



# POLICIES AND PROCEDURES OF THE ILLINOIS CRIMINAL JUSTICE SYSTEM





# Policies and procedures of the Illinois criminal justice system

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*Prepared by*

Junaid Afeef, Associate General Counsel  
Lindsay Bostwick, Research Analyst  
Simeon Kim, Associate General Counsel  
Jessica Reichert, Senior Research Analyst

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Illinois Criminal Justice Information Authority  
300 West Adams, Suite 200  
Chicago, Illinois 60606  
Phone: 312.793.8550  
Fax: 312.793.8422  
<http://www.icjia.state.il.us>

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# Introduction

## About this report

This guide provides a detailed walkthrough of the adult criminal justice system in Illinois. The system, procedures, and laws may differ significantly from other states. In addition, there may be variations in practice in different local jurisdictions. This guide provides an overview of the criminal justice system process. The Illinois Criminal Justice Information Authority (ICJIA) published a similar guide of the Illinois juvenile justice system, *Policies and procedures of the Illinois juvenile justice system*, which is available on the ICJIA website at <http://www.icjia.state.il.us>. This report is not intended as, nor constitutes, legal advice. If you need assistance on a specific criminal matter, please consult an attorney.

This report generally follows the flow of an adult criminal case through the criminal justice system. The first section describes arrest procedures following suspected criminal activity. The second section is on the court system, followed by a section on pretrial activities and a section on trial procedures. Proceeding sections detail sentencing procedures and options, corrections, sentence completion. The final section describes the expungement process.

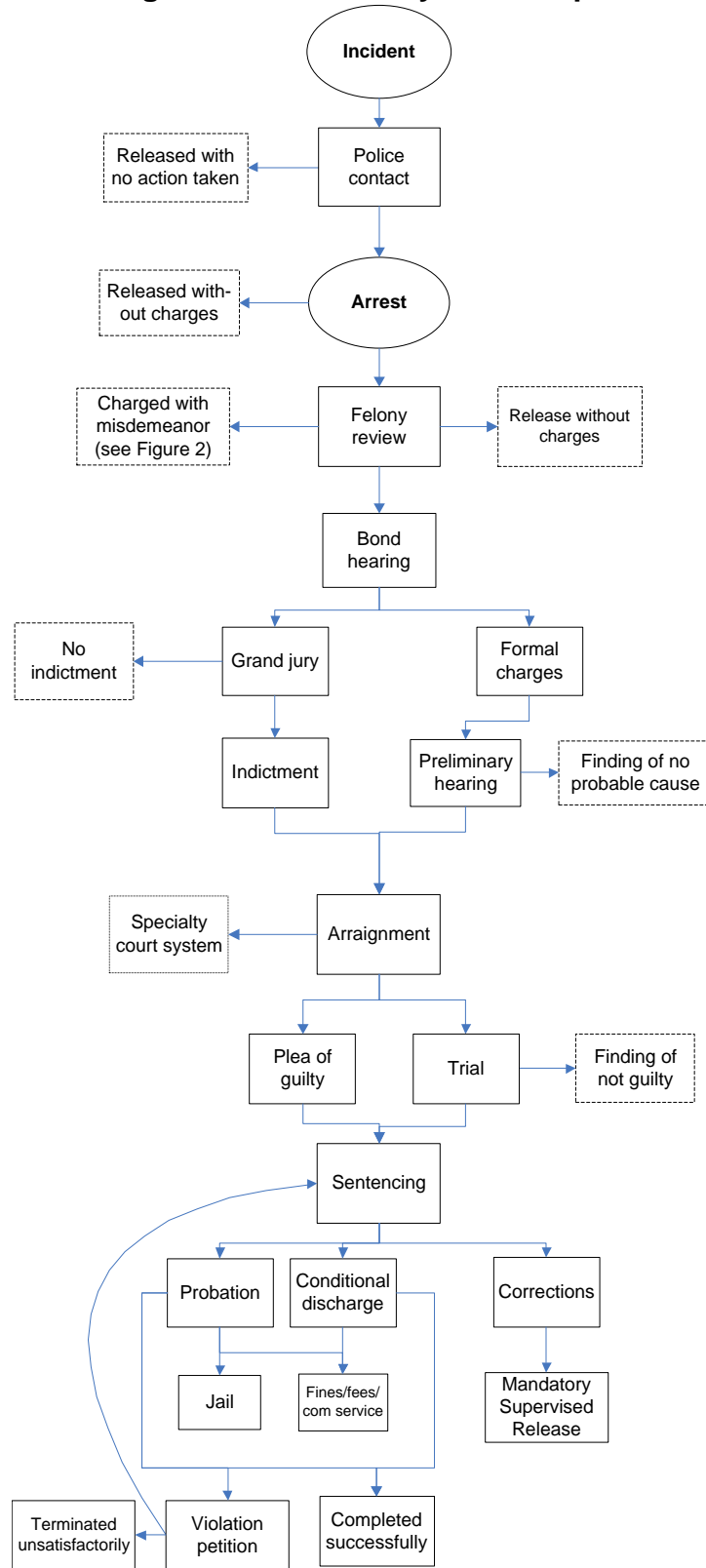
## The Illinois criminal justice system

There are 102 counties in the state of Illinois and each county operates its criminal justice system independently. Some statewide agencies have specific responsibilities. The Administrative Office of the Illinois Courts oversees probation and court services departments. The Illinois Department of Corrections oversees state prisons, and individuals on mandatory supervised release. Each county's criminal justice system is comprised of a network of state and local entities. These include:

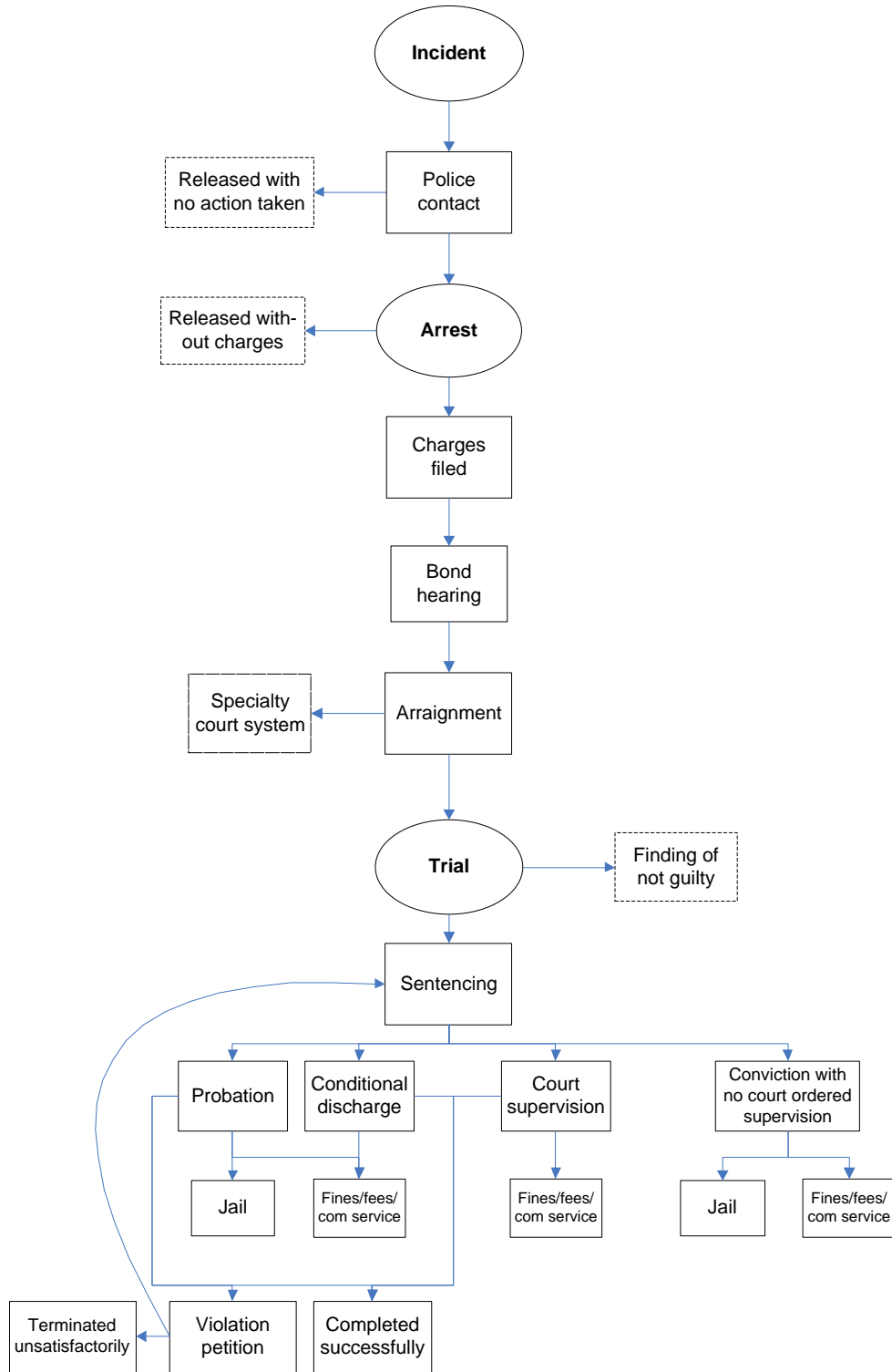
- Illinois State Police, county sheriff's departments, municipal police departments, university and college police departments, and other law enforcement agencies.
- Circuit clerks, county probation and court services departments.
- Judges, state's attorneys, public defenders, and private attorneys.
- Illinois Department of Corrections.
- County jails and municipal lock-ups.
- Private social service organizations that provide crisis intervention, residential placement, employment, counseling, re-entry, and other services.
- Neighborhood-based and faith-based organizations and coalitions.

*Figure 1* depicts stages in the adult felony criminal justice process. *Figure 2* depicts the stages in the adult misdemeanor criminal justice process. While cases typically flow the same way through county criminal justice systems, some variation exists between jurisdictions in how specific types of cases are handled.

**Figure 1**  
**Flowchart of the general adult felony criminal process in Illinois**



**Figure 2**  
**Flowchart of the general adult misdemeanor criminal process in Illinois**





# Police custody and arrest

## Incident

Involvement in the criminal justice system begins with an alleged violation of state criminal law or local or municipal ordinance. Individuals can enter police custody in different ways. A police officer may directly observe a violation of the law or ordinance or may be called to investigate a report of a possible crime. In either case, when a police officer determines that he or she has probable cause to believe an individual committed a criminal act, he or she can take that person into custody. Even with probable cause, a police officer may choose to release the individual and continue an investigation into the alleged offense. A police officer has discretion, limited by the police department's policy, regarding what action he or she takes. A person also may be taken into police custody on a warrant. A warrant is an order issued by a judge authorizing the arrest of a specific person. *Figure 3* provides some of the rights of individuals accused of a crime, but is not exhaustive.

### **Figure 3 Rights of the accused**

The following are some rights of adults accused of a crime:

- Right to remain silent at every step of the investigation and criminal prosecution.
- Right to prompt bond hearing.
- Right to a free attorney if the individual cannot afford to hire a private attorney, as determined by the court.
- Right to decide whether to plead guilty or not guilty.
- Right to be informed of the evidence and witness statements in the prosecution's possession.
- Right to decide whether to present the case to a jury or judge for trial.
- Right to confront witnesses.
- Right to testify or not testify during criminal proceedings.
- Right to appeal a conviction.
- Right to refuse to provide DNA samples except when ordered by the court.

## Complaint

A complaint is a document completed by a police officer stating the alleged offense. The complaint informs the accused of the nature of the charge and its filing starts the court process.

## **Warrants**

Arrest warrants may be issued in a variety of situations. An arrest warrant may be issued upon complaint when a complaint is presented to a court charging that an offense has been committed and the court determines through examination of the complaint that there is probable cause to believe the person committed the offense [725 *ILCS* 5/107-9]. An arrest warrant also may be issued when a person fails to comply with the conditions of a court order such as failing to appear in court [725 *ILCS* 5/110-3] or violating an order of protection in a domestic violence case].

## **Initial police stop**

A police officer can stop any person in a public place for a reasonable amount of time when the officer has a reasonable suspicion based on specific facts that an individual is committing, is about to commit, or has committed an offense. The officer may ask the name and address of the individual and may ask questions about the individual's actions or reason for being in the area [725 *ILCS* 5/107-14]. While an officer may question citizens during such stops, citizens have a right to remain silent. If the officer has specific reason to believe that the individual may be armed, the officer also has the right to pat down the individual for weapons. The permissible period of detention must be reasonably brief. If the officer's suspicions are not confirmed by the contact, the individual is free to go.

## **Arrest**

If the officer has probable cause to believe that an individual has committed an offense, the officer may make an arrest. Once taken into police custody and placed under arrest, an individual must be informed of certain constitutional (Miranda) rights prior to questioning by police. Among these is that an individual has the right to remain silent and the right to an attorney. If a person is not advised of his or her Miranda rights prior to interrogation, the person may be able to prevent prosecutors from using the results of the interrogation in a subsequent criminal trial.

When an arrest is made, an arrest card is completed either electronically or on paper that includes the individual's fingerprints, offenses with which they are being charged, their race, gender, age, and other information. The information is then submitted to the Illinois State Police's Criminal History Records Information (CHRI) system. *Appendix A* includes a copy of an arrest card used by police in Illinois.

Options available to officers at the time of an arrest include releasing the individual without criminal charges, releasing the individual with a request to the state's attorney (or prosecutor) to review the case to file charges, or formally charging the suspect. If formally charged, a person has the right to know the nature of the offense on which the charge is based.

## **Charges**

After a case is investigated by the police, they make the initial decision of whether probable cause exists to charge an arrestee with a crime. Probable cause is a police officer's reasonable

belief that a violation of state law occurred. The police officer's initial decision will be re-evaluated by a court.

Police investigations include interviewing witnesses and gathering physical evidence. Witnesses interviewed may include victims, suspects, possible eye witnesses, and expert witnesses. If the police decide not to file charges due to insufficient evidence or for any other reason, the arrestee is released from custody. Charges may be filed later.

However, for most crimes, charges must be filed within a specific time period, due to the statutes of limitation. Time limits differ depending on whether the crime is a misdemeanor or a felony. Misdemeanor crimes carry a possible jail sentence of less than one year. Felony crimes carry a possible sentence to incarceration of one year or more in the state prison. Generally, statutes of limitation are 18 months for misdemeanors and three years for felonies. However, there are some exceptions [720 *ILCS* 5/3-5].

When the police are seeking felony charges, the prosecutor is usually contacted to review the charges. Prosecutors are usually available around the clock to screen cases for felony charges. They can approve felony charges, decline felony charges, or instruct the police to continue the investigation. The suspect may be held in custody for a reasonable period of time as an investigation continues. After further investigation, the police may again contact a prosecutor for approval of felony charges. If felony charges are not approved, police have the option of charging the suspect with a misdemeanor offense, if appropriate.

## **Bond**

Bond, also known as bail, is a monetary deposit given to the court clerk to secure the release of the defendant from custody during a pending case. A predetermined amount of bond is set by law for some misdemeanor charges. In felony cases, the bond amount is determined by a judge. If bond is posted, the individual will be released from custody (police lock-up or county jail) and given a court date. If the person cannot post bond or if the law does not provide for a predetermined amount of bond, the person is placed in a holding cell until he or she is brought before a judge. If the judge makes a preliminary determination that probable cause exists to detain the person, the judge sets bond and other conditions of release. Any person arrested shall be taken without unnecessary delay before the nearest and most accessible judge in the county [720 *ILCS* 5/109-1]. Bond can be denied, but it is rare.

## **Pre-trial services**

Pre-trial services agencies are housed in each county probation department. Pre-trial services officers interview felony defendants while in custody and prepare a report to the judge that includes the individual's background information such as community ties, employment, criminal history, and other details. This report assists the judge in making informed pre-trial release decisions, including conditions of bond. A defendant may refuse to speak to the pre-trial services officer. The report is confidential and may not be released to any individual or organization other than the defendant and his or her attorney, employees of probation and court services, and the prosecuting attorney without the defendant's permission.

Pre-trial services officers also supervise those on pre-trial release to ensure compliance with the conditions of release [725 *ILCS* 185 et seq.]. Conditions of pre-trial release include no contact or stay away orders, curfew, drug and alcohol testing, electronic home monitoring, and required contact with a pre-trial services officer.

# Special issue: Multi-disciplinary and multi-jurisdictional responses to crime

In Illinois, multi-disciplinary and multi-jurisdictional teams and task forces are in place to address specific types of crime. These groups may include law enforcement, prosecutors, non-profit agencies, and concerned citizens, who combine resources, knowledge, and personnel to tackle specific crime issues.

## Illinois motor vehicle theft task forces

The Illinois Motor Vehicle Theft Prevention Council (Council) was established to combat vehicle theft, insurance fraud, and related crimes. Funded through fees paid by insurance companies, the Council is made up of law enforcement and insurance industry officials to assess the scope of the motor vehicle theft problem and implement strategies to combat it. The Council oversees 11 auto theft task forces, special prosecution units and support programs comprised of both state and local agencies. The task forces coordinate with local, county, state, and federal agencies in their areas, along with insurance companies, local vehicle rental companies, and salvage yards. Their central activities include intelligence gathering, investigation of auto theft and insurance fraud rings, and local law enforcement training.

## Illinois law enforcement task forces

Police agencies may join together to form major crimes task forces to investigate serious offenses and so share resources beyond the capacity of individual departments. Multi-jurisdictional teams consisting of several law enforcement agencies are in place across Illinois to address certain specific, serious crime problems across jurisdictional boundaries. Task force membership may be drawn from municipal, county, state, and federal law enforcement agencies and may be established formally by statute or in response to a limited pressing community need.

Multi-jurisdictional enforcement groups (MEG) and drug task forces are staffed by officers representing state, county, and local police agencies to combat drug crime. MEGs have been in existence in Illinois since 1978 through the Intergovernmental Drug Enforcement Act [30 *ILCS* 715/1]. MEG operations are limited to the enforcement of drug laws and certain weapons offenses and the investigation of gang-related crimes. Other drug task forces began in the 1980s using the organizational authority from the Intergovernmental Cooperation Act [5 *ILCS* 220/1]. Twenty-two multijurisdictional drug task forces exist in Illinois.

## Multi-disciplinary teams

Multi-disciplinary teams (MDT) bring together professionals from diverse disciplines to review criminal cases and assist victims. MDT can enhance service coordination by clarifying agencies' policies, procedures, and roles, and by identifying service and communication gaps. MDT typically handle cases of sexual assault, domestic violence, child abuse, and elder abuse. For example, in Peoria, Illinois, the Family Justice Center uses a MDT model and involves the local

police, county sheriffs, prosecutors, probation and court services, and a non-profit victims' services agency. MDT offer a single location for victims to talk to a police officer, meet with a prosecutor, and obtain services, such as safety planning and assistance in obtaining an order of protection.

# The court system

The Illinois criminal court system has three tiers: trial or circuit courts, appellate courts, and the Illinois Supreme Court. The majority of all criminal matters are heard and resolved in circuit courts. Violations of federal criminal laws are heard in the federal courts, an entirely separate system from Illinois state courts.

The Illinois court system is comprised of 23 judicial circuits. Judicial circuit courts are where all state criminal cases are introduced. Most circuits include two or more counties. Single-county judicial circuits include those of Cook, DuPage, Lake, McHenry, and Will. Circuit judges elect the chief judge, who is the administrative authority for the circuit and assigns cases to specialized divisions. Circuit court judges are elected for six-year terms, with no term limit. Associate judges are appointed by circuit court judges to four-year terms and may hear only non-felony cases, unless they are authorized by the Illinois Supreme Court to handle felony matters. *Appendix B* offers a map of the judicial circuits in Illinois.

## Criminal offense classes

In Illinois, felony and misdemeanor offenses are classified by degree of severity. In order of decreasing severity, these classifications are first degree murder, Class X felonies, Class 1, 2, 3, and 4 felonies, and Class A, B and C misdemeanors. State statute mandates imprisonment for certain offenses, including all first degree murder cases, all Class X offenses, and certain Class 1 and 2 felonies. Both felony and misdemeanor offenses are punishable by imprisonment, along with other sentencing alternatives. An individual charged with a felony offense that does not carry a mandatory sentence of imprisonment may instead be sentenced to probation or conditional discharge. Probation or conditional discharge, however, must be imposed in felony cases when imprisonment in a state prison is not ordered, and may be imposed for misdemeanor offenses [730 ILCS 5/5-5-3]. Misdemeanor incarceration sentences imposed must be less than one year. Municipalities may also enact local ordinances prohibiting certain conduct but may only proscribe a maximum penalty of six months incarceration. Such municipal ordinances often relate to the same conduct as state misdemeanor offenses.

## Prosecutors

Violation of a state criminal statute is a crime against the state. The state has the responsibility to bring charges and prosecute the alleged offenders. Victims of crimes have rights as enumerated in the State Constitution. However, those rights do not include the authority to pursue or dismiss criminal proceedings. In Illinois, the state is represented in each county by a state's attorney, an elected prosecutor. All prosecutors working for the county state's attorney are referred to as assistant state's attorneys. Other states may use different terms for prosecutors such as district attorneys and county prosecutors. In this document, Illinois state's attorneys and assistant state's attorneys will be referred to as prosecutors.

## **Representation by an attorney**

At any time after being taken into custody, an individual can retain a private attorney to represent him or her. After an individual is charged with a crime, he or she has the right to appointed counsel (often referred to as a public defender). Counsel is appointed to individuals who cannot afford their own attorney as determined by the court.



# Special issue: Specialty courts

Also called problem solving courts, these courts serve special populations and attempt to address and treat the underlying reason for offending behavior. Drug courts, mental health courts, and veterans courts are most common in Illinois. Some jurisdictions have courts dedicated to handling only specific offenses such as domestic violence and driving under the influence, but those are not considered “specialty courts” for the purpose of this report.

## Characteristics of specialty courts

The specialty court model includes a judge, prosecutor, defense attorney, probation officer, social worker or case manager, treatment provider, and other justice system partners who work together to determine an appropriate combination of sanctions and treatment. Specialty courts focus on establishing or restoring offenders as contributing members of society through a balanced approach of treatment and supervision.

While eligible populations for specialized courts vary depending on the jurisdiction, the following components remain constant:

- Individuals must voluntarily participate in the program.
- Individuals must have no pending charges for a violent crime and no prior conviction for a violent crime in the past 10 years.
- Specialty courts are either housed in a separate facility or in a dedicated courtroom. This adds to the specialized focus of these models.
- In order to encourage compliance, specialty courts must offer clear incentives. Depending on the model, these incentives may be the prospect of dismissed charges, avoiding incarceration, or smaller rewards, such as movie tickets or restaurant vouchers. In addition, sanctions also may be imposed, such as increased reporting, curfew, home confinement, and county jail time.
- Judges, prosecutors, and defense attorneys assist the offender with accepting responsibility for his or her actions, focusing on rehabilitation, and completing the program, rather than focusing on punishment.
- The courtroom workgroup (judge, prosecutor, defense attorney, and other administrative staff) creates an individual plan for treatment, including available incentives and sanctions, assesses and addresses the needs of the individual, and outlines a specific timeline for completion.
- Judges in specialty courts become invested in the success of the offender, taking time to monitor progress, praise compliance, and sanction non-compliance.
- Specialty courts incorporate graduation exercises, ranging from a certificate of completion to a ceremony in the courtroom, to recognize the offender’s accomplishment.

## **Drug courts**

Drug court populations are limited to individuals with substance use disorders, often focusing on lower-level drug offenders who show willingness to participate in treatment. Some drug courts accept individuals who commit crimes, such as burglary or theft, to support a drug habit. Drug courts have certain common components and others that may vary across sites:

- Some courts accept offenders with a substance use/abuse disorder generally, while others only accept offenders who have committed specific drug-related crimes.
- Post-plea models require offenders to plead guilty and waive their right to a trial. This model uses avoidance of incarceration as one incentive for the offender to remain compliant with program conditions. In this model, if the offender does not successfully complete the drug court program, he or she is convicted of the charge(s) and the judge will impose a traditional sentence. Upon successful completion of the program, the court may dismiss the original charges, terminate the sentence, or otherwise discharge the offender from any further criminal court proceedings. Another pre-plea model allows for dropped or dismissed charges upon successful program completion without a guilty plea from the offender.

In Illinois, most drug courts do not use pre-plea models. Illinois drug court operations are outlined in the Drug Court Treatment Act [730 *ILCS* 166/ et seq.].

## **Mental health courts**

Mental health court populations include individuals with diagnosed mental illnesses who can consent to and follow a court's case plan. Mental health courts have several components:

- Mental health courts accept individuals with serious diagnosed mental illnesses requiring treatment, often with drug abuse issues as a co-occurring disorder.
- Although some mental health courts do not allow violent offenders or sex offenders, an increasing number of these courts are allowing individuals with mental health needs who commit violent offenses [730 *ILCS* 168/1 et seq.].
- Mental health court staff receives specialized training on how to safely and effectively interact with mentally ill offenders. This is a necessity for individuals working with these populations.

Illinois mental health court operations are outlined in the Mental Health Court Treatment Act [730 *ILCS* 168/ et seq.].

## **Veterans courts**

Veterans courts seek to assist veterans whose problems have led to criminal involvement and include the following components:

- Veterans court populations include all active service members in the military and veterans who were discharged or released from duty. Dishonorably discharged veterans are ineligible.
- Since veterans courts often handle individuals who have co-occurring disorders (substance abuse and mental health), many veterans courts have adopted a model that includes components of both drug courts and mental health courts.
- Veterans court participants may receive job training, group treatment sessions to discuss and process traumatic events, or other professional or communal opportunities.

Illinois veterans court operations are outlined in the Veterans and Service Members Court Treatment Act [730 *ILCS* 167/ et seq.]. A distinct advantage of such courts is that needed drug abuse or mental health treatment is provided by the individual's veteran's benefits, the costs of such treatment often are a problem for other specialty courts.

# Pre-trial activities

## Criminal charges

Criminal complaints are filed prior to a defendant's first court appearance. A person alleged to have committed a misdemeanor offense is charged via a complaint or in some Illinois jurisdictions, an "information." A complaint is a document filled out by a police officer detailing the alleged offense. An information is a document completed by a prosecutor and filed with the court to initiate criminal court proceedings.

A person alleged to have committed a felony is charged via an information or indictment. An indictment is a document filed by a prosecutor on behalf of a grand jury stating the existence of probable cause to believe that a person committed a crime.

All charging documents, complaints, information, and indictments must include:

1. Name of the alleged offense.
2. Statutory provision alleged to have been violated.
3. Nature and elements of the offense charged.
4. Date and county of the offense.
5. Name of the accused, if known. If the name is not known, a description of the accused is included, by which he or she may be identified with reasonable certainty [725 *ILCS* 5/111-3].

Within 30 days of arrest, a defendant who is in custody must have a preliminary hearing or be charged by indictment, or be released from custody. The deadline for a preliminary hearing and/or indictment is 60 days for those not in custody. The time limit may be extended further when the delay is caused by the defendant or for competency issues [725 *ILCS* 5/109-3.1].

## Preliminary hearing

After a felony complaint is filed, the prosecutor may elect to proceed by a preliminary hearing instead of presenting the case to the grand jury. At the hearing, a judge determines if there is probable cause to believe that the defendant has committed the offenses with which he or she has been charged [725 *ILCS* 5/109 et seq.]. The defendant may waive his or her right to a preliminary hearing [725 *ILCS* 5/109-3]. Upon a finding of probable cause the prosecutor will file an information which takes the place of an indictment as the formal charge which requires the individual to stand trial.

## Indictment by Grand Jury

A Grand Jury is a body of 16 citizens (12 are required for a quorum) of a jurisdiction that make indictment decisions on criminal felony cases. Prosecutors present evidence about the case to the Grand Jury. The defendant is typically not present unless requested by the prosecutor or subpoenaed by the Grand Jury. Grand jurors determine if there is probable cause to believe that

the defendant committed the crime. If the Grand Jury finds probable cause, the prosecutor will prepare a Bill of Indictment [725 *ILCS* 5/112-4], a charging document signed by the foreman of the Grand Jury [725 *ILCS* 5/111-3] and agreed upon by at least nine grand jurors.

## **Arraignment**

Before a defendant may be required to stand trial in criminal court he or she must be arraigned. An arraignment is a proceeding in open court where the defendant is read the formal charge(s) against him or her. This occurs after the preliminary hearing or grand jury indictment and bond hearing, but before trial [725 *ILCS* 5/113-1 et seq.].

A defendant also has the right to counsel at the arraignment. A court will allow a defendant time to retain and consult with counsel by continuing the arraignment for a reasonable amount of time. If a defendant cannot afford counsel, then counsel—an attorney with the public defender’s office or a private licensed attorney—will be appointed to represent the defendant at no cost to him or her.

## **Pleas**

At the arraignment, the defendant must enter a plea—a formal statement of not guilty, guilty, or guilty but mentally ill. A plea entered at arraignment should not be confused with plea agreements or plea bargains which have different meanings. If the defendant pleads not guilty at arraignment, he may change his plea later during the proceedings.

### **Guilty**

At any time, a defendant may enter a plea of guilty with or without a formal plea agreement. A guilty plea will not be accepted until the court explains to the defendant the consequences of pleading guilty and ensures there is a factual basis for pleading guilty. These consequences include giving up certain constitutional rights and the judge must question the defendant in open court to ensure that the defendant understands the rights. This explanation includes a statement of the maximum penalty provided by law that the court may impose. If the defendant maintains a guilty plea and the judge believes the plea was made freely and knowingly, the plea will be accepted by the court. Without a plea agreement, the judge determines the sentence. This kind of plea is often called a blind plea, open plea, or cold plea.

### **Not guilty**

A defendant may enter a plea of not guilty at the arraignment. If the defendant chooses not to speak at all, a not guilty plea is presumed and entered. After a plea of not guilty, the case will move ahead to trial. If the defendant fails to appear in court, he or she waives the right to confront witnesses, and may be tried in his or her absence.

### **Guilty but mentally ill**

If a defendant pleads guilty but mentally ill, a series of examinations and hearings must take place to determine whether the defendant was mentally ill at the time of the offense. The

defendant will be required to undergo an examination by a clinical psychologist or psychiatrist who will produce a report for the court. A hearing will be held on the issue of the defendant's mental condition. If the court finds that the defendant was mentally ill at the time of the offense, the plea is accepted and entered.

## **Pre-trial motions**

There may be one or more court dates between the defendant's arraignment and trial. These appearances are used by the court to oversee and supervise trial preparation. Trial preparation includes investigation, witness preparation, exchange of discovery between the prosecutor and defense attorney, and filing of and ruling on various motions. A pre-trial motion is a formal request to the judge to make a ruling on a legal issue. Such issues may include a request for a bond reduction, matters respecting discovery of evidence that the opposing party has or intends to introduce at trial or the suppression of evidence on a claim that the evidence was obtained in violation of the Constitution. Either side can also request a pre-trial determination of the admissibility of particular evidence by a motion *in limine*.

There are numerous motions authorized by the *Illinois Code of Criminal Procedure*. Motions may include a request to dismiss the charges, for a continuance, for substitution of judges, to join or to sever charges, to suppress a confession, to suppress evidence illegally seized, and discovery matters [725 ILCS 5/114-1 et seq.].

## **Pre-trial preparation**

In most cases, it is necessary for the prosecutor and defense counsel to locate and interview witnesses, secure witness statements, and prepare a strategy for trial. The prosecutor is responsible for proving the defendant guilty beyond a reasonable doubt. The defendant is presumed innocent. A defendant is not required to prove his or her innocence or to offer any evidence at trial but may rely solely on challenging the strength of the prosecution's case. The defense will prepare for trial by examining the prosecution's evidence and analyzing it for inaccuracies and inconsistencies. The defendant may try to locate witnesses or other evidence which contradicts the prosecution's witnesses. Defense preparations also may involve securing evidence to support an alibi or an affirmative defense—a claim by a defendant that he or she has a reasonable excuse for their conduct based on the law, such as insanity or self-defense. Either side may issue a subpoena to require witnesses to appear and give testimony or to produce physical evidence at trial.

## **Plea agreements**

After the prosecutor reviews the case and speaks to the victim(s), he or she may offer a plea agreement, or plea bargain to the defendant. A plea agreement usually involves an agreement by both sides to recommend to the judge that a specific sentence be imposed in exchange for the defendant's guilty plea. A plea agreement may also involve a reduction in the seriousness of the charges.

A defendant and the prosecution can enter into a plea agreement at any time before a verdict. If the defendant enters into the plea agreement, he or she may be sentenced by the judge who makes the ultimate decision on the plea agreement and subsequent sentence. The judge often sentences in accordance with plea agreements, but plea agreements may be rejected.

If the prosecutor and defense are unsure if a judge will accept or reject a plea agreement, they can request a “402 conference.” In a 402 conference, prosecutors and defense attorneys may confer with the judge, with the consent of the defendant, to disclose the tentative plea agreement and the reasons supporting the plea [IL S. Ct. Rule 402]. At the conference, the judge will indicate approval or disapproval of the agreement. If the judge rejects the proposed agreement or the defendant rejects the offer, the case will proceed to trial.

### **Discovery**

Pre-trial preparations involve a process referred to as discovery. In the discovery stage of felony cases, both the prosecution and the defense share information about witnesses and their prior statements and testimony, physical evidence and other information. In misdemeanor cases, only the prosecution is required to produce discovery information, but that information is more limited than in felonies.

# Trial

Unless the defendant has pled guilty, a trial will be held to determine whether or not the defendant is guilty of the crime charged. A defendant may only be found guilty if the prosecution produces enough evidence to establish the defendant's guilt. If, after considering all the evidence presented at trial, there remains a reasonable doubt as to whether the defendant committed the crime charged, the prosecution has not met its burden of proof and the defendant must be found not guilty. In making that determination, the only evidence that can be considered is the evidence which has been presented during the trial.

Our system of justice, both criminal and civil, is based on the adversary system where opposing parties may present evidence and challenge the strength of the opposing party's case. The system rests on the assumption that such an adversarial process is likely to determine an accurate result. In criminal cases, the two parties are the state, represented by the prosecutor and the defendant, usually represented by a defense attorney. The crime is against the state and its laws, and even in crimes where there is an individual victim, the victim is not a party to the case.

## Jury and bench trials

In a bench trial, the judge decides whether the defendant is guilty or not guilty. In a jury trial, a jury decides. However, in a jury trial, while the jury is the sole judge of the facts, the judge determines legal questions, such as whether certain evidence may or may not be admissible. Defendants have the right to a jury in a criminal trial, but he or she can give up that right and have a bench trial. The state has no right to request a jury trial. A trial jury, as opposed a Grand Jury, is made up of 12 citizens.

## Jury selection

If the defendant does not waive his or her right to a jury trial and does not enter into a plea agreement, the next step is the selection of 12 jury members. Illinois statutes, Illinois Supreme Court rules, and Illinois and federal case law outline rules for the selection of jury members. Selection varies based on jurisdiction and courtroom. Individuals are selected at random, generally from voter registration lists, to serve as jurors. The prospective jurors will receive a jury summons to appear on a set day for possible jury service. On the date of service, these prospective jurors are brought to the courtroom where the case will be heard for the jury selection process. Potential jurors will be questioned to determine their ability to hear and decide the case fairly and impartially. If the questioning develops that the individual would not be able to do so, that individual will be excused from jury service for cause. Each side also has the right to excuse a limited number of jurors by peremptory challenge, without the necessity for stating a reason. However, a juror cannot be dismissed based solely on race or gender. In the selection process, the prospective jurors are called in a random order. After jurors have been excused for cause and each side has expended its peremptory challenges, the first twelve remaining individuals will serve as the jury. Generally, there are two individuals who are selected as alternate jurors in the event that one of the regular jurors becomes unable to finish jury service.



## **Opening statements**

After jury selection in a jury trial, or as the first step in a bench trial, each party may make an opening statement. Opening statements are limited to a discussion of what each side believes the evidence will be at trial, what the witnesses are expected to say and what physical evidence may be introduced.

## **Presentation of evidence**

The next stage of the trial is the presentation of evidence. Because the state brought the case and bears the burden of proof, the prosecution is the first to present its evidence. The prosecution will call witnesses and ask them to testify about the case in what is referred to as direct examination. After the prosecution finishes its examination of each witness, the defense may cross-examine the witness. In cross-examination, the defense tries to clarify, expand, or challenge the witness's testimony. In so doing, the defense may attempt to show that the witness did not have a good opportunity to see or hear the events about which they have testified, or that there is some reason why the witness might not be truthful. The prosecution may also introduce items of physical evidence such as a weapon used in the crime or photographs of the scene. The prosecution may also present expert witnesses, such as scientists who may have tested physical evidence such as drugs.

After the prosecution has presented its case, the defense may make a motion asking the judge to enter a directed verdict, or a not guilty finding, if the judge believes the state's evidence does not constitute proof beyond a reasonable doubt. If a judge grants a directed verdict, the case ends. If the judge denies the motion, the trial proceeds and the defense may present a defense.

Due to the presumption of innocence, the defense is not required to offer evidence and the fact that a defendant chooses not to present evidence cannot be argued or considered as an indication of guilt. If the defense presents a case, it proceeds as did the prosecution, by calling witnesses to testify, who are then cross-examined by the prosecutor. If the defense does present evidence, the prosecution has the opportunity to present rebuttal evidence, or respond to what the defense presented.

## **Argument**

When both the prosecution and defense have finished presenting their case, the defense may again make a motion asking the judge to enter a directed verdict, or not guilty finding. If the judge grants a directed verdict, the case ends. If the motion is denied, the prosecution and defense present their closing arguments. Closing arguments allow the prosecutor and defense attorney to review the evidence presented during the trial and argue what the evidence proved or did not prove and whether witnesses are credible.

## **Verdict or finding**

After closing arguments, in a bench trial, the judge will decide whether the defendant should be found guilty. In a jury trial, the next step is for the judge to instruct the jury as to the law

applicable to the case. The jury then returns to the jury room to deliberate and make a decision as to whether the evidence is sufficient to establish guilt beyond a reasonable doubt.

If a jury finds the defendant not guilty, the case ends. If the jury finds the defendant guilty, the judge will set a date for the sentencing hearing and order a pre-sentence investigation.

The defendant has thirty days from the verdict or judge's finding to file a post-trial motion, in which the defense sets forth an exhaustive list of claimed trial errors. The defense will argue that the errors are so serious and that the defendant should be granted a new trial. A judge will review and make decisions on post-trial motions. If a defendant later files an appeal, as a general rule, the defense may not argue any matter on appeal that was not contained in the post-trial motion.

## **Failure to appear in court**

If a defendant fails to appear in court, the judge may issue a warrant for his or her arrest. An individual arrested on a warrant for failure to appear typically will not be allowed bail unless the court finds that his or her absence was not for the purpose of obstructing justice or avoiding prosecution [725 *ILCS* 5/110-16].

If an individual fails to appear for trial and the prosecutor is able to prove with substantial evidence that he or she is willfully avoiding the trial, following specific rules, the court may commence the trial in the individual's absence. If a trial is carried out while the individual is absent, he or she must be represented by an attorney. If there is a finding of guilt, the court may hold a sentencing hearing for the absent individual. If the individual who was found guilty and sentenced in his or her absence can prove that the absence was both not his or her fault and due to circumstances beyond his or her control, then he or she may request a new trial and/or sentencing hearing [725 *ILCS* 5/115-4.1].

## **Fitness to stand trial**

At any time during court proceedings, the attorneys or the judge may raise a concern that the defendant's mental or physical condition may interfere with his or her ability to understand the nature of the court proceedings or compromise his or her ability to cooperate with his or her attorneys. A person who has a mental illness, a physical condition, or a developmental disability is not necessarily unfit to stand trial unless those conditions affect the ability to understand the nature and purpose of, and participate in, the proceedings.

When a bona fide issue of a defendant's fitness is raised, the judge will order the defendant to be evaluated by a qualified licensed physician, clinical psychologist, or psychiatrist [725 *ILCS* 5/104-13(a)]. These evaluations may be conducted while the defendant is in custody or out on bond. The recommendation of the evaluation is then submitted to the judge, the defense attorney, and the state's attorney, and a fitness hearing is held. The findings include whether the defendant is deemed unfit to stand trial or enter a plea and, if not, whether a substantial probability exists that the individual can be restored to fitness within the statutory time frame of one year. During the hearing, expert testimony by evaluators will be heard. If the parties stipulate to the results of the evaluation, the court will issue an order reflecting that finding.

If the judge, after hearing, determines that a defendant is fit to stand trial, the court process will proceed even if the defense continues to contest fitness. If an individual is found unfit to stand trial, he or she will then be remanded by the judge to the Illinois Department of Human Services Division of Mental Health (DMH). DMH will then make the determination as to what services or treatment he or she needs in order to be fit to stand trial. An individual must be made fit within one year and the services may be inpatient or outpatient.

If an individual is not determined fit to stand trial after one year, DMH will report to court whether he or she remains unfit but is making progress towards fitness or if fitness cannot be achieved. If the defendant is deemed unfit to stand trial and unable to achieve fitness, the state may drop charges with prejudice, pursue a civil commitment, or the case may proceed to a discharge hearing.

During the discharge hearing, the judge may find the individual not guilty by reason of insanity, not guilty, or not acquit the individual. If the judge does not acquit him or her and DMH believes he or she can achieve fitness, the judge can order a term of extended treatment. Statutory limitations exist governing how long an individual may remain in extended treatment based on the offense committed [725 ILCS 5/104-23]. *Appendix B* provides a flowchart of the process for individuals found unfit to stand trial.

## **Findings regarding defendant's mental condition at the time of the offense**

### **Not guilty by reason of insanity**

A defendant may assert an affirmative defense of not guilty by reason of insanity. This affirmative defense asserts that the defendant's mental state at the time of the offense results in his or her lacking substantial capacity to appreciate the criminality of his or her act [720 ILCS 5/6-2]. If the defendant is found not guilty by reason of insanity, he or she shall be ordered to the DMH for an evaluation, either inpatient or outpatient, to determine whether he or she is in need of mental health services. If the evaluation is completed on an inpatient basis, during this period the defendant will remain held in secure custody until the appropriate placement determination has been made, at which time the defendant will be transported to the designated facility [730 ILCS 5/5-2-4]. *Appendix C* provides a flowchart of process for individuals found not guilty by reason of insanity.

### **Guilty but mentally ill**

Illinois also permits a trial to result in a finding or verdict of guilty but mentally ill. Such a finding does not result in an acquittal but rather, is treated as a finding of guilty as the name implies. The defendant is sentenced just as in any other case and may receive either probation, conditional discharge or a term of imprisonment. In such event, the defendant is to be provided mental health services and treatment but still must serve out his or her sentence as does any other convicted person.

# Special issue: Crime victims

In 2008, 21 million crimes were committed in the United States according to the Bureau of Justice Statistics. Of them, 5 million were violent crimes and 16 million were property crimes. In 2009, U.S. residents age 12 or older experienced an estimated 20 million violent and property victimizations, according to the National Crime Victimization Survey. The criminal justice system not only seeks to apprehend, sanction, and rehabilitate the offender, it also takes steps to protect the victim, and connect him or her with community services to enhance safety and well-being.

## Rights of victims of crime in Illinois

The Illinois Rights of Crime Victims and Witnesses Act [725 ILCS 120] implements, preserves, and protects the following rights for victims of crime as guaranteed by the Illinois Constitution (Art I, Sec 8.1):

- (1) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process
- (2) The right to notification of court proceedings
- (3) The right to communicate with the prosecution
- (4) The right to make a statement to the court at sentencing
- (5) The right to information about the conviction, sentence, imprisonment and release of the accused
- (6) The right to the timely disposition of the case following the arrest of the accused
- (7) The right to be reasonably protected from the accused through the criminal justice process
- (8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial
- (9) The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice
- (10) The right to restitution

## Assistance to victims during court proceedings

Victims of crime and their families often need support as they attempt to navigate the court process. Victims in Illinois can obtain assistance through the Illinois Attorney General's Office, from the county prosecutor's offices, from some police agencies who maintain victim advocates, or from nonprofit victim service agencies. Victim-witness specialists assist crime victims during trial proceedings. In addition, the Illinois Attorney General's Office has a hotline dedicated to helping answer the questions victims may have. The hotline provides victims with referrals for services, information on crime victim compensation claims, and assistance in completion of compensation applications.

Some jurisdictions have formed multi-disciplinary teams of criminal justice system professionals to coordinate services for victims of abuse. Victims can talk to police and prosecutors, as well as receive services.

Child advocacy centers (CACs) in some jurisdictions house multi-disciplinary teams that investigate child abuse cases and assist abused and neglected children. Partners include law enforcement, mental health providers, social workers, prosecutors, and investigators. CACs offer a comfortable environment for children to be interviewed and medically examined and provide support, education, counseling, and referrals to non-offending family members and the community. CAC workers also prepare children and families for court proceedings.

## **Collection of evidence from victims**

Physical examinations of victims following a crime provide evidence for prosecutors. DNA results can help prosecute or exonerate suspects. Sexual Assault Nurse Examiner (SANE) programs in Illinois have specially trained forensic nurses to provide 24-hours, first-response care to sexual assault victims in either hospital or non-hospital settings. SANE nurses collect forensic evidence from victims.

## **Victim compensation**

The Illinois Crime Victim's Compensation Act [740 *ILCS* 45/et seq] created the Illinois Crime Victim Compensation Program administered by the Illinois Attorney General's Office. The program provides financial compensation to victims of violent crime and their families. Eligible victims or their family members who apply can receive compensation for certain out-of-pocket expenses, medical/hospital expenses, and loss of earnings incurred due to a violent crime. There is no compensation for property loss or pain and suffering. The claim must be filed within two years of the date of the crime or within one year of the criminal indictment. However, applicants must first exhaust all other sources reasonably available, including, but not limited to any governmental, medical, or health insurance programs.

## **Victim notification**

The Illinois Attorney General's Office operates the statewide Illinois Automated Victim Notification System. This system offers victims and concerned citizens a toll-free number to get up-to-date information on the custody and/or case status of an offender. Callers register for automatic notification to receive notification of changes in an inmate's status by phone. The system also allows the public to search for offender custody and case status.

# Sentencing

## Pre-sentence investigations

A pre-sentence investigation (PSI) report is completed by a probation department upon request of a judge after a guilty plea or guilty verdict. This report provides detailed offender information and is intended to aid judges in imposing an appropriate sentence. Furthermore, it can provide a rationale for sentences and can indicate the likelihood of success during the imposed sentence. PSIs are required in all felony cases before a defendant is sentenced, but are not required for plea agreements unless the offense is sex-related. PSIs are not statutorily mandated in misdemeanor cases, and therefore, are rarely ordered in misdemeanor cases.

The following are common elements contained in a pre-sentence investigation report:

- Demographic information such as name, age, race, gender
- Details of the current offense and criminal history
- Victim impact statements and restitution information
- History and condition of the defendant's physical and mental health
- Family history and background
- Attitude
- Education, employment.
- Alcohol, drug use history
- Current programs, treatment
- Recommendations, treatment plan

## Sentencing options

A sentence is a disposition imposed on the defendant such as court supervision, probation, conditional discharge, jail, or prison. Once a defendant is found guilty, a sentencing hearing is held. At the sentencing hearing, several options are available to the judge. Convicted felons are required to submit a DNA sample. An individual convicted of a felony must be sentenced to conditional discharge, probation, or prison. More than one sentencing option can be imposed in a single sentence. For example, an individual may be ordered to serve a term of probation with a condition of incarceration in the county jail or substance abuse treatment.

### Court supervision

Court supervision in misdemeanor cases either after a plea or after a trial, suspends the judgment in the case for a specific period of time. If the offender complies with all conditions set by the court, the offender will be released without a conviction. This is considered a diversion program because it allows an offender to avoid a conviction on his or her record. If the individual does not successfully complete the conditions of supervision, the case will proceed to sentencing and the conviction will remain on the individual's record. However, an individual who has been found guilty of or pleads guilty to a felony offense is ineligible for court supervision.

## **Probation**

Probation is a sentence in which an offender is monitored by a probation officer for a specific period of time. Probation is the most common disposition for felony offenders. Individuals on probation remain in the community with court-ordered conditions. Their compliance with these conditions is monitored by probation officers. The period of probation for a misdemeanor may not be longer than two years. The length of probation for a Class 3 or 4 felony cannot exceed 30 months. The length of probation for a Class 1 or 2 felony cannot exceed four years. A person who pleads guilty to, or is found guilty of, a Class X felony is not eligible for probation.

Typical conditions of probation in Illinois include, but are not limited to:

- Reporting to and appearing in person before a probation officer on a regular basis
- Paying a fine and court costs
- Undergoing medical, psychological or psychiatric treatment
- Undergoing treatment for drug addiction or alcoholism
- Refraining from possessing a firearm or other dangerous weapon
- Paying restitution to the victim
- Performing community service
- Remaining in the state of Illinois
- Refraining from contact with certain specified persons
- Refraining from using illicit drugs

### **First offender drug probation**

Illinois has two types of probation for drug offenders. Offenders convicted of certain cannabis possession offenses may be eligible for a type of first offender probation, referred to as “710 probation”. Some offenders charged with certain controlled substance possession offenses may be eligible for a type of first offender probation referred to as “410” or “1410 probation”. Unlike other probation offenses, these convictions may be eligible for expungement.

### **Intensive probation supervision**

Intensive probation supervision (IPS) allows for the conditional release of a convicted offender under strict probation guidelines. A sentence of IPS may be ordered for the first year of a multi-year probation sentence. In addition, IPS may be used if an offender receives probation for a more serious offense, or if the offender has multiple convictions. Under IPS, the offender meets more frequently with a probation officer and has stricter conditions than those set in standard probation cases, such as curfews, electronic monitoring, and more frequent drug testing.

## **Conditional discharge**

Conditional discharge orders an offender to comply with specific court mandates for a specific period of time, usually without the supervision of a probation officer as in regular probation. However, similar conditions to probation can be ordered in a sentence of conditional discharge. Conditional discharge is not a diversion program. Unlike court supervision, a person sentenced

to conditional discharge is convicted of the crime even if he or she successfully completes the terms of his or her conditional discharge.

### **Home confinement**

Home confinement is typically used prior to trial in conjunction with electronic monitoring. However, offenders may be sentenced to home confinement, which requires that they remain in their own residence, with the exception of approved leave. Home confinement is monitored by probation officers who use a variety of methods to confirm offenders are in their designated places. Home confinement also may be ordered when a defendant is awaiting a violation of probation or probation revocation hearing.

### **Electronic monitoring**

Electronic monitoring devices verify that offenders are at specified locations. The devices, used most commonly in conjunction with home confinement, assist probation officers in ensuring offenders are at approved locations (usually school, work, or home) during specified times.

### **Treatment**

Offenders may be sentenced to attend treatment programs or counseling for drug and alcohol abuse, sex offenders, anger management, or for mental health problems. Treatment sentences may include stays in a residential facility. Sentences of treatment are often conditions of probation or conditional release. It is uncommon for a defendant to be sentenced solely to treatment with no other conditions.

### **Periodic imprisonment**

Periodic imprisonment requires an offender to report to a county jail or state correctional facility daily for a specific period of time [730 *ILCS* 5/5-7-1]. This allows the offender to remain in school or employed while serving a sentence of incarceration.

### **Jail**

Offenders may be sentenced to incarceration in a jail for less than one year for misdemeanor offenses or as a condition of a probation sentence in either a misdemeanor or felony case. In general, jails are operated by the county sheriff's department.

The following are guidelines for misdemeanor sentencing:

- Class A misdemeanor—less than 1 year in jail [730 *ILCS* 5/5-4.5-55]
- Class B misdemeanor—up to 6 months in jail [730 *ILCS* 5/5-4.5-60]
- Class C misdemeanor—up to 30 days in jail [730 *ILCS* 5/5-4.5-65]
- Petty offenses and business offense—no jail [730 *ILCS* 5/5-4.5-75 & 730 *ILCS* 5/5-4.5-80]



## **Prison**

Offenders sentenced to one year of incarceration or more are sent to a state correctional facility or prison. As of July 2012, the Illinois Department of Corrections (IDOC) operates 22 correctional facilities. The security levels of the prisons range from minimum to maximum. Three of the prisons house only women.

The following are general sentencing guidelines of felons to prison both as to length of sentence and length of Mandatory Supervised Release (MSR, which replaced parole):

- First degree murder—20 to 60 years imprisonment, 3 years mandatory supervised release (MSR). Special circumstances allow for additional time on the sentence (e.g., 100 years, natural life) [730 *ILCS* 5/5-4.5-20]
- Class X felonies—6 to 30 years imprisonment, 3 years MSR. The minimum or maximum possible sentence is greater for certain Class X offenses [730 *ILCS* 5/5-4.5-25]
- Class 1 felonies—4 to 15 years imprisonment, 2 years MSR [730 *ILCS* 5/5-4.5-30]
- Class 2 felonies—3 to 7 years imprisonment, 2 years MSR [730 *ILCS* 5/5-4.5-35]
- Class 3 felonies—2 to 5 years imprisonment, 1 year MSR [730 *ILCS* 5/5-4.5-40]
- Class 4 felonies—1 to 3 years imprisonment, 1 year MSR [730 *ILCS* 5/5-4.5-45]

Specific circumstances extend the maximum amount of time that a judge could sentence an offender to IDOC [730 *ILCS* 5/5-8-2]. This is called an extended term sentence.

## **Impact incarceration**

Impact incarceration programs (IIP) are also referred to as boot camps. Jurisdictions in Illinois use boot camp programs as diversion options most commonly for juvenile offenders. However, the Illinois Department of Corrections (IDOC) operates three IIPs for non-violent offenders who meet certain criteria [730 *ILCS* 5/5-8-1.1]. A judge may sentence an individual to IDOC and recommend they attend an IIP, or IDOC may identify potential candidates during the inmate intake. IIP lasts 120 days and incorporates military activities, physical exercise, labor-intensive work, and substance abuse treatment. Inmates who successfully complete IIP may have their sentence reduced to time served and may be placed on community supervision (or mandatory supervised release). If an inmate fails IIP, the original sentence is reinstated.

## **Death penalty/Capital punishment**

On March 9, 2011, Governor Quinn signed into law Public Act 096-1543, abolishing the death penalty in Illinois, effective July 1, 2011. Death sentences of all individuals were commuted to life without parole.

## **Fines**

An offender may be ordered to pay certain court costs, fees, and fines [730 *ILCS* 5/5-9-1]. Fines may include a crime lab fee, domestic violence fine, sexual assault fine, child pornography fine, DUI analysis fee, arson fine, and sex offender fine. These fees and fines are defined by statute.

The maximum fine for a felony offense is \$25,000 unless otherwise specified by law. The maximum fine for a Class A misdemeanor is \$2,500 and \$1,500 for a Class B or C misdemeanor.

## **Criminal appeals**

A criminal appeal is a process in which the defendant asks a higher court to examine the possible errors in the case and determine whether those errors affected the outcome of the case. Every defendant convicted of a crime has a right to an appeal (IL Constitution Article VI, 725 *ILCS* 5/121-1 et seq, Illinois Supreme Court Rules). The right to counsel for defendants continues throughout the appeals process. Defendants who cannot afford counsel shall be afforded counsel free of charge [725 *ILCS* 5/121-13]. This right to appeal is derived from the Illinois Constitution (Art VI, Sec 6). A finding of not guilty cannot be appealed.

Appeals are first made to the state appellate court who must hear all appeals that meet the appellate guidelines. Defendants may appeal guilty verdicts and evidentiary rulings to the appellate court. Prosecutors may not appeal not guilty verdicts, but can appeal evidentiary rulings made prior to a verdict. The unsuccessful party at the state appellate court, may request that the Illinois Supreme Court hear the case. The Illinois Supreme Court may, but is not required to, accept such a request and entertain the appeal.

After a judge makes a final ruling on the defendant's post-trial motion, the defendant has 30 days to file a notice of appeal. The appeal process involves a series of written arguments, also known as legal briefs, explaining the appeal. The briefs are filed by the defendant and prosecutor with the appellate court. The briefs present the facts of the case, the rulings, a review of the evidence in question, and the legal basis for the appeal. In addition, at appeal, the defendant may request the appellate court to grant relief such as a new trial or a new sentence.

The appellate court may make a decision on the appeal solely on the basis of the submitted legal briefs. At its discretion, the appellate court also may require the defendant and the prosecution to appear in person to present oral arguments before rendering its decision.

# Corrections

This section on corrections refers to the incarceration of convicted felons in prisons operated by the Illinois Department of Corrections (IDOC). There are two main types of sentencing: indeterminate and determinate.

## Determinate sentencing

When a judge imposes a sentence to a correctional facility, he or she sentences to a fixed length of time referred to as a determinate sentence. However, the actual time served is often shorter than the sentence. The length of incarceration is determined by state statutes, and parole boards have no discretion in determining release dates. An offender knows his or her release date (not factoring in good conduct credits). In addition, limited judicial discretion exists in sentence length because, with few exceptions, the law provides a maximum sentence that may be imposed by the judge. Illinois adopted such determinate sentencing practices in 1978. This eliminated parole and parole boards, establishing the Prisoner Review Board (PRB). Judges sentence offenders to specific amounts of time outlined in Illinois statutes. Offenders are released onto Mandatory Supervised Release (MSR), which is a statutorily defined amount of time in which the offender is under the supervision of IDOC while in the community in addition to the offender's incarceration sentence. The length of MSR is defined by the class of the offense. While MSR replaced parole, MSR is still often referred to as parole. In certain circumstances, offenders serve their MSR in an IDOC facility. This most frequently occurs when appropriate housing within the community cannot be secured for an offender, particularly among those convicted of sex offenses.

## Mandatory prison sentencing

An additional subcategory of determinate sentencing includes mandatory prison sentencing. Defendants guilty of certain offenses cannot be sentenced to probation, conditional discharge, or deferred prosecution. A judge is required to sentence an offender to IDOC if the offender is convicted of a Class X felony. In addition, certain other felony offenses require a mandatory prison sentence, including specific violent and sex offenses or a fourth conviction for felony driving under the influence [730 *ILCS* 5/5-5-3].

## Sentence credits

Actual time spent in a correctional facility is often reduced due to sentence credits, which replaced good conduct credits in 2012. Sentence credits were designed to create an incentive for inmates to behave while in prison and become involved in programs and activities that promote rehabilitation and self-improvement. Further, sentence credit programs help relieve prison overcrowding. Sentence credits are awarded for:

- Successful completion of programming while in IDOC or while in custody prior to sentencing
- Compliance with the rules and regulations of IDOC

- Service to the institution, community, or State

There are many specifications on eligibility for sentence credits outlined in 730 *ILCS* 5/3-6-3, and there are numerous offenses that are ineligible for some or all sentence credits. Generally, many offenses in Illinois, but not all, allow for day-for-day good behavior credit. Inmates with no behavioral or other problems will receive one day off their sentence for every one day spent in a correctional facility, including while in custody pre-trial, as outlined in 730 *ILCS* 5/3-6-3. An additional 60 days of sentence credit shall be awarded to inmates who obtain their GED while in IDOC custody. IDOC has the discretion to award the 60 day sentence credit to inmates who completed the GED while in custody pre-trial. Further, the Director of IDOC has the discretion to award up to 180 days of sentence credits for good behavior. However, there are many statutory specifications in eligibility for these discretionary credits and the Director of IDOC may consider the inmate's criminal history and level of criminal risk when awarding the credits.

## **Truth-in-sentencing**

Truth-in-sentencing statutes (TIS) makes those convicted of specific serious offenses ineligible for day-for-day good conduct credit and requires the individual to serve a certain percentage of the sentence in prison. TIS provisions are outlined in state law [730 *ILCS* 5/3-6-3]. TIS is intended to reduce the discrepancy between the time sentenced and the actual time served. Those convicted of first-degree murder are required to serve 100 percent of their sentence and are not eligible for good conduct credit or early release. Some other offenses, particularly violent offenses and sex offenses, are required to serve 75 or 85 percent of their sentence.

## **Former practice: indeterminate sentencing**

Indeterminate sentences to prisons do not provide a set length of incarceration but instead provide a range or minimum and maximum amount of time (e.g., 3 to 5 years) that the offender is to serve. With an indeterminate sentence, the actual release date of the offender is determined by a parole board and is often related to the offender's behavior while incarcerated, and whether or not the offender is judged rehabilitated. Some individuals in prison at this writing were sentenced before the change to determinate sentencing.

Illinois eliminated indeterminate sentencing in 1978 and adopted a determinate sentencing model. Such individuals with remaining time on their sentence were provided the opportunity to either convert their sentence to a determinate sentence or maintain their indeterminate sentence and allow the Prisoner Review Board to determine if he or she is to be released (often referred to as "C-Number" inmates).

## **Prisoner Review Board**

The Prisoner Review Board (PRB) consists of 15 full-time members who are appointed by the Governor with approval from the State Senate. The PRB is responsible for parole hearings for "C-number inmates", hearings on revocation or restoration of good conduct credits, victim notification, juvenile parole hearings, MSR/parole revocation hearings, and clemency

recommendations. The PRB reviews MSR/parole release conditions and determines if MSR/parole should be revoked for technical violations.

### **Post-incarceration supervision**

IDOC parole agents monitor all inmates upon release, whether they are released on parole or MSR. State law provides for extending MSR/parole for certain sex offenders [730 *ILCS* 5/5-8-1].

# Completion of sentence

If an individual successfully completes the sentence or does not violate any of the conditions of the sentence, the individual will be discharged from the criminal justice system. An individual who does not comply with the conditions of probation, conditional discharge, court supervision, or MSR/parole may have his or her sentence or MSR/parole revoked.

## Violations and revocations of community supervision

Individuals who fail to comply with their conditions of community supervision may be subject to administrative sanctions or a revocation of their sentence that can lead to a new sentence. Community supervision includes probation, conditional discharge, and court supervision. Probation officers have a continuum of sanctions that may be imposed when probationers do not comply with their conditions of probation without the necessity of a court hearing. Non-compliance may include failure to report to probation, complete community service hours, attend treatment, and pass a drug test.

Administrative sanctions are options available to a probation officer to address community supervision violations. These sanctions may include increased reporting and community service hours, treatment referral, curfew, electronic monitoring, and home confinement. If a probation officer decides to notify the prosecutor of non-compliance, the prosecutor may file a petition to revoke (PTR), which brings the case back into court for a hearing.

A PTR hearing is held before a judge to determine whether a violation occurred and if so, whether the individual should be re-sentenced due to a sentence violation. In most cases, individuals have the right to appointed counsel at these hearings. At the hearing, the judge may find insufficient evidence of a violation and the individual will continue with his or her community supervision as ordered. If there is enough evidence to establish a violation of community supervision, the judge may impose additional conditions, change conditions, or revoke the original sentence and re-sentence the defendant.

## Violations and revocations of MSR/parole

Individuals who fail to comply with their MSR/parole may be subject to administrative sanctions or a revocation of MSR. MSR/parole can be revoked if the individual commits a new offense or for technical violations, such as failing to obtain gainful employment or failing a drug test. Individuals who are found guilty of a new crime while on MSR/parole may be re-committed to the custody of IDOC. However, if the judge sentences the individual to probation or conditional discharge on a new offense, the PRB may allow the individual to remain on MSR/parole. MSR/parole agents also have administrative sanction options available to them, such as electronic monitoring and home confinement.

If there is an alleged violation of MSR/parole, an individual is arrested on a parole violation warrant and held in jail. The individual may not post bond and is held in jail until transported to IDOC. Alleged parole violators are entitled to a probable cause/preliminary hearing [20 IL ADC

1610.40]. Hearings are held at the next PRB meeting scheduled at a correctional facility. If probable cause is found, the individual will receive a final revocation hearing, conducted before at least three members of PRB. The PRB members interview the individual, any witnesses, and anyone who appears in support of the charge [20 IL ADC 1610.150]. Individuals have the right to have counsel at both the probable cause and parole revocation hearings. If it is determined there was a violation of the individual's MSR/parole, the PRB may change or impose additional conditions or revoke MSR/parole and return them to IDOC custody.

# Expungement

Upon arrest, a suspect's fingerprints are taken by police and submitted to the Illinois State Police. These fingerprints create a means to positively identify an individual and connect any subsequent arrests to that person. Information on any further action on that arrest by the court, such as a finding of guilty or not guilty, is also sent to Illinois State Police. A fingerprint-based criminal record remains in the state police database, even if the case was dismissed, supervision was ordered, or there was an acquittal.

Illinois law permits only information on a conviction—a final judgment of guilt by the court—to be disseminated to the public. Criminal justice agencies will have full access to criminal history records, except to those that were expunged. A criminal record can make it more difficult to obtain credit, employment, a residence, a license for certain jobs, and student loans. There are additional restrictions for those convicted of sex crimes. Finally, a criminal record can be accessed by the police investigating subsequent criminal activity and relied on in subsequent criminal proceedings.

Illinois law allows qualifying arrests, supervisions, and convictions to be either expunged or sealed by court order [20 *ILCS* 2630/5.2]. An individual must file a petition to expunge the matter in the court which heard the original matter. Expungement results in a criminal record being destroyed. The original police reports are delivered to the individual by the police agency, which does not maintain additional copies. In the case of computerized records systems, police agencies will delete the individual's electronic records related to the case. Sealing results in the record being kept confidential, and can only be reviewed by criminal justice agencies.

Only criminal offenses, including municipal ordinances, misdemeanors, and certain felonies can be expunged. Civil matters, such as divorces, lawsuits, or orders of protection, are not recorded on a criminal history record, and therefore, are not subject to expungement. A criminal record may be expunged if an individual is found not guilty of the charges or the state dismisses the charges. Under certain circumstances, a criminal record may be expunged when an individual was sentenced to supervision or probation for certain offenses or if the individual was released without conviction for certain offenses.

Petitions to expunge or seal must be filed in the county where the individual was arrested or where the charge was brought. There is a fee to file at the courthouse and a fee to the Illinois State Police. Petitions to expunge or seal can be done without a lawyer, but complex cases may require legal assistance.



# Appendix A: Adult arrest card

ALL FIELDS MARKED IN BOLD ARE MANDATORY **ARREST CARD**

Document Control Number **L 45219756** Ref. DCN **IL** Arresting Agency ORI - NCIC **FRM0130L45219756** Transaction Control Number

Subjects Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle Name / Suffix \_\_\_\_\_

Date of Birth \_\_\_\_\_ Place of Birth \_\_\_\_\_ State Identification Number **IL** \_\_\_\_\_ Chicago IR# \_\_\_\_\_ FBI # \_\_\_\_\_

Sex \_\_\_\_\_ Race \_\_\_\_\_ Height \_\_\_\_\_ Weight \_\_\_\_\_ Hair \_\_\_\_\_ Eye \_\_\_\_\_ Skin \_\_\_\_\_

Social Security Number \_\_\_\_\_ Drivers License Number \_\_\_\_\_ DL State \_\_\_\_\_ Photo Available **Y N** Palm Prints **Y N** FOID# \_\_\_\_\_

Basis For Caution: \_\_\_\_\_

Alias Last Name \_\_\_\_\_ Alias First Name \_\_\_\_\_ Alias Middle Name/Suffix \_\_\_\_\_ Alias Date of Birth \_\_\_\_\_

Scars, Marks, Tattoos \_\_\_\_\_ Occupation \_\_\_\_\_ Employer \_\_\_\_\_

Employer Address \_\_\_\_\_ Residence of Person Fingerprinted \_\_\_\_\_

Agency Case Number \_\_\_\_\_ Indictment Case Number \_\_\_\_\_ Date of Arrest \_\_\_\_\_ Officer Badge # \_\_\_\_\_ City of Pros. \_\_\_\_\_

Arrestee Armed With (Code Table on Back) Choose Maximum of two Auto Weapon

1 11 12 13 14 15 16 17 **Y N**

Adult By Court Order  Yes

Bond Date \_\_\_\_\_ Receipt Number \_\_\_\_\_ Bond Amount \_\_\_\_\_ Cash Amount \_\_\_\_\_

Released w/o charging  Yes

Bond Type (Check box)  No Bond  Div. Lic  Recognizance  DUI  Cash  Other \_\_\_\_\_

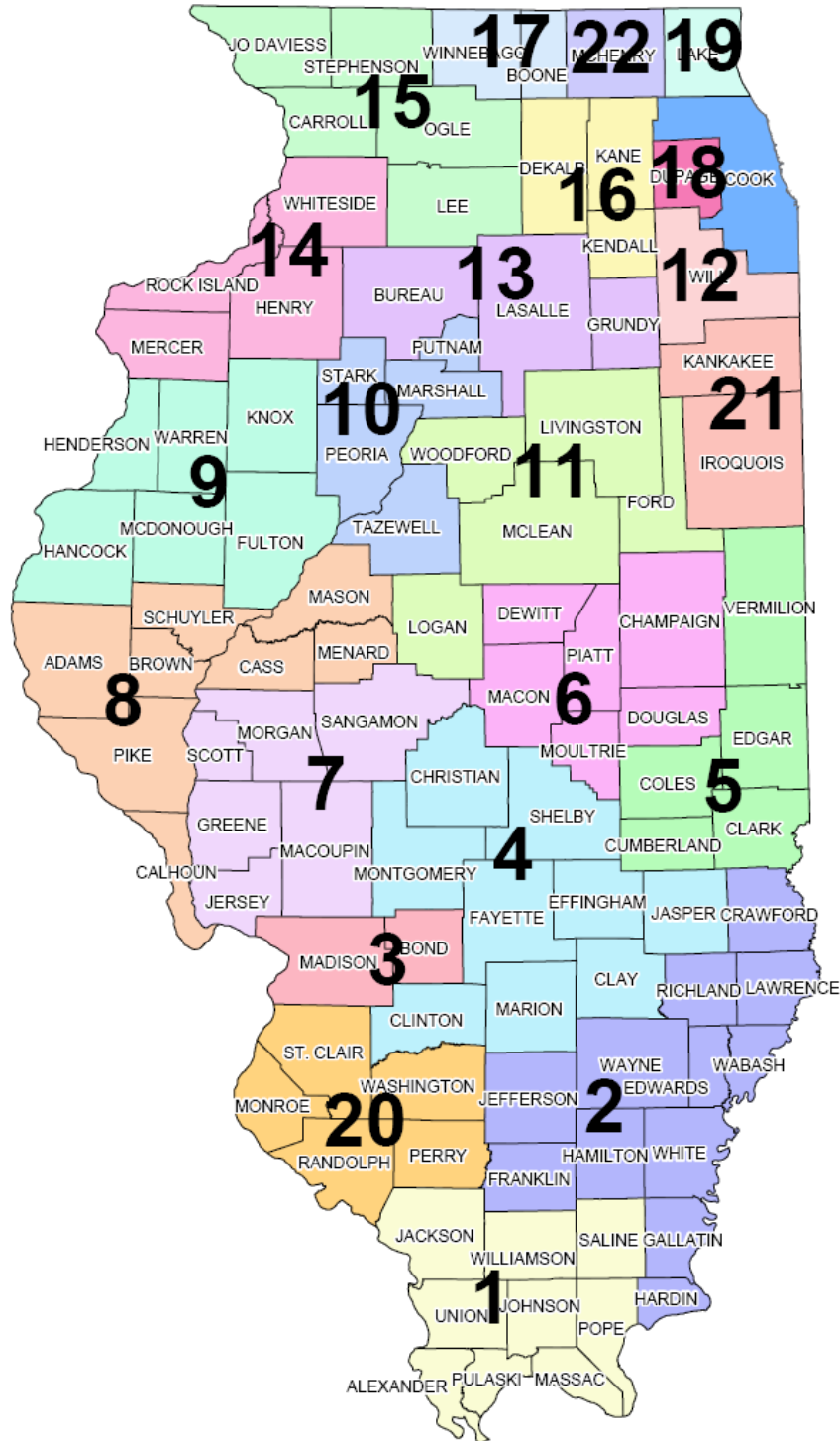
Date Fingerprinted \_\_\_\_\_ Post Sentence Fingerprints  Yes

Count	Statute Citation/AOIC Code	C S A O D	C L A S S	Offense Description	Warrant County	Case Number	State Use Only -
001							
001							
001	Date of Offense / /			<b>Domestic Violence (Please Check)</b>	Yes	No	Arrest Type (Back)
002							
002							
002	Date of Offense / /			<b>Domestic Violence (Please Check)</b>	Yes	No	Arrest Type (Back)
003							
003							
003	Date of Offense / /			<b>Domestic Violence (Please Check)</b>	Yes	No	Arrest Type (Back)

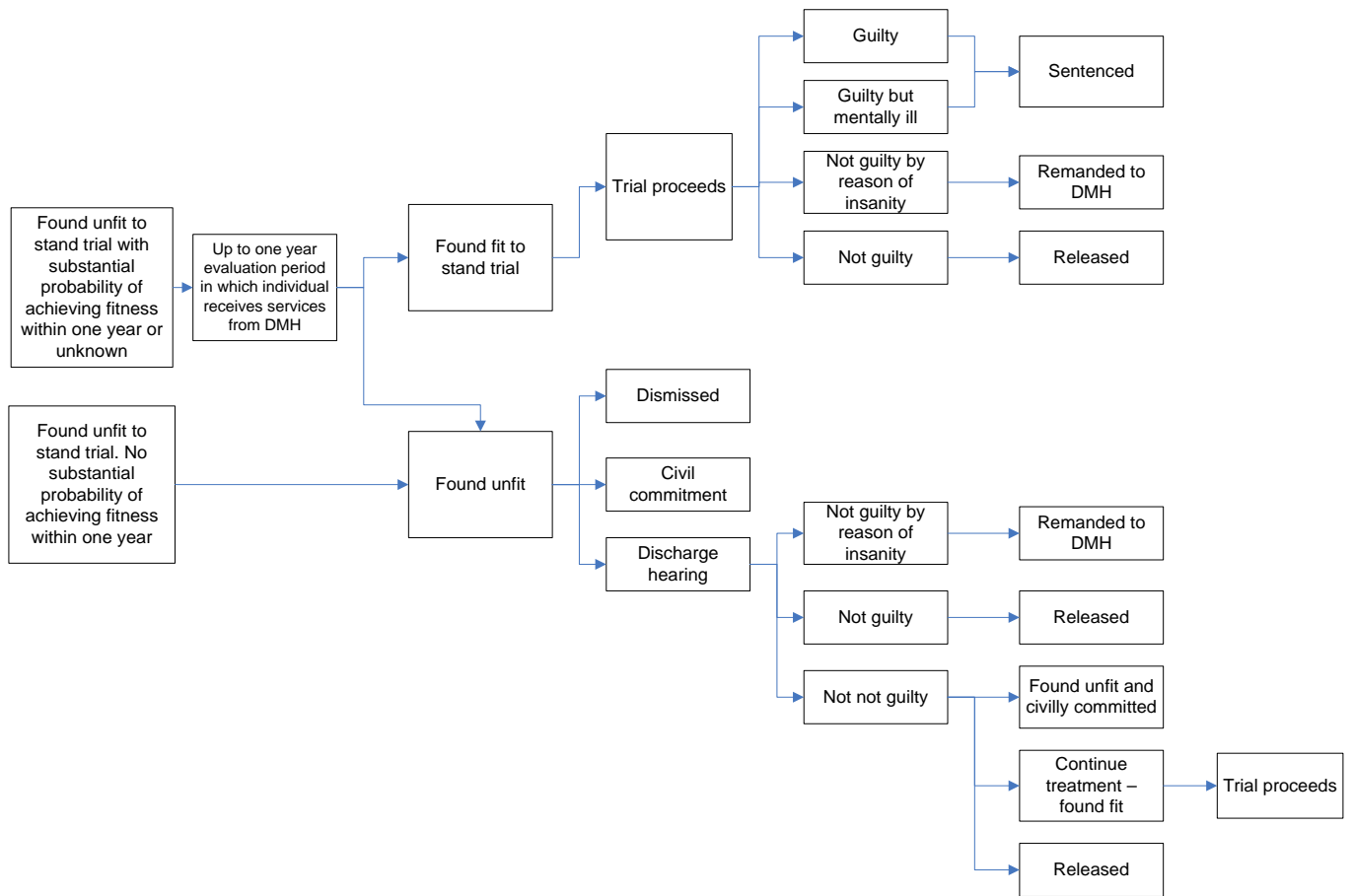
Page Number \_\_\_\_\_ of \_\_\_\_\_

IL493-0692 Copy #1 Arresting Agency Copy ISP 6-402 (3/04)

# Appendix B: Map of Illinois judicial circuits

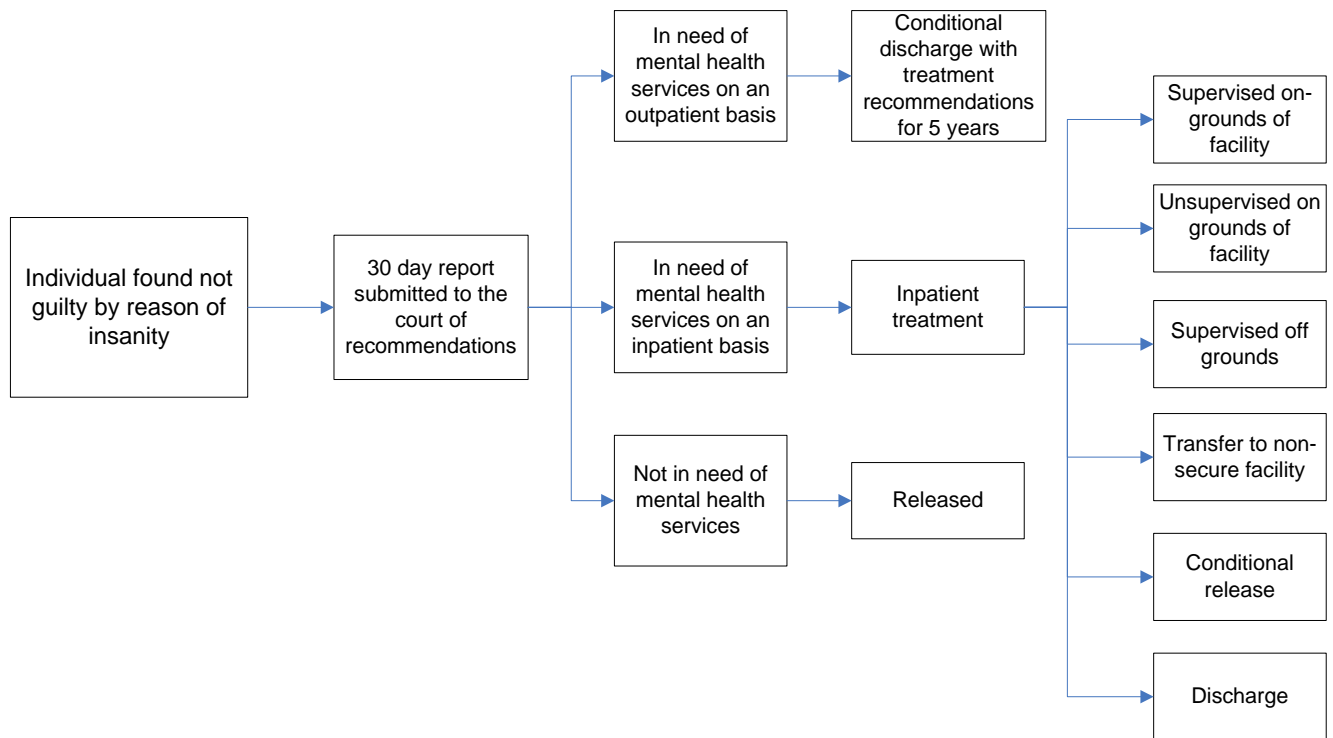


# Appendix C: Flowchart of process for individuals found unfit to stand trial



Source: Adapted from Ferguson, D. (2010). Illinois Department of Human Services, Division of Mental Health.

# Appendix D: Flowchart of process for individuals found not guilty by reason of insanity



Source: Adapted from Ferguson, D. (2010). Illinois Department of Human Services, Division of Mental Health.



**Illinois Criminal Justice Information Authority**

300 W. Adams Street, Suite 200

Chicago, Illinois 60606

Phone: 312.793.8408

Fax: 312.793.8422

TDD: 312.793.4170

*Visit us online: [www.icjia.state.il.us](http://www.icjia.state.il.us)*