CH. 21
FITNESS TO STAND TRIAL

§21-1
Generally

United States Supreme Court

Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966) Failure to hold a fitness hearing is reversible error where there is a possibility that defendant is unable to assist in his defense or understand nature of the charges. See also, **People v. Thompson**, 36 Ill.2d 332, 223 N.E.2d 97 (1967).

Illinois Supreme Court

People v. Johnson, 191 Ill.2d 257, 730 N.E.2d 1107 (2000) The Supreme Court established several rules to be applied where questions arise concerning the fitness of a post-conviction petitioner. A post-conviction petitioner is presumed fit at the outset of post-conviction proceedings, and the court may require a substantial threshold showing of incompetence to establish a bona fide doubt of fitness. Once a bona fide doubt has been raised, it is the State's burden to prove the petitioner fit to proceed on the post-conviction petition. The level of competency required during post-conviction proceedings is less than required at trial. A post-conviction petitioner is unfit where a mental condition prevents him from communicating his allegations of constitutional deprivations to post-conviction counsel.

People v. Murphy, 72 Ill.2d 421, 381 N.E.2d 677 (1978) A defendant is unfit to stand trial when, because of a mental or physical condition, he or she is unable to understand the nature and purpose of the proceedings or assist in the defense. Whether a bona fide doubt has been raised regarding fitness rests largely within the discretion of the trial judge.

People ex rel. Myers v. Briggs, 46 Ill.2d 281, 263 N.E.2d 109 (1970) Defendant, an illiterate deaf-mute who does not know any recognized sign language, was indicted for murder in 1965. After an incompetency commitment, the superintendent stated that defendant would never be able to cooperate with counsel. A defendant cannot be indefinitely confined merely because he is accused of a crime. Defendant was entitled to a trial to determine his guilt or innocence.

People v. McLain, 37 Ill.2d 173, 226 N.E.2d 21 (1967) The requirement that the accused or his counsel raise any incompetency question is a rule of administration and not jurisdiction or power. Thus, the failure to raise the fitness issue at trial does not mean that it cannot be raised in subsequent proceedings. Here, the Court considered a fitness issue raised for the first time in combined petitions for writs of habeas corpus and coram nobis and for post-conviction relief.

Illinois Appellate Court

People v. Bolanos, 2022 IL App (1st) 200790 The trial court erred in summarily dismissing defendant's post-conviction petition where it stated the gist of a constitutional claim that defendant had been unfit at the time of her guilty plea. Defendant, who had suffered from mental health issues since her mid-teens, pled guilty but mentally ill to the first degree

murder of her infant son by stabbing him 44 times. The offense was committed in 2013, when defendant was 21 years old. Defendant was sentenced to 38 years of imprisonment. Evidence at the plea and sentencing established that at least one doctor had found defendant was insane at the time of the offense, but the parties stipulated that defendant was not proceeding on an insanity defense. Defendant's subsequent post-conviction petition alleged that she was incapable of making an informed decision to plead guilty or of properly defending her self because she was still suffering from mental illness at the time of the plea. Defendant had twice been transported to a mental hospital after her incarceration and was presently housed in the mental health unit of Logan Correctional Center. Additionally she had gouged out both of her eyes while incarcerated.

Due process bars prosecution of a person who is unfit. A defendant is unfit where, due to a mental condition, she is unable to understand the nature and purpose of the proceedings or is unable to assist in her defense. Generally, a defendant is presumed fit to stand trial and bears the burden of demonstrating a *bona fide* doubt of her fitness. While no one factor is determinative, relevant factors include a defendant's irrational behavior, her courtroom demeanor, medical opinions as to her competence, and any opinions of defense counsel. Here, defendant's post-conviction contention that she was unfit had an arguable basis in law and fact. The record showed signs that defendant had difficulty following the proceedings on some occasions, and had a history of mental illness. While a single doctor had opined that defendant was fit with medication three years prior to her guilty plea, additional information might have led the doctor to a different opinion by the time of the plea. The court found it relevant that defendant's mental illness was so severe, even while on medication, as to have led her to gouge out her own eyes while subsequently incarcerated. On this record, it could not be said that her claim was frivolous and patently without merit. Accordingly, the dismissal of defendant's post-conviction petition was vacated, and the matter was remanded for second-stage post-conviction proceedings.

People v. Corbett, 2022 IL App (2d) 200025 Defendant was charged with misdemeanor offenses in three separate cases. Over the course of several years, defendant vacillated between being unfit and being found to have been restored to fitness. In 2019, defendant was again found unfit. At that fitness hearing, the psychologist assigned to evaluate defendant testified to the bases for her conclusion that defendant was unfit, noting that he suffered from a delusional disorder and had "fixed false beliefs," including a belief that others were conspiring against him. She also testified that she believed defendant would be able to be restored to fitness within a year and that he would need inpatient treatment. The court agreed that defendant was unfit, found that there was a substantial probability that he would attain fitness within one year, and ordered inpatient treatment.

On appeal, defendant argued that the evidence did not support the determination that there was a substantial probability that defendant would attain fitness within a year if treated. Defendant argued that the court erred in adopting the psychologist's conclusory statement that defendant could be restored to fitness within a year and that defense counsel rendered ineffective assistance by failing to argue that restoration was unlikely and failing to move for a discharge hearing.

The Appellate Court concluded that defense counsel rendered ineffective assistance. Counsel did not exercise any strategy where she failed to take the basic steps necessary to ensure that the trial court properly considered the substantial probability issue rather than simply accepting the psychologist's conclusory opinion. Counsel did not ask the psychologist to elaborate as to the basis for her opinion and did not appear to have given any consideration

to the substantial probability issue where counsel simply "defer[red] to the Court in terms of whether he could be restored within a year."

Had counsel's performance not been deficient, there was a reasonable probability that the results of the proceedings would have been different. The psychologist had not been able to conduct a formal evaluation of defendant due to his repeated refusal to cooperate. The Appellate Court noted that a defendant's perpetual refusal to cooperate may be relevant to the likelihood of attaining fitness within a year, especially given defendant's history of vacillating between being fit and being unfit.

The Appellate Court reversed the trial court's finding that it was substantially probable that defendant would attain fitness within one year and remanded for further proceedings.

People v. Wilber, 2020 IL App (2d) 180024 Upon being found unfit, defendant filed an interlocutory appeal. While the appeal was pending, defendant was found restored to fitness. Trial court proceedings recommenced, defendant discharged counsel and proceeded *pro se*, and a bench trial was held, all while the unfitness appeal remained pending. Defendant was convicted of harassment through electronic communication and appealed that judgment.

The Appellate Court reviewed *de novo* whether the trial court had jurisdiction over the matter while the unfitness appeal had remained pending and concluded that it did not. The court rejected the State's revestment argument, holding that revestment only applies after a final order and the unfitness order was not such an order. Likewise, the doctrine of invited error did not operate to restore jurisdiction in the circuit court because the lack of subject matter jurisdiction in the circuit court could not be waived by the parties.

People v. Williams, 2018 IL App (4th) 150759 The sentencing court improperly considered a written report of defendant's fitness examination, in violation of section 104-14 of the Code of Criminal Procedure. Section 104-14 makes such reports admissible only when defendant raises an insanity or intoxication defense. Here, defendant committed disorderly conduct for pulling a fire alarm and, while he requested a fitness examination before trial, he did not raise an insanity or intoxication defense. He received a 68-month prison sentence, four months below the maximum extended term. In imposing the sentence, the court explicitly referenced findings from the fitness report before concluding that defendant required extended periods of incarceration. This denial of the right to a fair sentencing hearing constituted second-prong plain error and required a new sentencing hearing.

People v. Hiatt, 2018 IL App (3d) 160751 Following a guilty plea to possession of a controlled substance, defendant was released on recognizance and subsequently failed to appear at sentencing. He was sentenced in absentia and, after apprehension, filed a post-conviction petition. The trial court did not err in granting granted post-conviction relief on the basis that defendant received ineffective assistance of guilty plea counsel for failing to investigate defendant's fitness to plead.

The Appellate Court upheld the decision to grant relief. Evidence at the evidentiary hearing showed that prior to the plea, counsel was aware of defendant's recent fitness evaluation in an Iowa case. Had counsel reviewed that fitness evaluation, he would have learned of defendant's mental health history, including diagnoses of PTSD, OCD, ADHD, anxiety, psychosis, and depression. Also, the trial court found defendant's post-conviction testimony credible, specifically that he believed he was released after his plea in order to

work as a DEA agent and apprehend "Drug Lords," which led to his traveling to Florida to follow the flow of drugs (and which caused him to miss his sentencing hearing).

People v. Stahl, 2013 IL App (5th) 110385 A defendant is not fit to stand trial if he is unable to understand the purpose and nature of the proceedings against him or is unable to assist counsel in his defense. Once a *bona fide* doubt is raised as to the defendant's fitness to stand trial, the State must prove the defendant fit by a preponderance of the evidence. In determining a defendant's fitness, courts are to consider, among other things, the "defendant's ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged." 725 ILCS 5/104-16(b)(2). A trial court's determination of defendant's fitness to stand trial will be reversed only if it is against the manifest weight of the evidence.

As a result of a self-inflicted gunshot wound, defendant suffered from short-term memory impairment and was completely unable to recall any of the events at issue. Even assuming that adequate accommodations could be made for defendant's short-term memory impairment, under the express language of the fitness statute, his inability to recall the events at issue rendered him unfit to stand trial. That defendant may be able to discuss aspects of the trial with his attorney did not override the fact that he is unable to provide his attorney with any information regarding the crimes charged.

The Appellate Court affirmed the trial court's finding that defendant was unfit to stand trial.

People v. Jones, 349 Ill.App.3d 255, 812 N.E.2d 32 (3d Dist. 2004) The trial judge found that there was a bona fide doubt as to defendant's fitness and granted a motion for a fitness evaluation. The expert appointed to make the evaluation submitted a report stating that defendant was fit while taking psychotropic medication. At the fitness hearing, the parties stipulated to fitness based upon the report, and the trial judge ordered the sheriff's department to continue defendant's medication and to notify the trial judge if any changes were contemplated.

Nearly a year later, defendant appeared before a different trial judge and entered a negotiated guilty plea to second degree murder. In the course of the plea hearing, defendant stated that he had been taken off psychotropic medication two or three weeks before the hearing. At the conclusion of the plea hearing, the trial court gave defendant post-guilty plea admonitions under Supreme Court Rule 605. Some 2½ years later, defendant filed a motion to reconsider which argued that the sentence was excessive. The motion was denied as untimely, and defendant appealed.

Although an appellate court must generally dismiss an appeal when defendant failed to follow Rule 604(d), the "admonition exception," under which the Appellate Court may entertain appeals in which the trial court failed to give proper Rule 605 admonitions, should be applied where there was a bona fide doubt as to defendant's fitness at the time he received the admonitions. See also, People v. McKay, 282 Ill.App.3d 108, 668 N.E.2d 580 (2d Dist. 1996) (because defendant was taking psychotropic medication, he could not be presumed to be capable of comprehending the Rule 605(b) admonitions).

Defendant was not properly found fit to stand trial. The plain language of 725 ILCS 5/104-11, which authorizes only two findings - fit or unfit - does not authorize a conditional finding of fitness while on medication. Even if a conditional finding of fitness while on medication was authorized, the guilty plea proceedings occurred after the sheriff had stopped defendant's medication in direct violation of the first judge's order. Without the psychotropic medication, defendant could have been unfit to plead, to be sentenced, and to understand the court's admonishments.

Because more than four years had passed, a retrospective fitness hearing would be inappropriate. Defendant's conviction was reversed and the cause remanded for a determination of defendant's fitness to plead guilty and, if appropriate, further proceedings.

People v. Braggs, 302 Ill.App.3d 602, 707 N.E.2d 172 (1st Dist. 1998) Under 725 ILCS 5/104-11(d), "[f]ollowing a finding of unfitness, the court may hear and rule on any pretrial motion or motions if the defendant's presence is not essential to a fair determination of the issues." This includes motions to suppress.

People v. Kilpatrick, 293 Ill.App.3d 446, 688 N.E.2d 1202 (3d Dist. 1997) Public Act 89-689, which amended 725 ILCS 5/104-21(a) effective December 31, 1996, to remove the presumption that a defendant who is receiving psychotropic medication is unfit to stand trial, does not apply to cases that were on appeal at the time the act became effective.

People v. Eisholtz, 136 Ill.App.3d 209, 483 N.E.2d 386 (2d Dist. 1985) Where finding of unfitness was on appeal, trial court had jurisdiction to re-examine defendant's fitness but lacked authority to conduct a trial.

People v. Marshall, 114 Ill.App.3d 217, 448 N.E.2d 969 (4th Dist. 1983) The fact "that a defendant's mental capabilities are maintained through the use of medication is irrelevant to a determination of whether [she] is fit to stand trial."

§21-2
Constitutional Issues

United States Supreme Court

Sell v. U.S., 539 U.S. 166, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003) Because citizens have a significant, constitutionally protected liberty interest in avoiding the unwanted administration of anti-psychotic drugs, a mentally ill defendant who is facing serious criminal charges may be involuntarily medicated to achieve fitness to stand trial only if the treatment is medically appropriate, substantially unlikely to create side effects that will undermine a fair trial, and in light of any less intrusive alternatives is necessary to significantly further "important governmental trial-related interests." Use of psychotropic drugs is "medically appropriate" when it is "in the patient's best medical interest in light of his medical condition."

Before a trial court considers whether involuntary administration of drugs is constitutionally justified to render a defendant competent to stand trial, it should consider whether such drugs are necessary for another purpose, such as to protect defendant or others. Such questions are typically treated as civil matters and therefore involve a more objective determination than does involuntary medication to achieve competency to stand trial. In addition, even if involuntary medication cannot be authorized on alternative grounds, the court's findings will be valuable in determining whether involuntary medication is appropriate to achieve competency.

Cooper v. Oklahoma, 517 U.S. 348, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996) Due process is violated where a defendant is presumed competent to stand trial unless he proves incompetency by clear and convincing evidence. The "clear and convincing evidence" standard creates an unacceptable risk that persons who are actually incompetent will be convicted.

Medina v. California, 505 U.S. 437, 112 S.Ct. 2572, 120 L.Ed.2d 353 (1992) Due process is not violated by a state law requiring criminal defendants to prove their own incompetency to stand trial.

Riggins v. Nevada, 504 U.S. 127, 112 S.Ct. 1810, 118 L.Ed.2d 479 (1992) A pretrial detainee has a Fourteenth Amendment due process right to freedom from the involuntary administration of antipsychotic drugs. To overcome this right, the State must show that use of the drug is medically appropriate and essential to an overriding interest, such as insuring defendant's own safety or that of others.

Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975) Defendant was denied a fair trial by the trial judge's failure to make further inquiry into his competency to stand trial. Sufficient doubt of fitness to require inquiry was created by defendant's suicide attempt during trial, pretrial psychiatric testimony that defendant had a difficult time relating and was markedly irrelevant in his speech, and testimony that shortly before trial defendant tried to choke his wife to death.

Defendant's due process rights cannot be adequately protected by remanding the case now for proceedings aimed at establishing whether he was competent to stand trial in 1969; however, the State may retry defendant if at the time of the retrial he is competent to stand trial.

Illinois Supreme Court

People v. Waid, 221 Ill.2d 464, 851 N.E.2d 1210 (2006) Neither due process nor the confrontation clause are violated by 725 ILCS 5/104-25(a), which provides that at a discharge hearing for a defendant who has been found unfit to stand trial and unlikely to regain fitness within one year, the court may admit hearsay or affidavit evidence on "secondary matters such as testimony to establish the change of possession of physical evidence, laboratory reports, authentication of transcripts . . ., court and business records and public documents."

The purpose of a discharge hearing is to determine whether the evidence against an unfit defendant is sufficient to establish guilt beyond a reasonable doubt. If the evidence is insufficient to satisfy the reasonable doubt standard, defendant is subject to a mental health treatment for a period of one to five years.

A discharge hearing is not a criminal prosecution, and the confrontation clause therefore does not apply. Also, defendant does not have the same degree of due process protection at a discharge hearing as at a criminal trial; the admission of reliable evidence on secondary matters is permissible.

People v. Mitchell, 189 Ill.2d 312, 727 N.E.2d 254 (2000) Due process is not violated where a defendant on psychotropic medication is denied the statutory right to a fitness hearing. At the time of defendant's trial, statute mandated a fitness hearing for a criminal defendant who was taking psychotropic medication. Even where a defendant is on psychotropic medication, the failure to hold a fitness hearing violates due process only if there is a bona fide doubt of fitness.

Further, a defendant on psychotropic medication does not satisfy the prejudice requirement of Strickland by showing that a fitness hearing would have been held if requested. Instead, defendant must show that he would have been found unfit had a hearing been held. See also, People v. Moore, 189 Ill.2d 521, 727 N.E.2d 348 (2000) (trial counsel was

not ineffective for failing to request a hearing on defendant's fitness to stand trial while on psychotropic medication; defendant was unable to show that he would have been found unfit had a hearing been held).

Finally, a trial court should consider defendant's demeanor in determining fitness, although where there is a bona fide doubt of fitness a trial judge cannot rely on mere demeanor to dispense with a fitness hearing.

People v. Burson, 11 Ill.2d 360, 143 N.E.2d 239 (1957) Due process is violated where an unfit person is tried, convicted, or sentenced. See also, **People v. Newell**, 196 Ill.App.3d 373, 553 N.E.2d 722 (3d Dist. 1990).

Illinois Appellate Court

People v. Rodriguez, 2019 IL App (1st) 151938-B Defendant was found not not guilty due to unfitness, and the trial court imposed SORA. On appeal, defendant claimed that applying SORA to a defendant found not not guilty was unconstitutional.

Unlike **People v. Bingham**, 2018 IL 122008, the Appellate Court here had jurisdiction over the claim because the trial court's judgment specifically ordered compliance with SORA. However, the court rejected the argument on the merits, finding SORA does not infringe on an unfit defendant's fundamental right not to be punished, because SORA does not constitute punishment. The law also passes the rational basis test as applied to defendant, because the record established that he is capable of compliance with the registration requirements despite his unfitness.

People v. Washington, 2017 IL App (4th) 150054 A waiver of the right to the assistance of counsel is valid only if the record shows that it was made knowingly and intelligently. Where the trial court finds a *bona fide* doubt of fitness to stand trial, the defendant loses the ability to knowingly and intelligently waive the right to counsel. Allowing a defendant to proceed *pro se* while there is a bona fide doubt of fitness violates the Sixth Amendment right to counsel.

Thus, once a *bona fide* doubt of fitness is established, the trial court is required to appoint counsel - even over the defendant's objections - until defendant regains fitness to stand trial. The trial court's order finding defendant unfit to stand trial was reversed and the cause remanded with instructions to conduct a new fitness hearing at which the defendant is to be represented by counsel, whether or not she objects.

People v. Olsson, 2012 IL App (2d) 110856 Due process is satisfied by providing a defendant periodic review of his fitness on request while he is involuntarily committed to the custody of the Department of Human Services as provided by 725 ILCS 5/104-25(g)(2), after he has been found unfit to stand trial and the statutory extended period of treatment to attain his fitness has been unsuccessful. The requirement that a treatment plan report be filed with the court every 90 days after defendant's initial admission, which includes an opinion as to whether the defendant is fit to stand trial, helps the defense reach an informed decision whether to seek a fitness hearing.

People v. Schoreck, 384 Ill.App.3d 904, 894 N.E.2d 428 (2d Dist. 2008) Defendant's fitness to stand trial is a fundamental right which is reviewed under the plain error doctrine - regardless of whether a pretrial fitness hearing was held but the issue was left out of the post-trial motion or the defense failed to raise the issue after a bona fide doubt of fitness

arose. Concerning the second issue, the court noted that the trial court is under a continuing duty to sua sponte order a fitness determination whenever a bona fide doubt arises.

Due process is violated where a criminal defendant is prosecuted or sentenced while he is not competent to stand trial. Although a defendant is presumed fit to stand trial, the trial court must determine fitness when a bona fide doubt is raised.

The trial court erred by finding, at the pretrial hearing, that the State proved fitness by a preponderance of the evidence. The expert appointed by the trial court stated that defendant was delusional and had a diminished capacity for rationality. Defendant's own testimony corroborated the expert's opinion. The State did not challenge the expert's negative assessment of defendant's mental capacity or the "corroborating evidence of defendant's persecution fantasies." The trial court's finding concerning fitness was contrary to the manifest weight of the evidence.

A defendant's opinion of his own fitness cannot be considered as evidence of fitness. Although the trial court's observations of defendant may be considered, the judge must evaluate the probative value of such observations carefully to insure that an accurate picture has been presented. Here, the trial court's observations at the hearing corroborated the expert's testimony that defendant was unfit. Even had defendant been proven fit before trial, the trial court had a continuing obligation to hold a fitness hearing sua sponte whenever a bona fide doubt of fitness arose. A bona fide doubt of fitness was raised by defendant's conduct at trial and sentencing.

People v. Jones, 317 Ill.App.3d 283, 739 N.E.2d 105 (5th Dist. 2000) P.A. 89-689, which amended the Code of Criminal Procedure to provide that a defendant who is receiving psychotropic drugs shall not be presumed unfit to stand trial solely by the receipt of those drugs, did not violate the single-subject rule of the Illinois Constitution.

People v. Akers, 301 Ill.App.3d 745, 704 N.E.2d 452 (4th Dist. 1998) Defendant in a Sexually Dangerous Persons (SDP) Act proceeding is not entitled to a fitness hearing even where there is a bona fide doubt of his fitness to stand trial. SDP proceedings are civil in nature; the constitutional prohibition against being tried while unfit applies only to criminal prosecutions.

§21-3
Fitness Hearings

§21-3(a)
Generally

Illinois Supreme Court

People v. Haynes, 174 Ill.2d 204, 673 N.E.2d 318 (1996) 725 ILCS 5/104-12 does not give defense counsel the right to elect a jury fitness hearing where defendant objects.

People v. Gevas, 166 Ill.2d 461, 655 N.E.2d 894 (1995) Where the law at the time held that a defendant who is taking psychotropic or other medication under medical direction is automatically entitled to a fitness hearing, consumption of psychotropic medication one month before the plea was sufficiently "proximate" to require additional inquiry.

People v. Eddmonds, 101 Ill.2d 44, 461 N.E.2d 347 (1984) Where two experts found defendant unfit more than two years before trial (and one later changed his opinion), the trial court did not err by failing to order, sua sponte, a fitness hearing. At the time of trial the most recent reports "tended to show" defendant was fit. In addition, defense counsel made no request for a fitness hearing and defendant testified lucidly at both a pretrial hearing and the trial.

People v. Bilyew, 73 Ill.2d 294, 383 N.E.2d 212 (1978) Once there is a bona fide doubt of defendant's fitness, the State is required to prove by a preponderance of the evidence that defendant is fit.

Illinois Appellate Court

People v. Stahl, 2014 IL 115804 Because fitness is determined on the totality of the circumstances, the fact that defendant has amnesia concerning the events surrounding the crime does not in and of itself render him unfit to stand trial. However, defendant's amnesia is one factor to be considered.

Here, the trial court's finding that defendant was unfit was not contrary to the manifest weight of the evidence. The trial court found that defendant's amnesia resulting from a self-inflicted shooting on the night of the offense. All three psychiatric experts whose evidence was submitted by testimony or stipulation concluded that defendant had no recollection of the events surrounding the charges, and two of the three psychiatric witnesses concluded that defendant's short-term memory was substantially impaired and affected his ability to assist in his own defense. The third witness, although believing that steps could be taken at trial to compensate for defendant's short-term memory deficits, testified that defendant ranked in the lowest one percentile concerning short-term memory retention after 20 to 30 minutes. In addition, an expert witness who was a criminal defense attorney testified that defendant's amnesia could negatively affect his ability to assist defense counsel in that defendant did not know whether he had committed any of the acts and therefore could not relate his version of events, describe his state of mind at the time of the offense, meaningfully testify in his own defense, or decide how to plead.

The court concluded that under these circumstances, the trial court's finding that defendant was unfit was not contrary to the manifest weight of the evidence. The trial court's finding was affirmed.

People v. McCoy, 2014 IL App (2d) 130632 There is no constitutional right to a jury at a fitness hearing. However, 725 ILCS 5/104-12 provides that the defense or the State may demand a jury, or the court may on its own motion order a jury, except in specified circumstances. The court concluded that unless the statutory exceptions apply, a person whose fitness is being litigated has a statutory right to personally demand a jury determination of fitness. Thus, the trial court erred by failing to respond to defendant's repeated demands that his fitness be determined by a jury.

The court rejected the argument that a different result is required by **People v. Holt**, 2013 IL App (2d) 120476. **Holt** involved not whether the defendant could demand a jury determination of fitness, but whether a defense attorney is obligated to adopt the defendant's wishes and argue for a finding of fitness even where he or she believes that the defendant is unfit.

People v. Miraglia, 2013 IL App (1st) 120286 There is no constitutional right to a jury determination of defendant's fitness to stand trial. The provision for a jury determination of defendant's fitness is statutory in origin. By statute, either party may demand or the trial court may order a jury determination of defendant's fitness to stand trial except where (1) the issue is raised after trial has begun, (2) the issue is raised after conviction but before sentencing, or (3) the issue is being redetermined after an initial finding of unfitness. 725 ILCS 5/104-12. Whether a defendant is entitled to a jury determination of fitness is a question of statutory interpretation subject to *de novo* review.

Prior to trial, the State raised a question regarding defendant's fitness to stand trial. At defense counsel's request, the court conducted a hearing outside the presence of defendant at which facts relevant to defendant's fitness to stand trial were discussed. The court found no bona fide doubt of defendant's fitness based on the disclosed facts. On appeal, the Appellate Court remanded to the circuit court for a retrospective fitness hearing, finding that defendant had been denied her right to be present at a critical stage when the issue of her fitness was discussed outside her presence. On remand, the court denied defendant's request for a jury determination of her fitness.

The plain language of §104-12 indicates that defendant had no right to a jury determination of fitness when her demand for a hearing was made after trial began. The State raised the issue of defendant's fitness prior to trial, but neither party made a request for a jury fitness hearing. It was not until remand that defendant raised the issue of a jury determination of her retrospective fitness. In that circumstance, the statute provides that the court, not a jury, should determine defendant's fitness to stand trial.

People v. Williams, 205 Ill.App.3d 715, 564 N.E.2d 507 (1st Dist. 1990) The trial judge did not err in ordering, sua sponte, a six-person jury to determine fitness to stand trial.

People v. Brown, 131 Ill.App.3d 859, 476 N.E.2d 469 (2d Dist. 1985) Defendant was convicted, in a bench trial, of DUI and improper lane usage. Following trial, defendant filed a motion to vacate the findings of guilt and hold a fitness hearing. Two psychiatrists had testified in an unrelated felony case that defendant was unfit, and the trial judge in the felony matter found defendant unfit. The trial judge denied defendant's motion on the grounds that it was untimely and that the fitness statute does not apply to Vehicle Code proceedings or misdemeanor sentencing hearings.

The trial judge abused his discretion by denying the motion for a fitness hearing. Section 104-11 specifically permits fitness to be raised "before, during, or after trial." Furthermore, the fitness statute "does not differentiate between misdemeanor and felony proceedings," and "neither statutory nor decisional law limits section 104's applicability only to offenses set out in the Criminal Code . . . Thus, section 104 would appear to be applicable to proceedings under the Illinois Vehicle Code."

People v. Williams, 87 Ill.App.3d 860, 409 N.E.2d 439 (2d Dist. 1980) Finding of fitness was contrary to the manifest weight of the evidence where the only testimony at the hearing agreed that defendant was not fit. The trial court erred by rejecting such testimony where there was no evidence or testimony that defendant was fit. See also, **People v. Baldwin**, 185 Ill.App.3d 1079, 541 N.E.2d 1315 (1st Dist. 1989) (where only evidence of fitness was defendant's own testimony, and that testimony was inherently unreliable because there was a bona fide doubt of fitness, the trial court erred by rejecting expert testimony that defendant was unfit).

People v. Polito, 21 Ill.App.3d 182, 315 N.E.2d 84 (1st Dist. 1974) Waiver of jury at competency hearing was invalid; since defendant had previously been adjudicated incompetent, there was no basis to find a knowing and intelligent waiver.

People v. Smith, 10 Ill.App.3d 61, 293 N.E.2d 465 (3d Dist. 1973) Where defendant had demanded a jury trial at competency hearing and his attorney made no express demand for or waiver of such right, a jury trial should have been held on the issue of competency.

§21-3(b)
Bona Fide Doubt

Illinois Supreme Court

People v. Hanson, 212 Ill.2d 212, 817 N.E.2d 472 (2004) Under 725 ILCS 5/104-11(a), the trial court must order a determination of defendant's fitness when there is a bona fide doubt of fitness. Under §104-11(b), the trial court may grant a defense request to appoint a qualified expert to conduct an examination to determine whether a bona fide doubt of fitness exists.

The mere appointment of an expert under §104-11(b) does not necessarily equate to a finding of a bona fide doubt of fitness and therefore does not mandate a fitness hearing. The trial court did not err by failing to hold a fitness hearing where: (1) an expert appointed at the defense's request concluded that defendant was fit, and (2) defense counsel withdrew his request for a fitness hearing.

People v. Burt, 205 Ill.2d 28, 792 N.E.2d 1250 (2001) To establish prejudice from counsel's failure to request a fitness hearing, defendant must show that facts existed at the time of trial which would have raised a bona fide doubt of his ability to understand the nature and purpose of the proceedings and assist in his defense. Factors to be considered include defendant's irrational behavior and demeanor at trial along with any prior medical opinion on defendant's competence to stand trial.

Here, there was no bona fide doubt of fitness that would have caused the trial judge to order a fitness hearing. Although during trial defendant abruptly elected to plead guilty, that decision was not irrational in view of the extensive evidence of guilt. Defendant clearly understood the consequences of his plea, and the record did not show that defendant had trouble concentrating or was unable to either understand the proceedings or assist in his defense.

People v. Sandham, 174 Ill.2d 379, 673 N.E.2d 1032 (1996) The trial judge has the duty to order a fitness hearing sua sponte when a bona fide doubt of fitness arises. Here, several factors should have led the court to find, sua sponte, a bona fide doubt of fitness, including: (1) the public defender's oral motion for a psychiatric evaluation to determine defendant's fitness, (2) a continuance ordered because defendant had difficulty cooperating with defense counsel, (3) defendant's commitment to a psychiatric ward, (4) two letters (one of which was "exceedingly hostile and profane") that defendant wrote to the trial judge, (5) the judge's statement that he had received several threatening phone calls from defendant, (6) testimony by the complainant's mother that defendant was not "all the way there" and would sometimes "run outside and start praying loudly to God," (7) an evaluation indicating that defendant had a slight chemical imbalance and was slightly schizophrenic, (8) defendant's ingestion of

psychotropic medications about the time of trial and sentencing, and (9) a colloquy between the court, defense counsel and defendant at sentencing.

Illinois Appellate Court

People v. Khan, 2021 IL App (1st) 190679 The trial court did not err in failing to order a fitness hearing *sua sponte*. The court ordered two separate behavioral clinical examinations of defendant during pretrial proceedings. Both examiners concluded defendant was fit, and the court never found a *bona fide* doubt of fitness, so a fitness hearing was not required.

People v. Westfall, 2018 IL App (4th) 150997 If a trial court has a *bona fide* doubt of the defendant's fitness to stand trial, it must conduct a fitness hearing. Here, defense counsel asserted that he had a *bona fide* doubt of defendant's fitness, and the trial court ordered a BCX. After the examination, the defense informed the court that defendant was deemed "fit" and dropped the issue. The court itself never suggested that it had a *bona fide* doubt of defendant's fitness. The record does not suggest that the court abused its discretion in not finding a *bona fide* doubt. Therefore, the Appellate Court rejected defendant's claim that the trial court erred by proceeding to trial without first holding a fitness hearing.

People v. Edwards, 2017 IL App (3d) 130190–B Under 725 ILCS 104-13(a), when a fitness issue involves defendant's mental state, the court shall order a fitness examination. Here, the trial court signed an order drafted by defense counsel which stated:
This matter coming on for a hearing on defendant's motion for expert witness and for fitness hearing, and for other relief, said motion being uncontested by the [State], and the Court finding that a *bona fide* doubt exist [sic] as to Defendant's fitness to stand trial under 725 ILCS 5/104-13.
An expert examined defendant and filed a report finding him fit to stand trial, but the trial court never conducted a fitness hearing. Defendant argued that the trial court erred in failing to conduct a fitness hearing after it signed an order finding a *bona fide* doubt of his fitness.

The Appellate Court rejected defendant's argument. In **People v. Hanson**, 212 Ill. 2d 212 (2004), the Supreme Court held that the grant of a defense motion for a psychological evaluation, without more, does not show that the trial court found a *bona fide* doubt of defendant's fitness. Here, defendant filed a motion pursuant to 104-13(a) requesting the trial court to appoint a qualified expert. Although the order signed by the trial court contained the language "*bona fide* doubt," it was defendant who drafted the order. The record provided no "indication whatsoever" that the court or State agreed with defense counsel, or raised their own *bona fide* doubt.

Under these circumstances, defendant merely requested an expert evaluation and there was no error in proceeding to trial without a fitness hearing.

The dissenting justice would have found that the trial court's explicit finding of a *bona fide* of defendant's fitness, as clearly stated in its written order, required the trial court to hold a fitness hearing.

People v. Nichols, 2012 IL App (4th) 110519 Factors relevant to determining whether a *bona fide* doubt of fitness exists include the rationality of the defendant's behavior and demeanor at trial, any medical opinions on defendant's fitness, and defense counsel's representations concerning the defendant's competency. The use of psychotropic medications may indicate unfitness, but does not in and of itself override the presumption of fitness.

The court concluded that the record did not indicate that there was a *bona fide* doubt of fitness to stand trial. Although the presentence report indicated that defendant was being treated for schizophrenia at the time of trial and was taking psychotropic medication, the brief summary gave little detail about the condition, its likely effect on defendant's fitness, or how the medication might affect fitness. The court stated, "[N]othing we perceive indicates that defendant's schizophrenia manifested during trial or sentencing or impaired defendant's capacity for understanding the nature of the proceedings against him or his ability to present his defense."

Defendant represented himself at trial and sentencing, and the court found that his "sometimes artless representation" showed a lack of legal training rather than a *bona fide* doubt of fitness. The court noted that defendant followed the trial court's instructions, participated in jury selection, and formulated a strategy of defense for the case.

Finally, the court found that defendant's allegations of corruption on the part of the arresting officer were "not so plainly delusional and grandiose that, evaluating its exercise of discretion against a cold record, we would conclude the court erred in not ordering a fitness hearing."

People v. Moore, 408 Ill.App.3d 706, 946 N.E.2d 442 (1st Dist. 2011) Whether there is a *bona fide* doubt of fitness depends on the facts of each case. The fitness inquiry implicates a wide range of factors, which may include any irrational behavior by the defendant, the defendant's demeanor at trial, any prior medical opinion on competence, and any representations by defense counsel concerning competence.

Where an expert witness testified at the pretrial fitness hearing that defendant needed to be on medication to be fit for trial, and the trial specifically found at that time that defendant would be fit to stand trial with medication, a *bona fide* doubt arose when the court learned on the day jury selection was to begin that defendant had not been receiving his medication regularly. Although defense counsel failed to follow up on the trial court's request to investigate and did not raise the issue until after trial, counsel's inaction was not relevant to the judge's duty to *sua sponte* order a fitness hearing.

Because the trial court erred by not *sua sponte* ordering a fitness hearing, and it cannot be determined whether the defendant was fit when he was convicted of delivery of a controlled substance, the cause was remanded for a retrospective fitness hearing.

People v. E.V., 190 Ill.App.3d 1079, 547 N.E.2d 521 (1st Dist. 1989) Among the factors to be considered in determining fitness are: defense counsel's assertion that defendant is unable to cooperate in his defense, any prior treatment of a mental disability, and defendant's demeanor at trial. "The presence of more than one of these factors indicates that an accused is unfit to stand trial."

The trial court erred by failing to hold a fitness hearing where the respondent had suffered brain damage in a fall and was undergoing therapy to learn to walk, defense counsel indicated her belief of a bona fide doubt of fitness, and there was no evidence that defendant was competent.

People v. Johnson, 121 Ill.App.3d 859, 460 N.E.2d 336 (1st Dist. 1984) After he was convicted of armed robbery, defendant was determined to be unfit for sentencing. However, five days later a restoration order was entered, and defendant was sentenced to 22 years.

The trial judge erred by not conducting a fitness hearing. Defense counsel alerted the court to the fact that defendant was unable to cooperate; defendant didn't speak to counsel for three months before trial and only smiled when counsel explained the case to him. Counsel

also informed the court that a psychiatrist had informed him that defendant was unfit. In addition, during trial defendant insisted that a deputy was trying to kill him, and defendant had to be removed from the courtroom while "howling" with "his body jerking convulsively."

People v. Harris, 113 Ill.App.3d 663, 447 N.E.2d 941 (1st Dist. 1983) The trial judge erred by failing, sua sponte, to conduct a hearing on defendant's fitness to stand trial. The presentence report disclosed that defendant had been treated at mental health clinics, he was released from prison in 1980 with the condition that he obtain therapy that was never secured, and after trial he was placed in restraints due to "some form of acting out." In addition, the jail director requested that defendant, who had attempted suicide, be given a psychiatric examination.

People v. Davenport, 92 Ill.App.3d 244, 416 N.E.2d 17 (1st Dist. 1980) The trial judge erred by denying defendant's request for a fitness hearing. Defendant had been previously diagnosed schizophrenic and paranoid, and he had been institutionalized between the earlier fitness findings and this trial. In addition, defense counsel told the judge that defendant was unable to communicate with him and often engaged in one-sided ramblings. Finally, defendant insisted at trial that the complainant had dropped all charges, called a State witness "sick," and insisted on calling three defense witnesses who identified him but who didn't recall being with him on the night of the alleged crime. Taken as a whole, these facts raised a bona fide doubt of fitness.

People v. Jackson, 57 Ill.App.3d 809, 373 N.E.2d 583 (1st Dist. 1978) Defendant was properly found to be fit to stand trial after a psychiatrist testified that defendant understood the charges and, with certain medication, could cooperate with counsel.

After conviction, the court ordered a fitness examination prior to sentencing. At the sentencing hearing, the court was informed that defendant had not been examined and had not received the medication necessary to maintain fitness. However, the court imposed sentence. A bona fide doubt existed as to defendant's fitness at sentencing, and the matter was remanded for a new sentencing hearing.

§21-3(c)
Evidentiary Issues (Stipulations, Expert Testimony, Behavioral Clinic Examinations

Illinois Appellate Court

People v. Schnoor, 2019 IL App (4th) 170571 The parties may stipulate to a finding of fitness following a behavioral examination, and the court may accept that stipulation and find defendant fit to stand trial, without conducting an additional independent fitness hearing, as long as there was no *bona fide* doubt of fitness prior to the examination. Section 104-11(b) contemplates the use of a BCX to determine whether a *bona fide* doubt of fitness exists. The need for an independent fitness hearing is triggered only if there is *bona fide* doubt and here, neither the parties nor the court ever suggested a *bona fide* doubt existed. To avoid future confusion, the Appellate Court urged trial courts to make a clear record as to whether or not a *bona fide* doubt of fitness exists, and that when a BCX is ordered in order to determine whether a *bona fide* doubt exists, state on the record that the court did not as of yet have a *bona fide* doubt.

People v. Gillon, 2016 IL App (4th) 140801 The trial court accepted a psychiatrist's report, found defendant unfit to stand trial, and placed defendant in the custody of the Department of Human Services for treatment. Seventeen days later, the department found defendant fit to stand trial if he took medication.

The trial court conducted a fitness hearing at which both parties stipulated to the department's report and neither party produced further evidence. The trial court accepted the report and found that defendant was fit to stand trial. Defendant's probation was subsequently revoked.

The Appellate Court concluded that the trial court erred by restoring defendant to fitness without making any further inquiries. There must be a high level of judicial scrutiny in a restoration hearing, and several circumstances in this case gave rise to pivotal concerns concerning defendant's fitness.

First, the Department's determination that defendant had been restored to fitness was conducted less than two weeks after the initial finding of unfitness. "To justify this seemingly quick turn of events, the court should have, on the record, questioned the parties about how or why defendant had regained fitness in a matter of days."

Second, the evaluation by the Department was performed by a licensed clinical social worker rather than by a psychiatrist or a psychologist. The court noted that 725 ILCS 5/104-13(a) requires that the initial fitness examination be performed by a licensed physician, clinical psychologist, or psychiatrist, and held that although 725 ILCS 5/104-17(b) does not specifically prohibit a fitness determination by a licensed clinical social worker, the trial court should have conducted "a more thorough analysis" of the report.

Third, defendant's behavior after he was found to have been restored to fitness put the court on notice that there were continuing questions about fitness. Defendant frequently interrupted the judge during the proceedings, and seemed unable to control his outbursts and agitation. At one point the trial court had defendant removed from the courtroom because he was out of control. Under these circumstances, the trial court erred by accepting the parties' stipulations instead of inquiring into the issue of fitness.

The trial court's orders revoking defendant's probation and restoring fitness were reversed. The cause was remanded for a new restoration hearing.

People v. Lucas, 388 Ill.App.3d 721, 904 N.E.2d 124 (2d Dist. 2009)_ The trial court is not required to accept the opinions of expert witnesses concerning defendant's fitness to stand trial. The trial court's power to reject expert testimony is not unlimited, however; the judge cannot reject an expert's opinion that defendant is unfit without some evidence that defendant is fit.

Here, the trial court's finding that defendant was fit to stand trial was contrary to the manifest weight of the evidence. The only expert testimony established that due to a severe cognitive disability, defendant did not possess an understanding of the trial proceedings and nature of the charges. The evidence, including a presentencing evaluation by a different expert, showed that defendant had memorized a variety of legal words which he had heard, but lacked abstract reasoning skills and the ability to generalize.

In addition, the expert's testimony was neither impeached nor rebutted. Finally, the trial court did not observe defendant interacting with his counsel, and therefore had no basis to conclude from personal observation that defendant was fit.

People v. Schoreck, 384 Ill.App.3d 904, 894 N.E.2d 428 (2d Dist. 2008) Defendant's fitness to stand trial is a fundamental right which is reviewed under the plain error doctrine -

regardless of whether a pretrial fitness hearing was held but the issue was left out of the post-trial motion or the defense failed to raise the issue after a bona fide doubt of fitness arose. Concerning the second issue, the court noted that the trial court is under a continuing duty to sua sponte order a fitness determination whenever a bona fide doubt arises.

Due process is violated where a criminal defendant is prosecuted or sentenced while he is not competent to stand trial. Although a defendant is presumed fit to stand trial, the trial court must determine fitness when a bona fide doubt is raised.

The trial court erred by finding, at the pretrial hearing, that the State proved fitness by a preponderance of the evidence. The expert appointed by the trial court stated that defendant was delusional and had a diminished capacity for rationality. Defendant's own testimony corroborated the expert's opinion. The State did not challenge the expert's negative assessment of defendant's mental capacity or the "corroborating evidence of defendant's persecution fantasies." The trial court's finding concerning fitness was contrary to the manifest weight of the evidence.

A defendant's opinion of his own fitness cannot be considered as evidence of fitness. Although the trial court's observations of defendant may be considered, the judge must evaluate the probative value of such observations carefully to insure that an accurate picture has been presented. Here, the trial court's observations at the hearing corroborated the expert's testimony that defendant was unfit. Even had defendant been proven fit before trial, the trial court had a continuing obligation to hold a fitness hearing sua sponte whenever a bona fide doubt of fitness arose. A bona fide doubt of fitness was raised by defendant's conduct at trial and sentencing.

People v. Jones, 386 Ill.App.3d 665, 899 N.E.2d 328 (3d Dist. 2008) Defendant is unfit to stand trial if he is unable to understand the nature and purpose of the proceedings and assist in the defense. Where a bona fide doubt has been raised, the party alleging that defendant is fit must prove fitness by a preponderance of the evidence.

In determining fitness, the trier of fact is not required to accept the opinions of psychiatrists. However, an expert's opinion that defendant is unfit cannot be rejected without some testimony or evidence of fitness other than defendant's own statements. An incompetent defendant is not considered a reliable witness regarding his own competency.

The jury's conclusion that defendant was fit to stand trial was against the manifest weight of the evidence. The only evidence of fitness was defendant's statement that he understood the proceedings. By contrast, a psychiatrist gave uncontradicted testimony that defendant was unfit. Under these circumstances, the trial court should have entered a directed verdict of unfitness despite the jury's finding.

People v. Vallo, 323 Ill.App.3d 495, 752 N.E.2d 481 (1st Dist. 2001) A bona fide doubt of fitness was raised by the combination of defendant's testimony at trial and use of psychotropic drugs.

The trial court erred at the fitness hearing by refusing to appoint an expert witness to review defendant's mental records. Under 725 ILCS 5/104-13(e), where the mental fitness of an indigent defendant is at issue the trial court has discretion to grant a defense request for a qualified expert, selected by defendant and at the county's expense, to examine defendant and make a fitness report. Thus, defendant is entitled to the assistance of an expert in addition to the expert selected by the court.

The failure to appoint a defense expert was not harmless because defendant could not identify the respects in which such an expert's testimony would have differed from that of the expert chosen by the trial court. Having been denied the opportunity to consult an expert,

defendant cannot be expected to inform the court of the substance of that expert's potential testimony.

§21-3(d)
Right to and Obligations of Counsel

Illinois Appellate Court

People v. Wilber, 2018 IL App (2d) 170328 Defendant argued that his rights to counsel and due process were denied at his fitness hearing because neither the State nor defense counsel advocated for his position that he was fit to stand trial, and because the trial court granted a motion for a directed verdict.

When there is a *bona fide* doubt as to fitness and the court orders a fitness hearing, the State has the burden to prove fitness, but for ethical reasons it may refrain from doing so, as seeking to convict an unfit defendant would violate due process. When the State agrees defendant is unfit, it is not improper for a trial court to direct a verdict when appropriate, even when defendant maintains he is fit. Defendant's rights to counsel and due process do not include a right to advocacy in favor of fitness not supported by the facts, particularly where the due process clause bars prosecution of a defendant unfit to stand trial.

People v. Washington, 2017 IL App (4th) 150054 A waiver of the right to the assistance of counsel is valid only if the record shows that it was made knowingly and intelligently. Where the trial court finds a *bona fide* doubt of fitness to stand trial, the defendant loses the ability to knowingly and intelligently waive the right to counsel. Allowing a defendant to proceed *pro se* while there is a bona fide doubt of fitness violates the Sixth Amendment right to counsel.

Thus, once a *bona fide* doubt of fitness is established, the trial court is required to appoint counsel - even over the defendant's objections - until defendant regains fitness to stand trial. The trial court's order finding defendant unfit to stand trial was reversed and the cause remanded with instructions to conduct a new fitness hearing at which the defendant is to be represented by counsel, whether or not she objects.

People v. Holt, 2013 IL App (2d) 120476 As a matter of first impression, the court found that a person about whom there is a *bona fide* doubt of fitness is not entitled to require her attorney to assert that she is fit. The court concluded that counsel has a duty to protect the due process right not to be tried while unfit, and that counsel who believes his client to be unfit may assume that the client is incapable of acting in her own best interests.

In *dicta,* the court also noted that under Illinois precedent, an attorney need not assist a client who is competent to stand trial in an attempt to feign a mental condition for the purpose of obtaining a finding that he or she is unfit.

People v. Rath, 121 Ill.App.3d 548, 459 N.E.2d 1134 (3d Dist. 1984) The trial court erred by allowing defendant to waive counsel and proceed pro se at his fitness hearing. "[U]ntil the shadow of defendant's questioned ability to understand the nature of the charges against him and his ability to cooperate in his own defense was removed, he was not only entitled to be represented by competent counsel, it was required, even if against his will."

§21-3(e)
Judicial Findings/Discretion

Illinois Supreme Court

People v. Brown, 2020 IL 125203 Defense counsel requested a fitness evaluation after learning that defendant had been "hearing voices." The results showed defendant fit to stand trial. Rather than holding a hearing on defendant's fitness, the trial court accepted the parties' stipulation to the finding of fitness. The case proceeded to trial and defendant was found guilty. The Appellate Court reversed, agreeing with defendant's argument that the trial court erred when it failed to exercise discretion and make an independent finding of fitness.

On appeal to the Supreme Court, the State argued that the trial court had no obligation to exercise discretion. Discretion is required only after a fitness hearing, and no fitness hearing is required unless the court finds a *bona fide* doubt of fitness, which never occurred here. Alternatively, it argued that the court did exercise discretion. Defendant argued that the State had waived the first issue by failing to raise it below or in its PLA.

The Supreme Court reviewed the first issue on the merits and agreed with the State. It first found that the failure to raise the issue in the Appellate Court is not dispositive, as an appellee may rely on any grounds included in the record when asking to sustain the judgment of the trial court. As for the failure to include the issue in the PLA, the lapse is not jurisdictional, and the court may still consider an issue if it is "inextricably intertwined" with the issue presented. The Supreme Court concluded that the question of whether a fitness hearing was required was intertwined with the issue of whether the judge had a duty to exercise discretion.

On the merits, the Court found that the request for a fitness evaluation occurred pursuant to section 104-11(b), which allows a party to request an evaluation to determine whether a *bona fide* doubt of fitness exists. Only after a *bona fide* doubt is found to exist is the judge required, pursuant to 104-11(a), to hold a fitness hearing and exercise discretion. Here, neither party nor the judge suggested a *bona fide* doubt existed, and therefore the judge could properly accept a stipulation to fitness without holding a hearing or exercising independent discretion.

Illinois Appellate Court

People v. Smith, 2017 IL App (1st) 143728 After a behavioral clinical examination, a court must conduct a fitness hearing pursuant to 725 ILCS 5/104-16(a). Fitness hearings are within a trial court's discretion, but because due process concerns are present, the record must show an affirmative exercise of judicial discretion. Here, immediately after the parties stipulated to the psychiatrist's conclusion that defendant was fit to stand trial, the trial court stated, "Defendant fit to stand trial." The record therefore fails to show an affirmative exercise of judicial discretion, and the Appellate Court ordered a new fitness hearing.

People v. Shaw, 2015 IL. App (4th) 140106 The record must show an affirmative exercise of judicial discretion regarding the fitness determination, and a court's fitness determination may not be based solely upon a stipulation to an expert's conclusions or findings. Where the parties stipulate to an expert's anticipated testimony, rather than the expert's conclusions, the court may consider this stipulation in making its decision. But the distinction between proper and improper stipulations "is a fine one."

Prior to trial, defense counsel filed a motion for a fitness hearing. The trial court ordered a fitness examination and appointed a mental health expert to examine defendant. The expert filed a report finding defendant fit to stand trial. On the day defendant's case was set for trial, the parties addressed the fitness issue. The court confirmed that both parties received the expert's report and both stipulated that the expert would testify "as set forth in his report." The court then stated: "We will show based upon the evidence presented, the court finds the defendant fit to plead and/or stand trial."

The Appellate Court held that the trial court properly relied on stipulated evidence to find defendant fit. The stipulations were based on the testimony the expert would provide if called to testify, not solely his ultimate conclusion that defendant was fit. The trial court was free to rely on the stipulations when deciding whether defendant was fit.

In a special concurrence, Justice Steigmann suggested that the Illinois Supreme Court reconsider its decision in **People v. Lewis**, 103 Ill. 2d 111 (1984), which held that the parties may stipulate to what an expert would testify to, but a trial court may not accept a stipulation regarding the fact of defendant's fitness. The special concurrence found that the distinction drawn in **Lewis** is a "distinction without a difference, as this very case shows."

People v. Cook, 2014 IL App (2d) 130545 A determination that a defendant is fit may not be based solely on a stipulation to psychiatric conclusions or findings. Where the parties stipulate to an expert's testimony rather than to his or her conclusions, the trial court may consider the stipulation in exercising its discretion. However, the decision as to fitness must be made by the trial court, not by the experts. In other words, the trial court must analyze and evaluate the basis for the expert's opinion and may not merely rely on the expert's ultimate conclusion.

The record failed to show that the trial court exercised its discretion in determining that defendant was fit. The parties stipulated that the expert would testify consistently with his report "finding the defendant fit to stand trial." The record did not indicate that the trial judge ever reviewed the report, which it received just before entering an order that defendant was fit. The trial judge did not discuss the basis for finding defendant to be fit, and did not question defendant or the attorneys on the issue of fitness. "[W]ithout anything to indicate that the court actually reviewed the report or knew of the basis for the finding, the record is at best ambiguous as to whether the court exercised its discretion as opposed to merely relying on [the expert's] ultimate conclusion."

The court stated:

[I]t is incumbent upon the court to make a record reflecting that it did more than merely base its fitness finding on the stipulation to the expert's ultimate conclusion. The court must state on the record the factual basis for its finding, which must be more than a mere acceptance of a stipulation that the defendant is fit or that an expert found the defendant fit. . . . [H]ad the court stated that it read the report and agreed with [the expert's] conclusion based on the facts set out in the report, or had it recited the facts it relied on in making its own fitness determination, there would have been no ambiguity about the court's exercise of discretion.

In most cases where more than a year has passed since the original trial and sentencing, due process cannot be satisfied by a retrospective fitness determination. In exceptional cases, however, the issue of fitness at the time of trial may be fairly and accurately determined after the fact. **People v. Neal**, 179 Ill. 2d 541, 689 N.E.2d 1040 (1997). The court concluded that a retrospective fitness determination would satisfy due process in this case because the parties stipulated to all of the evidence and the judge could determine whether defendant was fit when he pleaded guilty and was sentenced. The cause was remanded for a retrospective determination of fitness.

People v. Lucas, 388 Ill.App.3d 721, 904 N.E.2d 124 (2d Dist. 2009)_ The trial court is not required to accept the opinions of expert witnesses concerning defendant's fitness to stand trial. The trial court's power to reject expert testimony is not unlimited, however; the judge cannot reject an expert's opinion that defendant is unfit without some evidence that defendant is fit.

Here, the trial court's finding that defendant was fit to stand trial was contrary to the manifest weight of the evidence. The only expert testimony established that due to a severe cognitive disability, defendant did not possess an understanding of the trial proceedings and nature of the charges. The evidence, including a presentencing evaluation by a different expert, showed that defendant had memorized a variety of legal words which he had heard, but lacked abstract reasoning skills and the ability to generalize.

In addition, the expert's testimony was neither impeached nor rebutted. Finally, the trial court did not observe defendant interacting with his counsel, and therefore had no basis to conclude from personal observation that defendant was fit.

People v. Contorno, 322 Ill.App.3d 177, 750 N.E.2d 290 (2d Dist. 2001) Generally, the trial court's decision concerning a defendant's fitness to stand trial will not be reversed absent an abuse of discretion. The trial court must affirmatively exercise its judicial discretion in determining fitness, however; a finding of fitness may not be based solely on a stipulation to the conclusions or findings of an examining psychiatrist. The parties may stipulate to the expected testimony of an expert (rather than to his ultimate conclusion), but the final decision concerning fitness must be made by the trial court.

People v. Bleitner, 189 Ill.App.3d 971, 546 N.E.2d 241 (4th Dist. 1989) Trial judge properly found defendant fit to stand trial despite psychiatric evidence that he was unable to cooperate with counsel. The judge considered the totality of the testimony, and the judge's observations of defendant were consistent with the lay testimony.

§21-3(f)
Retrospective Fitness Hearings

Illinois Supreme Court

People v. Neal, 179 Ill.2d 541, 689 N.E.2d 1040 (1997) Retrospective fitness hearing was proper even though 15 years had elapsed since defendant's trial and sentencing. At the post-conviction hearing, an expert testified that with the timing and dosage of the psychotropic medication ingested by defendant, there was no "reasonable scientific basis to believe that [defendant] was affected by those psychotropic drugs during trial or sentencing." Because the expert's testimony was sufficient to show that defendant's fitness to stand trial was not affected by his ingestion of psychotropic medication, the trial court did not err by making a retrospective determination that defendant had been fit.

People v. Burgess, 176 Ill.2d 289, 680 N.E.2d 357 (1997) The trial court did not err by making a retrospective determination of defendant's fitness to stand trial where the evidence indicated that the medication in question was administered in non-psychotropic dosages merely to assist defendant in sleeping. But see, People v. Flynn, 291 Ill.App.3d 512, 685 N.E.2d 376 (2d Dist. 1997) (Burgess permits an "after-the-fact" assessment of defendant's

fitness to stand trial; where defendant on psychotropic medication received a fair trial even though he was not afforded a fitness hearing, the conviction may be affirmed).

Illinois Appellate Court

People v. Payne, 2018 IL App (3d) 160105 In a prior appeal, the Appellate Court remanded for a retrospective fitness hearing because the record was ambiguous as to whether the trial judge had relied on the parties' stipulation to fitness or had actually analyzed the expert's stipulated findings. The remand order directed the trial court to consider specific transcripts of pretrial proceedings at the retrospective hearing. On remand, the trial court explained its reasons for the original fitness finding but did not expressly consider the transcripts as directed. While the better approach would have been for the trial court to conduct a full retrospective fitness hearing on the record, the proceedings here were sufficient to satisfy due process because they were conducted by the same judge who presided over the trial and the judge specifically relied on his own observations as well as the expert's stipulated findings.

People v. Cook, 2014 IL App (2d) 130545 A determination that a defendant is fit may not be based solely on a stipulation to psychiatric conclusions or findings. Where the parties stipulate to an expert's testimony rather than to his or her conclusions, the trial court may consider the stipulation in exercising its discretion. However, the decision as to fitness must be made by the trial court, not by the experts. In other words, the trial court must analyze and evaluate the basis for the expert's opinion and may not merely rely on the expert's ultimate conclusion.

The record failed to show that the trial court exercised its discretion in determining that defendant was fit. The parties stipulated that the expert would testify consistently with his report "finding the defendant fit to stand trial." The record did not indicate that the trial judge ever reviewed the report, which it received just before entering an order that defendant was fit. The trial judge did not discuss the basis for finding defendant to be fit, and did not question defendant or the attorneys on the issue of fitness. "[W]ithout anything to indicate that the court actually reviewed the report or knew of the basis for the finding, the record is at best ambiguous as to whether the court exercised its discretion as opposed to merely relying on [the expert's] ultimate conclusion."

The court stated:

[I]t is incumbent upon the court to make a record reflecting that it did more than merely base its fitness finding on the stipulation to the expert's ultimate conclusion. The court must state on the record the factual basis for its finding, which must be more than a mere acceptance of a stipulation that the defendant is fit or that an expert found the defendant fit. . . . [H]ad the court stated that it read the report and agreed with [the expert's] conclusion based on the facts set out in the report, or had it recited the facts it relied on in making its own fitness determination, there would have been no ambiguity about the court's exercise of discretion.

In most cases where more than a year has passed since the original trial and sentencing, due process cannot be satisfied by a retrospective fitness determination. In exceptional cases, however, the issue of fitness at the time of trial may be fairly and accurately determined after the fact. **People v. Neal**, 179 Ill. 2d 541, 689 N.E.2d 1040 (1997). The court concluded that a retrospective fitness determination would satisfy due process in this case because the parties stipulated to all of the evidence and the judge could determine whether defendant was fit when he pleaded guilty and was sentenced. The cause was remanded for a retrospective determination of fitness.

§21-4
Findings of Unfitness

§21-4(a)
Restoration to Fitness

Illinois Supreme Court

People v. Lewis, 103 Ill.2d 111, 468 N.E.2d 1222 (1984) After a finding that an accused is not fit to stand trial, a subsequent finding of fitness may properly be based upon stipulated evidence. Here, the stipulations were not "to the fact of fitness," but merely to the testimony which would have been presented by the psychiatrists.

People ex rel. Martin v. Strayhorn, 62 Ill.2d 296, 342 N.E.2d 5 (1976) Petitioner was found unfit to stand trial and was remanded to the Department of Mental Health. At a hearing held under the procedures of the Mental Health Code, petitioner was found not to be in need of treatment and was ordered discharged.

The Department then petitioned the judge who had found petitioner unfit to stand trial to release petitioner on bail or recognizance, as is required by statute when a person is not in need of mental treatment. The judge refused to release petitioner and ordered him remanded to the Department "until he recovers from his mental unfitness."

The Supreme Court ordered the judge to comply with the directives of the statutory provision.

Illinois Appellate Court

People v. Finlaw, 2023 IL App (4th) 220797 In reviewing the propriety of a court's fitness determination, the appropriate standard of review is whether the ruling was against the manifest weight of the evidence. While both the State and defendant asserted that the abuse-of-discretion standard should apply, a court will not apply a wrong standard even if agreed upon. A trial court's fitness determination is not a matter of discretion, but rather is a matter of evidence. While abuse-of-discretion may apply to issues concerning the manner in which a fitness hearing is conducted, the manifest-weight standard applies to issues concerning the sufficiency of the evidence supporting the trial court's ultimate finding on the issue of fitness.

Here, the trial court's fitness determination was not against the manifest weight of the evidence. Defendant initially was found unfit after exhibiting symptoms of psychosis and being diagnosed with schizophrenia. After a period of treatment, DHS reported that he had regained fitness. Defendant had been prescribed anti-psychotic medication, but there was evidence he was not fully compliant with taking it. At the fitness restoration hearing, defendant testified competently, without any apparent signs of psychosis. Defendant's expert testified to his opinion that defendant remained unfit and continued to exhibit symptoms of psychosis, but he also acknowledged that an individual can have hallucinations and still be fit for trial. While there was conflicting evidence, the trial court was able to observe defendant's demeanor and behavior in the courtroom and on the stand during the restoration hearing, and those observations were more consistent with the DHS doctor's report that defendant had regained fitness. Thus, the trial court's finding was not against the manifest weight of the evidence.

People v. Wilber, 2020 IL App (2d) 180024 Upon being found unfit, defendant filed an interlocutory appeal. While the appeal was pending, defendant was found restored to fitness.

Trial court proceedings recommenced, defendant discharged counsel and proceeded *pro se*, and a bench trial was held, all while the unfitness appeal remained pending. Defendant was convicted of harassment through electronic communication and appealed that judgment.

The Appellate Court reviewed *de novo* whether the trial court had jurisdiction over the matter while the unfitness appeal had remained pending and concluded that it did not. The court rejected the State's revestment argument, holding that revestment only applies after a final order and the unfitness order was not such an order. Likewise, the doctrine of invited error did not operate to restore jurisdiction in the circuit court because the lack of subject matter jurisdiction in the circuit court could not be waived by the parties.

People v. Gillon, 2016 IL App (4th) 140801 The trial court accepted a psychiatrist's report, found defendant unfit to stand trial, and placed defendant in the custody of the Department of Human Services for treatment. Seventeen days later, the department found defendant fit to stand trial if he took medication.

The trial court conducted a fitness hearing at which both parties stipulated to the department's report and neither party produced further evidence. The trial court accepted the report and found that defendant was fit to stand trial. Defendant's probation was subsequently revoked.

The Appellate Court concluded that the trial court erred by restoring defendant to fitness without making any further inquiries. There must be a high level of judicial scrutiny in a restoration hearing, and several circumstances in this case gave rise to pivotal concerns concerning defendant's fitness.

First, the Department's determination that defendant had been restored to fitness was conducted less than two weeks after the initial finding of unfitness. "To justify this seemingly quick turn of events, the court should have, on the record, questioned the parties about how or why defendant had regained fitness in a matter of days."

Second, the evaluation by the Department was performed by a licensed clinical social worker rather than by a psychiatrist or a psychologist. The court noted that 725 ILCS 5/104-13(a) requires that the initial fitness examination be performed by a licensed physician, clinical psychologist, or psychiatrist, and held that although 725 ILCS 5/104-17(b) does not specifically prohibit a fitness determination by a licensed clinical social worker, the trial court should have conducted "a more thorough analysis" of the report.

Third, defendant's behavior after he was found to have been restored to fitness put the court on notice that there were continuing questions about fitness. Defendant frequently interrupted the judge during the proceedings, and seemed unable to control his outbursts and agitation. At one point the trial court had defendant removed from the courtroom because he was out of control. Under these circumstances, the trial court erred by accepting the parties' stipulations instead of inquiring into the issue of fitness.

The trial court's orders revoking defendant's probation and restoring fitness were reversed. The cause was remanded for a new restoration hearing.

People v. Gipson, 2015 IL App (1st) 122451 Where a defendant has been previously found unfit to stand trial, a presumption exists that he remains unfit until he is found fit at a valid fitness restoration hearing. At the conclusion of the hearing, the court may: (1) find defendant fit; (2) find the evidence insufficient to show that defendant's's fitness has been restored; or (3) seek additional information.

Fitness for trial involves a fundamental right and thus alleged errors concerning fitness may be reviewed as plain error. Although defendant failed to preserve the issue here, the Appellate Court reviewed it as plain error.

At the fitness restoration hearing in this case, the parties stipulated to the reports of two experts, Drs. Kelly and Wahlstrom. Dr Kelly concluded that defendant was fit to stand trial. Dr. Wahlstrom concluded that defendant was "marginally" fit to stand trial with medication. The trial court relied equally on both experts' opinions and found defendant fit to stand trial.

The Appellate Court reversed the trial court's finding. It noted that a defendant may only be found fit, fit with medication, or unfit. Dr. Wahlstrom's opinion, on which the trial court gave great weight, found defendant "marginally" fit. But Illinois recognizes no such qualification to a defendant's fitness. Accordingly, the trial court had an obligation to seek more information in order to understand what Dr. Wahlstrom meant by "marginally" fit.

The Appellate Court was also troubled by the trial court's statement that Dr. Wahlstrom "could not rule out" that defendant was fit to stand trial. The presumption of a restoration hearing is that defendant is unfit. The trial court must therefore "rule out the possibility that defendant was still unfit."

The case was remanded for a retrospective fitness hearing.

People v. Sedlacek, 2013 IL App (5th) 120106 Article 104 sets out a comprehensive scheme for criminal defendants found unfit to stand trial and its provisions govern the procedures applicable to such defendants. When the issue of fitness involves the defendant's mental condition, the court is authorized to "order an examination of the defendant by one or more licensed physicians, clinical psychologists, or psychiatrists chosen by the court." 725 ILCS 5/104-13(a). The court may also in its discretion appoint a qualified expert selected by the defendant to examine him. 725 ILCS 5/104-13(e). There is no provision in article 104 authorizing the State to select an expert to independently examine the defendant for fitness. Therefore, the trial court properly denied the State's request that the expert it selected to examine defendant for sanity also examine the defendant to determine his fitness for trial.

By statute, a defendant ordered to undergo treatment for the purpose of rendering him fit to stand trial is entitled to a status hearing every 90 days. 725 ILCS 5/104-20(a). Once it is determined that it is unlikely that an unfit defendant will attain fitness within one year after initially being found unfit, the cause must proceed to a discharge hearing. 725 ILCS 5/104-23.

The court found the defendant unfit for trial in October 2009. In the following year, no 90-day hearings were held, and in October 2010 the court received a report from the DHS indicating that the defendant would not be fit to stand trial in one year. Therefore, the court did not err as a matter of law when, over 27 months after the initial finding of unfitness, it granted the defense motion for summary judgment, concluding that the defendant was unfit and entitled to a discharge hearing.

People v. Mutesha, 2012 IL App (2d) 110059 Although the filing of a notice of appeal vests jurisdiction in the Appellate Court, the trial court retains jurisdiction to decide matters that are independent of and collateral to the judgment on appeal. Collateral or supplemental matters include those lying outside the issues on appeal or arising subsequent to delivery of the judgment appealed from. Review of whether a trial court properly exercised jurisdiction is *de novo*.

Before the court ruled on defendant's post-trial motion and conducted a sentencing hearing, defendant was found unfit to be sentenced. He appealed from that finding. While

the fitness appeal was pending, defendant was restored to fitness. The court then proceeded to deny the post-trial motion and impose sentence. Defendant appealed his conviction and sentence.

Hearings to reexamine fitness are provided by statute at maximum intervals of 90 days where a defendant is expected to become fit with treatment. 725 ILCS 5/104-20(a). Because the judgment restoring defendant to fitness was based on new facts, it was independent of and collateral to the judgment on appeal, and the trial court retained jurisdiction to hear and decide the matter.

The trial court did not have jurisdiction, however, to rule on defendant's post-trial motion and impose sentence after he was restored to fitness while the appeal from the finding that he was unfit was pending. Both the post-trial motion and the sentencing hearing were central issues in the criminal matter and were not collateral to the fitness appeal. The orders denying the post-trial motion and sentencing the defendant were therefore void. If the defendant wished to obtain a ruling on his post-trial motion and be sentenced immediately upon his restoration of fitness, he should have first moved to dismiss his pending fitness appeal.

The Appellate Court vacated the order denying the post-trial motion as well as defendant's sentence, and dismissed defendant's appeal.

People v. Olsson, 2012 IL App (2d) 110856 Due process is satisfied by providing a defendant periodic review of his fitness on request while he is involuntarily committed to the custody of the Department of Human Services as provided by 725 ILCS 5/104-25(g)(2), after he has been found unfit to stand trial and the statutory extended period of treatment to attain his fitness has been unsuccessful. The requirement that a treatment plan report be filed with the court every 90 days after defendant's initial admission, which includes an opinion as to whether the defendant is fit to stand trial, helps the defense reach an informed decision whether to seek a fitness hearing.

People v. Meyers, 352 Ill.App.3d 790, 817 N.E.2d 173 (2d Dist. 2004) Once there has been a judicial finding that a defendant is unfit, the finding can be reversed only through a subsequent judicial determination. Here, the trial court found defendant to be unfit, and at no point expressly found defendant to be fit. An order granting a motion asking to vacate a finding of unfitness and schedule a new hearing did not equate to a finding that defendant was fit. Defendant's conviction was reversed, and the cause was remanded to determine whether defendant was fit to proceed further.

People v. Williams, 92 Ill.App.3d 608, 415 N.E.2d 1192 (1st Dist. 1981) At a fitness hearing before trial, defendant was found unfit to stand trial. After subsequently receiving two psychiatric reports stating that defendant was now fit, but without any further hearing, the trial court accepted defendant's guilty plea.

The trial court erred by accepting the guilty plea without first conducting a fitness hearing. Once there has been a judicial determination that a defendant is unfit to stand trial or be sentenced, the presumption of unfitness continues until there is a valid hearing adjudicating him fit. "A summary disposition in a restoration hearing does not comport with the procedural requirements of either the constitution or the statute...."

People v. Gravot, 19 Ill.App.3d 486, 311 N.E.2d 699 (5th Dist. 1974) Psychiatric report that indicated merely that defendant possessed "partial responsibility . . . and could partially assist in his defense" was insufficient to "overcome the continued presumption of defendant's

incompetence based on his previous adjudication" of unfitness. Finding of fitness and murder conviction were reversed.

§21-4(b)
Discharge Hearings

Illinois Supreme Court

People v. Waid, 221 Ill.2d 464, 851 N.E.2d 1210 (2006) Neither due process nor the confrontation clause are violated by 725 ILCS 5/104-25(a), which provides that at a discharge hearing for a defendant who has been found unfit to stand trial and unlikely to regain fitness within one year, the court may admit hearsay or affidavit evidence on "secondary matters such as testimony to establish the change of possession of physical evidence, laboratory reports, authentication of transcripts . . ., court and business records and public documents."

The purpose of a discharge hearing is to determine whether the evidence against an unfit defendant is sufficient to establish guilt beyond a reasonable doubt. If the evidence is insufficient to satisfy the reasonable doubt standard, defendant is subject to a mental health treatment for a period of one to five years.

A discharge hearing is not a criminal prosecution, and the confrontation clause therefore does not apply. Also, defendant does not have the same degree of due process protection at a discharge hearing as at a criminal trial; the admission of reliable evidence on secondary matters is permissible.

Illinois Appellate Court

People v. Lewis, 2021 IL App (3d) 180259 The trial court did not err in allowing the State to introduce the deposition of a witness as substantive evidence at defendant's discharge hearing which resulted in a finding of "not not guilty." The witness was 85 years old and living in a nursing home at the time the evidence deposition was taken. And, by the time of trial, more than a year later, she was suffering heart failure and being treated for injuries sustained during a fall. Her doctor opined that in-court testimony would have a negative impact on the witness, both physically and psychologically.

Illinois Supreme Court Rule 414 permits the taking of evidence depositions in criminal cases. Defendant argued that because his case proceeded to a discharge hearing, rather than a criminal trial, Rule 414 did not apply. The Appellate Court rejected that argument. While there is a statute specifically providing for the admission of certain hearsay evidence in discharge hearings [725 ILCS 5/104-25(a)], that statute does not set forth the full scope of admissible evidence in such proceeding. Instead, Section 104-25(a) simply describes a specific area in which more evidence is allowed at a discharge hearing than would be at a criminal trial. The finding of not not guilty was affirmed.

In re S.B., 2012 IL 112204 As a matter of first impression, the Supreme Court held that 725 ILCS 5/104-25(a), which provides an "innocence only" proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the Act does not refer to an "innocence only" proceeding where a juvenile is unfit. 705 ILCS 405/5-101(3) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard

the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

Also, a minor who is found "not not guilty" in a discharge hearing is required to register under the Sex Offender Registration Act. Section 2 of the Act, in its relevant parts, defines a "sex offender" as a person who is charged with a sex offense and "is the subject of a finding not resulting in an acquittal" at a discharge hearing under 725 ILCS 5/104-25(a), or who is adjudicated delinquent based on an act which would constitute one of several criminal offenses if committed by an adult. Because §104-25(a) is incorporated into the Juvenile Court Act, and a person who is found "not not guilty" is not acquitted, registration is required under the plain language of the Registration Act.

The court noted, however, that only juveniles who are found delinquent are allowed to petition to terminate their sex offender registration upon showing that the minor poses no risk to the community. (730 ILCS 150/3-5(c),(d)). Because a literal interpretation of the relevant statutes would result in an unfit minor who has been found "not not guilty" being unable to petition to terminate registration, and thus having fewer rights than juveniles who were actually adjudicated delinquent, the court concluded that the legislature could not have intended to exclude juveniles who were found "not not guilty" from seeking termination of the sex offender registration. The court noted that it has authority to read into statutes language omitted by oversight, and elected to correct the legislature's oversight by allowing juveniles who are found "not not guilty" to seek termination of the sex offender registration requirement under the same conditions as minors adjudicated delinquent for sex offenses.

The court also found that the legislature made a similar oversight with respect to the limitations that are contained in the Sex Offender Community Notification Law (730 ILCS 152/121) related to the dissemination of sex offender registration information with respect to adjudicated delinquents. It held that §121 of that Act should be read to include juveniles found "not not guilty" following a discharge hearing.

People v. Orengo, 2012 IL App (1st) 111071 "In a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13," evidence of out-of-court statements made by the child is admissible as an exception to the hearsay rule under certain specified circumstances. 725 ILCS 5/115-10.

A discharge hearing is conducted pursuant to 725 ILCS 5/104-25 to determine whether to acquit a defendant of the charges when there has been a finding of unfitness. The discharge hearing is not a criminal prosecution. The defendant may not be convicted at the hearing. If the evidence is sufficient to establish his guilt, he is found not not guilty. But the purpose of the hearing is the same as that of a criminal trial—to test the sufficiency of the State's evidence of defendant's guilt of the charged crime. The standard of proof is the same. It follows that, unless otherwise noted in §104-25, the rules of evidence governing a criminal proceeding apply at a discharge hearing.

Subsection (a) of §104-25 provides that hearsay or affidavit evidence may be admitted at a discharge hearing "on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, court and business records, and public documents." 725 ILCS 5/104-25(a).

The statute's silence on the admission of hearsay evidence on primary matters does not reflect the legislature's intent to bar such evidence. Subsection (a) does not evidence the legislature's intent to provide greater protection of a defendant's rights at a discharge hearing than at a criminal trial. Such an interpretation of subsection (a) would be inconsistent with the Illinois Supreme Court's interpretation in **People v. Waid,** 221 Ill. 2d 464, 851 N.E.2d

1210 (2006), which upheld the constitutionality of subsection (a) against due process and confrontation clause challenges.

Therefore, it was not error to admit hearsay evidence as provided by §115-10 at defendant's discharge hearing.

People v. Peterson, 404 Ill.App.3d 145, 935 N.E.2d 1123 (2d Dist. 2010) Where an unfit defendant is unlikely to regain fitness within a year, the trial court must hold a discharge hearing to determine whether the evidence is sufficient to establish guilt beyond a reasonable doubt. If the evidence is insufficient to permit conviction at a criminal trial, or if the defendant is found not guilty by reason of insanity, an acquittal is entered. If the evidence of guilt satisfies the reasonable doubt standard, a finding of "not not guilty" is entered. The defendant is then subject to further treatment in an effort to restore fitness.

The discharge hearing is an "innocence-only" proceeding which results in a final adjudication of the case only if the defendant is acquitted.

The trial court erred by finding defendant "not not guilty," and should have entered an acquittal. Defendant was charged with knowingly failing to register a change of address as required by the Sex Offender Registration Act. However, the State presented no evidence supporting that charge, and at most proved that defendant was homeless for the entire period.

Because the State failed to prove that defendant knowingly provided false information or was required to report weekly, the evidence was insufficient to satisfy the reasonable doubt standard. The Appellate Court entered an acquittal in defendant's behalf.

People v. Manns, 373 Ill.App.3d 232, 869 N.E.2d 437 (4th Dist. 2007) Defense counsel was ineffective for failing to raise an insanity defense at a discharge hearing for a defendant who had been found unfit to stand trial and unlikely to recover within one year.

People v. Williams, 312 Ill.App.3d 232, 726 N.E.2d 641 (1st Dist. 2000) The trial court committed reversible error by conducting the discharge hearing of an unfit defendant in defendant's absence. Although a defendant's right to attend a discharge hearing is not absolute, the record did not support the trial court's finding that defendant was mentally or emotionally incapable of attending.

People v. Burt, 142 Ill.App.3d 833, 492 N.E.2d 233 (2d Dist. 1986) Defendant was indicted for three counts of criminal sexual assault against seven- and eight-year old complainants. The indictment alleged that defendant "knew that the victim was unable to understand the nature of the act [sexual penetration] or was unable to give effective consent." Defendant was found unfit to stand trial.

A discharge hearing was held. The evidence at the discharge hearing was insufficient to establish defendant's guilt of the offenses. "Defendant, functioning at the mental level of a 7- or 8-year-old, did not possess the requisite mental state to commit the offenses of criminal sexual assault."

§21-4(c)
Finding of Not Not Guilty

Illinois Appellate Court

People v. Martin, 2023 IL App (1st) 220252 Defendant was charged with Class 2 aggravated battery. He was found unfit for trial, and at a civil commitment hearing, he was found not not guilty. The court ordered involuntary civil commitment, pursuant to section 720 ILCS 104-25(g)(2), for the maximum Class 2 term of seven years. The appellate court affirmed this sentence over defendant's argument that the 85% good conduct credit under 730 ILCS 5/3-6-3 applied to his term.

The credit does not apply to civil commitments. Section 104-25(g)(2) states that the maximum sentence shall be determined by 730 ILCS 5/5-8-1 or Article 4.5 of Chapter V of the Unified Code of Corrections. Defendant argued that by referencing Article 4.5, the legislature meant to include the 85% credit and other truth-in-sentencing provisions contained in that article.

Although the appellate court found the statute ambiguous, it held that provisions within Article 4.5 treated civil commitments differently than imprisonment when discussing credit. Also, the article's provision on insanity explicitly allowed for good conduct credit, whereas the civil commitment language did not. It therefore followed that the reference to truth-in-sentencing in the sentencing provisions of section 3-6-3 did not apply to civil commitments.

People v. Rodriguez, 2019 IL App (1st) 151938-B Defendant was found not not guilty due to unfitness, and the trial court imposed SORA. On appeal, defendant claimed that applying SORA to a defendant found not not guilty was unconstitutional.

Unlike **People v. Bingham**, 2018 IL 122008, the Appellate Court here had jurisdiction over the claim because the trial court's judgment specifically ordered compliance with SORA. However, the court rejected the argument on the merits, finding SORA does not infringe on an unfit defendant's fundamental right not to be punished, because SORA does not constitute punishment. The law also passes the rational basis test as applied to defendant, because the record established that he is capable of compliance with the registration requirements despite his unfitness.

In re S.B., 2012 IL 112204 As a matter of first impression, the Supreme Court held that 725 ILCS 5/104-25(a), which provides an "innocence only" proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the Act does not refer to an "innocence only" proceeding where a juvenile is unfit. 705 ILCS 405/5-101(3) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

Also, a minor who is found "not not guilty" in a discharge hearing is required to register under the Sex Offender Registration Act. Section 2 of the Act, in its relevant parts, defines a "sex offender" as a person who is charged with a sex offense and "is the subject of a finding not resulting in an acquittal" at a discharge hearing under 725 ILCS 5/104-25(a), or who is adjudicated delinquent based on an act which would constitute one of several criminal offenses if committed by an adult. Because §104-25(a) is incorporated into the Juvenile Court Act, and a person who is found "not not guilty" is not acquitted, registration is required under the plain language of the Registration Act.

The court noted, however, that only juveniles who are found delinquent are allowed to petition to terminate their sex offender registration upon showing that the minor poses no risk to the community. (730 ILCS 150/3-5(c),(d)). Because a literal interpretation of the relevant statutes would result in an unfit minor who has been found "not not guilty" being unable to petition to terminate registration, and thus having fewer rights than juveniles who were actually adjudicated delinquent, the court concluded that the legislature could not have intended to exclude juveniles who were found "not not guilty" from seeking termination of the sex offender registration. The court noted that it has authority to read into statutes language omitted by oversight, and elected to correct the legislature's oversight by allowing juveniles who are found "not not guilty" to seek termination of the sex offender registration requirement under the same conditions as minors adjudicated delinquent for sex offenses.

The court also found that the legislature made a similar oversight with respect to the limitations that are contained in the Sex Offender Community Notification Law (730 ILCS 152/121) related to the dissemination of sex offender registration information with respect to adjudicated delinquents. It held that §121 of that Act should be read to include juveniles found "not not guilty" following a discharge hearing.

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The discharge hearing is an "innocence-only" proceeding which results in a final adjudication of the case only if the defendant is acquitted.

The trial court erred by finding defendant "not not guilty," and should have entered an acquittal. Defendant was charged with knowingly failing to register a change of address as required by the Sex Offender Registration Act. However, the State presented no evidence supporting that charge, and at most proved that defendant was homeless for the entire period.

Because the State failed to prove that defendant knowingly provided false information or was required to report weekly, the evidence was insufficient to satisfy the reasonable doubt standard. The Appellate Court entered an acquittal in defendant's behalf.

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