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Sexually Dangerous Persons Act - Burden of Proof - Sexual Dangerousness Must be Established Beyond a Reasonable Doubt - People v. Pembrock, 62 Ill.2d 317, 342 N.E.2d 28 (1976)

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RECENT CASES

Sexually Dangerous Persons Act—Burden of Proof—SEXUAL DANGEROUSNESS MUST BE ESTABLISHED BEYOND A REASONABLE DOUBT—*People v. Pembrock*, 62 Ill.2d 317, 342 N.E.2d 28 (1976).

Under the Illinois Sexually Dangerous Persons Act,[1] the attorney general or a county state's attorney may file a court petition alleging that a person charged with a crime is a sexually dangerous person.[2] A sexually dangerous person is defined in the Act as one suffering from a mental disorder with a propensity to commit sex offenses and a demonstrated propensity to commit sexual assault or molestation.[3] Following the determination that an individual is sexually dangerous, he is committed to the Director of Corrections for an indefinite period of time until he has recovered.[4] The Act appears to reflect a twofold purpose: to protect the community from sex offenders and to provide treatment for the individual.

On September 19, 1972, Robert Pembrock was charged with taking indecent liberties with a child[5] by soliciting three teenage girls to commit acts of sexual intercourse.[6] He had a past juvenile record of sexual assault. The State's Attorney of Cook County filed a petition to have Pembrock declared a sexually dangerous person,[7] and declined to prose-

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1. Sexually Dangerous Persons Act, ILL. REV. STAT. ch. 38, §§105-1.01 *et seq.* (1975) [hereinafter cited as the Act].

2. *Id.* §105-3.

3. *Id.* §105-1.01.

4. *Id.* §105-8.

5. People v. Pembrock, 62 Ill.2d 317, 342 N.E.2d 28 (1976). The Illinois Criminal Code defines the crime as follows:

> (a) Any person of the age of 17 years and upwards who performs or submits to any of the following acts with a child under the age of 16 commits indecent liberties with a child:
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> (1) Any act of sexual intercourse; or
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> (2) Any act of deviate sexual conduct; or
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> (3) Any lewd fondling or touching of either the child or the person done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the person or both.

ILL. REV. STAT. ch. 38, §11-4(a) (1975).

6. Brief for Appellee at 24, People v. Pembrock, 62 Ill.2d 317, 342 N.E.2d 28 (1976).

7. Sexually dangerous persons are defined as:

> All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities towards acts of sexual assault or acts of sexual molestation of children . . . .

ILL. REV. STAT. ch. 38, §105-1.01 (1975).

cute the criminal charge of indecent liberties. In accordance with the requirements of the Illinois Sexually Dangerous Persons Act, Pembrock was examined by two court-appointed psychiatrists[8] who testified at the hearing on the state's petition that they believed he was a "sexually dangerous person."[9] Without specifying the burden of proof, the trial court found Pembrock to be a sexually dangerous person. He was incarcerated in the Illinois State Penitentiary at Menard, Psychiatric Division, until he recovered.[10]

On appeal, Pembrock argued that the proper burden of proof should be beyond a reasonable doubt and that the Act was violative of equal protection and was unconstitutionally vague and overbroad. The Illinois Supreme Court in *People v. Pembrock*[11] affirmed the Appellate Court for the First District,[12] which held that: (1) the proper standard of proof required for commitment under the Act is proof beyond a reasonable doubt;[13] (2) the Act does not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;[14] and (3) the Act is neither unconstitutionally vague nor overbroad.[15] This Note will discuss *Pembrock* as part of a recent trend, in both federal and Illinois courts, to apply the beyond a reasonable doubt standard in commitment proceedings under the Sexually Dangerous Persons Act. It will also consider the possible extension of this strict standard of proof to civil commitment proceedings under the Illinois Mental Health Code.[16]

For a comprehensive review of the Act, see Burrick, *An Analysis of the Illinois Sexually Dangerous Persons Act*, 59 J. CRIM. L.C. & P.S. 254 (1968).

8. The Act provides that the individual is to be examined in the following manner:
> After the filing of the petition, the court shall appoint two qualified psychiatrists to make a personal examination of such alleged sexually dangerous person, to ascertain whether such person is sexually dangerous . . . .

ILL. REV. STAT. ch. 38, §105-4 (1975).

9. During the course of the examination, Pembrock conceded to the psychiatrists that he had approached three teenage girls and asked them to "have sex with him," but he further stated that he had walked away when the girls refused him. Pembrock also admitted to having participated in homosexual activities at one time and to having exposed himself to a child. He has never been convicted of a crime. Brief for Appellee at 24, People v. Pembrock, 62 Ill.2d 317, 342 N.E.2d 28 (1976).

10. *Id.* at 2.

11. 62 Ill.2d 317, 342 N.E.2d 28 (1976).

12. 23 Ill.App.3d 991, 320 N.E.2d 470 (1st Dist. 1974).

13. *Id.* at 995, 320 N.E.2d at 473.

14. *Id.* at 996, 320 N.E.2d at 474.

15. *Id.*

16. It is not within the scope of this Note to discuss the *Pembrock* court's ruling that the Illinois Sexually Dangerous Persons Act does not violate the Fourteenth Amendment's Equal Protection Clause. For a historical review of the Equal Protection Clause, see Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CAL. L. REV. 341 (1949); Shaman, *The Rule of Reasonableness In Constitutional Adjudication: Toward The End*

In determining that the proper standard of proof to be applied under the Act was beyond a reasonable doubt, the *Pembrock* court rejected the state's argument that the civil nature of the proceeding precluded the standard of proof used in criminal cases.[17] Instead, the court relied on the United States Supreme Court decision in *In re Winship*[18] and the Seventh Circuit decision in *United States ex rel. Stachulak v. Coughlin*[19] in applying the reasonable doubt standard. In *Winship,* the Court concluded that the possible loss of liberty and resulting stigmatization at stake in a juvenile delinquency proceeding required that a child could not be imprisoned when there remained a reasonable doubt as to his guilt.[20] Relying on *Winship,* the Seventh Circuit required that the be-

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of Irresponsible Judicial Review And The Establishment of A Viable Theory of The Equal Protection Clause, 2 HASTINGS CONST. L.Q. 153 (1975); *Developments in the Law-Equal Protection,* 82 HARV. L. REV. 1065 (1969).

17. Reply Brief for Appellant at 2, People v. Pembrock, 62 Ill.2d 317, 342 N.E.2d 28 (1976).

18. 397 U.S. 358 (1970). The Supreme Court in *Winship* obviously was following its own precedent in *In re* Gault, 387 U.S. 1 (1967), a juvenile proceeding. The Court in *Gault* held that even though the Fourteenth Amendment does not require that juvenile hearings conform with all the requirements of a criminal proceeding, the Due Process Clause does require application during the adjudicatory hearing of "the essentials of due process and fair treatment." *Id.* at 30, *quoting* Kent v. United States, 383 U.S. 541, 562 (1966). That proof beyond a reasonable doubt should be regarded as one of the due process rights under the Sexually Dangerous Persons Act seems inevitable when one considers a recent line of Illinois decisions in civil commitment proceedings leading up to the *Pembrock* decision. *See, e.g.,* People v. Olmstead, 32 Ill.2d 306, 309, 205 N.E.2d 625, 627 (1965) (right to counsel); People v. English, 31 Ill.2d 301, 306, 201 N.E.2d 455, 459 (1964) (right against self-incrimination); People v. Nastasio, 19 Ill.2d 524, 530, 168 N.E.2d 728, 731 (1960) (right to confront testifying witnesses); People v. Capoldi, 10 Ill.2d 261, 267, 139 N.E.2d 776, 779 (1957) (right to suppress an involuntary confession); People v. Beshears, 65 Ill.App.2d 446, 459, 213 N.E.2d 55, 62 (5th Dist. 1965) (right to a speedy trial).

This growing trend reinforces the concept that one who is to undergo any type of involuntary civil commitment proceeding is entitled to the "full panoply of due process rights" without exception. *See, e.g.,* Morrissey v. Brewer, 408 U.S. 471 (1972); *In re* Ballay, 482 F.2d 648 (D.C. Cir. 1973); Gerchman v. Maroney, 355 F.2d 302 (3d Cir. 1966); Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972); Denton v. Commonwealth, 383 S.W.2d 681 (Ky. 1964).

19. 520 F.2d 931 (7th Cir. 1975), *cert. denied,* 424 U.S. 947 (1976). Frank Stachulak, like Robert Pembrock, was committed to the custody of the Illinois Director of Corrections pursuant to the Illinois Sexually Dangerous Persons Act and subsequently confined at the Psychiatric Division of the Illinois State Penitentiary at Menard. Four years later he brought an action under the federal habeas corpus statutes, 28 U.S.C. §§2241 *et seq.* (1970), and the Civil Rights Act, 42 U.S.C. §1983 (1970), challenging the legality of his detention and the conditions of his confinement. The district court granted habeas corpus relief, Stachulak v. Coughlin, 369 F. Supp. 628 (N.D. Ill. 1973), and the Seventh Circuit affirmed the decision when Illinois correctional officials appealed. 520 F.2d 931 (7th Cir. 1975).

20. 397 U.S. at 363-64 (1970). *See also* Speiser v. Randall, 357 U.S. 513 (1958). In *Speiser,* the appellants were denied the tax exemptions provided for veterans by the

yond a reasonable doubt standard be applied to commitment proceedings under the Sexually Dangerous Persons Act in *United States ex rel. Stachulak v. Coughlin.*[21] The court, after recognizing society's substantial interest in protecting itself from deviant sexual behavior, emphasized that the stakes are great for an individual facing possible commitment. Therefore, the court concluded, the proof of sexual dangerousness must be great enough "to produce the highest recognized degree of certitude."[22] This rationale was adopted in *Pembrock* in its decision to extend the higher burden of proof to civil commitment proceedings under the Sexually Dangerous Persons Act.[23] The court stated that the drastic

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California Constitution for the sole reason that they had refused to take loyalty oaths. The Supreme Court held that placing the burden of proof on the taxpayers denied appellants their freedom of speech without allowing them the procedural safeguards required by the Fourteenth Amendment's Due Process Clause. *Id.* at 528-29.

The Court in *Speiser* concluded that there is always a margin of error in factfinding in any type of litigation; when one party has at stake an interest of such transcending value as his own liberty, this margin of error must be reduced by placing upon the adverse party the burden of proving guilt beyond a reasonable doubt. *Id.* at 525-26.

21. 520 F.2d 931 (7th Cir. 1975). The Illinois Supreme Court in *Pembrock* apparently was not required to follow the Seventh Circuit's decision in *Stachulak*. Illinois courts have held that they are not bound "to follow decisions by federal courts other than the United States Supreme Court." Occhino v. Illinois Liquor Control Comm'n, 28 Ill.App.3d 967, 971, 329 N.E.2d 353, 357 (4th Dist. 1975). Decisions of lower federal courts are not binding on state courts because the lower federal courts exercise no appellate jurisdiction over state tribunals. Corbett v. Devon Bank, 12 Ill.App.3d 559, 567, 299 N.E.2d 521, 525 (1st Dist. 1973); People v. Battiste, 133 Ill.App.2d 62, 65, 272 N.E.2d 808, 811-12 (1st Dist. 1971), *quoting* United States *ex rel.* Lawrence v. Woods, 432 F.2d 1072, 1075 (7th Cir. 1970). *But see* Hannigan v. Elgin, J. & E. Ry., 337 Ill.App. 538, 548, 86 N.E.2d 388, 392 (1st Dist. 1949); Louisiana Lumber Co. v. Michigan Cent. Ry., 230 Ill.App. 33, 36 (1st Dist. 1923); Pennsylvania Ry. v. Cunningham, 224 Ill.App. 584, 587 (4th Dist. 1922).

22. 520 F.2d at 937.

23. An additional argument, not raised in *Pembrock*, is that the need for a stricter standard of proof becomes stronger as the risk of error in the commitment proceedings becomes greater. *See* note 20 *supra*. Dr. Jay Ziskin, a psychologist-lawyer from California State University, has pointed to research findings which indicate that psychiatrists cannot agree on a diagnosis in more than 60% of the cases. *See* Brief for American Civil Liberties Union as Amicus Curiae at 9, People v. Pembrock, 62 Ill.2d 317, 342 N.E.2d 28 (1976), *citing* J. ZISKIN, COPING WITH PSYCHIATRIC AND SOCIOLOGICAL TESTIMONY 123 (1970). Ziskin's statistics refer to all types of mental disorders, rather than specifically to conditions of sexual dangerousness. The major authority supporting the opposite view, that diagnosis of psychiatric impairment is reliable and valid, is Carl Rogers. *See* C. ROGERS, CLIENT-CENTERED THERAPY, ITS CURRENT PRACTICE, IMPLICATIONS, AND THEORY (1951).

A staff attorney for the New York Civil Liberties Union and Mental Health Law Project and an assistant professor of psychology have pointed to the psychiatric tendency to label more individuals as dangerous than are actually the case in hopes of not mistakenly releasing those individuals who actually are dangerous. This tendency is known as the "false positive" phenomenon. Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 CALIF. L. REV. 693, 711-16 (1974). *Cf.*

impairment of the liberty and good name of the individual resulting from civil commitment under the Act must be justified by proof beyond a reasonable doubt, as required by due process under both the United States and Illinois Constitutions.[24]

The issue of the proper standard of proof to be applied under the Sexually Dangerous Persons Act arises because the Act itself does not specify the burden of proof to be used. Rather, it provides that proceedings shall be civil in nature.[25] In addition, the Act states that judicial proceedings are to be conducted in accordance with the Civil Practice Act,[26] but the Civil Practice Act does not contain a provision for the applicable burden of proof.[27] The courts also have failed to articulate the specific standard of proof necessary for commitment under the Act. Illinois courts have held that the burden of proving insanity or sexual psychopathy is one of overcoming the presumption of sanity[28] and that the committing party must prove the essential elements under the Sexually Dangerous Persons Act by competent evidence.[29] However, Illinois courts have attempted to categorize the nature of the proceedings. It has been held that sexual psychopath commitments are not criminal proceedings[30] but that commitment proceedings of the sexually dangerous

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Schmideberg, *The Promise of Psychiatry: Hopes and Disillusionment*, 57 NW. L. REV. 19, 27 (1962). A University of Chicago doctor has estimated that in 60 to 70% of the cases dealing with dangerousness and violent behavior, those subjects who are not in fact dangerous are adjudged to be dangerous under the "false positive" phenomenon. Rubin, *Prediction of Dangerousness in Mentally Ill Criminals*, 27 ARCH. GEN. PSYCH. 397-98 (1972).

24. 62 Ill.2d at 321, 342 N.E.2d at 29. This approach of implicitly balancing the community's interest in protection of its members and the individual's interest in liberty has a long judicial history. *See, e.g.*, Weems v. United States, 217 U.S. 349, 367 (1910); Williams v. United States, 157 F. Supp. 871, 876 (D.D.C. 1958); Note, *The Cruel and Unusual Punishment Clause and the Substantive Criminal Law*, 79 HARV. L. REV. 635, 636 (1966).

The implicit balancing of community and individual interests has much of its basis in the Cruel and Unusual Punishment Clause of the Eighth Amendment. The punishment for an unlawful act must be in proportion to that act. The factors to be considered in determining this proportionality are numerous. They may include the harm actually resulting from the unlawful offense, the degree of temptation the wrongdoer faces, or his moral fault. *See, e.g.*, Note, *id.* Just as the elements of due process have recently been incorporated into civil commitment proceedings, *see* note 18 *supra*, consistency requires that the balancing of the individual's interest in liberty and freedom from stigmatization against his potential sexual dangerousness should be incorporated into commitment proceedings under the Sexually Dangerous Persons Act.

25. ILL. REV. STAT. ch. 38, §105-3.01 (1975).

26. *Id.*

27. Civil Practice Act, ILL. REV. STAT. ch. 110, §§1 *et seq.* (1975).

28. People v. Ross, 344 Ill.App. 407, 414, 101 N.E.2d 112, 117 (2d Dist. 1951).

29. People v. Pearson, 65 Ill.App.2d 264, 267, 212 N.E.2d 715, 716 (3d Dist. 1965).

30. People v. Redlich, 402 Ill. 270, 276, 83 N.E.2d 736, 740 (1949); People v. Ross, 344 Ill.App. 407, 412, 101 N.E.2d 112, 116 (2d Dist. 1951).

and psychopathic resemble criminal prosecutions in many respects.[31]

While it usually has been accepted that conviction in a criminal proceeding requires proof beyond a reasonable doubt[32] and judgment in a civil proceeding requires a preponderance of the evidence,[33] the distinction between the two types of proceedings has become blurred. An intermediate standard of proof known as clear and convincing evidence[34] has been introduced in regard to civil commitments under the Illinois Mental Health Code, which also directs that proceedings be conducted in accordance with the Illinois Civil Practice Act.[35] This intermediate standard of proof was first applied to the Illinois Mental Health Code in *People v. Sansone*.[36] In *Sansone* the subject was committed to a mental institution following an emergency petition signed by the Assistant Director of Social Services, Psychiatric Institute of the Circuit Court of Cook County. Without specifically defining clear and convincing evidence, the court apparently reasoned that it was a compromise between the two other standards of proof. The court agreed that the preponderance of the evidence standard was inadequate in view of the possible loss of personal liberty.[37] However, it refused to apply the beyond a reasonable doubt standard, stating that the Mental Health Code had already afforded him a right to treatment,[38] a periodic review

31. People v. Abney, 90 Ill.App.2d 235, 238-39, 232 N.E.2d 784, 786 (5th Dist. 1967); Potts v. People, 80 Ill.App.2d 195, 199, 224 N.E.2d 281, 283 (5th Dist. 1967).

32. *See, e.g.*, People v. Boyd, 17 Ill.2d 321, 327, 161 N.E.2d 311, 315 (1959); People v. Etzel, 348 Ill. 223, 227, 180 N.E. 789, 790 (1932); People v. Fiorita, 339 Ill. 78, 85, 170 N.E. 690, 693 (1930); People v. Benson, 321 Ill. 605, 611, 152 N.E. 514, 516 (1926). *See generally* McBaine, *Burden of Proof: Degrees of Belief*, 32 CALIF. L. REV. 242 (1944).

33. *See, e.g.*, Woolley v. Hafner's Wagon Wheel, Inc., 22 Ill.2d 413, 418, 176 N.E.2d 757, 760 (1961); J. MAGUIRE, EVIDENCE; COMMON SENSE AND COMMON LAW 180 (1947).

34. *See* text accompanying notes 36-37 *infra*.

35. Mental Health Code, ILL. REV. STAT. ch. 91½, §1-1 (1975). The Mental Health Code was enacted by the Illinois Legislature in 1967 in order to provide protections for persons in need of mental health care who are admitted to mental hospitals. The subject himself may request his own commitment through either an informal or voluntary admission. *Id.* §4-1, §5-1. On the other hand, if the individual does not desire to be treated, he can be involuntarily admitted by (1) emergency admission, *id.* §7-1, (2) admission on the certificate of a physician, *id.* §6-1, or (3) admission following a petition for examination and hearing upon a court order, *id.* §§8-1 to 8-3. For a comprehensive review of the Illinois Mental Health Code, see Beis, *Civil Commitment: Rights of the Mentally Disabled, Recent Development and Trends*, 23 DEPAUL L. REV. 42 (1973).

The intermediate standard of proof, clear and convincing evidence, is one of the three basic standards of proof to be applied in various judicial proceedings. McBaine, *Burden of Proof: Degrees of Belief*, 32 CALIF. L. REV. 242, 245 (1944).

36. 18 Ill.App.3d 315, 309 N.E.2d 733 (1st Dist. 1974).

37. *Id.* at 325, 309 N.E.2d at 740.

38. *Id.* The Mental Health Code provides:

> If any person is finally found to be in need of mental treatment or mentally retarded, the court, as part of the hearing shall consider the alternative forms

of his condition,[39] and a release when he was no longer in need of treatment.[40] Apparently, the court reasoned that these three Code provisions constituted a full panoply of due process protections and concluded that the individual's interests had been balanced with society's interests in the administration, hospitalization, and treatment of the mentally ill.[41]

The *Sansone* court made two observations in reaching its decision not to require proof beyond a reasonable doubt. First, the court stressed that because confinement under the Sexually Dangerous Persons Act is involuntary, due process requires criminal safeguards.[42] Second, the court compared civil commitment proceedings with criminal proceedings. While both may result in confinement, the court pointed out that involuntary commitment under the Code provides the individual with treatment, periodic review of the patient's condition, and release when treatment is no longer necessary.[43] A similar comparison may be drawn between the Sexually Dangerous Persons Act and the Mental Health Code, both of which are civil commitments that may result in confinement. The Sexually Dangerous Persons Act provides for treatment and release of the individual upon recovery,[44] but there is no provision in the Act for periodic review of the individual's condition. Rather, it is the responsibility of one committed under the Act to file an application

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> of care or treatment which are desirable for and available to the patient, including but not limited to hospitalization . . . .

ILL. REV. STAT. ch. 91½, §9-6 (1975).

39. 18 Ill.App.3d at 325, 309 N.E.2d at 740. The Mental Health Code provides for review of the patient's continued need for hospitalization as follows:

> The superintendent of any hospital in which any patient is hospitalized as in need of mental treatment or as mentally ill under this Act or any prior Act shall, as frequently as practicable but not less than every 6 months, review the need for continued hospitalization of the patient, and make the results of such examination a part of the patient's record . . . .

ILL. REV. STAT. ch. 91½, §10-2 (1975).

40. 18 Ill.App.3d at 325, 309 N.E.2d at 740. The Code provides for the discharge of the individual as follows:

> When any person has been admitted or hospitalized under this Act or any prior Act, upon court order or otherwise, the superintendent of the hospital in which such person is hospitalized may at any time grant an absolute discharge, or a conditional discharge in the case of a mentally retarded person, and shall do so if the patient is no longer in need of hospitalization . . . .

ILL. REV. STAT. ch. 91½, §10-4 (1975).

41. 18 Ill.App.3d at 325-26, 309 N.E.2d at 741. For other cases utilizing the "clear and convincing evidence" standard, see *In re* Sciara, 21 Ill.App.3d 889, 895-96, 316 N.E.2d 153, 157 (1st Dist. 1974); People v. Bradley, 22 Ill.App.3d 1076, 1083, 318 N.E.2d 267, 272 (1st Dist. 1974); People v. Ralls, 23 Ill.App.3d 96, 99, 318 N.E.2d 703, 706 (5th Dist. 1974).

42. 18 Ill.App.3d at 326 n.11, 309 N.E.2d at 741 n.11.

43. *Id.* at 325, 309 N.E.2d at 740.

44. ILL. REV. STAT. ch. 38, §§105-8 to 105-10 (1975).

showing facts of recovery with the committing court.[45] It is indeed a heavy burden for the committed person, perhaps somewhat illiterate, to prepare an articulate application for a hearing in the hope that it will be transmitted with reasonable speed through the channels required by the Act.

Although the *Sansone* court did not have the benefit of *Pembrock*, which was decided two years later, neither of the observations in *Sansone* logically can support a different standard of proof for commitments under the Sexually Dangerous Persons Act and the Mental Health Code. First, the court's distinction that involuntary commitment under the Act requires criminal safeguards[46] ignores the Code's provision for involuntary commitment.[47] The only additional safeguard for involuntary commitment under the Code is for review of the patient's condition every six months.[48] While this review provision may facilitate early release of the individual, the fact remains that the initial commitment is involuntary and occurs in *Sansone* on a mere showing of clear and convincing evidence.[49] Therefore, if an involuntary commitment under the Sexually Dangerous Persons Act requires proof beyond a reasonable doubt, an involuntary commitment under the Mental Health Code should also require proof beyond a reasonable doubt. Second, even though the Mental Health Code provides the individual with a periodic review, shifting the burden from the patient to the superintendent of the confining hospital, the Code does not afford the subject a full panoply of due process protections, contrary to the court's conclusion in *Sansone*. The clear and convincing evidence standard of proof, a compromise of preponderance of the evidence and beyond a reasonable doubt, cannot be justified as the proper balancing of individual and community interests. The Supreme Court in *Winship* has held that when one will possibly be deprived of liberty or stigmatized through civil commitment, the only proper standard of proof is beyond a reasonable doubt.[50] If an individual is committed under any weaker standard of proof, he has not been afforded the full range of due process protections.

The policy considerations that support the reasonable doubt standard

45. Upon receipt of the application, the clerk of the court forwards it to the Director of the Department of Corrections, who requests a report on the individual prepared by the psychiatrist, sociologist, psychologist, and warden of the institution in which the individual is confined. Only upon submission of this report to the court by the Director will the committing court allow the individual's hearing to determine the need for his continued confinement. *Id.* §105-9.

46. 18 Ill.App.3d at 326 n.11, 309 N.E.2d at 741 n.11.

47. Mental Health Code, ILL. REV. STAT. ch. 91½, §§6-1, 7-1, 8-1 (1975).

48. *Id.* §10-2.

49. 18 Ill.App.3d at 326, 309 N.E.2d at 741.

50. 397 U.S. at 363-64.

in commitment proceedings under the Sexually Dangerous Persons Act apply equally to commitments under the Mental Health Code. Commitment under the Code[51] carries the same stigmatization and deprivation of liberty that prompted the court to require a higher standard of proof in *Pembrock*. Likewise, a juvenile conviction[52] or commitment for sexual deviance[53] carries the same stigma as confinement for mental treatment. The retention of an individual in a hospital or appropriate Department of Corrections facility effectively deprives that person of his freedom just as one committed under the Sexually Dangerous Persons Act is deprived of freedom. Thus, the logical conclusion would be to apply the beyond a reasonable doubt standard to civil commitment proceedings pursuant to the Mental Health Code, rather than the more liberal standard of clear and convincing evidence presently being used.[54] If the rationale of *Pembrock, Winship,* and *Stachulak,* based on the loss of liberty and stigmatization, were extended to other types of civil commitments, the beyond a reasonable doubt standard also would be required in commitments for sexual psychopaths, alcoholics, and narcotics addicts.[55]

The Illinois Supreme Court in *People v. Pembrock* has established beyond a reasonable doubt as the proper standard of proof in commitments of the sexually dangerous. This strict burden of proof, rather than the more liberal preponderance of the evidence or clear and convincing evidence standard, has been incorporated as one of the due process elements in this type of proceeding. The court's conclusion extends the rationale of *Winship* to civil commitment of sexually dangerous persons. Whether the same rationale will be applied to other types of civil commitment proceedings remains to be seen.

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51. ILL. REV. STAT. ch. 91½, §6-1 (1975).

52. *See In re* Winship, 397 U.S. at 363-64.

53. *See* People v. Pembrock, 62 Ill.2d at 318, 342 N.E.2d at 29.

54. *See* text accompanying note 36 *supra.*

55. *See The Supreme Court, 1969 Term,* 84 HARV. L. REV. 1, 163 (1970). In each of these types of civil commitment proceedings, the subject may be deprived of his freedom and good reputation in return for treatment negligently administered in overcrowded facilities which offer little chance of cure. Furthermore, these proceedings are all intended to curb the subject's "dangerousness" or risk of harm to others; but unless the probability of that harm being manifested is great enough, it is possible for that person to be adjudged dangerous even though it is doubtful that his dangerousness will be manifested in overt action. *Id.* at 163-64.