulsive therapy may be administered to an adult recipient of services on an inpatient or outpatient basis 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 psychotropic medication and electroconvulsive therapy 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 acknowledgement 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 psychotropic medication or electroconvulsive therapy 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) Psychotropic medication and electroconvulsive therapy may be administered to the recipient if and only if it has been determined by clear and convincing evidence that all of the following factors are present. In determining whether a person meets the criteria specified in the following paragraphs (A) through (G), the court may consider evidence of the person's

history of serious violence, repeated past pattern of specific behavior, actions related to the person's illness, or past outcomes of various treatment options.

(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 psychotropic medication or electroconvulsive therapy 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 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.

(a-10) The court may, in its discretion, appoint a guardian ad litem for a recipient before the court or authorize an existing guardian of the person to monitor treatment and compliance

with court orders under this Section.
(b) A guardian may be authorized to consent to the administration of psychotropic medication or electroconvulsive therapy 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 psychotropic medication or electroconvulsive therapy to a non-objecting recipient under Article XIa of the Probate Act of 1975.
(d) Nothing in this Section shall prevent the administration of psychotropic medication or electroconvulsive therapy to recipients in an emergency under Section 2-107 of this Act.
(e) Notwithstanding any of the provisions of this Section, psychotropic medication or electroconvulsive therapy 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.
(f) The Department shall conduct annual trainings for physicians and registered nurses working in State-operated mental health facilities on the appropriate use of psychotropic medication and electroconvulsive therapy, standards for their use, and the preparation of court petitions under this Section.
(Source: P.A. 97-375, eff. 8-15-11.)

(405 ILCS 5/2-107.2) (from Ch. 91 1/2, 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 psychotropic medication or electroconvulsive therapy 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. 95-172, eff. 8-14-07.)

(405 ILCS 5/2-107.3)
Sec. 2-107.3. Reports. Each facility director of a State-operated mental health facility shall prepare a quarterly report stating the number of persons who were determined to meet the standard for administration of psychotropic medication or electroconvulsive therapy but for whom it was determined that the filing of such a petition was not warranted as provided for in subsection (h) of Section 2-107 of this Code and the reasons for each such determination. The Department shall prepare and publish an annual report summarizing the information received under this Section. The Department's report shall include the data from each facility filing such a report and shall separately report the data from each such facility, identified by facility.
(Source: P.A. 94-1066, eff. 8-1-06; 95-172, eff. 8-14-07.)

(405 ILCS 5/2-108) (from Ch. 91 1/2, 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, clinical professional counselor, or registered nurse with supervisory responsibilities. No restraint shall be ordered unless the physician, clinical psychologist, clinical social worker, clinical professional counselor, 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, clinical professional counselor, or registered nurse with supervisory responsibilities is not immediately available. In that event, an order by a nurse, clinical psychologist, clinical social worker, clinical professional counselor, 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. 98-137, eff. 8-2-13.)

(405 ILCS 5/2-109) (from Ch. 91 1/2, 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, clinical professional counselor, or registered nurse with supervisory

responsibilities. No seclusion shall be ordered unless the physician, clinical psychologist, clinical social worker, clinical professional counselor, 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. 98-137, eff. 8-2-13.)

(405 ILCS 5/2-110) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

ARTICLE II. PROCEDURES

(405 ILCS 5/2-200) (from Ch. 91 1/2, 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 or electroconvulsive therapy 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. 95-172, eff. 8-14-07.)

(405 ILCS 5/2-201) (from Ch. 91 1/2, 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 1/2, 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.)

CHAPTER III
ADMISSION, TRANSFER AND DISCHARGE PROCEDURES FOR THE MENTALLY ILL

ARTICLE I. JURISDICTION; DUTIES OF STATE'S ATTORNEY

(405 ILCS 5/3-100) (from Ch. 91 1/2, 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 1/2, par. 3-101)
Sec. 3-101. (a) 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, including any petitioner, from being represented by his own counsel.
(b) Any community mental health provider or inpatient mental health facility, including hospitals operated by the Department, may be represented by counsel in court proceedings under this Chapter if they are providing services or funding for services to the respondent, or if an order by the court directing said entity to provide services or funding for services to the respondent is being sought by any party.
(Source: P.A. 97-375, eff. 8-15-11.)

ARTICLE II. GENERAL PROVISIONS

(405 ILCS 5/3-200) (from Ch. 91 1/2, 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 intellectually disabled 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. 97-227, eff. 1-1-12.)

(405 ILCS 5/3-201) (from Ch. 91 1/2, 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 publish all forms in electronic format and post the forms to its website.
(Source: P.A. 97-752, eff. 7-6-12.)

(405 ILCS 5/3-202) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 include a written assessment of whether or not the recipient is in need of psychotropic medications. The plan shall be reviewed and updated as the clinical condition warrants, but not less than every 30 days.
(Source: P.A. 94-1066, eff. 8-1-06.)

(405 ILCS 5/3-210) (from Ch. 91 1/2, 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 1/2, 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.)

ARTICLE III. INFORMAL ADMISSION

(405 ILCS 5/3-300) (from Ch. 91 1/2, 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.)

ARTICLE IV. VOLUNTARY ADMISSION OF ADULTS

(405 ILCS 5/3-400) (from Ch. 91 1/2, par. 3-400)
Sec. 3-400. Voluntary admission to mental health facility.
(a) Any person 16 or older, including a person adjudicated a disabled person, 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 determines and documents in the recipient's medical record that the person (1) is clinically suitable for admission as a voluntary recipient and (2) has the capacity to consent to voluntary admission.
(b) For purposes of consenting to voluntary admission, a person has the capacity to consent to voluntary admission if, in the professional judgment of the facility director or his or her designee, the person is able to understand that:
(1) He or she is being admitted to a mental health facility.

(2) He or she may request discharge at any time. The request must be in writing, and discharge is not automatic.

(3) Within 5 business days after receipt of the written request for discharge, the facility must either discharge the person or initiate commitment proceedings.

(c) No mental health facility shall require the completion of a petition or certificate as a condition of accepting the admission of a recipient who is being transported to that facility from any other inpatient or outpatient healthcare facility if the recipient has completed an application for voluntary admission to the receiving facility pursuant to this Section.
(Source: P.A. 96-612, eff. 1-1-10; 97-375, eff. 8-15-11.)

(405 ILCS 5/3-401) (from Ch. 91 1/2, 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 5/3-401.1)
Sec. 3-401.1. Transportation to mental health facility. Upon receipt of an application for admission prepared pursuant to this Article, any licensed ambulance service may transport a recipient to a mental health facility or from one mental health facility to another. An ambulance service, 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.
(Source: P.A. 97-375, eff. 8-15-11.)

(405 ILCS 5/3-402) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

ARTICLE V. ADMISSION OF MINORS

(405 ILCS 5/3-500) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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, clinical professional counselor, 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. 95-804, eff. 8-12-08.)

(405 ILCS 5/3-504) (from Ch. 91 1/2, 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, licensed clinical professional counselor, 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, licensed clinical professional counselor, 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. 95-804, eff. 8-12-08.)

(405 ILCS 5/3-505) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

ARTICLE VI. EMERGENCY ADMISSION BY CERTIFICATION

(405 ILCS 5/3-600) (from Ch. 91 1/2, par. 3-600)
Sec. 3-600. A person 18 years of age or older who is subject to involuntary admission on an inpatient basis and in need of immediate hospitalization may be admitted to a mental health facility pursuant to this Article.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-601) (from Ch. 91 1/2, par. 3-601)
Sec. 3-601. Involuntary admission; petition.
(a) When a person is asserted to be subject to involuntary admission on an inpatient basis 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 on an inpatient basis, 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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(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 1/2, par. 3-602)
Sec. 3-602. The petition shall be accompanied by a certificate executed by a physician, qualified examiner, psychiatrist, or clinical psychologist which states that the respondent is subject to involuntary admission on an inpatient basis and requires immediate hospitalization. The certificate shall indicate that the physician, qualified examiner, psychiatrist, 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, psychiatrist'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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-603) (from Ch. 91 1/2, par. 3-603)
Sec. 3-603. (a) If no physician, qualified examiner, psychiatrist, 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 on an inpatient basis;
2. a diligent effort was made to obtain a certificate;
3. no physician, qualified examiner, psychiatrist, 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, psychiatrist, or clinical psychologist, unless the petitioner reasonably believes that effort would impose a risk of harm to the respondent or others.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-604) (from Ch. 91 1/2, 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 1/2, 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 1/2, par. 3-606)

Sec. 3-606. A peace officer may take a person into custody and transport him to a mental health facility when the peace officer has reasonable grounds to believe that the person is subject to involuntary admission on an inpatient basis and in need of immediate hospitalization to protect such person or others from physical harm. Upon arrival at the facility, the peace officer may complete the petition under Section 3-601. If the petition is not completed by the peace officer transporting the person, the transporting officer's name, badge number, and employer shall be included in the petition as a potential witness as provided in Section 3-601 of this Chapter.

(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-607) (from Ch. 91 1/2, 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 on an inpatient basis 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 to determine whether or not she or he is subject to involuntary admission and in need of immediate hospitalization. If a petition and certificate are executed within the 24 hours, the person may be admitted provided that the certificate states that the person is both subject to involuntary admission and in need of immediate hospitalization. If the certificate states that the person is subject to involuntary admission but not in need of immediate hospitalization, the person may remain in his or her place of residence pending a hearing on the petition unless he or she voluntarily agrees to inpatient treatment. The provisions of this Article shall apply to all petitions and certificates executed pursuant to this Section. If no petition or certificate is executed, the person shall be released.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-608) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 a certificate has already been completed by a psychiatrist following the respondent's admission, the respondent shall be

examined by another psychiatrist or by a physician, clinical psychologist, or qualified examiner. If, as a result of this second examination, a certificate is executed, the certificate shall be promptly filed with the court. If the certificate states that the respondent is subject to involuntary admission but not in need of immediate hospitalization, the respondent may remain in his or her place of residence pending a hearing on the petition unless he or she voluntarily agrees to inpatient treatment. If the respondent is not examined or if the psychiatrist, physician, clinical psychologist, or qualified examiner does not execute a certificate pursuant to Section 3-602, the respondent shall be released forthwith.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-611) (from Ch. 91 1/2, 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.)

ARTICLE VII. ADMISSION ON AN INPATIENT BASIS BY COURT ORDER

(405 ILCS 5/3-700) (from Ch. 91 1/2, par. 3-700)
Sec. 3-700. A person 18 years of age or older who is subject to involuntary admission on an inpatient basis may be admitted to an inpatient mental health facility upon court order pursuant to this Article.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-701) (from Ch. 91 1/2, 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 on an inpatient basis. 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.
(c) A petition for involuntary admission on an inpatient basis may be combined with or

accompanied by a petition for involuntary admission on an outpatient basis under Article VII-A.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-702) (from Ch. 91 1/2, par. 3-702)
Sec. 3-702. (a) The petition may be accompanied by the certificate of a physician, qualified examiner, psychiatrist, or clinical psychologist which certifies that the respondent is subject to involuntary admission on an inpatient basis 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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-703) (from Ch. 91 1/2, 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 on an inpatient basis. Copies of the certificates shall be made available to the attorneys for the parties upon request prior to the hearing. A certificate prepared in compliance with this Article shall state whether or not the respondent is in need of immediate hospitalization. However, if both the certificates state that the respondent is not in need of immediate hospitalization, the respondent may remain in his or her place of residence pending a hearing on the petition unless he or she voluntarily agrees to inpatient treatment.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-704) (from Ch. 91 1/2, 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 on an inpatient basis 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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-704.1)
Sec. 3-704.1. (Repealed).
(Source: P.A. 91-837, eff. 6-16-00. Repealed by P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-705) (from Ch. 91 1/2, 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 1/2, 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.)

ARTICLE VII-A. ADMISSION ON AN OUTPATIENT BASIS BY COURT ORDER

(405 ILCS 5/3-750)
Sec. 3-750. Involuntary admission on an outpatient basis. A person 18 years of age or older who is subject to involuntary admission on an outpatient basis may receive alternative treatment in the community or may be placed in the care and custody of a relative or other person upon court order pursuant to this Article.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-751)
Sec. 3-751. Involuntary admission; petition.
(a) Any person 18 years of age or older may execute a petition asserting that another person is subject to involuntary admission on an outpatient basis. 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 on an outpatient basis.
(c) A petition for involuntary admission on an outpatient basis may be combined with or accompanied by a petition for involuntary admission on an inpatient basis under Article VII.
(d) Notwithstanding any other provision in this Chapter, a petition may be filed under this Article prior to the expiration of an agreed order for outpatient admission issued pursuant to Section 3-801.5 of this Chapter, provided that the recipient has refused to agree to an extension of the agreed order as provided in subsection (g) of Section 3-801.5. The filing of such a petition at least 5 days prior to the expiration of such an agreed order shall continue the order in effect pending the disposition of the petition.
(e) A petition for involuntary outpatient commitment may be filed pursuant to this Section concerning a person who has been admitted to a mental health facility on an informal basis under Section 3-300 of this Code or as a voluntary recipient under Section 3-400 of this Code provided that such a person has a documented history of illness and treatment demonstrating that he or she is unlikely to continue to receive needed treatment following release from informal or voluntary admission and that an order for alternative treatment or for care and custody is necessary in order to ensure continuity of treatment outside a mental health facility. The filing of such a petition shall not prevent the recipient from requesting and obtaining a discharge pursuant to subsection (b) of Section 3-300 or Section 3-404, nor shall it prevent the facility director from discharging the recipient pursuant to Section 3-902 of this Code.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10; 97-375, eff. 8-15-11.)

(405 ILCS 5/3-752)
Sec. 3-752. Certificate.
(a) The petition may be accompanied by the certificate of a physician, qualified examiner, psychiatrist, or clinical psychologist which certifies that the respondent is subject to involuntary admission on an outpatient basis. The certificate shall indicate that the physician, qualified examiner, or clinical psychologist personally examined the respondent not more than 72 hours prior to the completion of the certificate. 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 or her rights under Section 3-208.
(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 3-753 as are necessary to provide for examination of the respondent. If the petition is not accompanied by 2 certificates executed pursuant to Section 3-753, the court may order the respondent to present himself or herself for examination at a time and place designated by the court. If the petition is accompanied by 2 certificates executed pursuant to Section 3-753 and the court finds the documents are in order, the court shall set the matter for hearing.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-753)
Sec. 3-753. Examination. 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 or her 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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-754)
Sec. 3-754. 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 respondent refuses to cooperate with an examination on an outpatient basis, the court may order that the person be admitted to a mental health facility solely for the purpose of such 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 on an inpatient basis and in need of immediate hospitalization to protect such person or others from physical harm and a petition is filed pursuant to Section 3-701. Upon admission under this Section, treatment may be given pursuant to Section 3-608. If the respondent is admitted on an inpatient basis, the facility shall proceed pursuant to Article VII.
(b) 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.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-755)
Sec. 3-755. Notice. 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 or her attorney and guardian, if any. If the respondent is admitted to a mental health facility for examination under Section 3-754, such notices may be delivered at the time of service of the order for admission.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-756)
Sec. 3-756. Court hearing. The court shall set a hearing to be held within 15 days, excluding Saturdays, Sundays, and holidays, after its receipt of the second certificate. The court shall direct that notice of the time and place of hearing be served upon the respondent, his or her attorney, and guardian, if any, and his or her responsible relatives. The respondent 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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

ARTICLE VIII. COURT HEARINGS

(405 ILCS 5/3-800) (from Ch. 91 1/2, 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.

(d) The provisions of subsection (a-5) of Section 6 of the Rights of Crime Victims and Witnesses Act shall apply to the initial commitment hearing, as provided under Section 5-2-4 of the Unified Code of Corrections, for a respondent found not guilty by reason of insanity of a violent crime in a criminal proceeding and the hearing has been ordered by the court under this Code to determine if the defendant is:

(1) in need of mental health services on an inpatient basis;

(2) in need of mental health services on an outpatient basis; or

(3) not in need of mental health services.

While the impact statement to the court allowed under this subsection (d) may include the impact that the respondent's criminal conduct has had upon the victim, victim's representative, or victim's family or household member, the court may only consider the impact statement along with all other appropriate factors in determining the:

(i) threat of serious physical harm posed by the respondent to himself or herself, or to another person;

(ii) location of inpatient or outpatient mental health services ordered by the court, but only after complying with all other applicable administrative requirements, rules, and statutory requirements;

(iii) maximum period of commitment for inpatient mental health services; and

(iv) conditions of release for outpatient mental health services ordered by the court.

(e) Notwithstanding the provisions of Section 2-1009 of the Code of Civil Procedure, a respondent may object to a motion for voluntary dismissal and the court may refuse to grant such a dismissal for good cause shown.
(Source: P.A. 96-117, eff. 1-1-10; 97-375, eff. 8-15-11.)

(405 ILCS 5/3-801) (from Ch. 91 1/2, 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 on an inpatient or outpatient basis. The facility director shall approve such a request unless the facility director determines that the respondent lacks the capacity to consent to informal or voluntary admission or that informal or voluntary admission is clinically inappropriate. The director shall not find that voluntary admission is clinically inappropriate in the absence of a documented history of the respondent's illness and treatment demonstrating that the respondent is unlikely to continue to receive needed treatment following release from informal or voluntary admission and that an order for involuntary admission on an outpatient basis is necessary in order to ensure continuity of treatment outside a mental health facility. If the facility director approves such a request, the petitioner shall be notified of the request and of his or her right to object thereto, if the petitioner has requested such notification on that individual recipient. The court may dismiss the pending proceedings, but shall consider any objection made by the petitioner, the respondent, or the State's Attorney and may require proof that such dismissal is in the best interest of the respondent and of the public. If voluntary admission is accepted and the petition is dismissed by the court, notice shall be provided to the petitioner, orally and in writing, of his or her right to receive notice of the recipient's discharge pursuant to Section 3-902(d).
(Source: P.A. 96-570, eff. 1-1-10; 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10; 97-375, eff. 8-15-11.)

(405 ILCS 5/3-801.5)
Sec. 3-801.5. Agreed order for admission on an outpatient basis.
(a) At any time before the conclusion of the hearing and the entry of the court's findings, a respondent may enter into an agreement to be subject to an order for admission on an outpatient basis as provided for in Sections 3-811, 3-812, and 3-813 of this Code, provided that:
(1) The court and the parties have been presented with a written report pursuant to Section 3-810 of this Code containing a recommendation for court-ordered admission on an outpatient basis and setting forth in detail the conditions for such an order, and the court is satisfied that the proposal for admission on an outpatient basis is in the best interest of the respondent and of the public.
(2) The court advises the respondent of the conditions of the proposed order in open court and is satisfied that the respondent understands and agrees to the conditions of the proposed order for admission on an outpatient basis.
(3) The proposed custodian is advised of the recommendation for care and custody and agrees to abide by the terms of the proposed order.
(4) No such order may require the respondent to be hospitalized except as provided in subsection (b) of this Section.

(5) No order may include as one of its conditions the administration of psychotropic medication, unless the court determines, based on the documented history of the respondent's treatment and illness, that the respondent is unlikely to continue to receive needed psychotropic medication in the absence of such an order.
(b) An agreed order of care and custody entered pursuant to this Section may grant the custodian the authority to admit a respondent to a hospital if the respondent fails to comply with the conditions of the agreed order. If necessary in order to obtain the hospitalization of the respondent, the custodian may apply to the court for an order authorizing an officer of the peace to take the respondent into custody and transport the respondent to the hospital specified in the agreed order. The provisions of Section 3-605 of this Code shall govern the transportation of the respondent to a mental health facility, except to the extent that those provisions are inconsistent with this Section. However, a person admitted to a hospital pursuant to powers granted under an agreed order for care and custody shall be treated as a voluntary recipient pursuant to Article IV of this Chapter and shall be advised immediately of his or her right to request a discharge pursuant to Section 3-403 of this Code.
(c) If the court has appointed counsel for the respondent pursuant to Section 3-805 of this Code, that appointment shall continue for the duration of any order entered under this Section, and the respondent shall be represented by counsel in any proceeding held pursuant to this Section.
(d) An order entered under this Section shall not constitute a finding that the respondent is subject to involuntary admission on an inpatient or outpatient basis.
(e) Nothing in this Section shall be deemed to create an agency relationship between the respondent and any custodian appointed pursuant to this Section.
(f) Notwithstanding any other provision of Illinois law, no respondent may be cited for contempt for violating the terms and conditions of his or her agreed order of care and custody.
(g) An order entered under this Section may be extended with the agreement of the parties for additional 180-day periods.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10; 97-375, eff. 8-15-11.)

(405 ILCS 5/3-802) (from Ch. 91 1/2, par. 3-802)
Sec. 3-802. The respondent is entitled to a jury on the question of whether he is subject to involuntary admission on an inpatient or outpatient basis. 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 psychotropic medication or electroconvulsive therapy may be administered under Section 2-107.1.
(Source: P.A. 95-172, eff. 8-14-07; 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-803) (from Ch. 91 1/2, 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 1/2, 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 1/2, par. 3-805)
Sec. 3-805. Every respondent alleged to be subject to involuntary admission on an inpatient or outpatient basis 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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-806) (from Ch. 91 1/2, 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 5/3-806.1)
Sec. 3-806.1. Video conferencing.
(a) Notwithstanding the provisions in Section 3-806, the Illinois Supreme Court or any circuit court of this State may adopt rules permitting the use of video conferencing equipment in all hearings under this Chapter subject to the following provisions:
(1) Such hearings are permitted if the parties, including the respondent, and their lawyers, including the State's Attorney, are at a mental health facility, or some other location to which the respondent may be safely and conveniently transported, and the judge and any court personnel are in another location.
(2) Such hearings are permitted if the respondent and his or her counsel are at a mental health facility or some other location to which the respondent may be safely and conveniently transported, and all of the other participants including the judge are in another location, if, and only if, agreed to by the respondent and the respondent's counsel.
(3) Video conferencing under this subsection (a) shall not be permitted in a jury trial under Section 3-802 of this Article.
(b) Notwithstanding the above provisions, any court may permit any witness, including a psychiatrist, to testify by video conferencing equipment from any location in the absence of a court rule specifically prohibiting such testimony.
(Source: P.A. 96-1321, eff. 1-1-11.)

(405 ILCS 5/3-807) (from Ch. 91 1/2, par. 3-807)
Sec. 3-807. No respondent may be found subject to involuntary admission on an inpatient or outpatient basis unless at least one psychiatrist, clinical social worker, clinical psychologist, or qualified examiner who has examined the respondent 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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10; 97-121, eff. 7-14-11.)

(405 ILCS 5/3-808) (from Ch. 91 1/2, par. 3-808)
Sec. 3-808. No respondent may be found subject to involuntary admission on an inpatient or outpatient basis unless that finding has been established by clear and convincing evidence.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-809) (from Ch. 91 1/2, par. 3-809)
Sec. 3-809. If the respondent is not found subject to involuntary admission on an inpatient or outpatient basis, the court shall dismiss the petition and order the respondent discharged. If the respondent is found subject to involuntary admission on an inpatient or outpatient basis,

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 on an inpatient or outpatient basis, it may set aside such verdict and order the respondent discharged or it may order another hearing.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-810) (from Ch. 91 1/2, 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 on an inpatient or outpatient basis, the court shall consider the report in determining an appropriate disposition.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-811) (from Ch. 91 1/2, par. 3-811)
Sec. 3-811. Involuntary admission; alternative mental health facilities.
(a) If any person is found subject to involuntary admission on an inpatient basis, 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. If any person is found subject to involuntary admission on an outpatient basis, 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.
(b) Whenever a person is found subject to involuntary admission on an inpatient or outpatient basis, notice shall be provided to the petitioner, orally and in writing, of his or her right to receive notice of the recipient's discharge pursuant to Section 3-902(d).
(c) An order that a person is found subject to involuntary admission on an inpatient basis does not eliminate any obligations under the federal Emergency Medical Transport and Active Labor Act (EMTALA) of the transferring facility toward the receiving facility. Before implementing an order, the transferring facility shall notify the receiving facility of the recipient and obtain medical clearance for the recipient.
(Source: P.A. 96-570, eff. 1-1-10; 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10; 97-130, eff. 7-14-11.)

(405 ILCS 5/3-812) (from Ch. 91 1/2, par. 3-812)
Sec. 3-812. Court ordered admission on an outpatient basis; modification; revocation.
(a) If a respondent is found subject to involuntary admission on an outpatient basis, the court may issue an order: (i) placing the respondent in the care and custody of a relative or other

person willing and able to properly care for him or her; or (ii) committing the respondent to alternative treatment at a community mental health provider.
(b) An order placing the respondent in the care and custody of a relative or other person shall specify the powers and duties of the custodian. An order of care and custody entered pursuant to this Section may grant the custodian the authority to admit a respondent to a hospital if the respondent fails to comply with the conditions of the order. If necessary in order to obtain the hospitalization of the respondent, the custodian may apply to the court for an order authorizing an officer of the peace to take the respondent into custody and transport the respondent to a mental health facility. The provisions of Section 3-605 shall govern the transportation of the respondent to a mental health facility, except to the extent that those provisions are inconsistent with this Section. No person admitted to a hospital pursuant to this subsection shall be detained for longer than 24 hours, excluding Saturdays, Sundays, and holidays, unless, within that period, a petition for involuntary admission on an inpatient basis and a certificate supporting such petition have been filed as provided in Section 3-611.
(c) 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. If the court determines that the respondent has violated the order for alternative treatment in the community or that alternative treatment in the community will no longer provide adequate assurances for the safety of the respondent or others, the court may revoke the order for alternative treatment in the community and may order a peace officer to take the recipient into custody and transport him to an inpatient mental health facility. The provisions of Section 3-605 shall govern the transportation of the respondent to a mental health facility, except to the extent that those provisions are inconsistent with this Section. No person admitted to a hospital pursuant to this subsection shall be detained for longer than 24 hours, excluding Saturdays, Sundays, and holidays, unless, within that period, a petition for involuntary admission on an inpatient basis and a certificate supporting such petition have been filed as provided in Section 3-611.
(Source: P.A. 98-221, eff. 1-1-14.)

(405 ILCS 5/3-813) (from Ch. 91 1/2, par. 3-813)
Sec. 3-813. (a) An initial order for commitment on an inpatient basis 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 on an inpatient or outpatient basis, 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 benefiting 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 commitment on an inpatient basis not to exceed 90 days only if it finds that the recipient continues to be subject to involuntary

admission on an inpatient basis. If, following a hearing, the court determines that the respondent is subject to involuntary admission on an outpatient basis as provided in Section 3-812, the court may order the respondent committed on an outpatient basis for a period not to exceed 180 days.
(a-1) An initial order of commitment on an outpatient basis shall be for a period not to exceed 180 days. Prior to the expiration of the initial order, if the facility director or the custodian believes that the recipient continues to be subject to involuntary admission on an outpatient basis, a new petition and 2 new certificates may be filed with the court. If a petition is filed, the facility director or the custodian shall file with the court a current treatment plan which includes an evaluation of the recipient's progress and the extent to which he or she is benefiting 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 commitment on an outpatient basis not to exceed 180 days only if it finds that the recipient continues to be subject to involuntary admission on an outpatient basis.
(b) Additional 180 day periods of inpatient or outpatient commitment may be sought pursuant to the procedures set out in this Section for so long as the recipient continues to meet the standard for such commitment. The provisions of this chapter which apply whenever an initial order is sought shall apply whenever an additional period of inpatient or outpatient commitment is sought.
(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-814) (from Ch. 91 1/2, 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 benefiting 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 benefiting 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)
Sec. 3-815. (Repealed).
(Source: P.A. 86-1402. Repealed by P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-816) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 Comptroller.
(Source: P.A. 95-146, eff. 1-1-08.)

(405 ILCS 5/3-819) (from Ch. 91 1/2, 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 1/2, 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.)

ARTICLE IX. DISCHARGE RESTORATION TRANSFER

(405 ILCS 5/3-900) (from Ch. 91 1/2, par. 3-900)
Sec. 3-900. (a) Any person committed on an inpatient or outpatient basis 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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-901) (from Ch. 91 1/2, 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. The court shall determine whether the recipient is: (i) subject to involuntary admission on an inpatient basis; (ii) subject to involuntary admission on an outpatient basis; or (iii) not subject to involuntary admission on either an inpatient or outpatient basis. If the court finds that the recipient is not subject to involuntary admission on an inpatient or outpatient basis, 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.
(b-1) If the court determines that the recipient is subject to involuntary admission on an outpatient basis, the court shall enter an appropriate order pursuant to Section 3-812.
(c) If the court determines that the recipient continues to be subject to involuntary admission on an inpatient basis, 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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-902) (from Ch. 91 1/2, 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 on an inpatient basis. 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. If the facility director determines that the recipient is subject to involuntary admission on an outpatient basis, he or she shall petition the court for such a commitment pursuant to this Chapter.
(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. 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 person whose petition pursuant to Section 3-701 resulted in the current hospitalization of the recipient's discharge at least 48 hours prior to the discharge, if the petitioner has requested in writing such notification on that individual recipient.
(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. 96-570, eff. 1-1-10; 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(405 ILCS 5/3-903) (from Ch. 91 1/2, 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 l2 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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. An order of transfer entered under this Section does not eliminate any obligations under the federal Emergency Medical Transport and Active Labor Act (EMTALA) of the transferring facility toward the receiving facility. Before implementing an order of transfer, the transferring facility shall notify the receiving facility of

the recipient and obtain medical clearance for the recipient.
(Source: P.A. 97-130, eff. 7-14-11.)

(405 ILCS 5/3-910) (from Ch. 91 1/2, 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.)

ARTICLE X. VETERANS ADMINISTRATION FACILITIES

(405 ILCS 5/3-1000) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

CHAPTER IV
ADMISSION, TRANSFER, AND DISCHARGE PROCEDURES FOR THE DEVELOPMENTALLY DISABLED

ARTICLE I. JURISDICTION
DUTIES OF STATE'S ATTORNEY

(405 ILCS 5/4-100) (from Ch. 91 1/2, 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 1/2, 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.)

ARTICLE II. GENERAL PROVISIONS

(405 ILCS 5/4-200) (from Ch. 91 1/2, 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 1/2, par. 4-201)
Sec. 4-201. (a) An intellectually disabled 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 intellectually disabled, including those who also have a mental illness, shall be evaluated by a multidisciplinary team which includes a qualified intellectual disabilities 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 a severe or profound intellectual disability 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 intellectually disabled 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 intellectual disabilities 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. 97-227, eff. 1-1-12.)

(405 ILCS 5/4-201.1) (from Ch. 91 1/2, 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 intellectually disabled, 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 intellectual disabilities professional.
(b) The mental health facility director shall give written notice to each person evaluated as being mildly or moderately intellectually disabled, 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 intellectually disabled.
(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. 97-227, eff. 1-1-12.)

(405 ILCS 5/4-202) (from Ch. 91 1/2, 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 publish all forms in electronic format and post the forms to its website.
(Source: P.A. 97-752, eff. 7-6-12.)

(405 ILCS 5/4-203) (from Ch. 91 1/2, 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 intellectual disability, (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. 97-227, eff. 1-1-12.)

(405 ILCS 5/4-204) (from Ch. 91 1/2, 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 acknowledgement is required.
(Source: P.A. 80-1414.)

(405 ILCS 5/4-205) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 intellectual disabilities 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. 97-227, eff. 1-1-12.)

(405 ILCS 5/4-210) (from Ch. 91 1/2, 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.)

ARTICLE III. ADMINISTRATIVE AND TEMPORARY ADMISSION OF THE DEVELOPMENTALLY DISABLED

(405 ILCS 5/4-300) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

ARTICLE IV. EMERGENCY ADMISSION OF THE INTELLECTUALLY DISABLED

(405 ILCS 5/4-400) (from Ch. 91 1/2, 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 intellectually disabled; (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. 97-227, eff. 1-1-12.)

(405 ILCS 5/4-401) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 therefor.
(Source: P.A. 80-1414.)

ARTICLE V. JUDICIAL ADMISSION FOR THE INTELLECTUALLY DISABLED

(405 ILCS 5/4-500) (from Ch. 91 1/2, 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 intellectually disabled; and (2) that he is reasonably expected to inflict serious physical harm upon himself or another in the near future.
(Source: P.A. 97-227, eff. 1-1-12.)

(405 ILCS 5/4-501) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

ARTICLE VI. COURT HEARINGS

(405 ILCS 5/4-600) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 benefiting 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 1/2, 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 benefiting 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 benefiting 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

ARTICLE VII. DISCHARGE AND TRANSFER

(405 ILCS 5/4-700) (from Ch. 91 1/2, 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 1/2, 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 intellectually disabled 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 developmental 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. 97-227, eff. 1-1-12; 98-463, eff. 8-16-13.)

(405 ILCS 5/4-702) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

CHAPTER V
GENERAL PROVISIONS

(405 ILCS 5/5-100) (from Ch. 91 1/2, 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)
Sec. 5-100A. (Repealed).
(Source: P.A. 89-507, eff. 7-1-97. Repealed by P.A. 96-1235, eff. 1-1-11.)

(405 ILCS 5/5-101) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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 1/2, 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.)

(405 ILCS 5/5-107) (from Ch. 91 1/2, par. 5-107)
Sec. 5-107. Remittances from intermediary agencies under Title XVIII of the Federal Social Security Act for services to persons in State facilities shall be deposited with the State Treasurer and placed in the Mental Health Fund. Payments received from the Department of Healthcare and Family Services under Title XIX of the Federal Social Security Act for services to persons in State facilities shall be deposited with the State Treasurer and shall be placed in the General Revenue Fund.
The Auditor General shall audit or cause to be audited all amounts collected by the Department.
(Source: P.A. 95-331, eff. 8-21-07.)

(405 ILCS 5/5-107.1) (from Ch. 91 1/2, par. 5-107.1)
Sec. 5-107.1. Remittances from or on behalf of licensed long-term care facilities through Department of Healthcare and Family Services reimbursement and monies from other funds for Day Training Programs for clients with a developmental disability shall be deposited with the State Treasurer and placed in the Mental Health Fund.
The Auditor General shall audit or cause to be audited all amounts collected by the Department.
(Source: P.A. 95-331, eff. 8-21-07.)

(405 ILCS 5/5-107.2) (from Ch. 91 1/2, par. 5-107.2)
Sec. 5-107.2. The Department shall charge, collect and receive fees or money equivalent to the cost of providing Department personnel, equipment, commodities and services to other agencies and branches of State government, units of local government or the federal government, on such terms and conditions as in the judgment of the Secretary are in the best interest of the State.
All services provided by the Department shall be conducted pursuant to contracts in accordance with the Intergovernmental Cooperation Act.
(Source: P.A. 89-507, eff. 7-1-97.)

(405 ILCS 5/5-108) (from Ch. 91 1/2, par. 5-108)
Sec. 5-108. The Department may investigate the financial condition of each person liable under this Act, may make determinations of the ability of each such person to pay sums representing services charges, and for such purposes may set a standard as a basis of judgment of ability to pay under Section 5-116 of this Act. The Department shall by rule make provisions for unusual and exceptional circumstances in the application of such standard. The Department may issue to any person liable under this Act a statement of amount due as treatment charges requiring him 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 the Act. 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 such 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 notwithstanding that the premiums for such insurance were paid for by a person other than the

individual.
(Source: P.A. 83-578.)

(405 ILCS 5/5-108.1)
Sec. 5-108.1. Exemption from charges. Any recipient of services who is participating in a research program conducted by the Psychiatric Institute located at 1601 West Taylor Street, Chicago, Illinois, under an intergovernmental agreement between the Board of Trustees of the University of Illinois and the Department shall not be liable for any charges as set forth in Sections 5-105, 5-106, and 5-107 of this Act. This exemption shall apply only to those charges incurred for services rendered at the Psychiatric Institute located at 1601 West Taylor Street, Chicago, Illinois.
(Source: P.A. 89-552, eff. 7-26-96.)

(405 ILCS 5/5-108.2)
Sec. 5-108.2. Exemption from charges; veterans. Any veteran who receives services provided by a State mental health facility that are not covered by the veteran's existing insurance plan shall not be liable for any charges as set forth in Sections 5-105, 5-106, and 5-107 of this Code. For purposes of this Section, "veteran" means an Illinois resident who is a veteran as defined under subsection (h) of Section 1491 of Title 10 of the United States Code.
(Source: P.A. 96-1013, eff. 7-8-10.)

(405 ILCS 5/5-109) (from Ch. 91 1/2, par. 5-109)
Sec. 5-109. No admission of a recipient in a State facility may be limited or conditioned in any manner by the financial status or ability to pay of the recipient, the estate of the recipient, or any responsible relative of the recipient.
(Source: P.A. 80-1414.)

(405 ILCS 5/5-110) (from Ch. 91 1/2, par. 5-110)
Sec. 5-110. Services charges against responsible relatives take effect on the date of admission or acceptance of the recipient for services or as soon thereafter as each responsible relative's financial ability during the period which the recipient receives services subjects him to liability for charges as required under this Act. Payment in full by a responsible relative of established services charges as provided in this Act constitutes full discharge of the liability of such responsible relative, unless there has been material misrepresentation in revealing the extent of financial resources.
(Source: P.A. 80-1414.)

(405 ILCS 5/5-111) (from Ch. 91 1/2, par. 5-111)
Sec. 5-111. 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 such hearing, cancel, modify or increase such former determination to an amount not to exceed the maximum provided for

such 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 such 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 such record to any person upon payment therefor of 75¢ per page for each original transcript and 25¢ per page for each copy thereof. Any person aggrieved by the decision of the Department upon such hearing may, within 30 days thereafter, file a petition with the Department for review of such decision by the Board of Reimbursement Appeals. The Board of Reimbursement Appeals may approve action taken by the Department or may remand the case to the Secretary with recommendations for redetermination of charges.
(Source: P.A. 89-507, eff. 7-1-97.)

(405 ILCS 5/5-112) (from Ch. 91 1/2, par. 5-112)
Sec. 5-112. A Board of Reimbursement Appeals, consisting of 3 persons appointed by the Governor, is created to review decisions of the Department under Sections 5-105 through 5-115 of this Act. Board members shall serve for terms of 3 years commencing January l of the year their appointment becomes effective and continuing until their successors are appointed and qualified. All Board members appointed under law prior to the effective date of this Act shall serve until the expiration of the terms for which they were appointed and until their successors are appointed and qualified. All Board members shall take and subscribe to the constitutional oath of office and file it with the Secretary of State. They shall receive no compensation but the Department shall reimburse them for expenses necessarily incurred in the performance of their duties. Persons appointed as Board members may have no other connection or duties with the Department.
(Source: P.A. 80-1414.)

(405 ILCS 5/5-113) (from Ch. 91 1/2, par. 5-113)
Sec. 5-113. Upon receiving a petition for review under Section 5-111, 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 responsible relative or a recipient who is liable under this Act for payment of sums representing services charges resides, shall institute appropriate legal action against any such responsible relative, or the recipient, or within the time provided by law shall file a claim against the estate of such recipient 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, except that no responsible relative may be held liable for charges for services furnished to a recipient if such charges were assessed more than 5 years prior to the time the action is filed; but such 5 year limitation does not apply to the liability of a recipient or recipient's estate. Such order may be entered against any or all such defendants 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 such 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.
(Source: P.A. 80-1414.)

(405 ILCS 5/5-114) (from Ch. 91 1/2, par. 5-114)
Sec. 5-114. A decedent's representative who has actual knowledge that the decedent has been a recipient in a State facility shall notify the Department of the death of the decedent and, if the representative has been appointed by a court, shall furnish the Department with a copy of his letters of office. Within the time allowed by law for the filing of claims, the Department may file a claim against the decedent's estate for any balance due for services charges by the decedent while a recipient. Such claim shall be allowed and paid as other lawful claims against the estate. Nothing contained in this Section imposes upon the legal representative any personal liability for the payment of any amount so due or claimed to be due.
As used in this Section, " representative" means executor or administrator of the decedent's estate or anyone holding assets of the decedent.
(Source: P.A. 83-388.)

(405 ILCS 5/5-115) (from Ch. 91 1/2, par. 5-115)
Sec. 5-115. In case any recipient, the estate of any recipient, or the responsible relatives of such recipient are unable to pay the services charges for the recipient provided for by this Act, then the cost of services of such recipient shall be borne by the State, but the cost of clothing, transportation and other incidental expenses not constituting any part of the services shall be defrayed at the expense of the recipient, or the estate of the recipient, or the responsible relatives of the recipient, or of the county of his residence, except that the county is not required to defray expense of clothing. No child is liable under this Act for clothing, transportation, or other incidental expenses of a parent and no spouse is liable under this Act for clothing, transportation or other incidental expenses of a spouse who wilfully failed to contribute to the spouse's support for a period of 5 years immediately preceding the maintenance, such spouse being in need of support or maintenance for hospitalization, however. No parent is liable under this Act for the services charges incurred by a child after such child reaches the age of majority.
(Source: P.A. 80-1414.)

(405 ILCS 5/5-116) (from Ch. 91 1/2, par. 5-116)
Sec. 5-116. Standard and Regulations for Determining Ability to Support. The Department shall establish a standard by which shall be measured the ability of responsible relatives to provide support, and shall implement the standard by rules governing its application. The standard and the rules shall take into account the buying and consumption patterns of self-supporting persons of modest income, present or future contingencies having direct bearing on maintenance of the relative's self-support status and fulfillment of his obligations to his immediate family, and any unusual or exceptional circumstances including estrangement or other personal or social factors, that have a bearing on family relationships and the relative's

ability to meet his support obligations. The standard shall be recomputed periodically to reflect changes in the cost of living and other pertinent factors.
(Source: P.A. 83-578.)

(405 ILCS 5/5-117) (from Ch. 91 1/2, par. 5-117)
Sec. 5-117. The Attorney General shall defend all civil actions and proceedings against any employee or agent of the Department arising out of official duties in connection with the apprehension, transportation, examination, services, detention or discharge of any individual under this Act, in any of the courts of this State or in federal court.
(Source: P.A. 91-726, eff. 6-2-00.)

CHAPTER VI
MISCELLANEOUS PROVISIONS

(405 ILCS 5/6-100) (from Ch. 91 1/2, 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 1/2, 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 1/2, 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 1/2, 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 5/6-103.1)
Sec. 6-103.1. Adjudication as a mentally disabled person. When a person has been adjudicated as a mentally disabled person as defined in Section 1.1 of the Firearm Owners Identification Card Act, including, but not limited to, an adjudication as a disabled person as defined in Section 11a-2 of the Probate Act of 1975, the court shall direct the circuit court clerk to notify the Department of State Police, Firearm Owner's Identification (FOID) Office, in a form and manner prescribed by the Department of State Police, and shall forward a copy of the court order to the Department no later than 7 days after the entry of the order. Upon receipt of the order, the Department of State Police shall provide notification to the National Instant Criminal Background Check System.
(Source: P.A. 97-1131, eff. 1-1-13; 98-63, eff. 7-9-13.)

(405 ILCS 5/6-103.2)
Sec. 6-103.2. Developmental disability; notice. For purposes of this Section, if a person is determined to be developmentally disabled as defined in Section 1.1 of the Firearm Owners Identification Card Act by a physician, clinical psychologist, or qualified examiner, whether practicing at a public or by a private mental health facility or developmental disability facility, the physician, clinical psychologist, or qualified examiner shall notify the Department of Human Services within 24 hours of making the determination that the person has a developmental disability. The Department of Human Services shall immediately update its records and information relating to mental health and developmental disabilities, and if appropriate, shall notify the Department of State Police in a form and manner prescribed by the Department of

State Police. Information disclosed under this Section shall remain privileged and confidential, and shall not be redisclosed, except as required under subsection (e) of Section 3.1 of the Firearm Owners Identification Card Act, nor used for any other purpose. The method of providing this information shall guarantee that the information is not released beyond that which is necessary for the purpose of this Section and shall be provided by rule by the Department of Human Services. The identity of the person reporting under this Section shall not be disclosed to the subject of the report.

The physician, clinical psychologist, or qualified examiner making the determination and his or her employer may not be held criminally, civilly, or professionally liable for making or not making the notification required under this Section, except for willful or wanton misconduct.

(Source: P.A. 98-63, eff. 7-9-13.)

(405 ILCS 5/6-103.3)

Sec. 6-103.3. Clear and present danger; notice. If a person is determined to pose a clear and present danger to himself, herself, or to others by a physician, clinical psychologist, or qualified examiner, whether employed by the State, by any public or private mental health facility or part thereof, or by a law enforcement official or a school administrator, then the physician, clinical psychologist, qualified examiner shall notify the Department of Human Services and a law enforcement official or school administrator shall notify the Department of State Police, within 24 hours of making the determination that the person poses a clear and present danger. The Department of Human Services shall immediately update its records and information relating to mental health and developmental disabilities, and if appropriate, shall notify the Department of State Police in a form and manner prescribed by the Department of State Police. Information disclosed under this Section shall remain privileged and confidential, and shall not be redisclosed, except as required under subsection (e) of Section 3.1 of the Firearm Owners Identification Card Act, nor used for any other purpose. The method of providing this information shall guarantee that the information is not released beyond that which is necessary for the purpose of this Section and shall be provided by rule by the Department of Human Services. The identity of the person reporting under this Section shall not be disclosed to the subject of the report. The physician, clinical psychologist, qualified examiner, law enforcement official, or school administrator making the determination and his or her employer shall not be held criminally, civilly, or professionally liable for making or not making the notification required under this Section, except for willful or wanton misconduct. This Section does not apply to a law enforcement official, if making the notification under this Section will interfere with an ongoing or pending criminal investigation.

For the purposes of this Section: "Clear and present danger" has the meaning ascribed to it in Section 1.1 of the Firearm Owners Identification Card Act. "School administrator" means the person required to report under the School Administrator Reporting of Mental Health Clear and Present Danger Determinations Law.

(Source: P.A. 98-63, eff. 7-9-13.)

(405 ILCS 5/6-104) (from Ch. 91 1/2, 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 5/6-104.3)
Sec. 6-104.3. Comparable programs for the services contained in the Specialized Mental Health Rehabilitation Act of 2013. The Division of Mental Health of the Department of Human Services shall oversee the creation of comparable programs for the services contained in the Specialized Mental Health Rehabilitation Act of 2013 for community-based providers to provide the following services:
(1) triage center;
(2) crisis stabilization; and
(3) transitional living.
These comparable programs shall operate under the regulations that may currently exist for such programs, or, if no such regulations are in existence, regulations shall be created. The comparable programs shall be provided through a managed care entity, a coordinated care entity, or an accountable care entity. The Department shall work in concert with any managed care entity, care coordination entity, or accountable care entity to gather the data necessary to report and monitor the progress of the services offered under this Section. The services to be provided under this Section shall be subject to a specific appropriation of the General Assembly for the specific purposes of this Section.
The Department shall adopt any emergency rules necessary to implement this Section.
(Source: P.A. 98-104, eff. 7-22-13.)

(405 ILCS 5/6-105) (from Ch. 91 1/2, 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 1/2, 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 1/2, par. 6-107)
Sec. 6-107. This Act takes effect January 1, 1979.
(Source: P.A. 80-1414.)

APPENDIX Q

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CONFIDENTIALITY ACT
740 ILCE 110/

(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.

"Business associate" has the meaning ascribed to it under HIPAA, as specified in 45 CFR 160.103.

"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. "Communication" does not include information that has been de-identified in accordance with HIPAA, as specified in 45 CFR 164.514.

"Covered entity" has the meaning ascribed to it under HIPAA, as specified in 45 CFR 160.103.

"Guardian" means a legally appointed guardian or conservator of the person.

"Health information exchange" or "HIE" means a health information exchange or health information organization that oversees and governs the electronic exchange of health information that (i) is established pursuant to the Illinois Health Information Exchange and Technology Act, or any subsequent amendments thereto, and any administrative rules promulgated thereunder; or (ii) has established a data sharing arrangement with the Illinois Health Information Exchange; or (iii) as of the effective date of this amendatory Act of the 98th General Assembly, was designated by the Illinois Health Information Exchange Authority Board as a member of, or was represented on, the Authority Board's Regional Health Information Exchange Workgroup; provided that such designation shall not require the establishment of a data sharing arrangement or other participation with the Illinois Health Information Exchange or the payment of any fee.

"HIE purposes" means those uses and disclosures (as those terms are defined under HIPAA, as specified in 45 CFR 160.103) for activities of an HIE: (i) set forth in the Illinois Health Information Exchange and Technology Act or any subsequent amendments thereto and any administrative rules promulgated thereunder; or (ii) which are permitted under federal law.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any subsequent amendments thereto and any regulations promulgated thereunder, including the Security Rule, as specified in 45 CFR 164.302-18, and the Privacy Rule, as specified in 45 CFR 164.500-34.

"Integrated health system" means an organization with a system of care which incorporates physical and behavioral healthcare and includes care delivered in an inpatient and outpatient setting.

"Interdisciplinary team" means a group of persons representing different clinical disciplines, such as medicine, nursing, social work, and psychology, providing and coordinating the care and treatment for a recipient of mental health or developmental disability services. The group may be composed of individuals employed by one provider or multiple providers.

"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" does not include information that has been de-identified in accordance with HIPAA, as specified in 45 CFR 164.514.

"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. 98-378, eff. 8-16-13.)

(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;
(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;
(7) an attorney-in-fact appointed under the Mental Health Treatment Preference Declaration Act; or
(8) any person in whose care and custody the recipient has been placed pursuant to Section 3-811 of the Mental Health and Developmental Disabilities Code.
(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. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

(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 as provided in this Act.
(Source: P.A. 98-378, eff. 8-16-13.)

(740 ILCS 110/7) (from Ch. 91 1/2, 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 in accordance with 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) An independent team of experts under Brian's Law shall be entitled to inspect and copy the records of any recipient whose death is being examined by such a team pursuant to the mortality review process authorized by Brian's Law. 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. 98-378, eff. 8-16-13.)

(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 Healthcare and Family Services, (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. 95-331, eff. 8-21-07.)

(740 ILCS 110/8) (from Ch. 91 1/2, 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)

Sec. 9. In the course of providing services and after the conclusion of the provision of services, including for the purposes of treatment and care coordination, a therapist, integrated health system, or member of an interdisciplinary team may use, disclose, or re-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, a business associate, an integrated health system, a member of an interdisciplinary team, 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, integrated health system, or member of an interdisciplinary team 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. 98-378, eff. 8-16-13.)

(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, licensed private hospitals, integrated health systems, members of an interdisciplinary team, federally qualified health centers, or physicians or therapists or other healthcare providers licensed or certified by or receiving payments from the Department of Human Services or the Department of Healthcare and Family Services, State correctional facilities, juvenile justice facilities, mental health facilities operated by a county, mental health court professionals as defined in Section 10 of the Mental Health Court Treatment Act, Veterans and Servicemembers Court professionals as defined in Section 10 of the Veterans and Servicemembers Court Treatment Act and jails and juvenile detention facilities 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, coordinating care, discharge, or governmentally mandated public health reporting. Entities shall not redisclose any personally identifiable information, unless necessary for admission, treatment, planning, coordinating care, discharge, or governmentally mandated public health reporting another setting. No records or communications may be disclosed to a county jail or State correctional facility pursuant to this Section unless the Department has entered into a written agreement with the county jail or State correctional facility requiring that the county jail or State correctional facility 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 or State correctional facility 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. 97-946, eff. 8-13-12; 98-378, eff. 8-16-13.)

(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 110/9.4)
Sec. 9.4. Disclosure for treatment and coordination of care.
(a) For recipients in a program administered or operated by the Department of Healthcare and Family Services or the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities), records of a recipient may be disclosed without consent by county jails, insurance companies, integrated health systems, and State agencies, including the Department of Corrections, the Department of Children and Family Services, the Department of Healthcare and Family Services and the Department of Human Services, to hospitals, physicians, therapists, emergency medical personnel, and members of an interdisciplinary team treating a recipient for the purposes of treatment and coordination of care.
(b) An interdisciplinary team treating a recipient may disclose the recipient's records without the recipient's consent to other members of the team.
(c) The records that may be disclosed under this Section are services rendered, providers rendering the services, pharmaceuticals prescribed or dispensed, and diagnoses. All disclosures under this Section must be made in a manner consistent with existing federal and State laws and regulations, including the federal Health Insurance Portability and Accountability Act (HIPAA).
(d) (Blank).
(Source: P.A. 97-515, eff. 8-23-11; 98-378, eff. 8-16-13.)

(740 ILCS 110/9.5)
Sec. 9.5. Use and disclosure of information to an HIE.
(a) An HIE, person, therapist, facility, agency, interdisciplinary team, integrated health system, business associate, or covered entity may, without a recipient's consent, use or disclose information from a recipient's record in connection with an HIE, including disclosure to the

Illinois Health Information Exchange Authority, an HIE, or the business associate of either. An HIE and its business associate may, without a recipient's consent, use or disclose and re-disclose such information for HIE purposes or for such other purposes as are specifically allowed under this Act.
(b) As used in this Section:
(1) "facility" means a developmental disability facility as defined in Section 1-107 of the Mental Health and Developmental Disabilities Code or a mental health facility as defined in Section 1-114 of the Mental Health and Developmental Disabilities Code; and
(2) the terms "disclosure" and "use" have the meanings ascribed to them under HIPAA, as specified in 45 CFR 160.103.
(Source: P.A. 98-378, eff. 8-16-13.)

(740 ILCS 110/9.6)
Sec. 9.6. HIE opt-out. The Illinois Health Information Exchange Authority shall, through appropriate rules, standards, or contractual obligations, which shall be binding upon any HIE, as defined under Section 2, require that participants of such HIE provide each recipient whose record is accessible through the health information exchange the reasonable opportunity to expressly decline the further disclosure of the record by the health information exchange to third parties, except to the extent permitted by law such as for purposes of public health reporting. These rules, standards, or contractual obligations shall permit a recipient to revoke a prior decision to opt-out or a decision not to opt-out. These rules, standards, or contractual obligations shall provide for written notice of a recipient's right to opt-out which directs the recipient to a health information exchange website containing (i) an explanation of the purposes of the health information exchange; and (ii) audio, visual, and written instructions on how to opt-out of participation in whole or in part to the extent possible. These rules, standards, or contractual obligations shall be reviewed annually and updated as the technical options develop. The recipient shall be provided meaningful disclosure regarding the health information exchange, and the recipient's decision whether to opt-out should be obtained without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. To the extent that HIPAA, as specified in 45 CFR 164.508(b)(4), prohibits a covered entity from conditioning the provision of its services upon an individual's provision of an authorization, an HIE participant shall not condition the provision of its services upon a recipient's decision to opt-out of further disclosure of the record by an HIE to third parties. The Illinois Health Information Exchange Authority shall, through appropriate rules, standards, or contractual obligations, which shall be binding upon any HIE, as defined under Section 2, give consideration to the format and content of the meaningful disclosure and the availability to recipients of information regarding an HIE and the rights of recipients under this Section to expressly decline the further disclosure of the record by an HIE to third parties. The Illinois Health Information Exchange Authority shall also give annual consideration to enable a recipient to expressly decline the further disclosure by an HIE to third parties of selected portions of the recipient's record while permitting disclosure of the recipient's remaining patient health information. In establishing rules, standards, or contractual obligations binding upon HIEs under this Section to give effect to recipient disclosure preferences, the Illinois Health Information Exchange Authority in its discretion may consider the extent to which

relevant health information technologies reasonably available to therapists and HIEs in this State reasonably enable the effective segmentation of specific information within a recipient's electronic medical record and reasonably enable the effective exclusion of specific information from disclosure by an HIE to third parties, as well as the availability of sufficient authoritative clinical guidance to enable the practical application of such technologies to effect recipient disclosure preferences. The provisions of this Section 9.6 shall not apply to the secure electronic transmission of data which is point-to-point communication directed by the data custodian. Any rules or standards promulgated under this Section which apply to HIEs shall be limited to that subject matter required by this Section and shall not include any requirement that an HIE enter a data sharing arrangement or otherwise participate with the Illinois Health Information Exchange. In connection with its annual consideration regarding the issue of segmentation of information within a medical record and prior to the adoption of any rules or standards regarding that issue, the Authority Board shall consider information provided by affected persons or organizations regarding the feasibility, availability, cost, reliability, and interoperability of any technology or process under consideration by the Board. Nothing in this Act shall be construed to limit the authority of the Illinois Health Information Exchange Authority to impose limits or conditions on consent for disclosures to or through any HIE, as defined under Section 2, which are more restrictive than the requirements under this Act or under HIPAA.
(Source: P.A. 98-378, eff. 8-16-13.)

(740 ILCS 110/9.7)
Sec. 9.7. Other limitations on consent requirements. The consent requirements under Section 5 may not be required for the use or disclosure (as those terms are defined under HIPAA, as specified in 45 CFR 160.103) of a record or communication disclosed (as that term is defined under HIPAA, as specified in 45 CFR 160.103) to or through an HIE for HIE purposes and in accordance with this Act.
(Source: P.A. 98-378, eff. 8-16-13.)

(740 ILCS 110/9.8)
Sec. 9.8. Business associates. An HIE, person, therapist, facility, agency, interdisciplinary team, integrated health system, business associate, covered entity, the Illinois Health Information Exchange Authority, or entity facilitating the establishment or operation of an HIE may, without a recipient's consent, utilize the services of and disclose information from a recipient's record to a business associate, as defined by and in accordance with the requirements set forth under HIPAA. As used in this Section, the term "disclosure" has the meaning ascribed to it by HIPAA, as specified in 45 CFR 160.103.
(Source: P.A. 98-378, eff. 8-16-13.)

(740 ILCS 110/9.9)
Sec. 9.9. Record locator service.
(a) An HIE, person, therapist, facility, agency, interdisciplinary team, integrated health system, business associate, covered entity, the Illinois Health Information Exchange Authority, or entity facilitating the establishment or operation of an HIE may, without a recipient's consent, disclose

the existence of a recipient's record to a record locator service, master patient index, or other directory or services necessary to support and enable the establishment and operation of an HIE.
(b) As used in this Section:
(1) the term "disclosure" has the meaning ascribed to it under HIPAA, as specified in 45 CFR 160.103; and
(2) "facility" means a developmental disability facility as defined in Section 1-107 of the Mental Health and Developmental Disabilities Code or a mental health facility as defined in Section 1-114 of the Mental Health and Developmental Disabilities Code.
(Source: P.A. 98-378, eff. 8-16-13.)

(740 ILCS 110/9.10)
Sec. 9.10. Interagency disclosures by HIE. Nothing in this Act shall be construed to limit the use of an HIE to facilitate the disclosure or re-disclosure of information from a recipient's record to any agency or department of this State as authorized by Sections 7.1, 9.2 and 9.4 of this Act. Notwithstanding the foregoing, nothing in this Act shall be construed to allow for the disclosure or re-disclosure of information from a recipient's record to law enforcement personnel or for law enforcement purposes.
(Source: P.A. 98-378, eff. 8-16-13.)

(740 ILCS 110/9.11)
Sec. 9.11. Establishment and disclosure of limited data sets and de-identified information.
(a) An HIE, person, therapist, facility, agency, interdisciplinary team, integrated health system, business associate, covered entity, the Illinois Health Information Exchange Authority, or entity facilitating the establishment or operation of an HIE may, without a recipient's consent, use information from a recipient's record to establish, or disclose such information to a business associate to establish, and further disclose information from a recipient's record as part of a limited data set as defined by and in accordance with the requirements set forth under HIPAA, as specified in 45 CFR 164.514(e). An HIE, person, therapist, facility, agency, interdisciplinary team, integrated health system, business associate, covered entity, the Illinois Health Information Exchange Authority, or entity facilitating the establishment or operation of an HIE may, without a recipient's consent, use information from a recipient's record or disclose information from a recipient's record to a business associate to de-identity the information in accordance with HIPAA, as specified in 45 CFR 164.514.
(b) As used in this Section:
(1) the terms "disclosure" and "use" shall have the meanings ascribed to them by HIPAA, as specified in 45 CFR 160.103; and
(2) "facility" means a developmental disability facility as defined in Section 1-107 of the Mental Health and Developmental Disabilities Code or a mental health facility as defined in Section 1-114 of the Mental Health and Developmental Disabilities Code.
(Source: P.A. 98-378, eff. 8-16-13.)

(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 to a court-appointed therapist, psychologist, or psychiatrist for use in determining a person's fitness to stand trial if the records were made within the 180-day period immediately preceding the date of the therapist's, psychologist's or psychiatrist's court appointment. These records and communications shall be admissible only as to the issue of the person's fitness to stand trial. 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 or by the written consent under Section 5 of this Act of the person whose records are being sought, authorizing the disclosure of the records or the issuance of the subpoena. No such written order shall be issued without written notice of the motion to the recipient and the treatment provider. Prior to issuance of the order, each party or other person entitled to notice shall be permitted an opportunity to be heard pursuant to subsection (b) of this Section. In the absence of the written consent under Section 5 of this Act of the person whose records are being sought, 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. Each subpoena issued by a court or administrative agency or served on any person pursuant to this subsection (d) shall include the following language: "No person shall comply with a subpoena for mental health records or communications pursuant to Section 10 of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/10, unless the subpoena is accompanied by a written order that authorizes the issuance of the subpoena and the disclosure of records or communications or by the written consent under Section 5 of that Act of the person whose records are being sought."

(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 Department of Human Services 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. A recipient's records and communications shall also be disclosed pursuant to subsection (g-5) of Section 1-17 of the Department of Human Services Act in testimony at health care worker registry hearings or preliminary proceedings when such are relevant to the matter in issue, 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.

(Source: P.A. 97-566, eff. 1-1-12; 98-221, eff. 1-1-14.)

(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,

subsection (u) of Section 5 of the Children and Family Services Act, or Section 7.4 of the Child Care Act of 1969;

(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 or involuntary treatment 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 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 petitioner in the judicial proceedings, 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. Information disclosed under this subsection shall not be utilized for any other purpose nor be redisclosed except in connection with the proceedings or investigations. Copies of any records provided to counsel for a petitioner shall be deleted or destroyed at the end of the proceedings and counsel for petitioner shall certify to the court in writing that he or she has done so. At the request of a recipient or his or her counsel, the court shall issue a protective order insuring the confidentiality of any records or communications provided to counsel for a petitioner;

(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;

(x) in accordance with the Rights of Crime Victims and Witnesses Act;
(xi) in accordance with Section 6 of the Abused and Neglected Long Term Care Facility Residents Reporting Act;
(xii) in accordance with Section 55 of the Abuse of Adults with Disabilities Intervention Act; and
(xiii) to an HIE as specifically allowed under this Act for HIE purposes and in accordance with any applicable requirements of the HIE.
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. 97-333, eff. 8-12-11; 97-375, eff. 8-15-11; 98-378, eff. 8-16-13.)

(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, member of the General Assembly, member of the United States Congress, Judge of the United States as defined in 28 U.S.C. 451, Justice of the United States as defined in 28 U.S.C. 451, United States Magistrate Judge as defined in 28 U.S.C. 639, Bankruptcy Judge appointed under 28 U.S.C. 152, or Supreme, Appellate, Circuit, or Associate Judge of the State of Illinois. 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 public or private hospitals and mental health facilities 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 or falls within the

federal prohibitors under subsection (e), (f), (g), (r), (s), or (t) of Section 8 of the Firearm Owners Identification Card Act, or falls within the federal prohibitors in 18 U.S.C. 922(g) and (n). All physicians, clinical psychologists, or qualified examiners at public or private mental health facilities or parts thereof as defined in this subsection shall, in the form and manner required by the Department, provide notice directly to the Department of Human Services, or to his or her employer who shall then report to the Department, within 24 hours after determining that a patient as described in clause (2) of the definition of "patient" in Section 1.1 of the Firearm Owners Identification Card Act poses a clear and present danger to himself, herself, or others, or is determined to be developmentally disabled. This information shall be furnished within 24 hours after the physician, clinical psychologist, or qualified examiner has made a determination, or within 7 days after admission to a public or private hospital or mental health facility or the provision of services to a patient described in clause (1) of the definition of "patient" in Section 1.1 of the Firearm Owners Identification Card Act. Any such information disclosed under this subsection shall remain privileged and confidential, and shall not be redisclosed, except as required by subsection (e) of Section 3.1 of the Firearm Owners Identification Card Act, 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 2012 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 public or private hospital or mental health facility 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. The identity of the person reporting under this subsection shall not be disclosed to the subject of the report. For the purposes of this subsection, the physician, clinical psychologist, or qualified examiner making the determination and his or her employer shall not be held criminally, civilly, or professionally liable for making or not making the notification required under this subsection, except for willful or wanton misconduct.

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) (Blank).

(1.3) "Clear and present danger" has the meaning as defined in Section 1.1 of the Firearm Owners Identification Card Act.

(1.5) "Developmentally disabled" has the meaning as defined in Section 1.1 of the Firearm Owners Identification Card Act.

(2) "Patient" has the meaning as defined in Section 1.1 of the Firearm Owners Identification Card Act.

(3) "Mental health facility" has the meaning as defined in Section 1.1 of the Firearm Owners Identification Card Act.

(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. 97-1150, eff. 1-25-13; 98-63, eff. 7-9-13.)

(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. When a forensic recipient is on an unauthorized absence or otherwise has left the facility without being discharged or being free to do so, the facility director, or designee, of a mental health facility or developmental facility operated by the Department shall also immediately notify, in like manner, the Department of State Police.
(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. 96-1191, eff. 7-22-10.)

(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, other than uses, disclosures, or redisclosures permitted under Sections 9.5, 9.8, 9.9, 9.10, and 9.11 of this Act, or other than uses, disclosures, or redisclosures permitted under Sections 9, 9.2, and 9.4 of this Act effected by electronic transmission, 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. 98-378, eff. 8-16-13.)

(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.)