

# **FITNESS MOTIONS**

**A Defendant is presumed to be fit to stand trial or to plead and be sentenced.**

**By Judge Bob Miller**

# WHAT IS A FITNESS MOTION?

- **A Fitness Motion indicates that there is a doubt that the Defendant can understand the proceedings against him and cooperate with counsel in his defense.**
- **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.**
- **Fitness to stand trial speaks only to a person's ability to function within the context of a trial.**
- **Fitness does NOT refer to sanity at the time of the offense or during the prosecution of the matter.**

# **WHO CAN FILE A FITNESS MOTION?**

- **Either the defense, the State, or the Court may raise the issue of Defendant's fitness.**

# WHAT IF THE DEFENDANT OBJECTS TO HIS ATTORNEY FILING A FITNESS MOTION?

- Defense counsel is not obliged to argue for a finding of fitness in deference to defendant's wishes when counsel is convinced the defendant is unfit.
- The right to counsel does not require the attorney to suborn a violation of the due process clause, which bars prosecution of an unfit defendant.
- People v. Holt, 2014 IL 116989, 386 Ill.Dec. 776, 21 N.E.3d 695.

# CAN THE DEFENDANT PROCEED PRO SE AT A FITNESS HEARING?

- It is error to allow a Defendant to represent himself once a bona fide doubt regarding competence has arisen. People v. Rath, 121 Ill.App.3d 548 (1984).
- At the fitness determination stage, standby counsel might suffice. People v. Allensworth, 235 Ill.App.3d 185 (1992)

# **WHEN CAN A FITNESS MOTION BE FILED?**

- **The issue of the Defendant's fitness for trial, to plead, or to be sentenced may be raised before, during or after trial.**

# HOW IS A FITNESS ISSUE RAISED?

- **There aren't any magic words required. Anything generally equivalent to voicing a "bona fide doubt" as to the Defendant's fitness will suffice.**

# **WHAT SHOULD A JUDGE DO WHEN A FITNESS MOTION IS PRESENTED?**

- **The court shall order a determination of the fitness issue before proceeding further.**
- **725 ILCS 5/104-13 states “When the issue of fitness involves the defendant’s mental condition, the court shall order an examination by one or more licensed physicians, clinical psychologists, or psychiatrists chosen by the court.”**



# WHAT SHOULD A JUDGE **NOT** DO WHEN A FITNESS MOTION IS PRESENTED?

- Do NOT reflexively state that there is a bona fide doubt as to Defendant's fitness.
- Note: 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, 2000.

## **WHY SHOULDN'T THE COURT SIMPLY AGREE TO A BONA FIDE DOUBT?**

- **Once the court has made a finding that there is a bona fide doubt as to fitness, the bullet has left the chamber. The Defendant is now Constitutionally entitled to a fitness hearing. People v. Johnson, 206 Ill.2d 348 (2002).**

## **CAN A JUDGE ORDER A FITNESS EXAM WITHOUT FINDING A BONA FIDE DOUBT?**

- **Yes. Under section 725 ILCS 5/104–11(b), the trial court may appoint an expert to examine defendant to aid in its determination of whether a bona fide doubt has been raised.**

## **DOES THE JUDGE NEED TO ADMONISH THE DEFENDANT REGARDING THE EXAMINATION?**

- **The court shall advise the defendant that no statement relating to the crime charged or any other criminal act, shall be disclosed to anyone except to members of the examining or treating team without the competent consent of the Defendant.**
- **The Court shall also advise him that he may refuse to cooperate with the person conducting the examination, but that his refusal may be admissible into evidence on the issue of his mental or physical condition. 725 ILCS 5/104-14(c).**

# WHAT IF DEFENDANT REFUSES TO BE EXAMINED?

- **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.**
- **725 ILCS 5/104-13 (C)**

# DOES DEFENDANT'S ATTORNEY HAVE THE RIGHT TO BE PRESENT DURING THE EVALUATION?

- **No** - Not according to People v. Itani, 383 Ill.App.3d 954, 890 N.E.2d 1154, Ill.App. 1 Dist., 2008.
- The United States Supreme Court's decision in Estelle v. Smith, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981) did not rule that a defendant is entitled to the presence of counsel at the exam. Rather, the Court stated, "Respondent does not assert, and the Court of Appeals did not find, any constitutional right to have counsel actually present during the examination. In fact, the Court of Appeals recognized that 'an attorney present during the psychiatric interview could contribute little and might seriously disrupt the examination.'"

# WHO IS USUALLY APPOINTED?

- **The DuPage County Department of Probation and Court Services have a forensic psychologist who is on staff.**
- **It is the Probation Department that is ordered to complete the examination.**

# INITIAL ORDER FOR EXAMINATION

## EXAMINATION ORDER

The Court being fully advised: **IT IS HEREBY ORDERED THAT:**

1. The Department of Probation and Court Services shall conduct a:

- Fitness examination 725 ILCS 5/104-13
- Sanity or drugged condition evaluation 725 ILCS 5/115-6
- Sex offender evaluation 20 ILCS 4026/16
- Other examination (Specify the mental health and/or legal issue to be addressed)

2. The Department of Probation and Court Services shall appoint a licensed examiner to interview the defendant and produce a report as requested above.

3. The Department of Probation and Court Services shall submit the report to:

- Court
  - Defense Attorney
  - State's Attorney
- on or before (date) 11/01/2022

4. The assigned evaluator shall be given face to face - **Inside the Jail Perimeter** - access to the defendant, if the defendant is incarcerated in the DuPage County Jail or elsewhere. A language interpreter may accompany the evaluator.

5. If the defendant is out on bond, the defendant will be instructed to report to the Department of Probation and Court Services immediately upon leaving the court to schedule an examination as required.

6. The Sheriff's Department and the State's Attorney's Office and/or the DuPage County Health Department, the Public Defender and/or private attorney and/or any other agency where the defendant has been evaluated or treated are authorized to release any and all pertinent records, segregation log and reports, evaluations, police reports, medical, psychological or psychiatric reports to the assigned evaluator in the Department of Probation and Court Services of the 18th Judicial Circuit Court.

Submitted by: \_\_\_\_\_

DuPage Attorney Number: \_\_\_\_\_

Attorney for: \_\_\_\_\_

Address: 502 N. COUNTY EARM RD. PUBLIC DEFENDER OFFICE

Entered: \_\_\_\_\_

Date: 10/31/2022  
*Robert A. Miller*

JUDGE ROBERT A MILLER



# WHO SHOULD NOT BE APPOINTED?

- **As tempting as it is to immediately send a Defendant who exhibits obvious issues to the Department of Human Services for the initial evaluation, that can't be done. Per 725 ILCS 5/104-13, no expert “employed by the Department of Human Services shall be ordered to perform, in his official capacity, an examination under this section.”**

# **WHAT HAPPENS AFTER THE PROBATION DEPARTMENT IS APPOINTED?**

**Either the staff psychologist or a contract psychologist will interview the Defendant either at the jail (if the Defendant is incarcerated) or at the Dr.'s county office.**

**The report of the examination shall be tendered to “ the court, the State, and the defense within 30 days of the date of the order.”**

- 725 Ill. Comp. Stat. Ann. 5/104-15

# INITIAL EXAM - REPORT

The Initial examiner 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:

- 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 to assist in his defense, or both.
- The report may include a general description of the type of treatment needed and of the least physically restrictive form of treatment therapeutically appropriate.

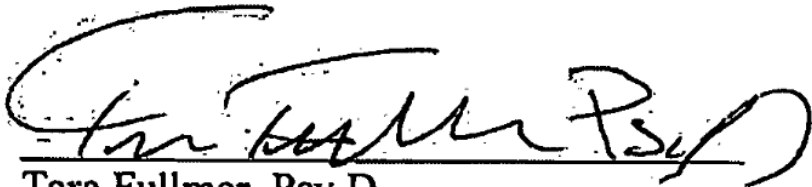
## **IN A NUTSHELL, WHAT IS THE 30 DAY REPORT SUPPOSED TO SAY?**

- **Although all judges thoroughly read the entire report, often the findings are capsulized at the end of the report. The examiner should state an opinion that Defendant is either FIT or UNFIT to stand trial, and the proposed treatment plan.**

# THE INITIAL EVALUATION

**OPINION:** Therefore, based on her presentation during the evaluation and the information obtained in records, it is my opinion, to a reasonable degree of psychological certainty that Ms. Waters is unfit to stand trial. Ms. Waters's bipolar-related mood symptoms and disorganization made it difficult for her to attend to the session and logically answer questions. Therefore, her current mental state impairs her ability to appreciate the nature of court proceedings and assist in her own defense.

If the Court finds Ms. Waters unfit to stand trial, it is this evaluator's opinion that she receives treatment in an inpatient setting. Ms. Waters is not currently taking psychiatric medications, has been placed on suicide watch at the jail, and is unable to coherently communicate. Her mental health needs coupled with her homelessness in the community suggest she would be unlikely to comply with outpatient treatment services. Therefore, an inpatient setting would better meet her needs at this time to thoroughly monitor and manage her symptoms. It is reasonable to conclude that she could be restored to fitness within the statutory time period associated with her charges.



Tara Fullmer, Psy.D

# HEARING WITHIN 45 DAYS

**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.**

725 Ill. Comp. Stat. Ann. 5/104-16

# DOES THE EVALUATION NEED TO BE RECORDED?

- Per 725 ILCS 5/104-15(d) - All forensic interviews conducted by a person retained or appointed by the State or the defense shall be videotaped unless doing so would be impractical.
- In the event that the interview is not videotaped, the examiner may still testify as to the person's fitness and the court may only consider the lack of compliance in according the weight and not the admissibility of the expert testimony.

# DOES THE EVALUATION NEED TO BE RECORDED? PART 2

- **The amendment to 725 ILCS 5/104-15 refers to "a person retained or appointed by the State or the defense." Typically, the Probation Department's psychologist is appointed as the "Court's" expert. In fact, 725 ILCS 5/104-13 states that "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."**
- **Therefore, it appears that the requirement to videotape does NOT extend to the typical circumstance of Probation's psychologist performing the examination, since he/she is not retained by either the State or the defense.**



# **IF THE DEFENDANT IS FOUND FIT BY THE EXAMINER, IS THE ISSUE RESOLVED?**

- **Yes, if the Court has NOT yet found that a bona fide doubt existed.**
- **Otherwise, once a bona fide doubt is raised as to the defendant's fitness to stand trial, the State must prove the defendant fit by a preponderance of the evidence. In determining a defendant's fitness, courts are to consider, among other things, the "defendant's ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged." 725 ILCS 5/104-16(b)(2).**

**CAN THE PARTIES STIPULATE TO THE REPORT OR MUST THERE BE A HEARING WITH LIVE TESTIMONY?**

- **The parties may stipulate that if called to testify, that the qualified examiner who had examined the defendant would testify consistent with their reports. The parties cannot simply stipulate that the Defendant is “fit” or “unfit.” People v. Lewis, 103 Ill.2d 111, 468 N.E.2d 1222 (1984)**

# JUDGE SHOULD MAKE INDEPENDENT RECORD

- **The parties may stipulate to a report, but it is incumbent upon the court to make a record reflecting that it did more than merely base its fitness finding on the stipulation to the expert's ultimate conclusion.**
- People v. Cook, 2014 IL App (2d) 130545, 25 N.E.3d 717

# **IS THE COURT REQUIRED TO ACCEPT THE STIPULATED EXPERT'S OPINIONS?**

- **No. In determining a defendant's fitness to stand trial, the trial court is not required to accept the opinions of psychiatrists. However, a trial court cannot reject an expert's opinion that a defendant is unfit to stand trial without evidence that the defendant is fit.**
- **People v. Lucas, 388 Ill.App.3d 721, 904 N.E.2d 124 (2009).**

## CAN A JUDGE TAKE JUDICIAL NOTICE OF A FINDING OF UNFITNESS BY ANOTHER COURT?

- Although a trial court is not bound to take judicial notice of the proceedings or record of another trial court's decisions, it may do so where injustice otherwise will result. In re Marriage of McBride, 166 Ill.App.3d 504, 519 N.E.2d 1095 (1988) Dist.,1988
- The determination of whether a bona fide doubt exists rests within the sound discretion of the trial court. People v. Rice, 257 Ill.App.3d 220, 195 Ill.Dec. 373, 628 N.E. 2d 837 (1993)

# RULE 23 CASE

The trial court in this case found that a *bona fide* doubt existed as to defendant's fitness and appointed counsel to represent him. Meanwhile, in a different case {aggravated battery case (No. 04–CF–960)}, defendant had a jury trial on the issue of his fitness to stand trial and was found unfit. In response, the trial court in this case took judicial notice of that finding and deemed defendant unfit for revocation proceedings. Defendant appealed the unfitness findings in this case

The Appellate Court affirmed the finding of unfitness.

**Caveat:** When the unfitness finding is on appeal, the trial court retains jurisdiction to find the Defendant FIT, but not to proceed any further.

People v. Schroeder, 2012 IL App (2d) 101030-U, ¶ 4

# JURY DEMAND

- There is no constitutional right to a jury at a hearing to determine fitness to stand trial.
- Our legislature, however, has made provisions for a jury to determine the issue of a defendant's fitness under some circumstances. [725 ILCS 5/104–12 \(West 2012\)](#)

People v. McCoy, 2014 IL App (2d) 130632, 25 N.E.3d 678

# STATUTORY RIGHT TO A 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.**



# DEFENDANT DEMANDS JURY

**The defendant has the right to personally demand a jury determination of fitness, even if his attorney disagrees.**

People v. McCoy, 2014 IL App (2d) 130632, ¶ 25, 25 N.E.3d 678, 684.

# ATTORNEY'S INDEPENDENCE

In *People v. Holt* a fitness hearing was held before a jury. The State conceded that it would not be able to meet its burden to show that the defendant was fit.

The defendant's attorney moved for a directed verdict in favor of Defendant being unfit, and the trial court granted the motion.

On appeal, the defendant argued that her counsel was ineffective for failing to follow her personal preference for a finding that she was fit.

The Court held that diligent advocacy did not require an attorney to blindly follow every desire of his or her client and that an attorney who doubts the sanity of a client may assume that the client cannot act in his or her own best interests.

*People v. Holt*, 2013 IL App (2d) 120476, ¶ 3, 998 N.E.2d 933, 935, aff'd, 2014 IL 116989, ¶ 3, 21 N.E.3d 695

# INTRA-TRIAL FITNESS ISSUE

When a fitness issue is raised after trial has begun, or after conviction, but before sentencing, the issue shall be determined by the court.

# **NO RIGHT TO A JURY TRIAL RE: FITNESS RESTORATION**

**When a defendant has been found unfit, but after treatment is found to be fit, the Defendant does NOT have a right to have a jury trial regarding restoration of fitness.**

# WHAT HAPPENS IF THE COURT FINDS THE DEFENDANT UNFIT?

- **If the Court finds the defendant unfit, the Court should determine and find whether there is a likelihood that the defendant will attain fitness within one year if provided with a course of treatment.**

# DOES THE COURT NEED TO NOTIFY ANYONE IF THE DEFENDANT IS FOUND UNFIT?

**YES**



- **You must notify the State Police.**



# **WHAT TYPE OF TREATMENT SHOULD THE COURT ORDER?**

- **If the Defendant is NOT incarcerated, then the court shall select the least physically restrictive form of treatment therapeutically appropriate and consistent with the treatment plan. The report from the expert should include a general description of the type of treatment needed and of the least restrictive form of treatment.**
- **725 ILCS 5/104-17**



## **WHAT TYPE OF TREATMENT SHOULD THE COURT ORDER IF THE DEFENDANT IS IN JAIL?**

- **The Court may order the Defendant to be transferred to the custody of the Department of Human Services.**

# PLACEMENT FOR MISDEMEANORS

If the most serious charge faced by the defendant is a misdemeanor, the court shall order outpatient treatment, unless the court finds good cause on the record to order inpatient treatment.

**(New language effective 2023)**

725 Ill. Comp. Stat. Ann. 5/104-17

# IDHS TIME LIMITS

The Department shall evaluate the defendant to determine the most appropriate secure facility to receive the defendant and, within 20 days of the transmittal by the clerk of the circuit court of the court's placement order, notify the court of the designated facility to receive the defendant. **The Department shall admit the defendant to a secure facility within 60 days of the transmittal of the court's placement order, unless the Department can demonstrate good faith efforts at placement and a lack of bed and placement availability. (New for 2023)**

# WHAT HAPPENS AFTER THE DEFENDANT IS ORDERED TO RECEIVE TREATMENT?

- Within 30 days **of admission\*** to the designated facility, 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 time from the date of the finding of unfitness. 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.
- **(\* Before 2023 the statute read “with 30 days of entry of an order to undergo treatment...”)**

725 Ill. Comp. Stat. Ann. 5/104-17

# 30 DAY REPORT - PART 2

1. Whether the facility can provide appropriate treatment.
2. An opinion indicating if there is a substantial probability that the Defendant will attain fitness within one year from the unfitness finding.
3. A diagnosis of defendant's disability.
4. A description of expected treatment.
5. Identity of the person supervising the Defendant's treatment.

# CAN PSYCHOTROPIC DRUGS BE FORCED UPON THE DEFENDANT?

- **Yes, but the Court must be convinced by clear and convincing evidence that the administration of the medication will outweigh the harms that may be caused by the medication.**

# PSYCHOTROPIC DRUGS – Part 2

In weighing the competing interests, the Court should consider:

- (1) that important governmental interests are at stake;**
- (2) that involuntary medication will significantly further those concomitant state interests;**
- (3) that involuntary medication is necessary to further those state interests;**
- (4) that the administration of the drugs is medically appropriate, i.e., in the patient's best medical interest in light of his medical condition.**
- (5) forced medication may also be warranted for a purpose other than returning a defendant to competence to stand trial, such as purposes related to the individual's dangerousness, or purposes related to the individual's own interests where refusal to take drugs puts his health gravely at risk.”**

Sell v. United States, 539 U.S. 166, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003)

In re Mark W., 348 Ill.App.3d 1065, 285 Ill.Dec. 289, 811 N.E.2d 767 (2004)

## **WHAT SHOULD THE COURT DO IF THE 30 DAY REPORT STATES THAT DEFENDANT IS EXPECTED TO ATTAIN FITNESS WITHIN ONE YEAR?**

- **The matter should be set for a hearing to review the Defendant's fitness every 90 days after the initial finding of Unfitness. The court should review:**
  - **1. Whether the defendant is fit to stand trial or plead**
  - **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.**



# 90 DAY REPORT

90 DAY FITNESS EVALUATION  
BRIGGS, Jeremiah ID# 915417  
12/04/14

**History of Sexual Violence:** No information available about this at this time.

**Risk for Elopement:** Estimated to be low because the patient denied any history of elopement attempts in the past. He also denied any intent to elope or did not display any behaviors indicating intent to elope from this facility.

**Risk for Fire-Setting:** Estimated to be low because the patient denied any fire-setting behaviors in the past.

**Diagnostic Impressions:** At the present time, the patient presents with persecutory delusions, poor insight and judgment, circumstantiality, and recent auditory hallucinations.

## Diagnoses:

— **AXIS I:** Schizophrenia, Paranoid-Type; History of Alcohol and Marijuana Abuse; Noncompliance with Medications.

**AXIS II:** No Diagnosis.

**AXIS III:** No Diagnosis.

**AXIS IV:** UST; History of Incarceration; Criminal History; Mental Illness; History of Psychiatric Hospitalizations; Poor Insight; Noncompliance.

**AXIS V:** GAF: 30.

## Problem Identification & Treatment Interventions:

- (1) Unspecified Psychotic Disorder vs. Schizophrenia

Treatment Interventions: Further observation to establish AXIS I diagnosis; Activity and medial therapy; Antipsychotic medications.

- (2) Noncompliance with Medication

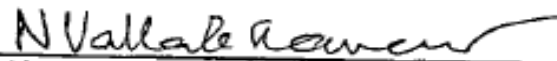
Treatment Interventions: Medication education.

- (3) Unfit to Stand Trial

Treatment Intervention: Fitness Education.

**Prognosis:** Is guarded due to the patient's refusal to take medications.

 **Fitness Statement:** Mr. Briggs is currently Unfit to Stand Trial. There is a substantial probability that he will attain fitness within a year.

  
N. Vallabhaneni, M.D., Psychiatrist

**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.]  
           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.]  
 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. 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 "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 discharge hearing  
 A status hearing to see if the civil courts committed the defendant to DHS  
 \_\_\_\_\_, a hearing which resumes this criminal case.

Date: \_\_\_\_\_, 20\_\_\_\_

Entered: \_\_\_\_\_

Judge of the Circuit Court

# TYPICAL 90 DAY REVEIEW ORDER

## ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter:

**IT IS ORDERED**, based on the DEFENDANT'S motion:

DEFENDANT NOT PRESENT. DEFENDANT IN TREATMENT. ATTORNEY PRESENT.

STATE AND DEFENSE STIPULATE TO REPORT. DEFENDANT CONTINUES TO BE UNFIT.

IT IS HEREBY ORDERED THAT THE PARTIES STIPULATE DR. CAROLYN SHIMA, TREATING PSYCHIATRIST IS AN EXPERT IN THE FIELD OF CLINICAL PSYCHOLOGY, AND STIPULATE TO HER EXPERTISE AND CREDENTIALS. THE PARTIES FURTHER STIPULATE THAT IF SHE WERE TO TESTIFY, SHE WOULD TESTIFY WITH A REASONABLE DEGREE OF PSYCHOLOGICAL AND SCIENTIFIC CERTAINTY, AND CONSISTENT WITH AND IN ACCORDANCE WITH HER REPORT DATED OCTOBER 26, 2022 AND THE FINDINGS AND CONCLUSIONS THEREIN. DEFENDANT REMAINS UNFIT TO STAND TRIALS. BUT THERE IS A SUBSTANTIAL LIKELIHOOD THAT DEFENDANT, IF PROVIDED WITH A COURSE OF TREATMENT, WILL ATTAIN FITNESS WITHIN THE STATUTORY TIME PERIOD.

PROGRESS REPORT TO BE IMPOUNDED.

CASE IS CONTINUED TO 02/03/2023 AT 08:30 AM IN COURTROOM 4003 FOR STATUS

## **IS THE DEFENDANT REQUIRED TO BE PRESENT FOR THE REVIEW HEARINGS?**

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



December 10, 2014

Judge Robert Miller  
DuPage County Court  
503 County Farm Road  
Wheaton, IL 60187

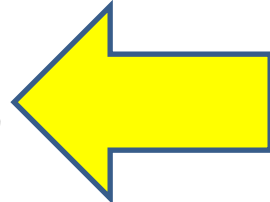
Handwritten notes: "11-11-14", "14 DEC 16 PM 2:43", "Clerk of the Court", "18th JUDICIAL DISTRICT", "MISSOURI".

RE: Jeremiah Briggs  
Ind. No. 13-DV-1468  
Admitted: 5/28/2014  
UST Date: 5/20/2014

Dear Judge Miller:

This progress report on **JEREMIAH BRIGGS** is being filed as required by Section 104-18, (a), (1) of Public Act 81-1217. Based on the content of the enclosed psychiatric evaluation, it is our opinion that he remains Unfit to Stand Trial.

It is our understanding that in order not to disrupt the patient's treatment program, the parties may stipulate to the contents of our report. It would, therefore, be unnecessary for us to bring the patient to the court. We will assume that this is how we will proceed unless otherwise informed.



Please address any questions, orders, or other correspondence to Wayne Womac, PSA, Forensic Court Services Liaison, who can be reached at 618-826-4571 ext. 221.

Sincerely,

Handwritten signature of Brian Thomas

Brian Thomas  
Hospital Administrator

# **WHAT SHOULD THE COURT DO IF A REPORT STATES THAT THE DEFENDANT IS FIT?**

- **If after a hearing, the Court finds the Defendant fit, the matter should be set for trial, or in the manner any other case is handled.**
- **Whenever the court is sent a report from IDHS that the defendant has attained fitness, the treatment provider shall arrange with the county jail for the immediate return of the defendant to the county jail under subsection (e) of Section 104-20 of this Code.**

**725 Ill. Comp. Stat. Ann. 5/104-18**

- **The court shall immediately enter an order directing the sheriff to return the defendant to the county jail.**

725 Ill. Comp. Stat. Ann. 5/104-20

# 90 Report states that the Defendant will NOT attain fitness

- **Whenever the court receives a report from the supervisor of the defendant will **NOT** attain fitness, with treatment, within the statutory time period, the court shall forthwith set the matter for a first hearing within 14 days unless good cause is demonstrated why the hearing cannot be held.**

**725 Ill. Comp. Stat. Ann. 5/104-20**

## IF THE OPINION STATES THAT THE DEFENDANT WILL NOT ATTAIN FITNESS WITHIN ONE YEAR

- If the Court finds that there is NOT a substantial probability that the Defendant will attain fitness within the time period set in subsection (e) of Section 104-17 of this Code from the original finding of unfitness, the court shall proceed as provided In Section 104-25 (Discharge Hearing), within **60 days\***, unless good cause is shown for the delay.
- **(Prior to 2023, the statute read within 120 days of a discharge motion being filed)**
- 725 ILCS 104-23



# TIME PERIODS TO RESTORE FITNESS

- **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.**

725 Ill. Comp. Stat. Ann. 5/104-17

# **TIME AFTER TREATMENT BUT BEFORE DISCHARGE HEARING**

- **After the expiration of treatment, and while awaiting the Discharge Hearing, it would appear the Defendant is returned to the status that existed prior to the order to undergo treatment. (Bond or Custody)**

# UNLIKELY TO BE RESTORED WITHIN STATUTORY PERIOD – Sample Report

has been entirely unable to benefit from this due to neurocognitive symptoms and unpredictable, impulsive, and violent behaviors.

Mr. Ngeunjuntr's competency has been assessed serially through semi-structured clinical interviews. At present, he lacks a basic understanding of the facts of his situation or general legal procedure. He does not accept that he is facing any charges at all and suspect staff "make this up for fun." He has not demonstrated any knowledge about the legal process or key persons in the courtroom. He is unable to think rationally due to neurocognitive impairments and secondary paranoia, impulsivity, and mood lability. He has not demonstrated appropriate behavior for a courtroom setting.

Given those facts, it is my professional opinion to a reasonable degree of medical certainty that Mr. Chinnawut Ngeunjuntr does not meet the legal threshold for competency to stand trial. Because this is primarily due to an underlying major neurocognitive disorder, which is unlikely to meaningfully respond to treatment, it is also my opinion that Mr. Ngeunjuntr is unlikely to be restored to competency within the statutory time limit of one year.

# ORDER SETTING MATTER FOR DISCHARGE HEARING

File Stamp Here

## ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter:

**IT IS ORDERED**, based on the DEFENDANT'S motion:

PUBLIC DEFENDER PRESENT VIA ZOOM. THE COURT IS IN RECEIPT OF AN EVALUATION AND REPORT REGARDING THE FITNESS OF THE DEFENDANT. THE PARTIES STIPULATE RYAN JONES OF UNIVERSITY OF CHICAGO MEDICINE, INGALLS MEMORIAL HOSPITAL IS AN EXPERT IN THE FIELD OF CLINICAL PSYCHOLOGY, AND STIPULATE TO HIS EXPERTISE AND CREDENTIALS. THE PARTIES FURTHER STIPULATE THAT IF HE WERE TO TESTIFY, HE WOULD TESTIFY WITH A REASONABLE DEGREE OF PSYCHOLOGICAL AND SCIENTIFIC CERTAINTY, AND CONSISTENT WITH AND IN ACCORDANCE WITH HIS REPORT DATED 1/26/2023 AND THE FINDINGS AND CONCLUSIONS THEREIN. HE WOULD OPINE TO A REASONABLE DEGREE OF CLINICAL PSYCHOLOGICAL CERTAINTY THAT THE DEFENDANT IS UNFIT TO PLEA OR STAND TRIAL, AND THERE IS NOT A SUBSTANTIAL LIKELIHOOD THAT DEFENDANT, IF PROVIDED WITH A COURSE OF TREATMENT, WILL ATTAIN FITNESS WITHIN ONE YEAR.

CASE CONTINUED FOR DISCHARGE HEARING.

CASE IS CONTINUED TO 03/28/2023 AT 10:30 AM IN COURTROOM 4003 FOR HEARING

# WHAT IS A SECTION 104-25 HEARING?

- This is a hearing to determine if the Defendant is “Not Guilty”
- The court does not find the Defendant “Guilty” but instead “**Not**-Not Guilty”
- The hearing is conducted by the court without a jury.
- Hearsay and affidavit evidence is admissible on secondary matters such as lab reports.

# **IS A NOT-NOT GUILTY DEFENDANT REMANDED?**

- **If the discharge hearing does not result in an acquittal of the charge the defendant may be remanded for further treatment to restore fitness, and the one year time limit set forth in Section 104-23 shall be extended as follows:**
- **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.**

# NOT-NOT GUILTY - PART 2

- If the Defendant is not committed pursuant to the Discharge Hearing, he or she shall be **“released.”** 725 ILCS 5/104-25(g)(3).
- State is not required to either try unfit defendants or to dismiss attending criminal charges against them. People v. Williams, App. 1 Dist.1977, 6 Ill.Dec. 386, 48 Ill.App.3d 842, 362 N.E.2d 1306.

# **IS THE SPEEDY TRIAL REQUIREMENT TOLLED?**

- **Per 725 ILCS 5/103-5, “Delay is occasioned by the defendant, by an examination for fitness ordered pursuant to Section 104-13 of this Act, by a fitness hearing, or by an adjudication of unfitness to stand trial”**



# WHAT HAPPENS IF THE DEFENDANT IS STILL UNFIT AFTER THE EXTENDED PERIOD?

- **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. 725 ILCS 5/104-25(g)(2)**
- **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. 725 ILCS 5/104-25(g)(2)**

# WHO CONDUCTS THE CIVIL COMMITMENT PROCEEDING?

- 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
- 725 ILCS 5/104-25(g)(2)

# **CAN THE CASE PROCEED AT ALL IF THE DEFENDANT IS FOUND UNFIT?**

- **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**

# DOES AN UNFIT DEFENDANT RECEIVE GOOD CONDUCT CREDIT?

- If the Defendant is not expected to be fit within one year, the matter will proceed to a discharge hearing.
- If the Defendant is NOT acquitted, (found “Not-not guilty) and is subsequently civilly committed, the Defendant is NOT entitled to good conduct credit. People v. Rasgaitis, 222 Ill.App.3d 855, 584 N.E.2d 451, Ill.App. 1 Dist.,1991.

# **IF THE DEFENDANT IS SUBSEQUENTLY CONVICTED, DOES GOOD TIME CREDIT APPLY?**

- **If a defendant is found unfit to stand trial or to be sentenced and is hospitalized in state, he shall be given credit for time spent in the hospital pursuant to the finding of unfitness if he is subsequently sentenced for the offense charged at the time of such finding. People v. Williams, 23 Ill.App.3d 127, 318 N.E.2d 692 (1974), 725 ILCS 5/104-24.**
- **Good Conduct Credit Allowance is addressed in the 730 ILCS 130 and 730 ILCS 5/3-6-3. Neither address commitment of unfit defendants.**

**IS THERE ANY STATUTORY AUTHORITY TO AWARD GOOD CONDUCT CREDIT IF A PREVIOUSLY COMMITTED DEFENDANT IS CONVICTED?**

- **Per 725 ILCS 5/104-26 (c )(5) (When an offender is placed with the Department of Human Services...) 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.**
- **Note: This statute refers to a convicted defendant who is remanded to the Department of Human Services due to a mental disability.**

## **DOES CASE LAW SUPPORT GOOD CONDUCT CREDIT FOR PRE-TRIAL COMMITMENT?**

- **Defendants who have been awarded good-time credit as a result of being found not guilty by reason of insanity, guilty but mentally ill, guilty after being found fit by the use of special provisions and assistance, and guilty after being found fit are situated differently than defendants committed due to unfitness for trial.**
- **People v. Williams, 142 Ill.App.3d 858, 494 N.E.2d 525 Ill.App. 2 Dist., 1986**

# KEY DATES

<b>0</b>	Order a report regarding the Defendant's fitness.
<b>30 days from Date of Order</b>	Report from examiner to be submitted within 30 days of the date of the order. {725 ILCS 5/104-15(a)}
<b>45 days from Date of Order</b>	Fitness hearing to be held with 45 days of the submission of the report. {725 ILCS 5/104-16(a)}
<b>Date of Unfitness</b>	It is the date that the Defendant is received for treatment that will be the baseline for future <b>REPORT</b> deadlines - Not the date of the Unfitness Finding.
<b>30 days from Admission to a Facility</b>	This is considered the Admission Report. Within 30 days of the Admission for treatment, the person supervising the defendants treatment shall file a report with the court, with preliminary opinions. A hearing isn't necessary at this point unless the Defendant was found fit, or was found unlikely to attain fitness within one year of the initial order. {725 ILCS 5/104-17(e)}
<b>90 days from Admission to a Facility</b>	Within 90 days from the admission to a facility, and every 90 day period following, a hearing to re-examine the defendants fitness shall be heard. {725 ILCS 5/104-20(a)}
<b>ANYTIME</b>	With 14 days of a report finding that the Defendant is NOT expected to be fit within one year of the original findings, a hearing should be set. {725 ILCS 5/104-20(a)}
<b>1 year from Unfitness Order</b>	If the Defendant is still unfit, follow procedure for a Discharge Hearing, or other options under 725 ILCS 5/104-23.



# WHAT IF THE COURT MISSES A DEADLINE?

- **The Appellate Court in the First and Fourth District were both confronted with an argument by the respective defendants that the time limits in the fitness statutes were not followed. Both courts found that when the time requirements in section 725 ILCS 5/104 are not met, there are neither statutory nor constitutional sanctions that are triggered.**
- People v. Oliver, 856 N.E.2<sup>nd</sup> 1144
- People v. Durham, 491 N.E.2d 832

# **SPECIAL TREATMENT FOR CLASS B & C MISDEMEANORS**

- **Per 725 ILCS 5/104-17, within 30 days of admission to IDHS 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 time which shall be no longer than the sentence if convicted of the most serious offense.**

# **TREATMENT TERM FOR B & C MISDEMEANORS**

- **A defendant cannot be ordered to undergo treatment for a term longer than the maximum sentence for the most serious offense. 725 ILCS 5/104-17**

# **CLASS B MISDEMEANOR**

- **If a defendant charged with a Class B misdemeanor is not found fit within 180 days of the order requiring the defendant to undergo treatment, the matter should be set for a discharge hearing regardless of whether there is an opinion that fitness may be restored within one year.**

# **CLASS C MISDEMEANOR**

- **If a defendant charged with a Class C misdemeanor is not found fit within 30 days of the order requiring the defendant to undergo treatment, the matter should be set for a discharge hearing regardless of whether there is an opinion that fitness may be restored within one year.**