

# SB0224



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB0224

Introduced 1/31/2019, by Sen. Cristina Castro

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-2-4

from Ch. 38, par. 1005-2-4

Amends the Unified Code of Corrections concerning persons found not guilty by reason of insanity. Provides that 90 days prior to the expiration of any conditional release, the Department of Corrections shall conduct an assessment of the defendant's continuing need for mental health services following the person's release from conditional release. Provides that the Department shall create a detailed plan for appropriate mental health services and provide or arrange funding to ensure that those mental health services enumerated in the plan are available to the defendant. Provides that an extension of the conditional release period may not be ordered unless there is clear and convincing evidence that the defendant will not participate in the mental health services set forth in the treatment plan created by the Department in the absence of a court order to do so, and that in the absence of those mental health services, the defendant is reasonably expected to inflict serious physical harm upon himself, herself, or others.

LRB101 05064 SLF 50074 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 5-2-4 as follows:

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

7 Sec. 5-2-4. Proceedings after acquittal by reason of  
8 insanity.

9 (a) After a finding or verdict of not guilty by reason of  
10 insanity under Sections 104-25, 115-3, or 115-4 of the Code of  
11 Criminal Procedure of 1963, the defendant shall be ordered to  
12 the Department of Human Services for an evaluation as to  
13 whether he is in need of mental health services. The order  
14 shall specify whether the evaluation shall be conducted on an  
15 inpatient or outpatient basis. If the evaluation is to be  
16 conducted on an inpatient basis, the defendant shall be placed  
17 in a secure setting. With the court order for evaluation shall  
18 be sent a copy of the arrest report, criminal charges, arrest  
19 record, jail record, any report prepared under Section 115-6 of  
20 the Code of Criminal Procedure of 1963, and any statement  
21 prepared under Section 6 of the Rights of Crime Victims and  
22 Witnesses Act. The clerk of the circuit court shall transmit  
23 this information to the Department within 5 days. If the court

1 orders that the evaluation be done on an inpatient basis, the  
2 Department shall evaluate the defendant to determine to which  
3 secure facility the defendant shall be transported and, within  
4 20 days of the transmittal by the clerk of the circuit court of  
5 the placement court order, notify the sheriff of the designated  
6 facility. Upon receipt of that notice, the sheriff shall  
7 promptly transport the defendant to the designated facility.  
8 During the period of time required to determine the appropriate  
9 placement, the defendant shall remain in jail. If, within 20  
10 days of the transmittal by the clerk of the circuit court of  
11 the placement court order, the Department fails to notify the  
12 sheriff of the identity of the facility to which the defendant  
13 shall be transported, the sheriff shall contact a designated  
14 person within the Department to inquire about when a placement  
15 will become available at the designated facility and bed  
16 availability at other facilities. If, within 20 days of the  
17 transmittal by the clerk of the circuit court of the placement  
18 court order, the Department fails to notify the sheriff of the  
19 identity of the facility to which the defendant shall be  
20 transported, the sheriff shall notify the Department of its  
21 intent to transfer the defendant to the nearest secure mental  
22 health facility operated by the Department and inquire as to  
23 the status of the placement evaluation and availability for  
24 admission to the facility operated by the Department by  
25 contacting a designated person within the Department. The  
26 Department shall respond to the sheriff within 2 business days

1 of the notice and inquiry by the sheriff seeking the transfer  
2 and the Department shall provide the sheriff with the status of  
3 the placement evaluation, information on bed and placement  
4 availability, and an estimated date of admission for the  
5 defendant and any changes to that estimated date of admission.  
6 If the Department notifies the sheriff during the 2 business  
7 day period of a facility operated by the Department with  
8 placement availability, the sheriff shall promptly transport  
9 the defendant to that facility. Individualized placement  
10 evaluations by the Department of Human Services determine the  
11 most appropriate setting for forensic treatment based upon a  
12 number of factors including mental health diagnosis, proximity  
13 to surviving victims, security need, age, gender, and proximity  
14 to family.

15 The Department shall provide the Court with a report of its  
16 evaluation within 30 days of the date of this order. The Court  
17 shall hold a hearing as provided under the Mental Health and  
18 Developmental Disabilities Code to determine if the individual  
19 is: (a) in need of mental health services on an inpatient  
20 basis; (b) in need of mental health services on an outpatient  
21 basis; (c) a person not in need of mental health services. The  
22 court shall afford the victim the opportunity to make a written  
23 or oral statement as guaranteed by Article I, Section 8.1 of  
24 the Illinois Constitution and Section 6 of the Rights of Crime  
25 Victims and Witnesses Act. The court shall allow a victim to  
26 make an oral statement if the victim is present in the

1 courtroom and requests to make an oral statement. An oral  
2 statement includes the victim or a representative of the victim  
3 reading the written statement. The court may allow persons  
4 impacted by the crime who are not victims under subsection (a)  
5 of Section 3 of the ~~this~~ Rights of Crime Victims and Witnesses  
6 Act to present an oral or written statement. A victim and any  
7 person making an oral statement shall not be put under oath or  
8 subject to cross-examination. The court shall consider any  
9 statement presented along with all other appropriate factors in  
10 determining the sentence of the defendant or disposition of the  
11 juvenile. All statements shall become part of the record of the  
12 court.

13 If the defendant is found to be in need of mental health  
14 services on an inpatient care basis, the Court shall order the  
15 defendant to the Department of Human Services. The defendant  
16 shall be placed in a secure setting. Such defendants placed in  
17 a secure setting shall not be permitted outside the facility's  
18 housing unit unless escorted or accompanied by personnel of the  
19 Department of Human Services or with the prior approval of the  
20 Court for unsupervised on-grounds privileges as provided  
21 herein. Any defendant placed in a secure setting pursuant to  
22 this Section, transported to court hearings or other necessary  
23 appointments off facility grounds by personnel of the  
24 Department of Human Services, shall be placed in security  
25 devices or otherwise secured during the period of  
26 transportation to assure secure transport of the defendant and

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

14 (a-1) Definitions. In ~~For the purposes of~~ this Section:

15 (A) (Blank).

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

22 (C) "In need of mental health services on an outpatient  
23 basis" means: a defendant who has been found not guilty by  
24 reason of insanity who is not in need of mental health  
25 services on an inpatient basis, but is in need of  
26 outpatient care, drug and/or alcohol rehabilitation

1 programs, community adjustment programs, individual,  
2 group, or family therapy, or chemotherapy.

3 (D) "Conditional Release" means: the release from  
4 either the custody of the Department of Human Services or  
5 the custody of the Court of a person who has been found not  
6 guilty by reason of insanity under such conditions as the  
7 Court may impose which reasonably assure the defendant's  
8 satisfactory progress in treatment or habilitation and the  
9 safety of the defendant, the victim, the victim's family,  
10 and others. The Court shall consider such terms and  
11 conditions which may include, but need not be limited to,  
12 outpatient care, alcoholic and drug rehabilitation  
13 programs, community adjustment programs, individual,  
14 group, family, and chemotherapy, random testing to ensure  
15 the defendant's timely and continuous taking of any  
16 medicines prescribed to control or manage his or her  
17 conduct or mental state, and periodic checks with the legal  
18 authorities and/or the Department of Human Services. The  
19 Court may order as a condition of conditional release that  
20 the defendant not contact the victim of the offense that  
21 resulted in the finding or verdict of not guilty by reason  
22 of insanity or any other person. The Court may order the  
23 Department of Human Services to provide care to any person  
24 conditionally released under this Section. The Department  
25 may contract with any public or private agency in order to  
26 discharge any responsibilities imposed under this Section.

1 The Department shall monitor the provision of services to  
2 persons conditionally released under this Section and  
3 provide periodic reports to the Court concerning the  
4 services and the condition of the defendant. Whenever a  
5 person is conditionally released pursuant to this Section,  
6 the State's Attorney for the county in which the hearing is  
7 held shall designate in writing the name, telephone number,  
8 and address of a person employed by him or her who shall be  
9 notified in the event that either the reporting agency or  
10 the Department decides that the conditional release of the  
11 defendant should be revoked or modified pursuant to  
12 subsection (i) of this Section. Such conditional release  
13 shall be for a period of 5 ~~five~~ years. Ninety days prior to  
14 the expiration of any conditional release, the Department  
15 shall conduct an assessment of the defendant's continuing  
16 need for mental health services following the person's  
17 release from conditional release. The Department shall  
18 create a detailed plan for appropriate mental health  
19 services and provide or arrange funding to ensure that  
20 those mental health services enumerated in the plan are  
21 available to the defendant. However, the defendant, the  
22 person or facility rendering the treatment, therapy,  
23 program or outpatient care, the Department, or the State's  
24 Attorney may petition the Court for an extension of the  
25 conditional release period for an additional 5 years. Upon  
26 receipt of such a petition, the Court shall hold a hearing



1 consistent with the provisions of paragraph (a), this  
2 paragraph (a-1), and paragraph (f) of this Section, shall  
3 determine whether the defendant should continue to be  
4 subject to the terms of conditional release, and shall  
5 enter an order either extending the defendant's period of  
6 conditional release for an additional 5-year period or  
7 discharging the defendant. An extension of the conditional  
8 release period may not be ordered unless there is clear and  
9 convincing evidence that the defendant will not  
10 participate in the mental health services set forth in the  
11 treatment plan created by the Department in the absence of  
12 a court order to do so, and that in the absence of those  
13 mental health services, the defendant is reasonably  
14 expected to inflict serious physical harm upon himself,  
15 herself, or others. Additional 5-year periods of  
16 conditional release may be ordered following a hearing as  
17 provided in this Section. However, in no event shall the  
18 defendant's period of conditional release continue beyond  
19 the maximum period of commitment ordered by the Court  
20 pursuant to paragraph (b) of this Section. These provisions  
21 for extension of conditional release shall only apply to  
22 defendants conditionally released on or after August 8,  
23 2003. However, the extension provisions of Public Act  
24 83-1449 apply only to defendants charged with a forcible  
25 felony.

26 (E) "Facility director" means the chief officer of a

1           mental health or developmental disabilities facility or  
2           his or her designee or the supervisor of a program of  
3           treatment or habilitation or his or her designee.  
4           "Designee" may include a physician, clinical psychologist,  
5           social worker, nurse, or clinical professional counselor.

6           (b) If the Court finds the defendant in need of mental  
7           health services on an inpatient basis, the admission,  
8           detention, care, treatment or habilitation, treatment plans,  
9           review proceedings, including review of treatment and  
10          treatment plans, and discharge of the defendant after such  
11          order shall be under the Mental Health and Developmental  
12          Disabilities Code, except that the initial order for admission  
13          of a defendant acquitted of a felony by reason of insanity  
14          shall be for an indefinite period of time. Such period of  
15          commitment shall not exceed the maximum length of time that the  
16          defendant would have been required to serve, less credit for  
17          good behavior as provided in Section 5-4-1 of the Unified Code  
18          of Corrections, before becoming eligible for release had he  
19          been convicted of and received the maximum sentence for the  
20          most serious crime for which he has been acquitted by reason of  
21          insanity. The Court shall determine the maximum period of  
22          commitment by an appropriate order. During this period of time,  
23          the defendant shall not be permitted to be in the community in  
24          any manner, including, but not limited to, off-grounds  
25          privileges, with or without escort by personnel of the  
26          Department of Human Services, unsupervised on-grounds

1 privileges, discharge or conditional or temporary release,  
2 except by a plan as provided in this Section. In no event shall  
3 a defendant's continued unauthorized absence be a basis for  
4 discharge. Not more than 30 days after admission and every 90  
5 days thereafter so long as the initial order remains in effect,  
6 the facility director shall file a treatment plan report in  
7 writing with the court and forward a copy of the treatment plan  
8 report to the clerk of the court, the State's Attorney, and the  
9 defendant's attorney, if the defendant is represented by  
10 counsel, or to a person authorized by the defendant under the  
11 Mental Health and Developmental Disabilities Confidentiality  
12 Act to be sent a copy of the report. The report shall include  
13 an opinion as to whether the defendant is currently in need of  
14 mental health services on an inpatient basis or in need of  
15 mental health services on an outpatient basis. The report shall  
16 also summarize the basis for those findings and provide a  
17 current summary of the following items from the treatment plan:  
18 (1) an assessment of the defendant's treatment needs, (2) a  
19 description of the services recommended for treatment, (3) the  
20 goals of each type of element of service, (4) an anticipated  
21 timetable for the accomplishment of the goals, and (5) a  
22 designation of the qualified professional responsible for the  
23 implementation of the plan. The report may also include  
24 unsupervised on-grounds privileges, off-grounds privileges  
25 (with or without escort by personnel of the Department of Human  
26 Services), home visits and participation in work programs, but

1 only where such privileges have been approved by specific court  
2 order, which order may include such conditions on the defendant  
3 as the Court may deem appropriate and necessary to reasonably  
4 assure the defendant's satisfactory progress in treatment and  
5 the safety of the defendant and others.

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

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

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

21 (d) When the facility director determines that:

22 (1) the defendant is no longer in need of mental health  
23 services on an inpatient basis; and

24 (2) the defendant may be conditionally released  
25 because he or she is still in need of mental health  
26 services or that the defendant may be discharged as not in

1           need of any mental health services; or

2           (3) (blank);

3           the facility director shall give written notice to the Court,  
4           State's Attorney and defense attorney. Such notice shall set  
5           forth in detail the basis for the recommendation of the  
6           facility director, and specify clearly the recommendations, if  
7           any, of the facility director, concerning conditional release.  
8           Any recommendation for conditional release shall include an  
9           evaluation of the defendant's need for psychotropic  
10          medication, what provisions should be made, if any, to ensure  
11          that the defendant will continue to receive psychotropic  
12          medication following discharge, and what provisions should be  
13          made to assure the safety of the defendant and others in the  
14          event the defendant is no longer receiving psychotropic  
15          medication. 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) (blank); or

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

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

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

24                 (v) (blank).

25          A crime victim shall be allowed to present an oral and  
26          written statement. The court shall allow a victim to make an

1 oral statement if the victim is present in the courtroom and  
2 requests to make an oral statement. An oral statement includes  
3 the victim or a representative of the victim reading the  
4 written statement. A victim and any person making an oral  
5 statement shall not be put under oath or subject to  
6 cross-examination. All statements shall become part of the  
7 record of the court.

8 Upon finding by the Court, the Court shall enter its  
9 findings and such appropriate order as provided in subsections  
10 (a) and (a-1) of this Section.

11 (e) A defendant admitted pursuant to this Section, or any  
12 person on his behalf, may file a petition for treatment plan  
13 review or discharge or conditional release under the standards  
14 of this Section in the Court which rendered the verdict. Upon  
15 receipt of a petition for treatment plan review or discharge or  
16 conditional release, the Court shall set a hearing to be held  
17 within 120 days. Thereafter, no new petition may be filed for  
18 180 days without leave of the Court.

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

1 Human Services shall be ordered, and the report considered at  
2 the time of the hearing.

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

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

15 (2) Whether the person appreciates the criminality of  
16 conduct similar to the conduct for which he or she was  
17 originally charged in this matter;

18 (3) the current state of the defendant's illness;

19 (4) what, if any, medications the defendant is taking  
20 to control his or her mental illness;

21 (5) what, if any, adverse physical side effects the  
22 medication has on the defendant;

23 (6) the length of time it would take for the  
24 defendant's mental health to deteriorate if the defendant  
25 stopped taking prescribed medication;

26 (7) the defendant's history or potential for alcohol

1 and drug abuse;

2 (8) the defendant's past criminal history;

3 (9) any specialized physical or medical needs of the  
4 defendant;

5 (10) any family participation or involvement expected  
6 upon release and what is the willingness and ability of the  
7 family to participate or be involved;

8 (11) the defendant's potential to be a danger to  
9 himself, herself, or others;

10 (11.5) a written or oral statement made by the victim;  
11 and

12 (12) any other factor or factors the Court deems  
13 appropriate.

14 (h) Before the court orders that the defendant be  
15 discharged or conditionally released, it shall order the  
16 facility director to establish a discharge plan that includes a  
17 plan for the defendant's shelter, support, and medication. If  
18 appropriate, the court shall order that the facility director  
19 establish a program to train the defendant in self-medication  
20 under standards established by the Department of Human  
21 Services. If the Court finds, consistent with the provisions of  
22 this Section, that the defendant is no longer in need of mental  
23 health services it shall order the facility director to  
24 discharge the defendant. If the Court finds, consistent with  
25 the provisions of this Section, that the defendant is in need  
26 of mental health services, and no longer in need of inpatient



1 care, it shall order the facility director to release the  
2 defendant under such conditions as the Court deems appropriate  
3 and as provided by this Section. Such conditional release shall  
4 be imposed for a period of 5 years as provided in paragraph (D)  
5 of subsection (a-1) and shall be subject to later modification  
6 by the Court as provided by this Section. If the Court finds  
7 consistent with the provisions in this Section that the  
8 defendant is in need of mental health services on an inpatient  
9 basis, it shall order the facility director not to discharge or  
10 release the defendant in accordance with paragraph (b) of this  
11 Section.

12 (i) If within the period of the defendant's conditional  
13 release the State's Attorney determines that the defendant has  
14 not fulfilled the conditions of his or her release, the State's  
15 Attorney may petition the Court to revoke or modify the  
16 conditional release of the defendant. Upon the filing of such  
17 petition the defendant may be remanded to the custody of the  
18 Department, or to any other mental health facility designated  
19 by the Department, pending the resolution of the petition.  
20 Nothing in this Section shall prevent the emergency admission  
21 of a defendant pursuant to Article VI of Chapter III of the  
22 Mental Health and Developmental Disabilities Code or the  
23 voluntary admission of the defendant pursuant to Article IV of  
24 Chapter III of the Mental Health and Developmental Disabilities  
25 Code. If the Court determines, after hearing evidence, that the  
26 defendant has not fulfilled the conditions of release, the

1 Court shall order a hearing to be held consistent with the  
2 provisions of paragraph (f) and (g) of this Section. At such  
3 hearing, if the Court finds that the defendant is in need of  
4 mental health services on an inpatient basis, it shall enter an  
5 order remanding him or her to the Department of Human Services  
6 or other facility. If the defendant is remanded to the  
7 Department of Human Services, he or she shall be placed in a  
8 secure setting unless the Court determines that there are  
9 compelling reasons that such placement is not necessary. If the  
10 Court finds that the defendant continues to be in need of  
11 mental health services but not on an inpatient basis, it may  
12 modify the conditions of the original release in order to  
13 reasonably assure the defendant's satisfactory progress in  
14 treatment and his or her safety and the safety of others in  
15 accordance with the standards established in paragraph (D) of  
16 subsection (a-1). Nothing in this Section shall limit a Court's  
17 contempt powers or any other powers of a Court.

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

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

24 (l) Public Act 90-593 shall apply to all persons who have  
25 been found not guilty by reason of insanity and who are  
26 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 transmit a certified copy  
4 of the order of discharge or conditional release to the  
5 Department of Human Services, to the sheriff of the county from  
6 which the defendant was admitted, to the Illinois Department of  
7 State Police, to the proper law enforcement agency for the  
8 municipality where the offense took place, and to the sheriff  
9 of the county into which the defendant is conditionally  
10 discharged. The Illinois Department of State Police shall  
11 maintain a centralized record of discharged or conditionally  
12 released defendants while they are under court supervision for  
13 access and use of appropriate law enforcement agencies.

14 (n) The provisions in this Section which allows a crime  
15 victim to make a written and oral statement do not apply if the  
16 defendant was under 18 years of age at the time the offense was  
17 committed.

18 (o) If any provision of this Section or its application to  
19 any person or circumstance is held invalid, the invalidity of  
20 that provision does not affect any other provision or  
21 application of this Section that can be given effect without  
22 the invalid provision or application.

23 (Source: P.A. 100-27, eff. 1-1-18; 100-424, eff. 1-1-18;  
24 100-863, eff. 8-14-18; 100-961, eff. 1-1-19; revised 10-3-18.)