

1 AMENDMENT TO SENATE BILL 1342

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1342, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

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

7 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)  
8 Sec. 5-2-4. Proceedings after Acquittal by Reason of  
9 Insanity.

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

1 murder, then the court shall order inpatient treatment. After  
2 the evaluation and during the period of time required to  
3 determine the appropriate placement, the defendant shall  
4 remain in jail. Upon completion of the placement process the  
5 sheriff shall be notified and shall transport the defendant  
6 to the designated facility.

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

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

1 restraint as defined in the Mental Health and Developmental  
2 Disabilities Code. If the defendant is found to be in need of  
3 mental health services, but not on an inpatient care basis,  
4 the Court shall conditionally release the defendant, under  
5 such conditions as set forth in this Section as will  
6 reasonably assure the defendant's satisfactory progress and  
7 participation in treatment or rehabilitation and the safety  
8 of the defendant and ~~or~~ others. If the Court finds the  
9 person not in need of mental health services, then the Court  
10 shall order the defendant discharged from custody.

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

12 (A) "Subject to involuntary admission" means: a  
13 defendant has been found not guilty by reason of  
14 insanity; and

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

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

23 (B) "In need of mental health services on an  
24 inpatient basis" means: a defendant who has been found  
25 not guilty by reason of insanity who is not subject to  
26 involuntary admission but who is reasonably expected to  
27 inflict serious physical harm upon himself or another and  
28 who would benefit from inpatient care or is in need of  
29 inpatient care. It also includes a person whose conduct  
30 for which a disposition under this Section was ordered  
31 involved a first degree murder, an attempt to commit  
32 first degree murder, or a second degree murder.

33 (C) "In need of mental health services on an  
34 outpatient basis" means: a defendant who has been found

1 not guilty by reason of insanity who is not subject to  
2 involuntary admission or in need of mental health  
3 services on an inpatient basis, but is in need of  
4 outpatient care, drug and/or alcohol rehabilitation  
5 programs, community adjustment programs, individual,  
6 group, or family therapy, or chemotherapy.

7 (D) "Conditional Release" means: the release from  
8 either the custody of the Department of Human Services or  
9 the custody of the Court of a person who has been found  
10 not guilty by reason of insanity under such conditions as  
11 the Court may impose which reasonably assure the  
12 defendant's satisfactory progress in treatment or  
13 habilitation and the safety of the defendant and others.  
14 The Court shall consider such terms and conditions which  
15 may include, but need not be limited to, outpatient care,  
16 alcoholic and drug rehabilitation programs, community  
17 adjustment programs, individual, group, family, and  
18 chemotherapy, random testing to insure the defendant's  
19 timely and continuous taking of any medicines prescribed  
20 to control or manage his or her conduct or mental state,  
21 periodic checks with the legal authorities and/or the  
22 Department of Human Services. The report of the  
23 evaluation as to whether the defendant is subject to  
24 involuntary admission or in need of mental health  
25 services, including any conditions or recommendations,  
26 shall be in writing and submitted to the court and the  
27 State at least 30 days prior to any hearing to insure  
28 proper input from the State's Attorney of record in the  
29 case and consideration by the court. The person or  
30 facility rendering the outpatient care shall be required  
31 to submit written reports every 90 days periodically  
32 report to the Court on the progress of the defendant with  
33 a copy provided to the State's Attorney of record in the  
34 case. Such conditional release shall be for a period of

1        10 five years, unless the defendant, the person or  
2        facility rendering the treatment, therapy, program or  
3        outpatient care, or the State's Attorney petitions the  
4        Court for an extension of the conditional release period  
5        for an additional 5 three years. Upon receipt of such a  
6        petition, the Court shall hold a hearing consistent with  
7        the provisions of this paragraph (a) and paragraph (f) of  
8        this Section, shall determine whether the defendant  
9        should continue to be subject to the terms of conditional  
10       release, and shall enter an order either extending the  
11       defendant's period of conditional release for a single  
12       additional 5 three year period or discharging the  
13       defendant. In no event shall the defendant's period of  
14       conditional release exceed 15 eight years. These  
15       provisions for extension of conditional release shall  
16       only apply to defendants conditionally released on or  
17       after July 1, 1979. ~~However-the-extension-provisions-of~~  
18       ~~Public-Act-83-1449-apply-only-to-defendants-charged-with~~  
19       ~~a-forcible-felony.~~

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

26        (b) If the Court finds the defendant subject to  
27        involuntary admission or in need of mental health services on  
28        an inpatient basis, the admission, detention, care, treatment  
29        or habilitation, treatment plans, review proceedings,  
30        including review of treatment and treatment plans, and  
31        discharge of the defendant after such order shall be under  
32        the Mental Health and Developmental Disabilities Code, except  
33        that the initial order for admission of a defendant acquitted  
34        of a felony by reason of insanity shall be for an indefinite

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

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

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

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

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

34 (d) When the facility director determines that:

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

4           (2) the defendant may be conditionally released  
5 because he or she is still in need of mental health  
6 services or that the defendant may be discharged as not  
7 in need of any mental health services; or

8           (3) the defendant no longer requires placement in a  
9 secure setting;

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

18           (i) subject to involuntary admission; or

19           (ii) in need of mental health services in the form  
20 of inpatient care; or

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

23           (iv) no longer in need of mental health services;  
24 or

25           (v) no longer requires placement in a secure  
26 setting.

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

30           (e) A defendant admitted pursuant to this Section, or  
31 any person on his behalf, may file a petition for treatment  
32 plan review, transfer to a non-secure setting within the  
33 Department of Human Services or discharge or conditional  
34 release under the standards of this Section in the Court

1 which rendered the verdict. Upon receipt of a petition for  
2 treatment plan review, transfer to a non-secure setting or  
3 discharge or conditional release, the Court shall set a  
4 hearing to be held within 365 ±20 days. Thereafter, no new  
5 petition may be filed for 365 ±20 days without leave of the  
6 Court.

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

17 (g) The findings of the Court shall be established by  
18 clear and convincing evidence. The burden of proof and the  
19 burden of going forth with the evidence rest with the  
20 defendant or any person on the defendant's behalf when a  
21 hearing is held to review a petition filed by or on behalf of  
22 the defendant. The evidence shall be presented in open Court  
23 with the right of confrontation and cross-examination. If the  
24 defendant has been charged with a first degree murder, an  
25 attempt to commit first degree murder, or a second degree  
26 murder, such evidence shall include, but is not limited to:

27 (1) whether the defendant appreciates the  
28 criminality of his or her prior conduct that resulted in  
29 the finding of not guilty by reason of insanity;

30 (2) the current state of the defendant's illness;

31 (3) what, if any, medications the defendant is  
32 taking to control his or her mental illness;

33 (4) what, if any, adverse physical side effects the  
34 medication has on the defendant;

1           (5) the length of time it would take for the  
2           defendant's mental health to deteriorate if the defendant  
3           stopped taking prescribed medication;

4           (6) the defendant's history or potential for  
5           alcohol and drug abuse;

6           (7) the defendant's past criminal history;

7           (8) any specialized physical or medical needs of  
8           the defendant;

9           (9) any family participation or involvement  
10          expected upon release;

11          (10) the defendant's potential to be a danger to  
12          himself, herself, or others; and

13          (11) any other factor or factors the court deems  
14          appropriate.

15          (h) If the Court finds, consistent with the provisions  
16          of this Section, that the defendant is no longer in need of  
17          mental health services it shall order the facility director  
18          to discharge the defendant. If the Court finds, consistent  
19          with the provisions of this Section, that the defendant is in  
20          need of mental health services, and no longer in need of  
21          inpatient care, it shall order the facility director to  
22          release the defendant under such conditions as the Court  
23          deems appropriate and as provided by this Section. Such  
24          conditional release shall be imposed for a period of 15 ~~five~~  
25          years and shall be subject to later modification by the  
26          Court as provided by this Section. If the Court finds  
27          consistent with the provisions in this Section that the  
28          defendant is subject to involuntary admission or in need of  
29          mental health services on an inpatient basis, it shall order  
30          the facility director not to discharge or release the  
31          defendant in accordance with paragraph (b) of this Section.

32          (i) If within the period of the defendant's conditional  
33          release, the Court determines, after hearing evidence, that  
34          the defendant has not fulfilled the conditions of release,

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

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

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

32 (l) This amendatory Act shall apply to all persons who  
33 have been found not guilty by reason of insanity and who are  
34 presently committed to the Department of Mental Health and

1 Developmental Disabilities (now the Department of Human  
2 Services).

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

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