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Mental Health Matters

The newsletter of the Illinois State Bar Association's Section on Mental Health Law

Your client has just been found not guilty by reason of insanity—Your work is not over

BY MARK J. HEYRMAN

Illinois, like most states, provides the defense of insanity to persons charged with a criminal offense.[1] This defense is defined quite narrowly,[2] so very few criminal defendants chose to plead insanity. Fewer still succeed. In 2015, only 80 people were admitted to a state mental hospital following an acquittal by reason of insanity.[3] However, for those who do succeed with this defense, the lawyer's job is not done. Specifically, counsel must ensure that: (1) the defendant is transferred promptly to a Department of Human Services facility for an evaluation; (2) the defendant receives a commitment hearing; and (3) if the defendant is committed, he is given a commitment which is no longer than authorized under 730 ILCS 5/5-2-4(b).[4]

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Bill to restrict guardians increases likelihood of ward abuse

BY DANIEL G. DENEEN

Casey Kasem died in June of 2014, but prior to his death his current wife and children from a prior marriage were feuding. The children were effectively kept away from Casey Kasem for several months. There were allegations of elder abuse, but authorities did not act upon them.

Illinois House Bill 4569 was introduced in response to the deprivation of visitation by Kasem's current wife. This well-intentioned but unnecessary and inappropriate bill is a bad remedy for a private misconduct. This bill would have prevented guardians from cutting off visitation without court approval.

It appears that the bill was the result of a nationwide effort by a group called the National Association to Stop Guardian

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Your client has just been found not guilty by reason of insanity

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Prompt Transfers to the Department of Human Services

Almost all those acquitted by reason of insanity (usually called "NGRIs") are transferred from the jail to the custody of the Department of Human Services ("the Department") for an evaluation pursuant to 730 ILCS 5/5-2-4(a).[5] However, that transfer cannot occur until the Department evaluates the defendant to determine where he should be confined and notifies the sheriff to which Department facility the defendant should be transferred.[6] Unfortunately, this notification is often delayed because the capacity of the Department to house NGRIs is limited.

This is problematic for NGRIs. Jails are rarely able to provide the appropriate environment and treatment for people with serious mental illnesses. Among other harms, keeping an NGRI for an extended period in a jail may cause him to deteriorate. This could in turn result in a negative evaluation of the client by the Department and result in the client's commitment. Thus, lawyers may wish to ask the court for a specific order directing a prompt transfer in order to ensure that their clients receive adequate treatment and a prompt evaluation and may need to ask the court to use its contempt powers to enforce that order. Because the Department is required to complete its written evaluation within 30 days following the NGRI finding,[7] the defendant must be transferred to the Department within that time period.

Commitment Hearings for NGRIs

It is important to note that, unlike many states, the commitment of NGRIs in Illinois is not automatic. Rather, following the evaluation by the Department, the defendant is entitled to a hearing in which the State must prove by clear and convincing evidence that the defendant meets one of the two commitment standards: inpatient or outpatient.[8] To be committed on an inpatient basis, the defendant must be "due to mental illness reasonably expected to inflict serious physical harm on himself or another and benefit from inpatient care or in need of inpatient care."[9] If the State fails to prove that your client meets this standard, he must be released.

This statutory provision makes sense because the finding needed to acquit someone by reason of insanity is quite different from the finding needed to commit someone to a mental hospital. A finding of insanity in Illinois just determines that, at the time of the crime, the defendant "lack[ed] substantial capacity to appreciate the criminality of his conduct."[10] It requires no finding that the defendant is dangerous to himself or others or that he is likely to be so in the future.[11]

Serious mental illnesses, while often incurable, are highly treatable. Even the most serious mental illnesses usually respond to medication and other treatments in a few weeks. Given the usual delay between the commission of the offense and the NGRI finding, there is no reason to think that the defendant should need to be confined in a mental hospital following that finding. Indeed it is frequently the case that the defendant is first found, due to his mental illness, to be unfit to stand trial. If so, any criminal disposition (a guilty plea or a criminal trial) will not occur until treatment has succeeded in rendering the defendant fit.[12]

While the standard for fitness[13] and the standard for commitment are not the same, restoration to fitness often coincides with a remission of the symptoms of mental illness. By the time the defendant is actually found not guilty by reason of insanity, his mental health is usually dramatically improved from what it was at the time of the offense. Thus, there is no reason to believe that the outcome of the hearing required under 730 ILCS 5/5-2-4 should be inpatient commitment and every reason to vigorously contest this result.

The hearing required by subsection (a) has substantial procedural requirements. That is because this law incorporates by reference all of the procedural protections in the Mental Health and Developmental

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OFFICE
ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITOR
Sandra M. Blake

MANAGING EDITOR / PRODUCTION
Katie Underwood
kunderwood@isba.org

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

Disabilities Code ("the Code"), 405 ILCS 5/1-100, et seq.[14] Those protections are detailed in Chapter III, Article VIII of the Code.[15] They include: (1) the right to a six-person jury;[16] (2) the right to an independent examination by an expert chosen by the respondent and the right to an appointed expert if the respondent is indigent;[17] (3) the right to counsel and to appointed counsel if indigent;[18] (4) the right to be present at the hearing;[19] (5) the requirement that at least one mental health expert testify at the hearing;[20] (6) that the standard of proof is clear and convincing evidence;[21] and, (7) that the court make findings of fact and conclusions of law on the record.[22] The Code also provides that a respondent who is committed following the hearing is entitled to appeal and that, if indigent, entitled to a free transcript and appointed counsel.[23] In short, a person found NGRI is entitled to a full commitment hearing, just like any other citizen, before being indefinitely confined in a mental health facility.

There is another reason why the commitment hearing provided for in subsection (a) of the NGRI law is very important. Unlike other civil commitments which last only 90 days,[24] the commitment of an NGRI may last as long as the criminal sentence that the defendant could have received had he been convicted.[25] During that extended period, which could be for "natural life", the NGRI cannot be released unless he proves by clear and convincing evidence that he no longer meets the criteria for confinement.[26]

Due to the uncertainties of predicting future behavior, the assignment of the burden of proof often determines who will prevail in a commitment or release hearing.[27] The only hearing an NGRI will ever have in which he does not bear the burden of proof by clear and convincing evidence is the initial commitment hearing to which he is entitled following the acquittal. This is the NGRI's best opportunity to avoid what could be a very lengthy commitment.

Preventing Lengthy Commitments–*Thiem* dates[28]

As mentioned above, if an NGRI is committed, the maximum length of commitment is related to the sentence the NGRI would have received had he been convicted.[29] The specific statutory language governing the length of commitments is:

> the initial order for admission of a defendant acquitted of a felony by reason of insanity shall be for an indefinite period of time. Such period of commitment shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior as provided in Section 5-4-1 of the Unified Code of Corrections, before becoming eligible for release had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity. The Court shall determine the maximum period of commitment by an appropriate order.[30]

Unfortunately, courts have frequently failed to determine the correct *Thiem* date. Following are some important issues regarding calculating the correct *Thiem* date:

1. Unlike a criminal sentencing order, the commitment order must state the actual date upon which the order will expire.[31]
2. Unlike a criminal sentencing order, the commitment order must calculate and deduct "credit for good behavior."[32] There is a split in authority about whether courts must award "compensatory" good time credits under 730 (LCS 5/3-6-3(a)(3).[33]
3. Because the commitment period must be based upon "the most serious crime [stated in the singular] for which [the defendant] has been acquitted," the commitment period cannot be based upon consecutive sentences, even if that would be permissible if the NGRI had been convicted.[34]
4. There is a split in authority about whether a *Thiem* date of natural life can be imposed.[35]
5. A *Thiem* date based upon the "extended term" provisions in 730 ILCS 5/5-3.2 and 730 ILCS 5/5-8-1(a)(1)(b) can be imposed unless it requires a finding which is inconsistent with the insanity defense.[36]
6. A court cannot change an NGRI's *Thiem* date based upon his conduct subsequent to commitment.[37]

It is important to note that the law governing the calculation of *Thiem* dates continues to evolve.

Conclusion

When someone has been found NGRI, his fate remains undetermined. There may or may not be a commitment, and the length of any commitment may turn on the careful attention of the lawyer. While an NGRI finding can be a substantial victory, it is not the end for the defendant. Nor should it be for his attorney. ■

Mark J. Heyrman, J.D., is a Clinical Professor at the University of Chicago Law School. See <http://www.law.uchicago.edu/faculty/heyrman>. He can be contacted at 773-702-9611 or by e-mail at m-heyrman@uchicago.edu

1. 720 ILCS 5/6-2.
2. "A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct." 720 (ILCS 5/6-2(a).
3. Department of Human Services Statistical Report: "FY2015 Total Admissions TDF and Mental Hospitals."
4. This article does not argue that all of this legal work must be performed by criminal defense counsel. Rather, counsel must make sure that someone has taken on this responsibility. If the defendant is indigent, he is entitled to appointed counsel pursuant to 730 ILCS 5/5-2-4(c).
5. This evaluation may take place on an outpatient basis. 730 ILCS 5/5-2-4(a). Counsel should consider whether the seriousness of the offense and the defendant's clinical condition permit this, and if so, ask the court for an appropriate order.
6. 730 ILCS 5/5-2-4(a).
7. Id.
8. Id.
9. 730 ILCS 5/5-2-4(a-1)(B).
10. 720 ILCS 5/6-2(a).
11. But see *Jones v. United States*, 463 U.S. 354 (1982) (holding that an acquittal by reason of insanity may substitute for a commitment hearing).
12. There is an exception. Someone who has been found unfit to stand trial and not rendered fit within one year or unlikely to become fit will

ordinarily be entitled to a "discharge hearing" under 725 ILCS 5/104-25. A discharge hearing may result in a finding of not guilty by reason of insanity. 725 ILCS 5/104-25(c). Such a finding will then trigger the commitment hearing under 730 ILCS 5/5-2-4. This result is relatively rare.

13. "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 or to assist in his defense." 725 ILCS 5/104-10.

14. 730 ILCS 5/5-2-4(b) provides: "the admission, detention, care, treatment or habilitation, treatment plans, review proceedings, including review of treatment and treatment plans, and discharge of the defendant after such order shall be under the Mental Health and Developmental Disabilities Code"

15. 405 ILCS 5/3-800, *et seq*.

16. Section 3-802.

17. Section 3-804.

18. Section 3-805.

19. Section 3-806.

20. Section 3-807.

21. Section 3-808.

22. Section 3-816(a).

23. Section 3-816(b).

24. 405 ILCS 5/3-813(a).

25. 730 ILCS 5/5-2-4(b).

26. 730 ILCS 5/5-2-4(g).

27. *Fasulo v. Arefeh*, 173 Conn 473, 378 A.2d 553 (1977).

28. Because the first case which considered whether and how to determine the maximum commitment period was *People v. Thiem*, 82 Ill. App. 3d 956, 403 N.E.2d 647 (1st Dist. 1980), the date on which an NGRI commitment expires is usually referred to as a *Thiem* date.

29. Many NGRIs are released prior to their *Thiem* date because a court has approved a request for release either from the facility director under 730 ILCS 5/5-2-4(d) or from the NGRI himself under 730 ILCS 5/5-2-4(e).

30. 730 ILCS 5/5-2-4(b).

31. *Thiem*, id.

32. *People v. Cochran*, 167 Ill. App. 3d 830, 833 (1988);

33. Compare *People v. Kokkeneis*, 259 Ill. App. 3d 404 (1st Dist. 1994) (court must award compensatory good time); with *People v. Detert,* 343 Ill. App. 607, 612 (2003) (the Department may award compensatory good time credit).

34. *People v. Steele-Kumi*, 21 N.E.3d 1267(1st Dist. 2014); *People v. Hampton*, 358 Ill. App. 3d 1029 (2005).

35. Compare *People v. Larson*, 132 Ill. App. 3d 594 (1988) (natural life not permitted), with *People v. Cochran*, 167 Ill. App. 3d 830 (1988), and *People v. Palmer*, 193 Ill. App. 3d 745 (1990) (natural life may be used).

36. Compare *People v Palmer*, 148 Ill. 2d 70, 92 (1992) (rejecting the use of the extended term provisions because the factor was based upon the defendant's *mens rea*), with *People v. Pastewski*, 164 Ill. 2d 198 (1995) (permitting such use based upon an objective, historical factor).

37. *In re Guy*, 126 Ill. App. 3d 267 (1st Dist. 1984)

Bill to restrict guardians increases likelihood of ward abuse

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Abuse. As with many organizations, the name is a misnomer. Its proposal in the Illinois legislature, which will undoubtedly resurface, actually increases the likelihood of abuse of wards.

The bill, which is one of several benignly labeled "Right to Association Bills," surfacing around the country, disregards the whole concept of guardianship. The person with a disability is a Ward of the State of Illinois under the doctrine of Parens Patriae, and responsibility for the person's health, safety and welfare is delegated by the State of Illinois to a Guardian, who assumes a fiduciary role. The Guardian must follow what is in the best interest of the Ward, not what the Guardian would like to occur. If the Guardian cannot act objectively, the Guardian should be replaced.

Judicial resources should be used to remedy violations of the fiduciary duties, not to supervise Guardians and micromanage their decisions. A court should not appoint a Guardian if there is suspicion that the person will not act objectively and appropriately. If concerns about "associations" are raised prior to the initial guardianship hearing the court could expressly note that the guardian's ability to restrict visitation should only be for good cause. The judicial system should not be required to supervise disputes between family members, especially including current spouses and their stepchildren.

Guardians should not be required to seek approval of the court to protect their Wards. As the Public Guardian of McLean County, I have had to chase a con-artist away from an assisted living facility. A grandson had a habit of taking grandma on trips from nursing home…..and a stop at a bank was always on his list. I had to restrict visits from a son because on a previous visit he wheeled his mom out of a nursing home. Another son showed up at a prospective nursing home with a baseball bat.

The most common problem visitation restriction problem is when family and friends won't accept that a ward shouldn't be going home, and disturb the adjustment process at a nursing home or assisted living facility. The "false hopes" given by these persons need to be restricted during the adjustment period. Judges shouldn't be required to enter a visitation restriction order when a guardian determines that a return home is not in the best interest of the respondent…….and often financially impossible due to the cost of 24/7 in home care.

In summary, for every person inappropriately denied visitation there are many negative interactions that Guardians need to guard against. Every Public Guardian and the Office of State Guardian has similar stories.

The bill would overturn established common law cases on the subject, something jurists would hesitate to do, and the legislature shouldn't. Illinois already has sufficient safeguards. Illinois statutory law addresses the issue, albeit not in a comprehensive manner. 755 ILCS 5/11a-14.1 provides that "the Guardian shall not remove the Ward from his or her home *or separate the Ward from family and friends* unless such removal is necessary to prevent substantial harm to the Ward or to the Ward's estate."

The State of Illinois has impliedly accepted guardianship standards that address the issue at greater length. See <http://www.guardianship.org/guardianship_standards.aspx>. The National Guardianship Association Standards should be followed by Public

Guardians, and presumably would be considered by courts as the best practices for all Guardians in the State of Illinois. The official position of the National Guardianship Association on "Right to Association" legislation is set forth at <http://www.guardianship.org/temp_pdfs/NGA%20Position%20Statement%20Regarding%20Right%20to%20Association%20Legislation.pdf>.

On the issue of visitation, the NGA standards read as follow:

NGA Standard 4 - The Guardian's Relationship with Family Members and Friends of the Person:

I. The Guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship.
   A. The Guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person.
   B. The Guardian may not interfere with established relationships unless necessary to protect the person from substantial harm.

II. The guardian shall make reasonable efforts to maintain the person's established social and support networks during the person's brief absences from the primary residence.

III. and IV. (Deals with assets)

V. The Guardian may maintain communication with the person's family and friends regarding significant occurrences that affect the person when that communication would benefit the person.

VI. The Guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the person. The Guardian may request and consider family input when making medical decisions.

A Guardian should have discretion as to proper associations. All Guardians should understand that communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail, are presumed beneficial, and inappropriate withholding of communications, visitation and interactions would be a material factor in any determination as to whether a new guardian should be appointed. ■

Daniel G. Deneen practices in Bloomington, Illinois, and can be reached at dandeneen@ilaw202.com.

Appellate update

BY ANDREAS LIEWALD

Illinois Supreme Court

***In re Linda B.*, 2015 IL App (1st) 132134 (February 18, 2015)**

Illinois Guardianship and Advocacy Commission has filed a PLA and has filed a Motion for Extension. Respondent was held on medical floor for 17 days before a petition for involuntary admission was filed.

***In re Benny M.*, 2015 IL App (2d) 141075 (November 2, 2015)**

The appellate court held that the trial court improperly kept Respondent shackled during involuntary-medication trial over Respondent's objection. Appellate court ruled that *Boose* hearing is required to determine necessity of restraint during trial. State's petition for leave to appeal was allowed on 03/30/16. State has requested extension to file brief to June 8, 2016.

***In re M.I.*, 2015 IL App (3d) 150403 (November 10, 2015)**

State's PLA was allowed on 01/22/16.

***In re Megan G.*, 2015 IL App (2d) 140148 (November 17, 2015)**

Appellate court held that trial court properly dismissed pending petitions for involuntary admission and involuntary treatment because of pending felony charges. State filed a PLA on 12/22/15. The State's petition for leave to appeal was denied.

***In re Miroslava P.*, 2016 IL App (2d) 141022 (March 30, 2016)**

State has filed a Motion for Extension to file PLA. State is considering whether to file a PLA.

District Appellate Court

***In re M.I.*, 2015 IL App (3d) 150403 (November 10, 2015)**

The State brought a petition to terminate the parental rights of respondent J.B., the father of M.I., alleging that J.B. failed to make reasonable progress for nine months prior for the parenting of M.I. and failed to maintain a reasonable degree of interest, concern or responsibility to her. ¶1, 6. A psychological examination indicated that Respondent was diagnosed with bi-polar disease and was mildly mentally retarded, with an IQ of 58, and skills ranging from a kindergarten to third grade level. ¶4, 8, 14. His abilities were consistent with those of a young child. ¶4. The trial court found J.B. unfit to care for M.I. and it was in the best interest of M.I. that his parental rights be terminated. ¶1. The trial court granted the State's petition to terminate the parental rights of Respondent. ¶1.

Respondent appealed the trial court's unfitness findings and its termination of his parental rights on the following grounds: (1) the trial court improperly considered evidence outside the relevant time period in finding Respondent failed to make reasonable progress; (2) it erred in determining that he failed to maintain a reasonable degree of interest, concern or responsibility toward M.I., and (3) DCFS failed to make reasonable accommodations and services in light of his mental

impairment. ¶11.

In terminating a parent's rights, the State must first prove that the parent is unfit and, if so, then must prove that it is in the child's best interest to terminate the parent's rights. Citing, *In re Petition of L.M.,* 385 Ill. App. 3d (1st Dist. 2008); 750 ILCS 50/1(D) (West 2010); and 705 ILCS 405/2-29(2) (West 2010). ¶12. "Grounds for termination of parental rights include the parent's failure to make reasonable progress toward the return of the child within a specified nine-month period after an adjudication of neglect or abuse and failure to maintain a reasonable degree of interest, concern or responsibility." 750 ILCS 50/1(D)(m)(ii), (D)(b) (West 2010). ¶12. "The court's focus is on the efforts of the parent rather than his success, and the court must examine the parent's conduct in the circumstances in which the conduct occurred." Citing *In re B'yata I.,* 2014 IL App (2d) 130558-B, ¶31. ¶13. Difficulty in obtaining transportation, poverty and other life issues needing resolution are circumstances relevant for the court's consideration." *Id.* ¶13.

The appellate court found that the majority of evidence considered by the trial court in making its unfitness finding was outside the specified nine-month period cited for lack of reasonable progress by Respondent. ¶15.

The appellate court rejected the trial court's determination that failing to complete a task that is beyond one's intellectual capacity is the same as refusing to comply with court-ordered directives and willfully not making reasonable progress toward the return of a minor child or willfully failing to maintain a reasonable degree of interest in the child. ¶16. The appellate court found that "there was no consideration of how the Respondent's mental retardation impacted his efforts to comply the court's directives." ¶16. "Importantly, the State never provided a service plan for J.B." ¶17.

The trial court was required to consider J.B.'s conduct in light of the circumstances [intellectual deficits and homelessness] facing him. ¶21. The appellate court found that the State did nothing to address J.B.'s particular situation. ¶21. "Rather, it abandoned a parent with an IQ of 58 to navigate the community social services network on his own and used his inability to do so as a grounds to terminate his parental rights." ¶21. The appellate court also found that DCFS and the trial court completely failed to recognize J.B.'s minimal functioning level and adjust his requirements according to his circumstances. ¶21. "So while J.B. might be unfit, that does not necessarily mean his parental rights should be terminated." Citing *In re Workman*, 56 Ill. App. 3d 1007, 1011 (3rd Dist. 1978) (parent retains bundle of rights until found unfit and guardian empowered to consent to adoption). ¶21.

The appellate court found that the State failed to meet its burden of proving J.B.'s unfitness and the trial court erred in terminating his parental rights. ¶21. Reversed and Remanded. ¶22.

People v. Bailey, **2016 IL App (3d) 150115 (opinion filed on February 10, 2016)**

Defendant appealed the trial court's ruling that he was in need of mental health services on an inpatient basis following a finding of not guilty by reason of insanity (NGRI). ¶1.

Defendant was charged with aggravated battery. ¶3. The trial court found defendant NGRI, and ordered that he be remanded to the custody of the Department of Human Services and be evaluated to determine whether he was in need of mental health services. ¶4. A written evaluation concluded that Defendant was in need of mental health services on an inpatient basis. ¶5. The evaluation noted that Defendant had a history of noncompliance with his prescribed medication on an outpatient basis, and a long history of substance abuse and problems with the criminal legal system. ¶5, 6.

At trial, a doctor testified that Defendant was diagnosed with manic bipolar disorder, which was in partial remission because he had been taking his medications. ¶8. The doctor opined that Defendant was in need of inpatient treatment based on Defendant's history of noncompliance with his medications and lack of insight into his mental illness and substance abuse. ¶8. He believed that defendant would pose a risk of harm to himself or others if he were not hospitalized based on his mental illness. ¶8. Defendant's father testified that he would allow Defendant to live with him and would be able to help Defendant obtain his medications and make sure he took them. ¶14. The father was not concerned for his safety if Defendant were to live with him. ¶14. Defendant testified that if the judge allowed him to receive outpatient mental health treatment, he would likely try to obtain his own housing. ¶15. The trial court found Defendant in need of mental health services on an inpatient basis and remanded him to the custody of DHS. ¶16. The trial court noted that Defendant exhibited a lack of compliance with his recommended treatment, a lack of insight into his mental illness, and a lack of remorse for his crime. ¶17.

Under section 5-2-4 of the Unified Code of Corrections, after a finding of NGRI, the trial court shall order the defendant to be evaluated by DHS to determine if the defendant is in need of mental health services. ¶20. DHS is to provide the trial court with a report of its evaluation within 30 days. *Id.* ¶20. After receiving the report, the trial court must hold a hearing to determine if the defendant is in need of mental health services and, if so, whether the defendant is in need of mental health services on an inpatient or outpatient basis. *Id.* ¶20. A finding that a defendant needs mental health treatment on an inpatient basis must be established by clear and convincing evidence. 730 ILCS 5/5-2-4(g). ¶21. Such a finding "must be based upon an explicit medical opinion regarding the defendant's future conduct and cannot be based upon a mere finding of mental illness." *People v. Grant,* 295 Ill. App. 3d 750, 758 (1998). ¶21.

Relevant factors in determining whether a person is reasonably expected to inflict serious harm upon himself or another include "evidence of (1) prior hospitalization with the underlying facts of that hospitalization and (2) defendant not taking his medication in the past and still not perceiving the value of continued medical treatment." *People v. Robin*, 312 Ill. App. 3d 710, 718 (2000). ¶21. "Even though

a finding of dangerousness must be based on a specific medical opinion regarding defendant's possible future conduct, there does not need to be an expectation of immediate danger." *People v. Hager,* 253 Ill. App. 3d 37, 41 (1993). ¶21. "The mere possibility that defendant may not comply with the prescribed treatment is insufficient to sustain a finding of involuntary commitment." *Robin,* 312 Ill. App. 3d 718. ¶21.

The appellate court affirmed the trial court's ruling, finding that the trial court's determination that Defendant was in need of mental health services on an inpatient basis was not manifestly erroneous. ¶1, 23, 29. Factors which supported the trial court's determination of treatment on an inpatient basis included the Defendant's history of noncompliance with medications on an outpatient basis, Defendant's lack of insight into his mental illness and substance abuse, lack of remorse for his crime, and that he was not fully compliant with attending therapy groups on an inpatient basis. ¶23.

In re Miroslava P., 2016 IL App (2d) 141022 (opinion filed on March 30, 2016)

The State petitioned for the involuntary admission and involuntary administration of psychotropic medication to Respondent, Miroslava P., a Bulgarian citizen. ¶1. At three early status hearings, Respondent requested that the Bulgarian consulate be notified of the admission proceedings. ¶1. Respondent then filed a Motion to Strike the petitions, arguing that the Vienna Convention required that the consulate be notified when one of its citizens was involuntarily detained. ¶8. The trial court denied Respondent's motions to strike the petitions. ¶14. The trial court granted the petitions for involuntary admission and involuntary medication. ¶16.

Respondent then filed a Motion to Reconsider, arguing that the petitions should have been stricken based on the failure to timely notify the consulate and provide it with the admission petition and appropriate documentation. ¶17. In the Motion to Reconsider, Respondent, for the first time, cited section 3-609 of the Mental Health Code, which requires that "[n]ot later than 24 hours, *** a copy of the petition and statement shall be given or sent to the respondent's attorney and guardian, if any. The respondent shall be asked if he desires such documents sent to any other persons, *and at least 2 such persons designated by the respondent shall receive such documents*." (emphasis added.) 405 ILCS 5/3-609 (West 2014). ¶17. The trial court granted Respondent's Motion to Reconsider, finding that noncompliance with section 3-609, warranted a reversal of both the admission order and the medication order. ¶1, 39.

The State appealed the trial court's reversal of orders, arguing that the trial court abused its discretion in granting the Respondent's motion to reconsider, because: (1) it should have found forfeited Respondent's late citation to section 3-609; (2) any noncompliance with section 3-609 was harmless; and (3) even if compliance with section 3-609 justified vacating the admission order, it did not justify vacating the medication order. ¶22.

Initially, the appellate court held that the public-interest exception to the mootness doctrine applied. Since issues of statutory compliance are considered questions of a public nature, an authoritative determination is needed for future guidance, and the circumstances are likely to recur. ¶24-26.

Respondent's counsel at trial initially cited the Vienna Convention, rather than the Code, for her position that the State must ensure that the consulate be notified. ¶ 32. Later in court when Respondent's counsel mentioned the Mental Health Code, she did not specifically cite section 3-609 as authority. ¶32. Nevertheless, at each and every court appearance, Respondent's counsel raised the broad issue of notifying the consulate. ¶32. "Under these circumstances, where counsel zealously and repeatedly raised the broad issue, Respondent did not forfeit the issue." ¶32.

The appellate court found that Respondent's request to provide her consulate with the petition detailing the reasons of her detainment was highly reasonable and agreed with the trial court's determination that, pursuant to section 3-609, a respondent who is a foreign national may designate her locally stationed counsel as one of her two "other persons" who must receive copies of the admission petition. ¶43-44.

The appellate court also distinguished between "plain-error" and "harmless-error" review. In "plain error" review, where the respondent did not object in the trial court to a noncompliance error, the respondent bears the burden of persuasion to show that the error was prejudicial. ¶64. However, in a "harmless error" review, the noncomplying party – here, the State – bore the burden of persuasion to show the absence of prejudice. ¶64. Here, because Respondent repeatedly objected to the State's failure to timely and adequately notify the consulate, a plain error analysis did not apply to this case. ¶65.

The appellate held that the trial court, in taking a strict compliance approach, did not abuse it discretion in vacating the admission order in light of the State's noncompliance with section 3-609. ¶58, 66.

Regarding notice in a medication proceeding, if, as here, "a hearing is requested to be held immediately following the hearing on a petition for involuntary admission, then the notice requirement *shall be the same* as that for the hearing on the petition for involuntary admission, and the petition filed pursuant to this Section shall be filed with the petition for involuntary admission." (Emphasis added.) 405 ILCS 5/2-107.1(a-5)(1) (West 2014). ¶69. "Also, the medication statute *does* require notification of an individual designated by the respondent, if the designation was made in writing." 405 ILCS 5/2-102(a) (West 2014). ¶69. Finally, the appellate court held that the trial court's determination that the medication order stemmed from the admission order was sound, and the State forfeited its opportunity to request a modification [treatment in an outpatient facility] as opposed to reversal. ¶70. Affirmed. ¶75.

In re Sharon N., 2016 IL App (3d) 140980 (April 15, 2016)

Respondent appealed the trial court's order for involuntary admission and involuntary administration of psychotropic

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medication.

Respondent argued that (1) the evidence was insufficient to establish that she was subject to involuntary admission; (2) the evidence was insufficient to establish that she was subject to involuntary medication; (3) the State and the circuit court failed to comply with the statutory provisions on involuntary medication; and (4) her trial counsel was ineffective. ¶18.

The appellate court found that Respondent's first two arguments presented nothing more than sufficiency of evidence arguments. ¶24. It found that those arguments did not meet the "capable of repetition, but evading review exception" to mootness and consequently did not address them. ¶25. However, the appellate court did find that Respondent's third and fourth arguments qualified for the "public interest exception" to the mootness doctrine. ¶32.

The appellate court found that the circuit court committed two errors regarding the petition for involuntary medication and reversed the medication order. ¶40. First, the Petitioner failed to provide a three-day notice of the hearing to Respondent under section 2-107.1(a-5)(1) of the Mental Health Code. 405 ILCS 5/2-107.1(a-5)(1). ¶37, 40. Second, the circuit court failed to specify in the medication order what testing it was requiring to be conducted on the Respondent. 405 ILCS 5/2-107.1(a-5)(4)(G). ¶39, 40.

Regarding Respondent's fourth argument that trial counsel was ineffective, the appellate court initially rejected her argument that failure to follow through with a jury demand in the commitment proceeding prejudiced her. ¶41. The appellate court found that trial counsel's failure to object to Respondent's mother's testimony was not prejudicial, since the evidence from the psychiatrist's testimony was sufficient to support a finding of involuntary admission. ¶5, 43. The appellate court declined to address Respondent's remaining claims of ineffective assistance of counsel related to the medication hearing because it already held that the medication order must be reversed. ¶44.

Commitment order is affirmed and medication order is reversed. ¶47. ■

Andreas Liewald is a staff attorney with the Illinois Guardianship and Advocacy Commission, West Suburban (Hines) Office.