

Mental Health Issues & the Criminal Courts



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Eleventh Judicial Circuit of Illinois

**McLean County Bar
Association 2017**

A silhouette of a balance scale is centered in the background. The scale is tilted, with the right pan being lower than the left pan. The text is overlaid on the scale's beam and pans.

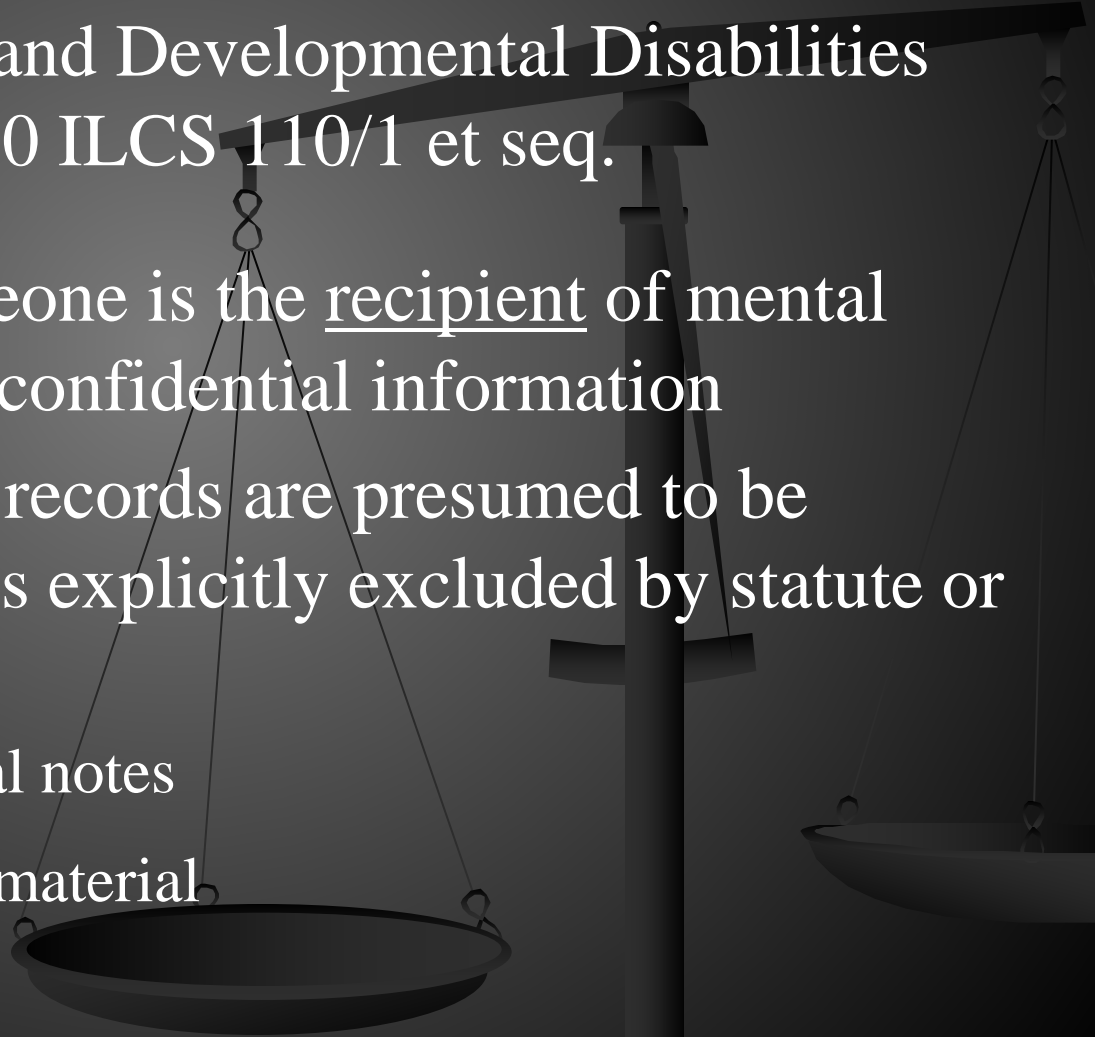
Mental Health Issues & the Criminal Courts

Discoverability of Mental Health Records in a
Criminal Proceeding



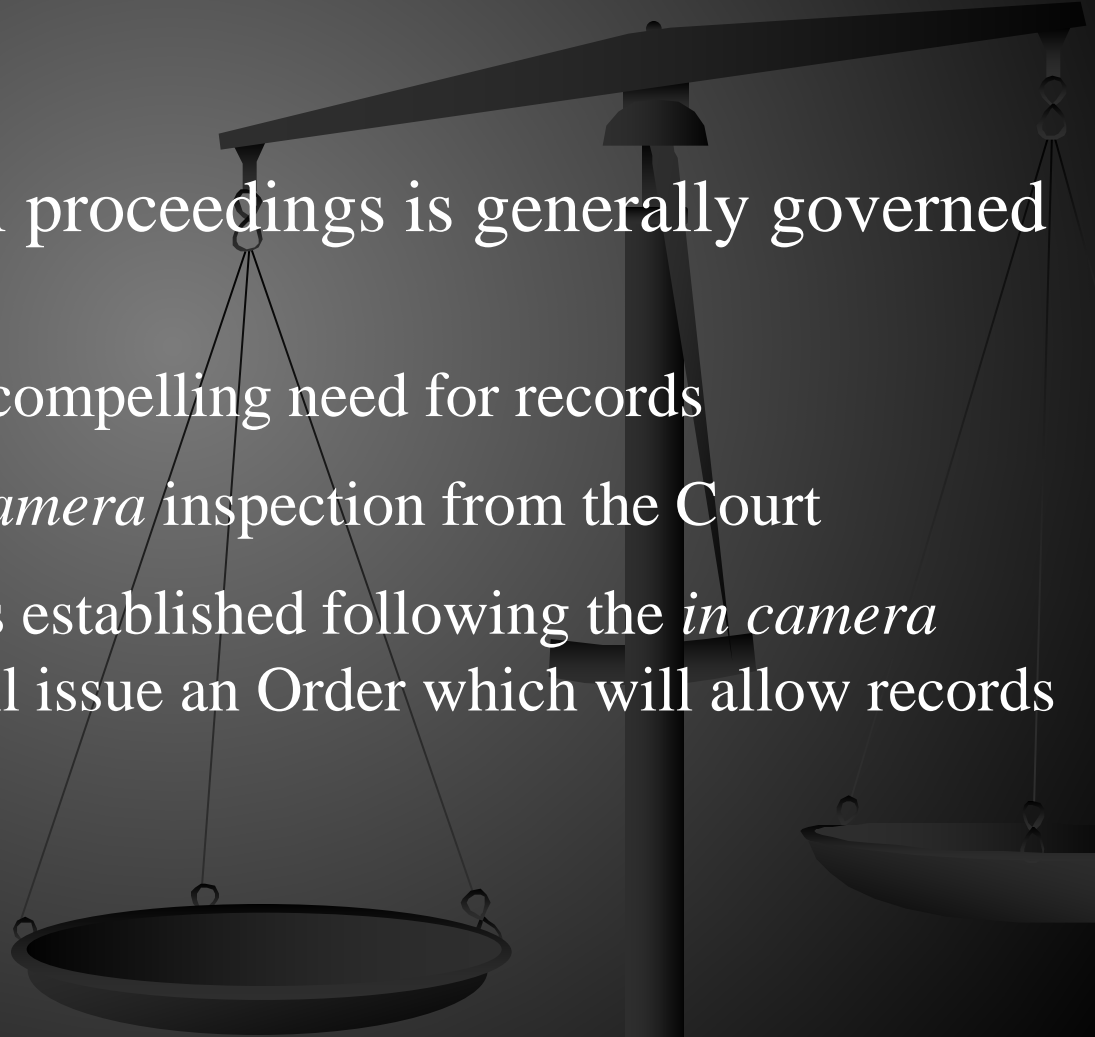
Discoverability of Mental Health Records

Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 et seq.

- ❑ The fact that someone is the recipient of mental health services is confidential information
 - ❑ All mental health records are presumed to be confidential unless explicitly excluded by statute or court order
 - ❑ Therapists' personal notes
 - ❑ Psychiatric testing material
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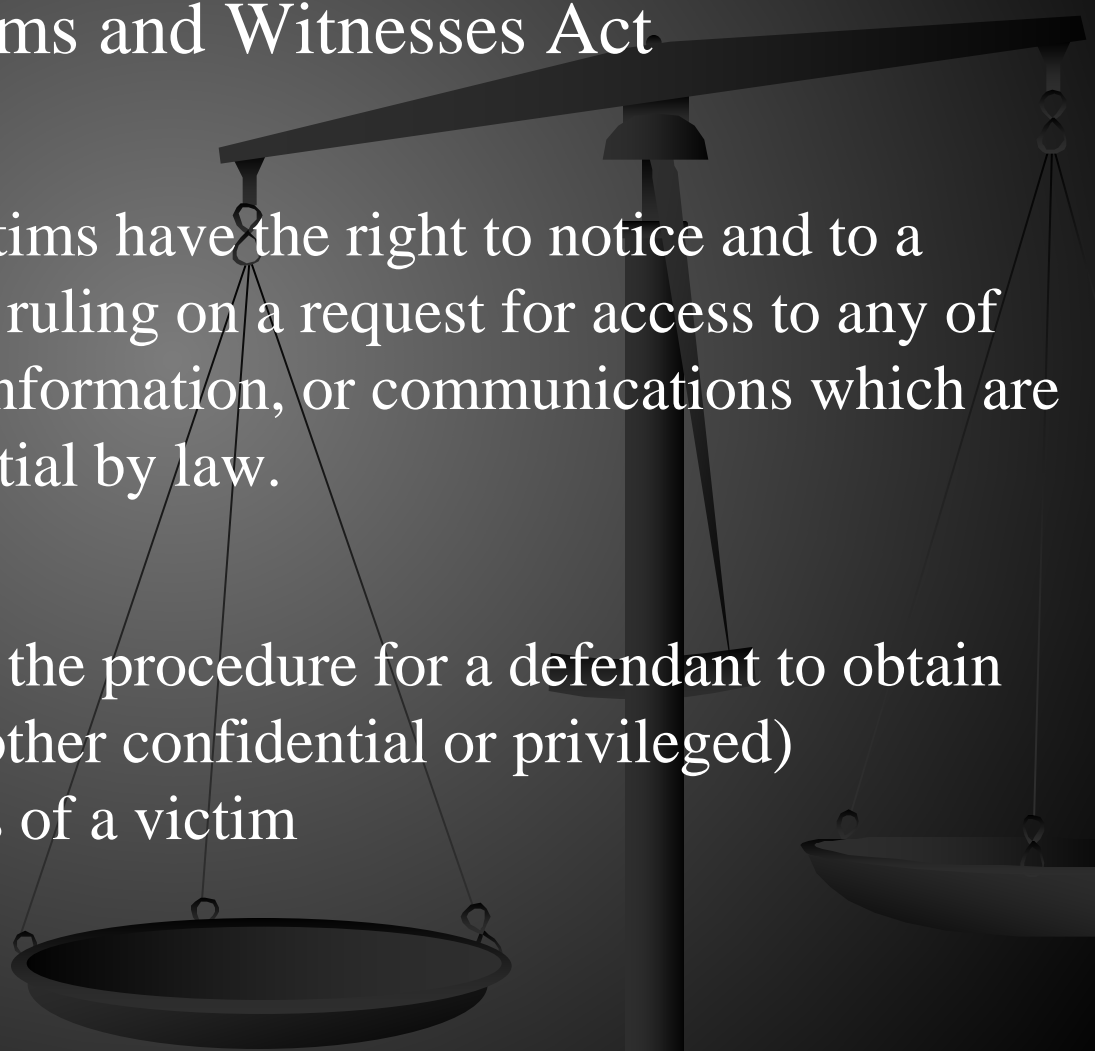


Discoverability of Mental Health Records

- Disclosure in criminal proceedings is generally governed by 740 ILCS 110/10
 - Must demonstrate a compelling need for records
 - Must request an *in camera* inspection from the Court
 - If compelling need is established following the *in camera* inspection, Court will issue an Order which will allow records to be subpoenaed
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Discoverability of Mental Health Records

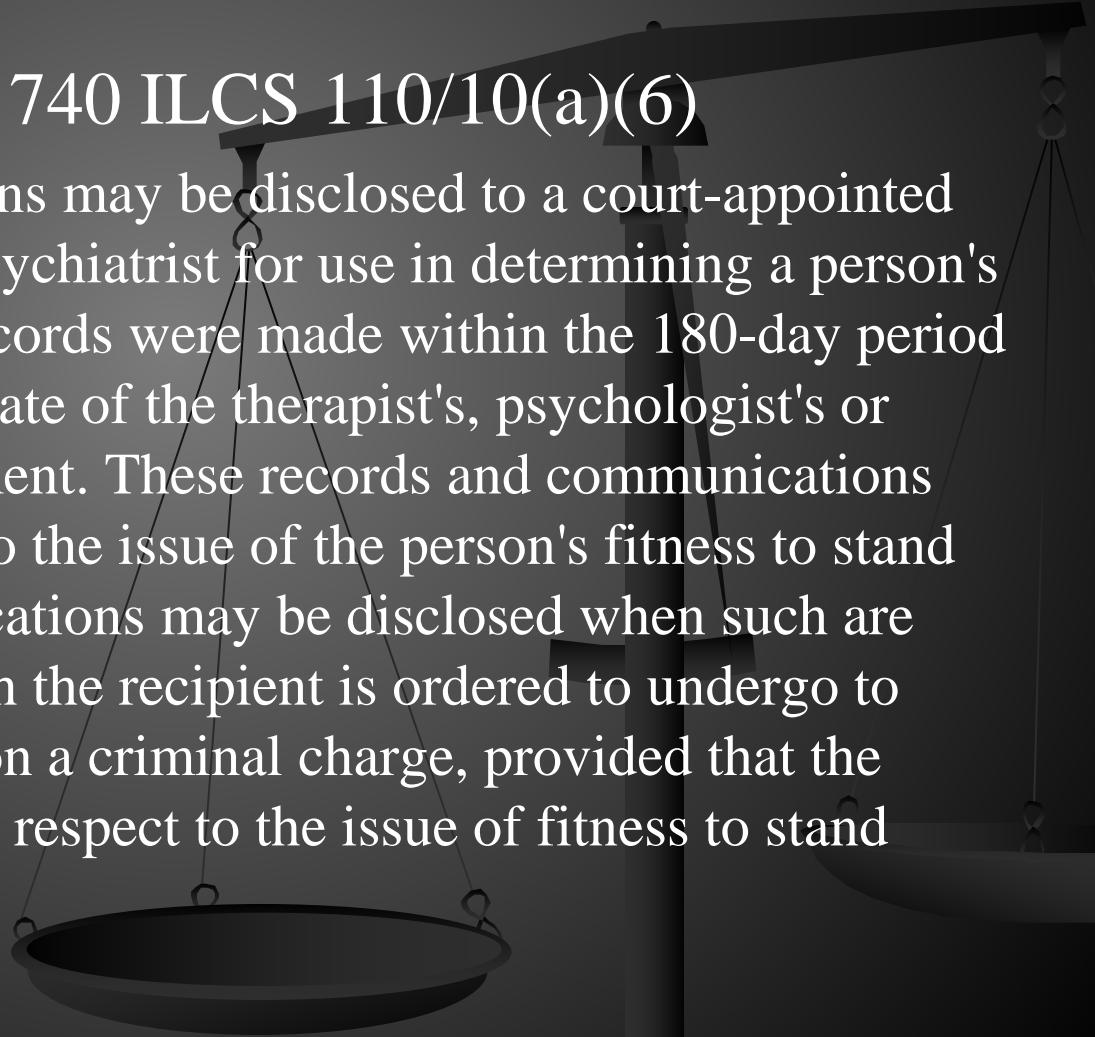
- Rights of Crime Victims and Witnesses Act
 - 725 ILCS 120/4
 - §4(a)(1.5): Crime victims have the right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.
 - 725 ILCS 120/4.5
 - §4.5(c-5)(9) sets forth the procedure for a defendant to obtain the mental health (or other confidential or privileged) information or records of a victim
- 



Discoverability of Mental Health Records

■ Fitness proceedings 740 ILCS 110/10(a)(6)

“Records and communications may be disclosed to a court-appointed therapist, psychologist, or psychiatrist for use in determining a person's fitness to stand trial if the records were made within the 180-day period immediately preceding the date of the therapist's, psychologist's or psychiatrist's court appointment. These records and communications shall be admissible only as to the issue of the person's fitness to stand trial. Records and communications may be disclosed when such are made during treatment which the recipient is ordered to undergo to render him fit to stand trial on a criminal charge, provided that the disclosure is made only with respect to the issue of fitness to stand trial.”





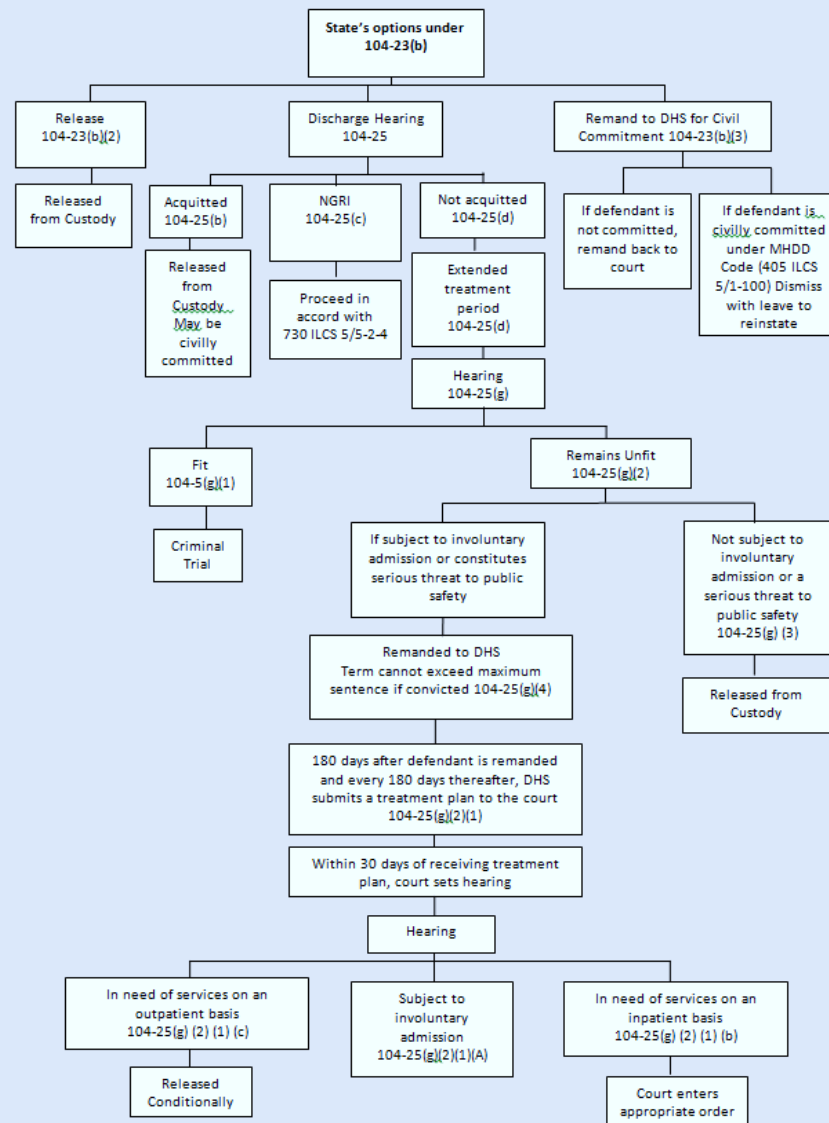
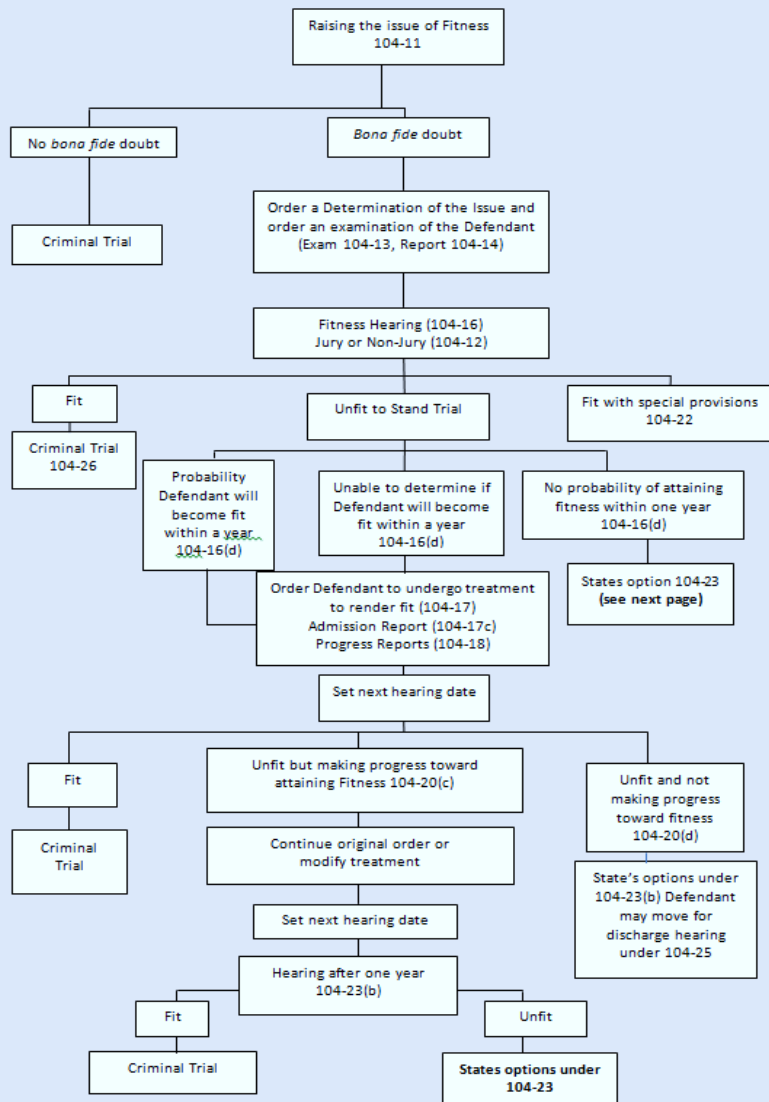
Mental Health Issues & the Criminal Courts

Fitness Procedures

Fitness Procedures

UST flowchart

FITNESS TO STAND TRIAL, TO PLEAD OR TO BE SENTENCED (725 ILCS 5/104) FLOWCHART



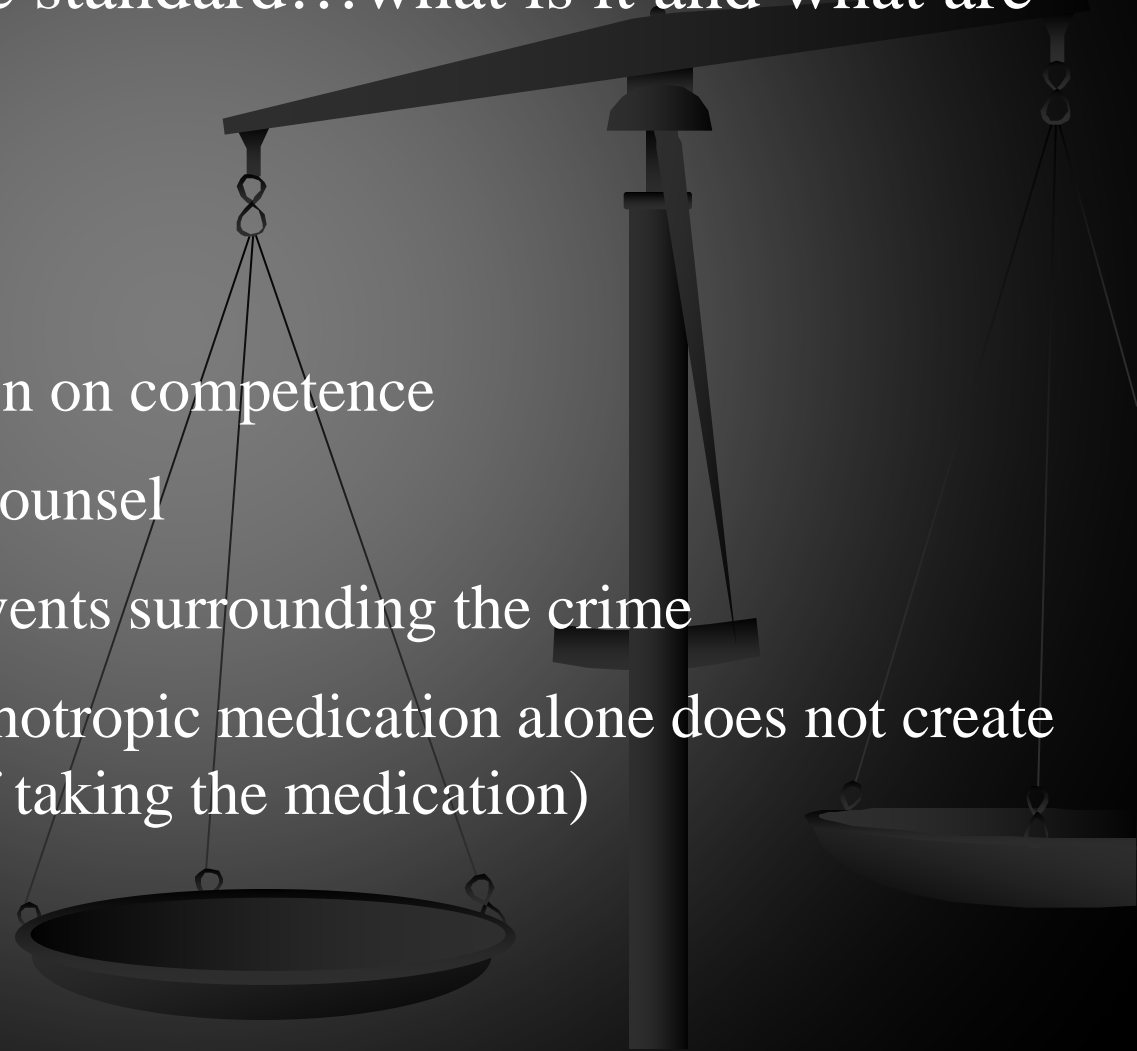


Fitness Procedures

- Federal and state due process prohibits a case from proceeding if the defendant is unable to understand the nature or purpose of proceedings against him or her or is unable to assist in the defense due to a physical or mental condition. *People v. Johnson*, 206 Ill.2d 348 (2002); 725 ILCS 5/104-10.
 - There is a presumption of fitness
 - Can be raised at any point of the proceedings
 - State, Defense or the Court can raise the issue
 - Statute does not require written motion

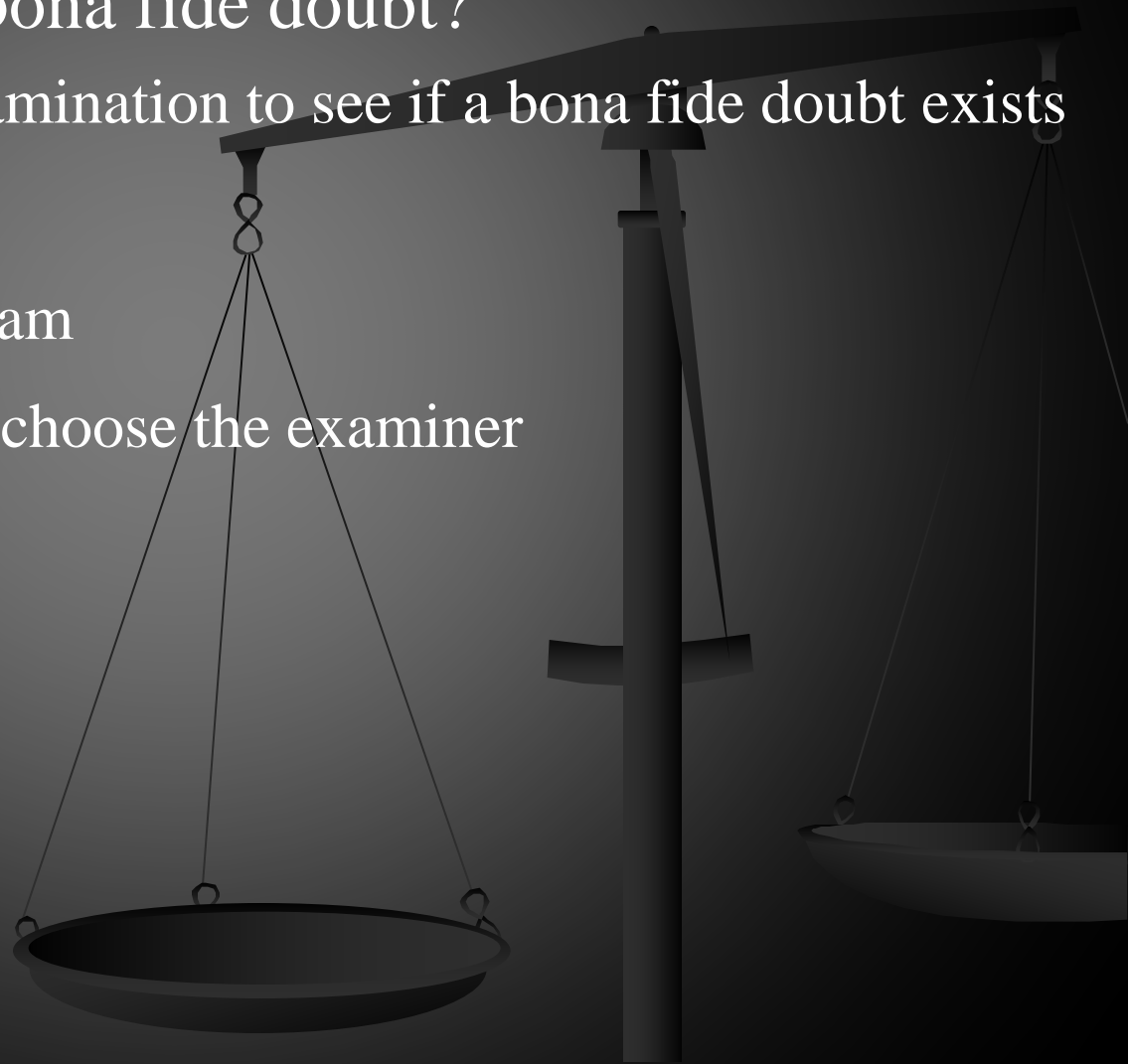
Fitness Procedures

- Bona fide doubt is the standard...what is it and what are the factors?
 - Irrational behavior
 - Demeanor
 - Prior medical opinion on competence
 - Representations of counsel
 - Amnesia as to the events surrounding the crime
 - Prescription of psychotropic medication alone does not create a bona fide doubt (if taking the medication)



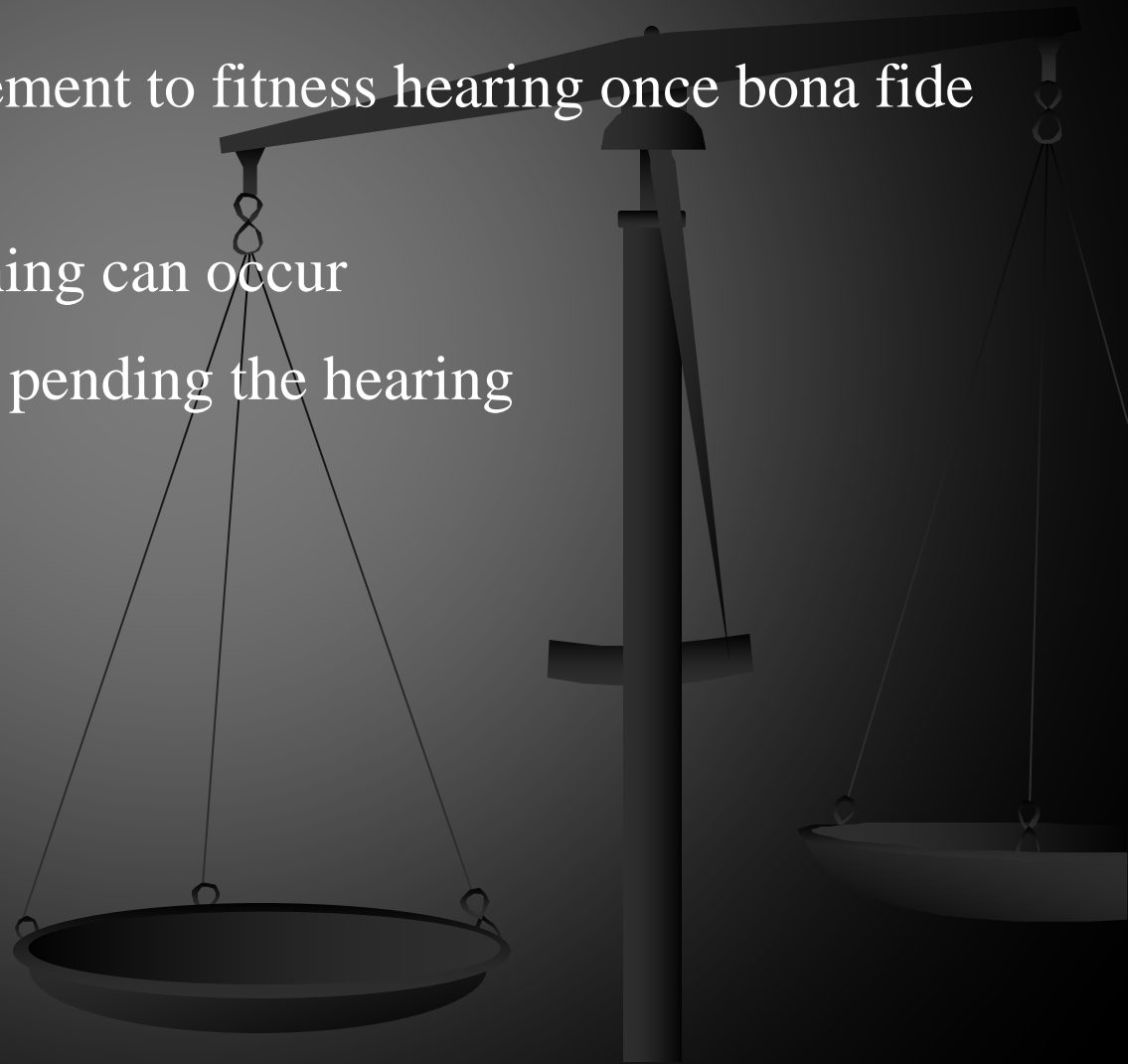
Fitness Procedures

- Not certain there's a bona fide doubt?
 - Request a fitness examination to see if a bona fide doubt exists
 - Judge's discretion
 - County to pay for exam
 - State does not get to choose the examiner



Fitness Procedures

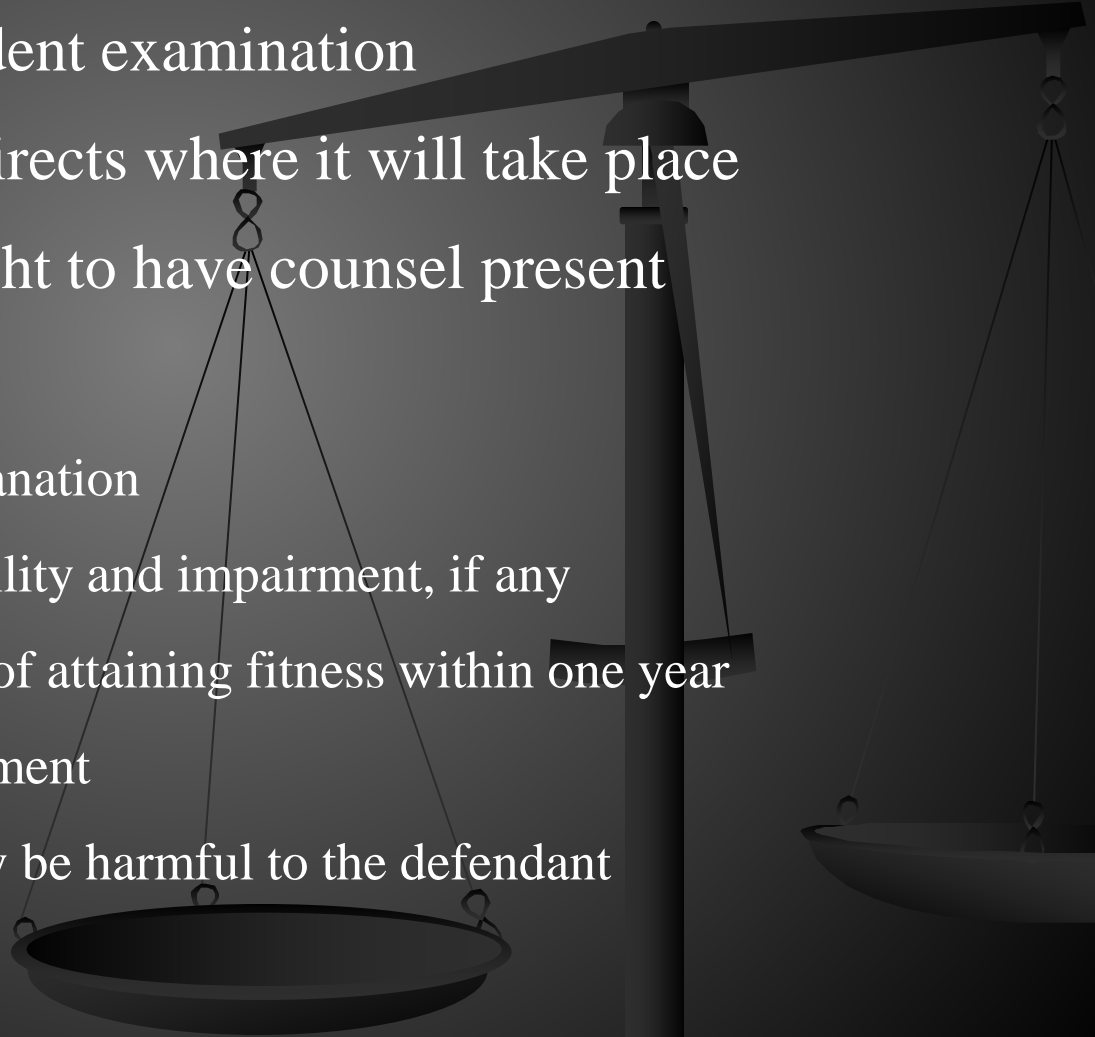
- No turning back
 - Constitutional entitlement to fitness hearing once bona fide doubt is established
 - Case is on hold, nothing can occur
 - Speedy trial is tolled pending the hearing





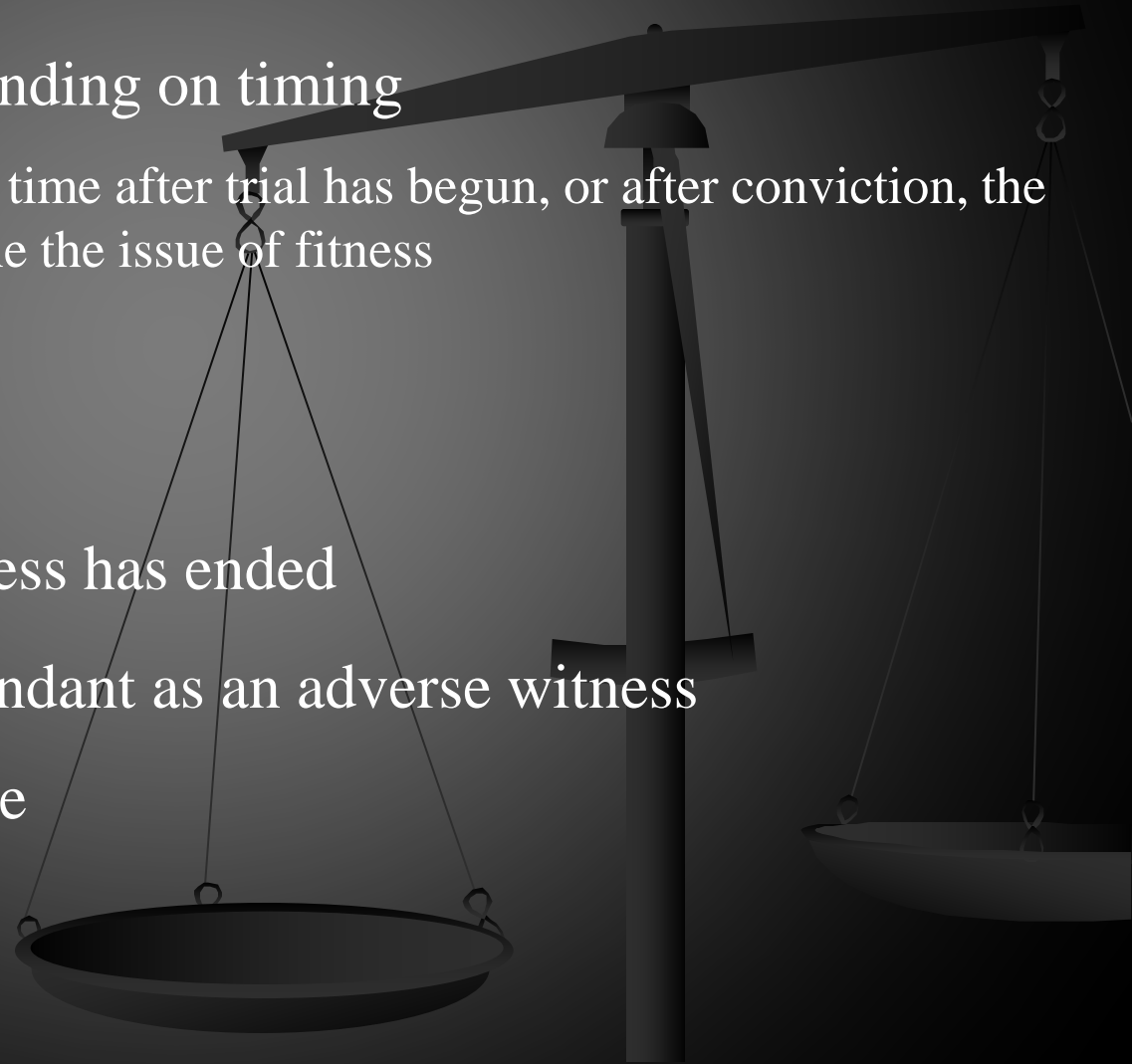
Fitness Procedures

■ The fitness examination

- Right to an independent examination
 - Court or examiner directs where it will take place
 - No constitutional right to have counsel present
 - Report to issue
 - Diagnosis with explanation
 - Description of disability and impairment, if any
 - If not fit, likelihood of attaining fitness within one year
 - Recommended treatment
 - Information that may be harmful to the defendant
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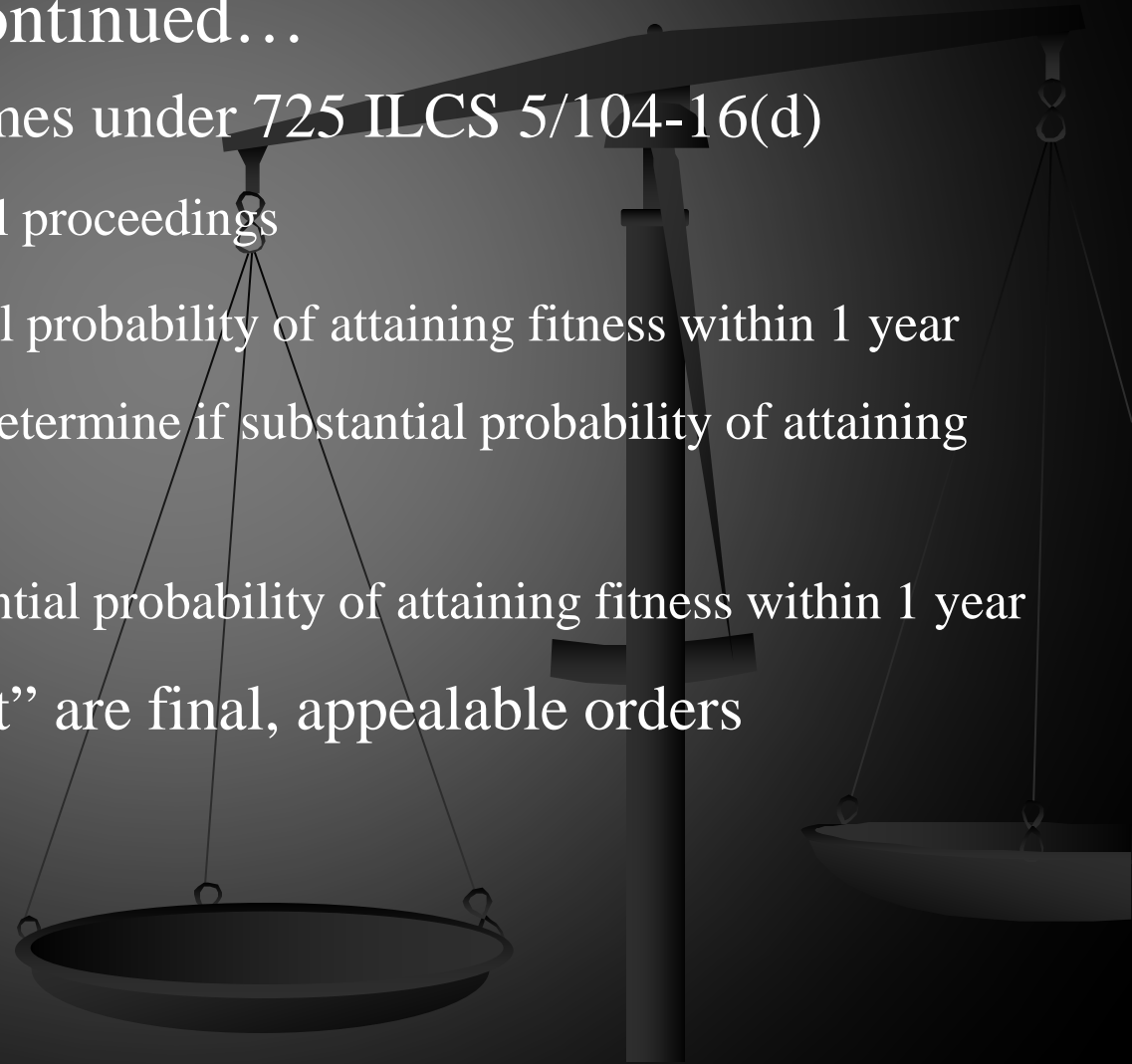
Fitness Procedures

- The fitness hearing
 - Bench or jury, depending on timing
 - If fitness raised any time after trial has begun, or after conviction, the Court is to determine the issue of fitness
 - Civil in nature
 - Burden of proof
 - Presumption of fitness has ended
 - State may call Defendant as an adverse witness
 - Admissible evidence



Fitness Procedures

- The fitness hearing continued...
 - Four possible outcomes under 725 ILCS 5/104-16(d)
 - Fit—resume criminal proceedings
 - Unfit with substantial probability of attaining fitness within 1 year
 - Unfit but unable to determine if substantial probability of attaining fitness within 1 year
 - Unfit with no substantial probability of attaining fitness within 1 year
 - All findings of “unfit” are final, appealable orders





Fitness Procedures



- Subsequent court proceedings

- The defendant has been found unfit. Now what?
 - Court has discretion to hear motions “if the defendant’s presence is not essential to a fair determination of the issues.”
 - A motion may be reheard upon a showing that evidence is available that was not available, due to the defendant’s unfitness, when the motion was first decided. 725 ILCS 5/104-11(d).
 - Once at the discharge stage, the Court must hear motions to suppress evidence. *People v. Braggs*, 302 Ill.App.3d 602 (1998).



Fitness Procedures

- The initial period of treatment
 - Applies to two categories
 - Initial Order for Treatment
 - Never longer than 1 year from date of finding of unfitness
 - Least form of physically restrictive treatment
 - If due to a mental condition, may order custodial treatment with DHS or any other appropriate mental health facility
 - Delays in placement with DHS



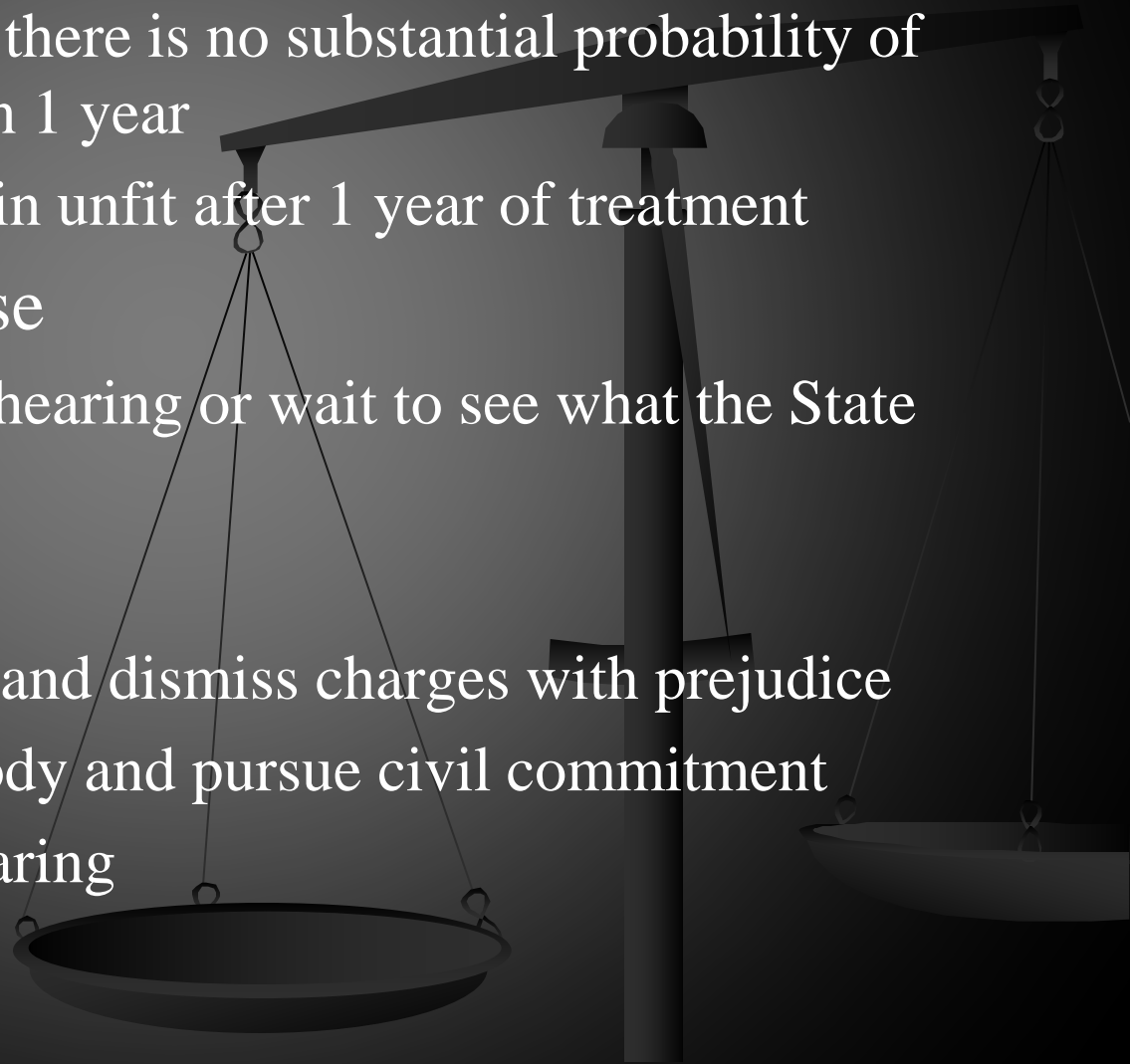
Fitness Procedures



- Reports during the initial period of treatment
 - 30 day report
 - Progress reports
- Hearings during the initial period of treatment
 - 90 day hearings
 - Accelerated hearing provision
- Procedure if unable to determine if defendant will be fit within 1 year

Fitness Procedures

- Extended period of treatment
 - Defendants for whom there is no substantial probability of attaining fitness within 1 year
 - Defendants who remain unfit after 1 year of treatment
- Options for the defense
 - Move for a discharge hearing or wait to see what the State elects
- Options for the State
 - Release from custody and dismiss charges with prejudice
 - Remand to DHS custody and pursue civil commitment
 - Set for a discharge hearing



Fitness Procedures



■ Discharge hearing

- The not not-guilty or innocence only hearing
- Not a criminal prosecution
- State's burden is beyond a reasonable doubt
- If burden is met, can be remanded for extended treatment

■ Extended treatment limits

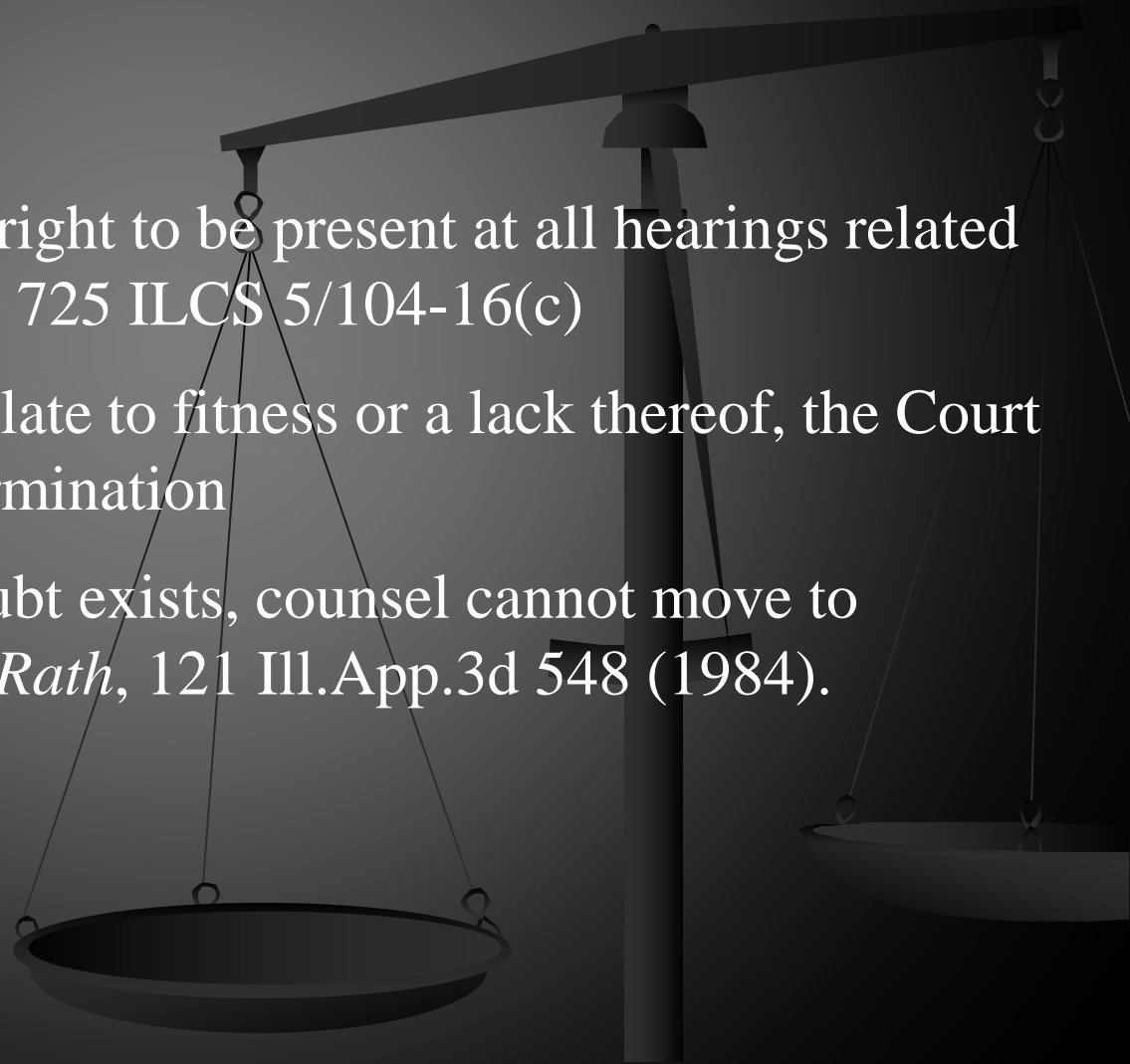
- Murder—5 additional years maximum
- Class X or Class 1—2 additional years maximum
- Class 2, 3 or 4—15 additional months maximum
- Misdemeanors unclear

■ Termination of extended treatment

Fitness Procedures

■ Important to note...

- The defendant has a right to be present at all hearings related to fitness pursuant to 725 ILCS 5/104-16(c)
- You CANNOT stipulate to fitness or a lack thereof, the Court must make that determination
- Once a bona fide doubt exists, counsel cannot move to withdraw. *People v. Rath*, 121 Ill.App.3d 548 (1984).



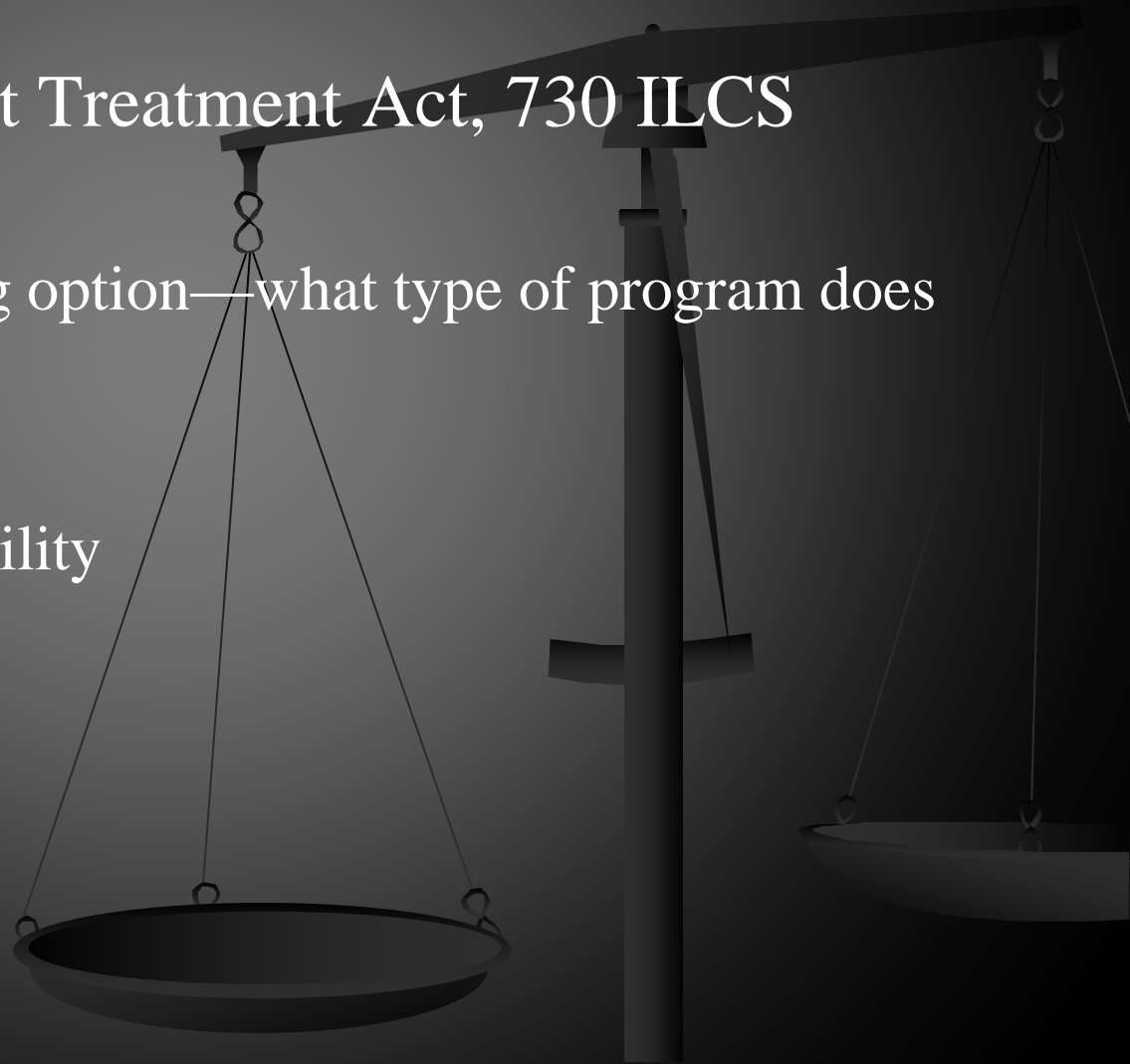


Mental Health Issues & the Criminal Courts

Mental Health Court as a Sentencing Option

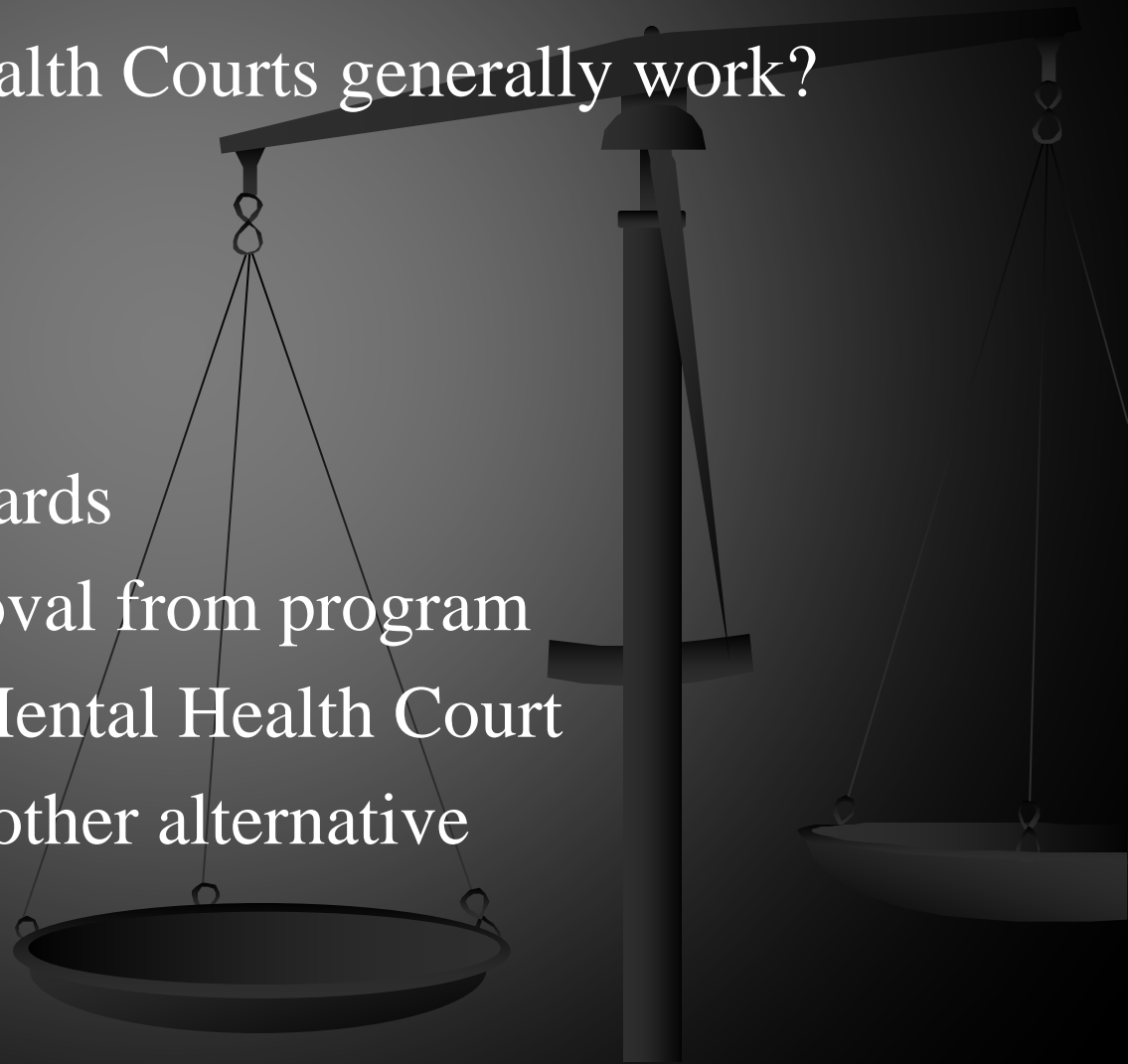
Mental Health Court as a Sentencing Option

- Mental Health Court Treatment Act, 730 ILCS 168/10, et seq.
- Maybe not a sentencing option—what type of program does your county have?
- Statutory eligibility
- Program specific eligibility
 - Qualifying diagnosis
 - Qualifying charges



Mental Health Court as a Sentencing Option

- How do Mental Health Courts generally work?
- No two are alike
- Team approach
- Requirements
- Sanctions and Rewards
- Graduation or removal from program
- Pros and Cons of Mental Health Court
- Veteran's Court another alternative



Mental Health Court as a Sentencing Option

- Mental health courts are more effective than the traditional court system and jails at connecting participants with mental health treatment¹.
- Mental Health Courts decreased the number of jail days for the persistent and severely mentally ill as compared to those who receive treatment as usual².
- There is a greater chance of failure with those clients who have more severe substance abuse problems.
- Potential to save money—reduce recidivism and associated jail and court costs; decrease the use of the most expensive treatment (inpatient).

1(Almquist & Dodd, 2009).

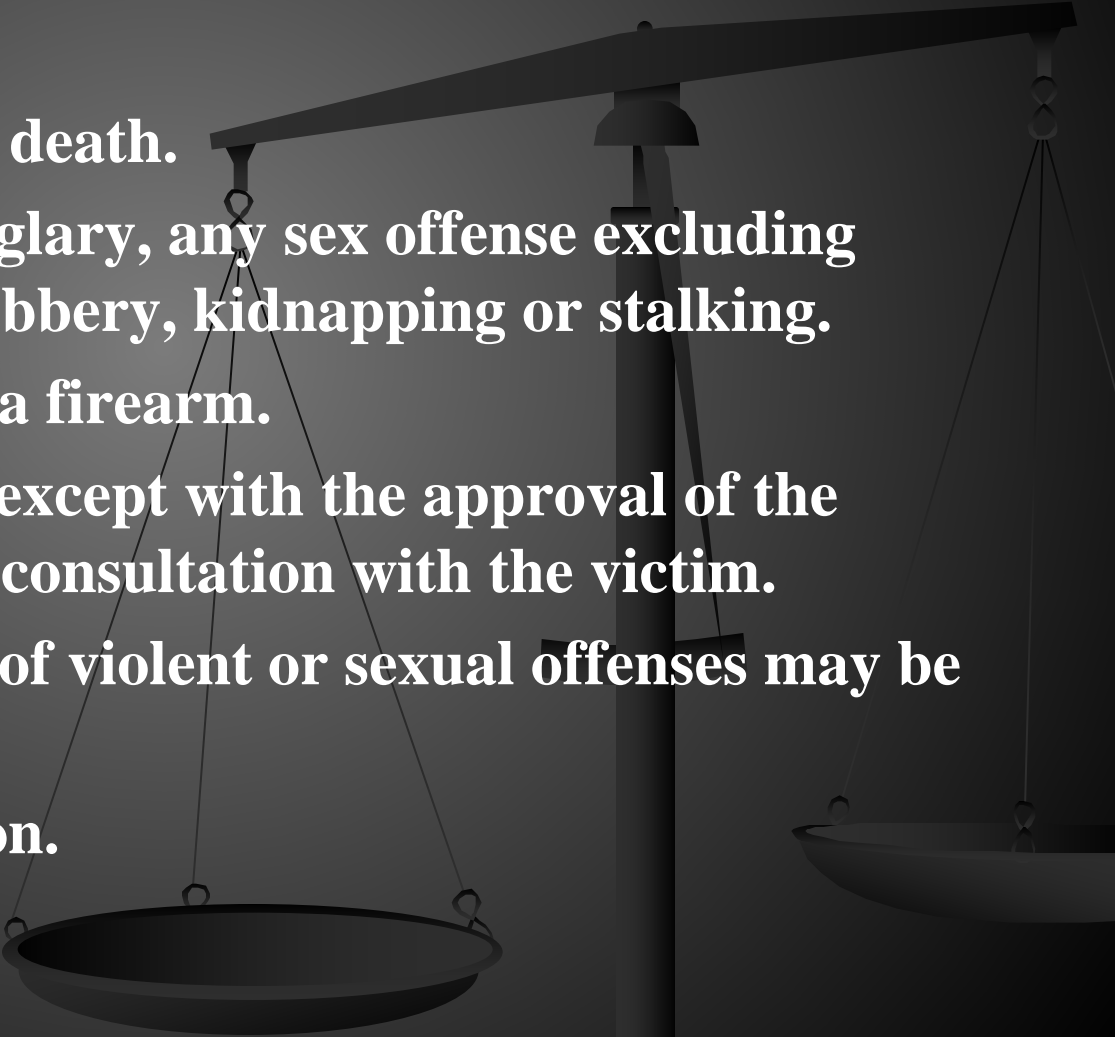
2 (Christy et al., 2005).

McLean County Recovery Court Eligibility Criteria

- **The Defendant must be at least 18 years of age.**
- **The criminal offense must be a non-excluded offense.**
- **Defendant must be diagnosed with a serious mental illness.**
- **Defendant must be willing to cooperate with the court and with an approved treatment agency and sign all releases of information required by the court and/or team.**
- **Defendant must be approved by the Recovery Court team to participate.**
- **Moderate-High or High Risk Level as determined by the Level of Service Inventory-Revised (LSI-R).**
- **Moderate-High or High Need Level as determined by the Global Assessment of Needs (GAIN-I).**

McLean County Recovery Court

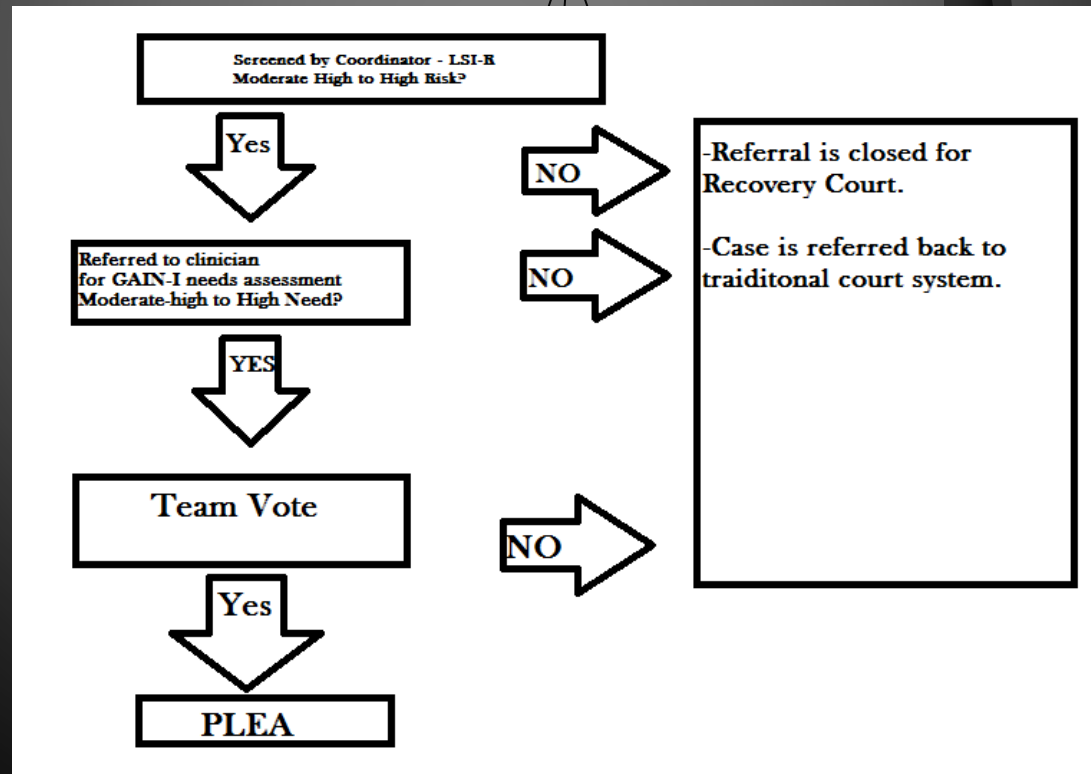
Non-Qualifying Factors

- Any crime involving a death.
 - Arson, residential burglary, any sex offense excluding prostitution, armed robbery, kidnapping or stalking.
 - Any offense involving a firearm.
 - Any domestic battery except with the approval of the State's Attorney after consultation with the victim.
 - A defendant's history of violent or sexual offenses may be factors for exclusion.
 - Prosecutorial discretion.
- 

McLean County Recovery Court

Referral Process

- A client may be referred by any referral source: Probation (PTR), Private Attorney, BPD, NPD, Jail, etc.
- Names referred to coordinator initially – entered into database.
- Names are then sent to SAO for approval to be screened – based on eligibility criteria. If approved, the process is listed below:



McLean County Recovery Court

Phases and Outcomes

Phase 1: Orientation

Phase 2: Engagement

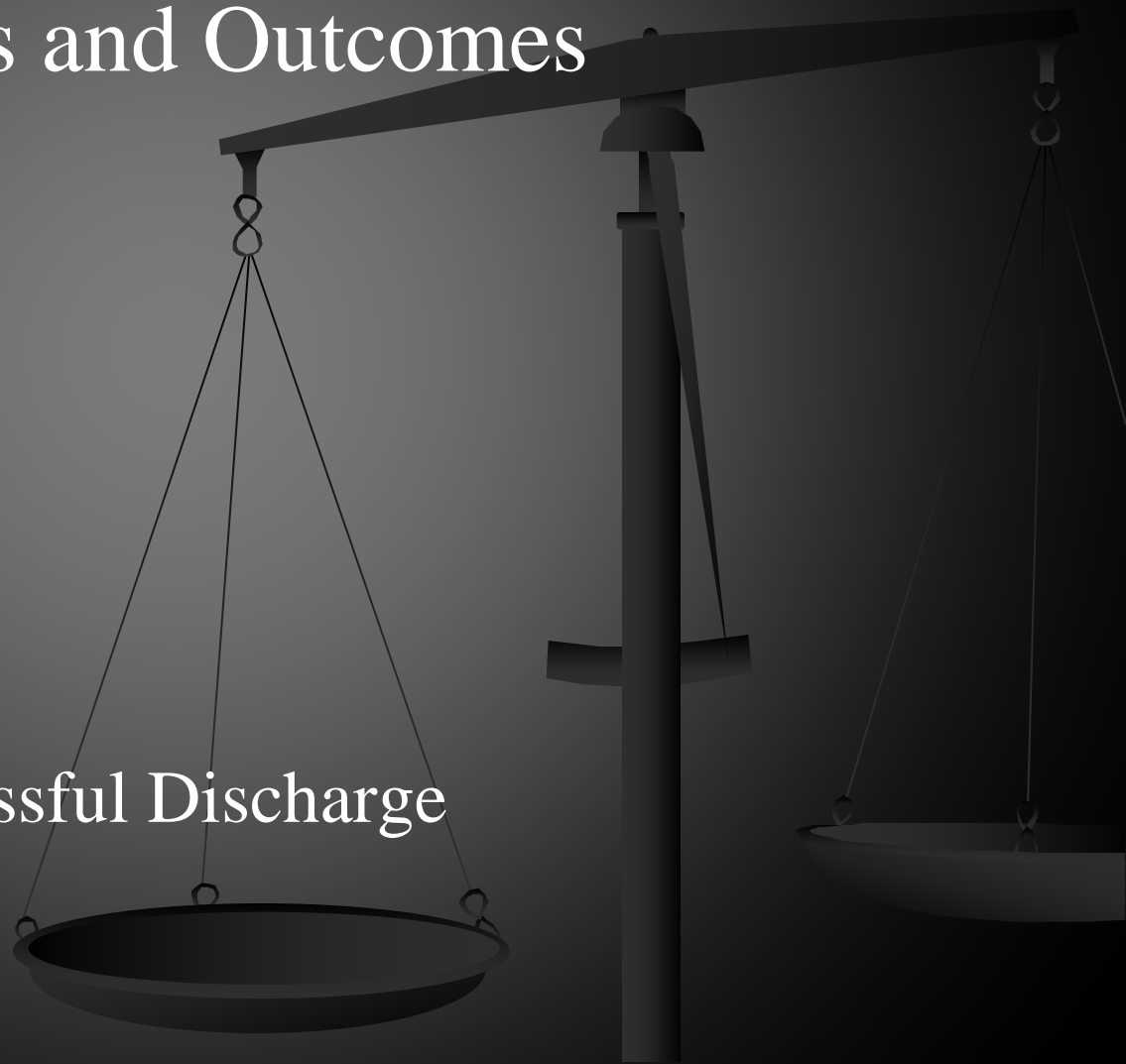
Phase 3: Stabilization

Phase 4: Maintenance

Phase 5: Transition

Graduation and Successful Discharge

Termination



Questions?

THANK YOU



Rebecca Simmons-Foley is a resident judge of the 11th Circuit Court in McLean County, Illinois. She was elected on November 6, 2012 to a term that expires in December 2018. Judge Foley hears Chancery cases, Miscellaneous Remedy cases, Adult and Minor Guardianships and Mental Health cases as assigned to her in McLean County Circuit Court.

Judge Foley received an undergraduate degree in journalism from the University of Illinois in 1991. She went on to earn a J.D. degree from the DePaul University College of Law in 1995.

From January 2004 until her judicial election in 2010, Foley worked as an associate judge of the 11th Circuit Court.