



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB6651

by Rep. Julie Hamos

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/3-8-7

from Ch. 38, par. 1003-8-7

Amends the Unified Code of Corrections. Provides that a prisoner may be transferred to a super-maximum security institution only when, within 3 months of the date of the proposed transfer: (1) while incarcerated, the prisoner committed or attempted to commit acts of violence which resulted in serious injury or death; (2) the prisoner has engaged in the second of 2 acts that occurred within one year of each other, which caused serious disruption of prison operations; or (3) he has escaped from within a security perimeter or custody, or both, or direct supervision. Provides that prisoners with serious mental illnesses shall not be transferred to a super-maximum security facility. Provides that unless the Director of Corrections personally certifies, in writing, that providing a hearing prior to transfer will pose an imminent threat to the safety and security of the prison where the prisoner is currently housed, prior to any transfer to a super-maximum security facility, a prisoner shall be entitled to a transfer hearing which complies with specified minimum requirements. Provides that at such hearing, the Department shall have the burden of proof. Provides that the Department of Corrections shall review the status of all prisoners currently housed at a super-maximum security institution within 90 days of the effective date of the amendatory Act to determine whether they should continue to be housed at that facility. Prisoners already incarcerated for longer than one year may continue to be held at a super-maximum institution only on the basis of specified criteria and must be provided a hearing within 6 months of the effective date of the amendatory Act.

LRB095 21548 RLC 51372 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

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

4 Section 5. The Unified Code of Corrections is amended by  
5 changing Section 3-8-7 as follows:

6 (730 ILCS 5/3-8-7) (from Ch. 38, par. 1003-8-7)  
7 Sec. 3-8-7. Disciplinary Procedures.)

8 (a) All disciplinary action shall be consistent with this  
9 Chapter. Rules of behavior and conduct, the penalties for  
10 violation thereof, and the disciplinary procedure by which such  
11 penalties may be imposed shall be available to committed  
12 persons.

13 (b) (1) Corporal punishment and disciplinary restrictions  
14 on diet, medical or sanitary facilities, mail or access to  
15 legal materials are prohibited.

16 (2) (Blank).

17 (3) (Blank).

18 (b-5) Transfers to super-maximum security institution.

19 (1) A prisoner may be transferred to a super-maximum  
20 security institution (as designated in paragraph (s) of  
21 subsection (1) of Section 3-2-2 of this Code) only when,  
22 within 3 months of the date of the proposed transfer:

23 (A) while incarcerated, the prisoner committed an

1 act of violence which resulted in or was likely to  
2 result in serious injury or death to another;

3 (B) the prisoner has engaged in the second of 2  
4 acts that occurred within one year of each other, which  
5 caused serious disruption of prison operations; or

6 (C) he has escaped from within a security perimeter  
7 or custody, or both, or direct supervision.

8 (2) Prisoners with a serious mental illness shall not  
9 be transferred to a super-maximum security facility.

10 All prisoners who are housed at a super-maximum  
11 security institution shall be evaluated by a mental health  
12 professional at least every 30 days. Any prisoner who is  
13 determined to be seriously mentally ill must be removed  
14 from the institution within 15 days.

15 A prisoner has a serious mental illness for purposes of  
16 this Section when he meets the definition used by the  
17 President's New Freedom Commission on Mental Health,  
18 "Achieving Promise: Transforming Mental Health Care in  
19 America," (July 23, 2003), based on the most current  
20 edition of the Diagnostic and Statistical Manual (DSM)  
21 published by the American Psychiatric Association.

22 (3) Prior to any transfer to a super-maximum security  
23 facility, a prisoner shall be entitled to a transfer  
24 hearing which complies with at least the following minimum  
25 requirements, unless the Director personally certifies, in  
26 writing, that providing a hearing prior to transfer will

1 pose an imminent threat to the safety and security of the  
2 prison where the prisoner is currently housed. At such  
3 hearing, the Department shall have the burden of proof.  
4 These minimal procedures shall apply:

5 (A) written notice shall be delivered to the  
6 prisoner at least 48 hours before the hearing, setting  
7 forth the factual basis for the proposed transfer in  
8 sufficient detail to permit the prisoner to prepare a  
9 meaningful defense;

10 (B) the prisoner shall have the right to personally  
11 appear before the persons making the determination;

12 (C) the prisoner shall have the right to submit  
13 documentary evidence to the persons making the  
14 decision;

15 (D) the prisoner shall have the right to call  
16 witnesses, unless there is a specific written finding  
17 that calling a specific witness will jeopardize the  
18 safety and security of the institution;

19 (E) a written decision shall be delivered to the  
20 prisoner within 5 business days of the hearing setting  
21 forth the reasons for the decision in sufficient detail  
22 to allow for review;

23 (F) the hearing shall be recorded by means of audio  
24 or video tape, and the tapes preserved until 120 days  
25 after the release of the prisoner from incarceration at  
26 the super-maximum facility; and

1           (G) the prisoner has a right to retain a lawyer to  
2           represent him or her at the hearing.

3           (4) In the event the Director makes a certification  
4           that a pre-transfer hearing would pose an imminent danger,  
5           a hearing shall be held within 5 business days of the  
6           prisoner's transfer.

7           (5) The transfer hearing shall be conducted by a panel  
8           of at least 2 persons. One such person shall be an attorney  
9           employed by or appointed by the Illinois Department of  
10           Corrections.

11           (6) The panel shall maintain a written record including  
12           all evidence it relied on, including all evidence  
13           supporting any finding of danger to the safety and security  
14           of the institution. The decision of the panel shall be  
15           reviewed and approved by the Director or a Deputy Director  
16           within 5 business days of the decision. The decision of the  
17           Director shall be final, and shall not be reviewable  
18           through the grievance process.

19           (7) All prisoners who are transferred to a  
20           super-maximum security facility shall be reviewed at least  
21           every 90 days to determine whether they should continue to  
22           be housed at that facility.

23           (8) No prisoner shall remain confined at a  
24           super-maximum security institution for more than one year,  
25           unless, at a hearing pursuant to clauses (3), (5), and (6)  
26           of this subsection (b-5), the Department (A) establishes

1 that the prisoner, within the previous one year, has  
2 committed an act which resulted in or was likely to result  
3 in serious injury or death to another; or (B) presents  
4 clear and convincing evidence, applying specific objective  
5 criteria set forth in writing by the Director or his or her  
6 designee that there is a significant risk that the prisoner  
7 will cause physical injury to prison staff, other  
8 prisoners, or members of the public if he or she is housed  
9 in any other facility operated by the Department, including  
10 segregation units at Level I facilities. Association with  
11 an inmate gang or security threat group, alone, shall not  
12 be sufficient to meet this burden. Such prisoners shall be  
13 provided with such a hearing pursuant to clauses (3), (5),  
14 and (6) of this subsection (b-5) at least every year.

15 (9) The Department shall review the status of all  
16 prisoners currently housed at a super-maximum security  
17 institution within 90 days of the effective date of this  
18 amendatory Act of the 95th General Assembly to determine  
19 whether they should continue to be housed at that facility.  
20 Prisoners already incarcerated for longer than one year may  
21 continue to be held at a super-maximum institution only on  
22 the basis of the criteria listed in clause (8) of this  
23 subsection (b-5). Such prisoners must be provided a  
24 hearing, pursuant to clauses (3), (5), and (6) of this  
25 subsection (b-5), within 6 months of the effective date of  
26 this amendatory Act of the 95th General Assembly.

1           (10) The Department shall maintain a current list of  
2           all prisoners in the super-maximum security facility, with  
3           the date of and reason for placement, date of last review,  
4           and, in cases where the prisoner has been housed in such  
5           facility for over one year, the written statement of the  
6           objective criteria relied upon.

7           (c) Review of disciplinary action imposed under this  
8 Section shall be provided by means of the grievance procedure  
9 under Section 3-8-8. The Department shall provide a disciplined  
10 person with a review of his or her disciplinary action in a  
11 timely manner as required by law.

12           (d) All institutions and facilities of the Adult Division  
13 shall establish, subject to the approval of the Director,  
14 procedures for hearing disciplinary cases except those that may  
15 involve the imposition of disciplinary segregation and  
16 isolation; the loss of good time credit under Section 3-6-3 or  
17 eligibility to earn good time credit.

18           (e) In disciplinary cases which may involve the imposition  
19 of disciplinary segregation and isolation, the loss of good  
20 time credit or eligibility to earn good time credit, the  
21 Director shall establish disciplinary procedures consistent  
22 with the following principles:

23           (1) Any person or persons who initiate a disciplinary  
24 charge against a person shall not determine the disposition  
25 of the charge. The Director may establish one or more  
26 disciplinary boards to hear and determine charges.

1           (2) Any committed person charged with a violation of  
2 Department rules of behavior shall be given notice of the  
3 charge including a statement of the misconduct alleged and  
4 of the rules this conduct is alleged to violate.

5           (3) Any person charged with a violation of rules is  
6 entitled to a hearing on that charge at which time he shall  
7 have an opportunity to appear before and address the person  
8 or persons deciding the charge.

9           (4) The person or persons determining the disposition  
10 of the charge may also summon to testify any witnesses or  
11 other persons with relevant knowledge of the incident.

12           (5) If the charge is sustained, the person charged is  
13 entitled to a written statement of the decision by the  
14 persons determining the disposition of the charge which  
15 shall include the basis for the decision and the  
16 disciplinary action, if any, to be imposed.

17           (6) (Blank).

18 (Source: P.A. 93-272, eff. 7-22-03.)