

UNFITNESS

This is a basic summary of the law and procedures regarding the representation of people who are unfit for trial. Due process requires that a defendant be mentally capable of understanding the nature of the proceedings and assist in his defense. As recent U.S. Supreme Court decisions have shown, a defendant's mental fitness to stand trial or be sentenced has come to the fore when considering the propriety of legal proceedings. In Illinois, the fitness of a defendant to stand trial or plead is governed by 725 ILCS 5/104-10 through 725 ILCS 5/104-31.

Before examining the procedure for handling cases involving unfit defendants, it is necessary to determine what "unfit" means. 725 ILCS 5/104-10 defines an unfit defendant as one who exhibits two characteristics, "because of his mental or physical condition, ... is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." This has been refined in the case law as the ability to understand the nature and purpose of the proceedings against him, "... a person's ability to function within the context of trial..." (*People v. Bivins*, 52 Ill. Dec. 835 (1981), at 838). *Bivins* goes on to note that the question is whether the Defendant can function within the legal proceedings rather than within the context of everyday life.

The legal procedures concerning how unfit defendants are handled may be considered a five-stage process. It begins with the raising of a bona fide doubt as to the defendant's fitness to stand trial or plead. The defense, State, or the Court can raise the doubt at any time during the proceedings. It is not necessary that there is a bona fide doubt prior to ordering a fitness evaluation. The purpose of the fitness evaluation is to discover whether or not there is a bona fide doubt as to the defendant's fitness.

I. THE FITNESS EVALUATION

The fitness evaluation is to be conducted in accordance with 725 ILCS 5/104-13 and the report prepared pursuant to 725 ILCS 5/104-15. A sample order directing court services to prepare such a report is attached as exhibit A. The code requires that the examination be done by one or more licensed physicians, clinical psychologists or psychologists other than those employed by the Department of Human Services. The examination is to be done at the place chosen by the evaluator, except that evaluations of people in custody are to be done at a place of the Court's direction. If a defendant does not keep appointments for an evaluation, the Court may order the defendant be admitted to an appropriate facility for up to 7 days (725 ILCS 5/104-13 (c)). "Appropriate facility" is not defined, although the facility cannot be operated by the Department of Human Services. A defendant cannot be remanded on the grounds that an examination has been ordered. (725 ILCS 5/104-13 (d)). The fitness evaluation statute also provides for payment of the expert by the county board.

An important consideration is that a defendant's statements made during the fitness evaluation regarding the crimes charged cannot be used against him, except to the extent that they can be used to rebut a defense of insanity or intoxication. However, when the defendant raises the issue of his mental state as in the ability to understand the *Miranda* warnings, the statements made during the evaluation may be introduced as impeachment. This is not a function of doctor-patient privilege but rather of the Fifth Amendment right against self-incrimination. (See *People v. Lowe*, 248 N.E. 2d 530 (1969)).

725 ILCS 5/104-15 sets forth the necessary contents of the fitness evaluation. It must contain a diagnosis and an explanation of the diagnosis of the defendant's mental condition as well as a description of how the defendant's mental condition interferes with his ability to understand the nature of the proceedings or assist in his defense. Although the statute sets forth with some specificity what is to be contained in the report, courts have found that strict compliance with the content requirements is not necessary if the court has additional information on the Defendant's mental health (*People v. Williams*, 211 Ill. Dec 441 (1995)); courts only rejected a report when it was conclusory and did not provide an explanation of the diagnosis or a statement of the facts on which the diagnosis was raised. (*People v. Harris*, 69 Ill. Dec. 506 (1983)). The evaluation is to be prepared within 30 days of being ordered. Finally, if the evaluation indicates that the Defendant is unfit, the report shall contain an opinion as to the likelihood that the Defendant will attain fitness within one year.

II. The Fitness Hearing

Once the fitness evaluation has been prepared, a hearing can take place pursuant to 725 ILCS 5/104-16. The defendant or the State may request a jury or the judge may on his own motion order a jury. The right to jury determination of competency is not a constitutional right. (*People v. Shadowens*, 44 Ill.2d 70, 254 N.E.2d 484; *People v. White*, 131 Ill.App.2d 652, 264 N.E.2d 228.) Thus, a jury waiver is unnecessary, but a demand required if the defendant desires a jury. In the alternative, the court may order a jury. The hearing is to take place within 45 days of the completion of the fitness evaluation. The statute sets forth issues that are admissible including the defendant's understanding of the legal process; ability to recall and communicate with counsel; social behavior and abilities. The defendant has a right to attend the hearing and his presence can be waived only if he physically cannot be there as certified by a licensed physician. The finder of fact, whether judge or jury, must then decide two issues: first, whether the defendant is unfit, and if so, whether there is a reasonable probability the defendant will achieve fitness within one year. If the defendant is found fit, then the case follows the same procedure as for any other fit defendant. If the defendant is found unfit and the finder of fact determines that there is not a reasonable probability he will attain fitness within one year, the Court shall proceed according to 725 ILCS 5/104-23, discussed *infra*. If the defendant is found unfit and the finder of fact determines that there is a reasonable probability that he will attain fitness within one year or that the finder of fact cannot determine whether there is a reasonable probability that the defendant will attain fitness within one year, the Court shall order that the defendant shall undergo treatment to render him fit.

III. Commitment for Treatment- Progress Reports

Once the defendant has been found unfit for reasons of mental disability, the court may remand him to DHS or place him in the custody of any appropriate public or private treatment program. If the defendant is placed with DHS, he will be held in a secure setting unless there are compelling reasons not to. It is important to note that the court is not required to remand the defendant to DHS, nor must the placement be inpatient. These matters rest with the sound discretion of the court. The treatment facility must provide a written report to the court, state and defense within 30 days of the treatment order. This report shall contain an assessment of the treatment facility's ability to provide treatment to the defendant and a statement of whether there is a substantial probability the defendant will attain fitness within one year. If the report states that there

is a substantial probability that the defendant will attain fitness, the report shall also include a diagnosis, a treatment plan with timetable and an identification of the defendant's treatment supervisor. 725 ILCS 5/104-18 provides for progress reports to be prepared whenever the treatment provider believes that the defendant has achieved fitness or that there is not a substantial probability the defendant will achieve fitness within one year. 725 ILCS 5/104-20 requires that there is a hearing date every 90 days to re-examine the defendant's fitness. The issues at that hearing remain nearly the same: whether the defendant is fit to stand trial or plead and whether the defendant is making progress towards achieving fitness within one year from the original finding of unfitness. This hearing takes place before the court only without a right to jury trial. A status report pursuant to 725 ILCS 5/104-18 shall be delivered to the court seven days before the 90 day hearing and shall contain three items: clinical findings and their basis; treatment provider's opinion as to whether the defendant is making progress towards achieving fitness; and a statement of the defendant's medication, if any.

At this hearing, the court determines whether the defendant is fit or remains unfit to stand trial. If the court finds the defendant to be fit, the court shall set the matter for trial. If the court finds that the defendant remains unfit but is making progress towards achieving fitness, the court may continue the treatment program previously ordered. Finally, the court may find that there is not a substantial probability that the defendant will achieve fitness within one year in which case the court shall set the case for a discharge hearing. It should be noted that the defendant may waive this hearing, although the burden of showing that the defendant has attained fitness remains on the state who must prove fitness by a preponderance of the evidence.

IV. Discharge Hearing

The discharge hearing takes place when either a year has passed since the original finding of unfitness or the court determines that there is not a reasonable probability that the defendant will attain fitness within a year. The defendant's attorney may file a motion for a discharge hearing that must take place within 120 days of the motion filing. The discharge hearing is a test of the strength of the evidence against the defendant. It is essentially a bench trial with some slight modifications to the rules of evidence pursuant to 725 ILCS 5/104(a), which permit the introduction of certain kinds of hearsay and testimony by affidavit. At the conclusion of the discharge hearing, the court can make one of three findings.

1. If the evidence does not prove the defendant guilty beyond a reasonable doubt, the court shall enter a judgment of acquittal. At that time, the defendant is released although the defendant may be subject to commitment (involuntary admission) under the Mental Health and Developmental Disabilities Code.
2. If the defendant is found not guilty by reason of insanity, the Court shall enter a judgment of acquittal and the case shall proceed as any other finding of not guilty by reason of insanity.
3. If the defendant is not acquitted of the charge and not found not guilty by reason of insanity, the Defendant may be remanded to DHS for an additional treatment period up to 15 months on class 2,3,4 felonies, up to 2 years for class X and 1 felonies, and up to 5 years for first degree murder. It is unclear whether there is an extended treatment period for misdemeanors.

V. Extended Treatment

A practical result of the code is that a defendant may not be subject to the extended treatment period unless he has had a discharge hearing. A finding of non-acquittal may be appealed in the same way as a guilty verdict in a criminal case. Since there is no chance that the defendant could be convicted of the offense charged, jeopardy does not attach at a discharge hearing. When the extended treatment period expires, the court must make an additional determination. If the defendant has become fit by the expiration of the extended treatment period, he may be tried as any fit defendant, with the addition that witness testimony from the discharge hearing may be introduced at the defendant's trial if that witness is legally unavailable at the time of the subsequent trial. If the defendant remains unfit, the court may decide that he is subject to commitment under the MHDCC or presents a serious threat to public safety, he shall be remanded to DHS for treatment as if he were civilly committed. A treatment plan must be prepared and 90-day status reports must be filed with the court and the State or the defendant may ask the court with jurisdiction to review the treatment plan, as part of which the court may order an independent evaluation of the defendant up to once per year. The final commitment to DHS for treatment may only last as long as the maximum penalty to which the defendant would have been subject had he been convicted in a criminal proceeding.

Much of the rest of 5/104 deals with its applicability to defendants found unfit prior to its enactment, disposition of defendants found unfit before the enactment of the article, and a conflict of law provision. The section ends with a requirement that before an unfit Defendant is released from DHS, the Sheriff for the committing county be given written notice of the release (725 ILCS 5/104-30) and that a committed Defendant taken outside of a DHS secure setting be accompanied by DHS personnel (725 ILCS 5/104-31).

Although 5/104 is written in convoluted style, the basic issues repeat themselves throughout the process: Is the defendant fit to stand trial and is there a substantial probability that the defendant will attain fitness with one year.

NO

Is the Defendant unable to understand the nature and purpose of the proceedings against him OR to assist in his defense because of his mental or physical condition?

104-10

YES

Oral or Written Motion for Fitness Evaluation 104-11

F

FITNESS EVALUATION 104-13

Fitness Report 104-15

(If you disagree with this finding you can request a Jury Trial to determine fitness)

Fitness Hearing 104-16 (WITHIN 45 DAYS OF REPORT)

NO

Is Defendant unfit?

YES

Can Defendant be restored to fitness within the maximum time allowed by 104-17(e)?

NO

YES

NO

Is Defendant in custody 104-17?

YES

DHS

H

LCBHS

30-DAY REPORT 104-17(e)

(Send Packet to LCBHS containing copies of court order, fitness evaluation and discovery on all cases)

(Court may order copies of court order, fitness evaluation and discovery on all cases tendered to Jail Administration)

NO

Is Defendant unfit?

YES

Can Defendant be restored to fitness within the maximum time allowed by 104-17(e)?

NO

YES

HEARING (WITHIN 90 DAYS) 104-20

PROGRESS REPORT 104-18

Has the maximum time allowed by 104-17(e) elapsed?

L

NO

Is Defendant still unfit?

YES

Is the Defendant making progress towards being restored?

NO

DISCHARGE HEARING 104-25

TRIAL

UNCERTAIN 104-11(h)

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STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
) GEN. NO.
)
)
)

ORDER

This matter coming before the Court on Defendant's Motion pursuant to 725 ILCS 104-11 raising the issue of the Defendant fitness,

The Court finds there is a bona fide doubt as to the Defendant's fitness to stand trial, therefore;

IT IS HEREBY ORDERED THAT: Dr. Dunne or Dr. Chantry shall conduct a mental health evaluation pursuant to 725 ILCS 5/104-13 for the purpose of determining the Defendant's fitness to stand trial.

If necessary, the Lake County Jail shall grant Dr. Dunne or Dr. Chantry a contact visit with the above named Defendant in order to complete said evaluation.

It is further ordered that the mental health evaluation shall be delivered to C- by at 9:00 A.M. or as soon thereafter as possible.

ENTER:

JUDGE

Dated at Waukegan, Illinois this
day of , 20 .

ORDER PREPARED BY:

 , Assistant Public Defender
OFFICE OF THE LAKE COUNTY PUBLIC DEFENDER
15 South County Street
Waukegan, Illinois 60085-5503
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
) GEN. NO.
)
)
)

ORDER

This matter coming before the Court on Defendant's Motion pursuant to 725 ILCS 104-11 raising the issue of the Defendant fitness,

The Court making no finding at this time as to the Defendant's fitness to stand trial, therefore;

IT IS HEREBY ORDERED THAT: Dr. Dunne or Dr. Chantry shall conduct a mental health evaluation pursuant to 725 ILCS 5/104-13 for the purpose of determining the Defendant's fitness to stand trial.

If necessary, the Lake County Jail shall grant Dr. Dunne or Dr. Chantry a contact visit with the above named Defendant in order to complete said evaluation.

It is further ordered that the mental health evaluation shall be delivered to C- by _____ at 9:00 A.M. or as soon thereafter as possible.

ENTER:

JUDGE

Dated at Waukegan, Illinois this
day of _____, 20____.

ORDER PREPARED BY:

_____, Assistant Public Defender
OFFICE OF THE LAKE COUNTY PUBLIC DEFENDER
15 South County Street
Waukegan, Illinois 60085-5503
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
 -vs-) GEN. NO.
)
)

ORDER

Pursuant to a petition filed under 725 ILCS 5/104-11 challenging the fitness of the above named Defendant to plead or stand trial, this matter coming on for hearing pursuant to 725 ILCS 5/104-16, the Court having heard the evidence and arguments of Counsel,

THE COURT FINDS the above named Defendant is not fit to plead or stand trial and further finds there is a substantial probability that the Defendant, if provided with a course of treatment, will attain fitness within one year, therefore,

IT IS HEREBY ORDERED THAT:

1. Pursuant to 725 ILCS 5/104-17(b), the Defendant shall be placed in the custody of the Department of Human Services, which shall determine the appropriate placement and provide appropriate treatment for the Defendant;
2. Within 30 days of the entry of this order, the person supervising the Defendant's treatment shall file with the court, the State, and the defense a report pursuant to 725 ILCS 5/104-17(e) . Said report shall contain:
 - a. An assessment of the facility's or program's capacity to provide appropriate treatment for the Defendant; and
 - b. Their opinion as to the probability of the Defendant's attaining fitness within a period of one year from the date of the finding of unfitness.
3. If the report indicates that there is a substantial probability that the Defendant will attain fitness within the time period, the treatment supervisor shall also file a treatment plan which shall include:
 - a. A diagnosis of the Defendant's disability;
 - b. A description of treatment goals with respect to rendering the Defendant fit, a specification of the proposed treatment modalities, and an estimated timetable for attainment of the goals;
 - c. An identification of the person in charge of supervising the Defendant's treatment.
4. This matter shall be set for hearing to reexamine the issue of the Defendant's fitness on _____, 20__ in C-_____ at _____M. (*within 90 days*)
5. Pursuant to 725 ILCS 5/104-18, the person supervising the Defendant's treatment shall file a written progress report to the court, the State, and the defense:
 - a. At least 7 days prior to the date for any hearing on the issue of the Defendant's fitness;
 - b. Whenever he believes that the Defendant has attained fitness;
 - c. Whenever he believes that there is not a substantial probability that the Defendant will attain fitness, with treatment, within one year from the date of the original finding of unfitness.
6. The progress report shall contain:
 - a. The clinical findings of the treatment supervisor and the facts upon which the findings are based;
 - b. The opinion of the treatment supervisor as to whether the Defendant has attained fitness or as to whether the Defendant is making progress, under treatment, toward attaining fitness within one year from the date of the original finding of unfitness;
 - c. If the Defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the Defendant's appearance, actions and demeanor.

ENTER:

JUDGE

Dated at Waukegan, Illinois
this ____ day of _____, 20_____.

ORDER PREPARED BY:

_____, Assistant Public Defender
15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
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 -vs-) GEN. NO.
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)

ORDER

Pursuant to a petition filed under 725 ILCS 5/104-11 challenging the fitness of the above named Defendant to plead or stand trial, this matter coming on for hearing pursuant to 725 ILCS 5/104-16, the Court having heard the evidence and arguments of Counsel,

THE COURT FINDS the above named Defendant is not fit to plead or stand trial and further finds there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year, therefore,

IT IS HEREBY ORDERED THAT:

7. Pursuant to 725 ILCS 5/104-17(a), the Defendant shall report to Lake County Behavioral Health Services within seven (7) days and thereafter follow all recommendations for treatment. Lake County Behavioral Health Services shall determine and provide the appropriate treatment for the defendant;
8. Within 30 days of the entry of this order, the person supervising the Defendant's treatment shall file with the court, the State, and the defense a report pursuant to 725 ILCS 5/104-17(e). Said report shall contain:
 - a. An assessment of the facility's or program's capacity to provide appropriate treatment for the Defendant; and
 - b. Their opinion as to the probability of the Defendant's attaining fitness within a period of one year from the date of the finding of unfitness.
9. If the report indicates that there is a substantial probability that the defendant will attain fitness within the time period, the treatment supervisor shall also file a treatment plan which shall include:
 - a. A diagnosis of the Defendant's disability;
 - b. A description of treatment goals with respect to rendering the Defendant fit, a specification of the proposed treatment modalities, and an estimated timetable for attainment of the goals;
 - c. An identification of the person in charge of supervising the Defendant's treatment.
10. This matter shall be set for hearing to reexamine the issue of the Defendant's fitness on _____, 20__ in C-_____ at _____ M. (*within 90 days*)
11. Pursuant to 725 ILCS 5/104-18, the person supervising the Defendant's treatment shall file a written progress report to the court, the State, and the defense:
 - a. At least 7 days prior to the date for any hearing on the issue of the Defendant's fitness;
 - b. Whenever he believes that the Defendant has attained fitness;
 - c. Whenever he believes that there is not a substantial probability that the Defendant will attain fitness, with treatment, within one year from the date of the original finding of unfitness.
12. The progress report shall contain:
 - a. The clinical findings of the treatment supervisor and the facts upon which the findings are based;
 - b. The opinion of the treatment supervisor as to whether the Defendant has attained fitness or as to whether the Defendant is making progress, under treatment, toward attaining fitness within one year from the date of the original finding of unfitness;
 - c. If the Defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the Defendant's appearance, actions and demeanor.

ENTER:

JUDGE

Dated at Waukegan, Illinois
this ____ day of _____, 20_____.

ORDER PREPARED BY:
_____, Assistant Public Defender
15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
) GEN. NO.
)
)
)

ORDER

This matter coming on for hearing pursuant to 725 ILCS 5/104-20, the Court having heard the evidence and arguments of Counsel,
THE COURT FINDS the above named Defendant is fit to plead or stand trial, therefore,

IT IS HEREBY ORDERED THAT: this matter shall be set for trial in C-_____ on _____, 20__ at _____.M.

ENTER:

JUDGE

Dated at Waukegan, Illinois
this _____ day of _____, 20_____.

ORDER PREPARED BY:

_____, Assistant Public Defender
15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
) GEN. NO.
)
)
)

ORDER

This matter coming on for hearing pursuant to 725 ILCS 5/104-20, the Court having heard the evidence and arguments of Counsel,

THE COURT FINDS the above named Defendant remains unfit to plead or stand trial and that the Defendant is not making progress toward attaining fitness such that there is not a substantial probability that he will attain fitness within one year from the date of the original finding of unfitness, therefore,

IT IS HEREBY ORDERED THAT, pursuant to Defendant's Motion under 725 ILCS 104-23(a), this matter shall be set for discharge hearing pursuant to 725 ILCS 104-25 on _____, 20__ in C-_____ at _____ .M.

ENTER:

JUDGE

Dated at Waukegan, Illinois
this ____ day of _____, 20 ____.

ORDER PREPARED BY:

_____, Assistant Public Defender
15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

THUMBNAIL GUIDE TO PRESERVATION

GENERAL RULE TO PRESERVE:	To preserve issue, party must (1) object before/at trial AND (2) include issue in a detailed post-trial motion. <i>People v. Enoch</i> , 122 Ill.2d 176 (1998).
WHAT TO FILE BEFORE TRIAL:	Motions: to suppress confession, to quash arrest/suppress evidence, to dismiss charges, for discovery, for SOJ, <i>in limine</i> , etc.
ON GRANT OF STATE'S MOTION:	To preserve issue, file a written response and include specific error in motion for new trial.
OBJECTIONS:	Must (1) be contemporaneous (as soon as basis becomes apparent), and (2) specify ALL applicable grounds for exclusion of evidence. <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">Objection to composition of jury must be made before jury is sworn in.</div>
SECURE COURT'S RULING:	Do what you can to ensure that judge issues a ruling on your objections on the record. Failure to secure ruling from trial court triggers forfeiture of issue on appeal. <i>People v. Caballero</i> , 102 Ill.2d 23 (1984).
OFFERS OF PROOF:	If court bars your evidence, make a detailed offer of proof by (1) calling witness to the stand (<i>preferred</i>) or (2) summarizing testimony (<i>disfavored</i>). <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">Judge's refusal to permit offer of proof on relevant evidence is error.</div>
WHAT IF ISSUE IS JUDGE'S OWN CONDUCT??	Try (within reason) to get judge to put his/her absurdity/obstinance on the record. If judge prevents you from objecting/makes objection futile, client can try <i>Sprinkle</i> doctrine on appeal (but don't count on it...).
ENSURING A CLEAR RECORD:	Appellant (your client, eventually!) bears responsibility to provide complete record on appeal, and any doubts will be resolved against appellant. <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">Clarify record re: distances, movements, race of excluded jurors, length of</div>
ASKING FOR JURY INSTRUCTION:	(1) Offer instruction, (2) argue for inclusion, (3) secure ruling, (4) tender sought-after instruction and incorporate into record, and (5) include in post-trial motion.
MOTION FOR NEW TRIAL:	A written motion , filed w/in 30 days of verdict, must include any and all claims of error that you would like preserved. MFNT must set forth errors with specificity ; generic invocations are insufficient, and only give you the sensation of doing a good job while producing the opposite result. The boilerplate motion is a template , not a finished product.
SENTENCING ISSUES:	Make a contemporaneous objection/offer of proof at sentencing hearing, and include issue in a written post-sentencing motion.