No. 127681

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, v. RICHARD KASTMAN, Defendant-Appellee.	)	Appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois No. 93CM4621
ROB JEFFREYS, Director of the Illinois Department of Corrections, in his official capacity, Intervenor-Appellant.	)	The Honorable THEODORE S. POTKONJAK, Judge Presiding.

BRIEF FOR DEFENDANT-APPELLEE

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NATURE OF THE ACTION

Intervenor-Appellant's nature of the action is largely sufficient to frame the issues for appeal. However, after the Intervenor-Appellant filed his brief, the criminal charges and petition for revocation referenced in his Nature of the Action were resolved in the circuit court.

ISSUE PRESENTED FOR REVIEW

Whether the circuit court had the authority under the Illinois Sexually Dangerous Persons Act to order the Director, as guardian, to pay for a portion of Kastman's essential expenses that Kastman could no longer afford while he remained civilly committed on conditional release.

STATEMENT OF FACTS[1]

After Kastman was arrested for two sexually-motivated misdemeanor offenses in 1993, the State elected to seek his civil commitment under the Illinois Sexually Dangerous Persons Act ("the Act") instead of pursuing a criminal prosecution. SR9. In April 1994, the matter proceeded to a jury trial at which the State prevailed. SR10; *People v. Kastman*, 335 Ill. App. 3d 87, 89 (2d Dist. 2002)[2], *citing People v. Kastman*, 2–94–0631, 281 Ill. App. 3d 1140 (2d Dist. 1996) (unpublished order pursuant to Sup. Ct. R. 23)(affirming

[1] Because the Director's Statement of Facts is argumentative in violation of Rule 341(h)(6), and thus does not adequately frame the issues for appeal, Kastman provides this separate Statement of Facts.

[2] This Court may take judicial notice of the facts recounted prior proceedings in this same case. *In re Brown*, 71 Ill. 2d 151, 155 (1978); *Aurora Loan Servs., LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 37; *see also* 2 McCormick On Evid. § 330 (8th ed.) ("It is settled, of course, that the courts, trial and appellate, take notice of their own respective records in the present litigation, both as to matters occurring in the immediate trial, and in previous trials or hearings.")

Kastman's adjudication as a sexually dangerous person). On June 1, 1994, the circuit court entered an order granting the State's civil commitment petition, and Kastman was confined under the Director's guardianship in a secure facility to undergo treatment designed to effect his recovery. SR10.

Prior to 2013, while confined at the Big Muddy River Correctional Center (BMRCC), Kastman filed a series of recovery applications, all of which were ultimately denied. Appellant's Br., A34-51. In 2013, Kastman filed his most recent recovery application and retained Dr. Mark Carich, previously a witness for the State, who had recently departed his position as staff psychologist for the Director's Sexually Dangerous Persons Program at BMRCC. SR2; *see People v. Kastman*, 335 Ill. App. 3d 87, 92 (2d. Dist. 2002). Dr. Carich evaluated Kastman and issued a report on June 15, 2015 supporting Kastman's bid for conditional release, citing his progress in treatment such that he appeared to be no longer dangerous within the confines of an institution. SR2. After reviewing Dr. Carich's report, Dr. Kristopher Clounch, the author of the Director's socio-psychiatric report, issued an updated evaluation on December 3, 2015 also supporting conditional release. SR2. Given the opinion of these two evaluators, the State agreed not to contest Kastman's recovery application insofar as it related to conditional release as opposed to discharge. Thereafter, the parties submitted an "Agreed Order of Conditional Release," which was entered in the circuit court on January 11, 2016. SR2-SR7.

The conditional release order placed Kastman outside of the prison setting but continued to restrict his freedom in a variety of ways. It placed him under the supervision of both a parole agent and probation officer; set limits on his freedom of movement, which was monitored by a global positioning system (GPS) device; subjected him, his residence

and his personal property to suspicionless and warrantless search upon request by any law enforcement, probation or parole officer; directed him to refrain from possession or consumption of drugs or alcohol; mandated that he engage in treatment for substance abuse, sexual offending, and any other treatment directed by his parole agent or probation officer while waiving all confidentiality to records of same; limited his ability to form or maintain a variety of social contacts; prohibited his use of the internet; and mandated that he work at becoming self-supporting. SR3-SR7. It also provided that the conditions of release were subject to periodic review and could be modified upon motion of either party. SR7. Pursuant to this modification clause, the court later amended the order to require Kastman to be placed on a continuous alcohol monitoring device (SCRAM bracelet) to ensure that he did not consume alcohol. SUP SR7.

In December 2020, Kastman moved for further modification. SR9, SR63, SR85. He asked the circuit court to order the Director, as his guardian, to pay for various living and court-mandated treatment expenses that he could no longer afford. SR11, SR16. Citing his role as Kastman's guardian, the Director filed a petition to intervene, which the circuit court allowed. SR26-SR29. In his written response to Kastman's motion[3], the Director argued that Kastman's motion should be denied because he had previously agreed to be self-supporting and was no longer confined. SR42-43.

At hearings conducted on February 17, 2021 and March 3, 2021, the court inquired about Kastman's financial situation. SR87. It learned that Kastman had been paying for

[3] In his pleading, the Director invoked *People v. Ford*, 2019 IL App (1st) 172592-U, an unpublished order that was adverse to his position. Although Kastman had not cited *Ford* in his motion, he addressed it in his reply and in his oral argument to the court.

all of his essential expenses, but was about to "run out of funds." SR87. He received "a small amount of money through disability," which he was utilizing to cover his expenses, but which was "not sufficient for the long term." SR88. As of March 3, 2021, he had approximately $9,000.00 remaining in his checking account and a monthly disability income of $1,130.00. SUP SR3; 7. His monthly expenses necessitated by the conditional release order totaled $2,912.00. SUP SR3; SUP SR6-7. At that rate, Kastman would have exhausted all of his savings within "about 5 months." SUP SR3. Kastman urged the circuit court to grant his motion because he could not afford to comply with the terms of the conditional release order. SR83. The Director objected because Kastman was "out of commitment," and there was no legal precedent requiring him to pay. SUP SR8.

The circuit court granted Kastman's motion and stated "[o]ne has to look at the big picture and make a determination as to how anyone can move forward from being actually confined at Big Muddy." SUP SR9. The court observed, "I don't think it's incumbent on [Kastman] draining the money he has in the account until it drains completely." SUP SR10. Citing the Director's duty to provide for Kastman's "care and treatment while he's … outside the institutional setting," the circuit court ordered the Director to contribute $2,412.00 per month toward Kastman's essential expenses. SR107; SUP SR11. The court also ordered Kastman to pay $500.00 each month. SUP SR11. The court stated, "[i]t's the Court's hope that as he goes forward, [Kastman] will be in a better position to take on more of the responsibilities with regard to pulling his weight financially in the outside placement." SUP SR10-11.

The Director filed an interlocutory appeal of this order and the appellate court affirmed.

ARGUMENT

I. Standard of Review.

Kastman's motion in the circuit court invoked the court's authority under the Act to order the Director, as guardian, to pay for Kastman's essential expenses. SR22-SR24. The circuit court concluded that the Act provided such authority. SUP SR10. The appellate court also framed the issue of one of the circuit court's legal authority. *People v. Kastman*, 2021 IL App (2d) 210158, ¶¶ 11, 24. Because this case therefore involves a question of law, the appropriate standard of review is *de novo*. *People v. Howard*, 2017 IL 120443, ¶ 19.

II. This Appeal Is Not Moot.

On January 14, 2022, the circuit court entered an agreed order temporarily staying the March 3, 2021 order while Kastman serves a sentence of state incarceration. SUP2 SR14. Although that order provides that the stay will be automatically lifted upon Kastman's completion of that sentence, the parties clearly did not intend to thereby render this appeal moot. Accordingly, this appeal presents a live controversy.

III. The Circuit Court Had The Authority Under The Act To Order The Director To Contribute To Kastman's Essential Living Expenses On Conditional Release.

The circuit court properly ordered the Director to financially contribute to Kastman's essential living expenses on conditional release. The Director was appointed by the court as Kastman's guardian in 1994 after Kastman was civilly committed under the Act. Because Kastman has not recovered, and therefore has not been discharged from the civil commitment, the Director remains guardian and has a continuing duty to provide care and treatment designed to effect recovery. After the circuit court determined that

Kastman's inability to pay for his essential expenses jeopardized his continued progress on conditional release, the court correctly concluded that the Director's duties as guardian made him the appropriate source of payment for those expenses. The court acted fully within the scope of its authority under the Act when it ordered the Director to contribute to those expenses.

While the Director frames the issue before this Court as whether the Act "requires" him to pay for a sexually dangerous person's living expenses on conditional release, this Court need not decide that issue. *See* Appellant's Br. 3. Rather, the only issue is whether the circuit court acted within the scope of its authority under the Act in this case. Because the Act clearly provides sufficient authority for the circuit court's order, the order should be upheld.

A. The Director Became Kastman's Guardian When The State Chose To Civilly Commit Kastman As A Sexually Dangerous Person.

The Act establishes a civil commitment regime for mentally disordered, recidivist sex offenders who pose an unacceptable public safety risk. The circuit court is vested with jurisdiction to conduct all proceedings under the Act, for the purpose of conducting "commitment and detention" hearings. 725 ILCS 205/2 (West 2021). In 1993, the State filed a civil commitment petition in the underlying criminal proceeding instead of prosecuting Kastman criminally. SR9; *see* 725 ILCS 205/3 (West 2021); *see also People v. Burns*, 209 Ill. 2d 551, 553 (2004) (The Act permits the State to seek an involuntary, indeterminate commitment in lieu of a criminal prosecution when a defendant is charged with a criminal offense and is believed to be sexually dangerous). That decision reflected the State's belief that Kastman suffered from a mental disorder that impaired his volitional capacity and rendered him dangerous. 725 ILCS 205/3, 4.03 (West 2021); *see People v.*

Masterson, 207 Ill. 2d 305, 328 (2003), (*abrogated on other grounds by statute*), *citing Kansas v. Hendricks*, 521 U.S. 346, 362 (1997). Under the Act, a sexually dangerous person is defined as a person who has suffered from a mental disorder for a period of not less than one year, who has criminal propensities to the commission of sex offenses, and who has demonstrated propensities toward acts of sexual assault or sexual molestation of children. 725 ILCS 205/1.01 (West 2021). To prevail on a petition, the State must prove each of these definitional propositions beyond a reasonable doubt. *Id.* §3.01.

By foregoing punishment, the State elected to subject Kastman to treatment until he recovers from the mental disorder that rendered him unable to control his sexual urges and behaviors. *See People v. Trainor*, 196 Ill. 2d 318, 325 (2001); *see also People v. Cooper*, 132 Ill. 2d 347, 355 (1989) ("[T]he legislature intended that, instead of being criminally punished for their criminal sexual offenses, they be committed to the Department of Corrections for treatment until they are no longer considered sexually dangerous, and then discharged."), *citing People v. Allen*, 107 Ill. 2d 91, 100-02 (1985). This comported with the purpose of the Act, which is "(1) to protect the public by sequestering a sexually dangerous person until such a time as the individual is recovered and released, and (2) to subject sexually dangerous persons to treatment such that the individual may recover from the propensity to commit sexual offenses and be rehabilitated." *Trainor*, 196 Ill. 2d at 324, *citing Cooper*, 132 Ill. 2d at 355.

After the jury found that the State had proven each of the Section 1.01 definitional propositions with respect to Kastman, the circuit court civilly committed Kastman, appointed the Director as his guardian, and remanded him to the Director's custody to undergo treatment in a secure facility. 725 ILCS 205/8 (West 2021). When the State chose

to so massively curtail his liberty in this way, it assumed an obligation to provide him with the means to one day regain his freedom. "Under the Act, the State has a statutory obligation to provide care and treatment for persons adjudged sexually dangerous." *People v. Trainor*, 196 Ill. 2d 318, 325 (2001). The legislature chose to create a guardianship, "a paradigmatic legal and judicial relationship that involves the court, the guardian (who acts as the hand of the court), and the ward," to facilitate this care and treatment for mentally ill detainees. *People v. Kastman*, 2021 IL App (2d) 210158, ¶20. The Act requires the Director of Corrections to serve as guardian. 725 ILCS 205/8 (West 2021).

The Director's guardianship obligations are set forth in Section 8 of the SDPA, which provides, in pertinent part, as follows:

> The Director of Corrections as guardian shall keep safely the person so committed until the person has recovered and is released as hereinafter provided. The Director of Corrections as guardian shall provide care and treatment for the person committed to him designed to effect recovery.

Id. (emphasis added). A guardian's duty to provide care encompasses the payment of a ward's necessary expenses, where appropriate. *People v. Carter*, 392 Ill. App. 3d 520 (2d Dist. 2009) (*citing People v. Wilcoxen*, 358 Ill. App. 3d 1076, 1078-1079 (3d Dist. 2005); *In re Lawrence M.*, 172 Ill. 2d 523, 527 (1996); *and Doe v. Burgos*, 265 Ill. App. 3d 789, 792 (4th Dist. 1994)); *see also People v. Downs*, 371 Ill. App. 3d 1187 (5th Dist. 2007). In addition to these explicit statutory duties, the Director, as guardian, also remains subject to the supervisory authority of the committing court, which has a duty "not limited to express statutory terms" to supervise appointed guardians and "to judicially interfere and protect the ward if the guardian is about to do anything that would cause harm." *People v. Kastman*, 2015 IL App (2d) 141245, ¶ 20, *citing In re Mark W.*, 228 Ill.2d 365, 375 (2008).

Under Section 8, the Director's guardianship will not end until: (1) Kastman has recovered, and (2) Kastman is released. 725 ILCS 205/8 (West 2021), *People v. Kastman*, 2015 IL App (2d) 141245, ¶ 20 ("[W]hile the Director may be a sexually dangerous person's guardian, a sexually dangerous person remains, until recovered …, a ward of the committing court.") (citations omitted). Until both termination conditions have been satisfied, the Director remains guardian. S*ee DG Enterprises, LLC-Will Tax, LLC v. Cornelius*, 2015 IL 118975, ¶ 31 ("It is well settled that generally the use of a conjunctive such as 'and' indicates that the legislature intended that *all* of the listed requirements be met.") (emphasis original).

Under Section 9 of the Act, a civilly committed person remains under the jurisdiction of the committing court until it finds that he no longer satisfies the Section 1.01 definitional requirements. 725 ILCS 205/9 (West 2021); *see People v. Cooper*, 132 Ill. 2d 347, 358 (1989); *People v. Parrott*, 244 Ill. App. 3d 424, 430 (1993). The committing court is then to order his discharge and the dismissal of the charges that led to his detention. 725 ILCS 205/9 (West 2021).

B. The Order For Conditional Release Did Not Terminate The Civil Commitment Or The Director's Guardianship.

Although conditionally released, Kastman has not recovered and remains a ward of the committing court under the Director's guardianship. *People v. Cooper*, 132 Ill. 2d 347, 355-356 (1989). To be placed on conditional release, a person must file a recovery application, as Kastman did in this case. 725 ILCS 205/9(a) (West 2021); SR2. A socio-psychiatric report concerning the applicant is then prepared by the Director and sent to the circuit court. *Id.* The application then proceeds to a recovery hearing at which the applicant has the right to demand a jury trial. *Id.* § 5. At trial, the State bears the burden to prove by

clear and convincing evidence that the person is "still a sexually dangerous person." *Id.* § 9(b); *see People v. Trainor*, 196 Ill. 2d 318, 335 (2001) (Due process requires that the State bear the burden of proof in a recovery proceeding). If the person "is found" to be no longer dangerous, *i.e.* should the State fail to prove any one of the Section 1.01 definitional propositions, the person must be discharged and the criminal charges that gave rise to the detention dismissed. 725 ILCS 205/9(e) (West 2021).

A person may be conditionally released if at the recovery hearing, the "court finds" that the person appears no longer to be dangerous but that it is impossible to determine with certainty under conditions of institutional care that the person has fully recovered. *Id.* An order for conditional release represents a finding "that given his conduct in an institutional setting he no longer appears to be sexually dangerous," *People v. Cooper*, 132 Ill. 2d 347, 354–55 (1989), and allows the unconvicted, civilly committed person to be released into the community "subject to the conditions and supervision by the Director as in the opinion of the court will adequately protect the public." 725 ILCS 205/9(e).

Because the State's failure to prove the Section 1.01 definitional propositions entitles a person to discharge, the court can consider the conditional release proposition only if the person has been found to remain sexually dangerous at trial. *See id.* §§ 9(b), § 9(e). Put differently, the Section 9(a) conditional release proposition requires at least *some evidence* that an institutionalized civilly committed person has made progress in treatment such that he no longer "appears" dangerous, at least in the institutional setting. *People v. Guthrie*, 2016 IL App (4th) 150617, ¶ 43. Of course, a person who "appears no longer to be dangerous" in the institutional setting may also, in fact, be "no longer dangerous," *i.e.* fully recovered. *See* 725 ILCS 205/9(e). To differentiate between the two,

the conditional release proposition entails the finding that it is impossible to determine with certainty under conditions of institutional care that the person has fully recovered. *Id.* This means that while the person remains sexually dangerous by clear and convincing evidence, his progress in the institutional setting gives him at least the *appearance* of recovery. *See id.* A person who can conform his behavior to institutional rules and who has internalized the treatment provided in a secure setting, and who thus "appears" to be no longer dangerous, may of course still suffer from a mental disorder that causes him serious difficulty controlling his sexual urges and predisposes him to the commission of sex offenses. However, insofar as the conditional release proposition may also shed doubt on one or more of Section 1.01 definitional propositions, it can occupy only that region of doubt that exists between clear and convincing evidence and complete certainty that a person is sexually dangerous. If the quantum of evidence is large enough to defeat the State's attempt to prove any one of the Section 1.01 propositions by clear and convincing evidence, the only possible outcome is discharge. *Id*.

Thus, an order for conditional release under the Act does not represent a termination of the civil commitment because it does not constitute a finding that a person is no longer sexually dangerous. *People v. Parrott*, 244 Ill. App. 3d 424, 430 (1993). "A sexually dangerous person who has been conditionally released retains his status as sexually dangerous until a trial court grants a petition for a discharge." *People v. Cooper*, 132 Ill. 2d 347, 358 (1989). As the appellate court observed, "[a] sexually dangerous person who has been conditionally released has of course been released but has *not* been considered to have recovered." *People v. Kastman*, 2021 IL App (2d) 210158, ¶17. The Director's suggestion that conditional release is tantamount to recovery is therefore without merit, as

is his argument that the legislature intended there to be a substantive difference between "recovery" and "fully recovered." Appellant's Br. 30 - 31. A person who merely "appears" to be no longer dangerous in an institutional setting has neither "recovered" nor "fully recovered." Because a person on conditional release remains a sexually dangerous person, he continues to suffer from a mental disorder that impairs his volitional capacity and continues to have the criminal propensities toward the commission of sex offenses. 725 ILCS 205/1.01, §§ 4.03, 4.05. He has not recovered.

Thus, the 2016 Agreed Order for Conditional Release represented a finding that while Kastman remained sexually dangerous, his progress toward recovery in the institutional setting made him an appropriate candidate to be released into the community under the Director's continued guardianship, subject to the watchful eye and continuous review of the committing court. This comports with the legislative purpose to treat and not punish sexually dangerous persons, including those on conditional release. "The purpose of conditional release is to determine whether a person who no longer appears to be sexually dangerous is able to function in a non-institutional setting." *People v. Parrott*, 244 Ill. App. 3d 424, 431 (3d Dist. 1993). That is why a sexually dangerous person who has been conditionally released is permitted to go "at large," subject to the conditions and restraints imposed by the committing court. 725 ILCS 205/9(e) (West 2021). As the Director concedes in his brief, a person on conditional release has not been discharged, and should be encouraged to seek "full recovery and discharge from the court's supervision." *See* Appellant's Br. 27. Significantly, the procedure for a sexually dangerous person to seek discharge from the civil commitment under Section 9(a) does differentiate between those persons who are institutionalized and those who are on conditional release. 725 ILCS

205/9(a) (West 2021). Whether confined or on conditional release, the person remains a sexually dangerous person whose liberty continues to be substantially impaired by the committing court. *See People v. Pembrock*, 62 Ill. 2d 317, 321 (1976) (recognizing the "drastic impairment of the liberty and reputation of an individual which results from civil commitment under the … Act.")

When the circuit court conditionally released Kastman in 2016, it imposed continued restrictions and conditions on his liberty. Kastman is therefore not "free; unrestrained; not under control" while on conditional release as the Director suggests. *See* Appellant's Br. 23. The conditional release order placed Kastman on a GPS monitor, restricted his geographical movement, directed him to engage in individual and group therapy for both substance abuse and sexual offending, and ordered him to abstain from alcohol, not to use the internet and to submit to periodic polygraph examinations. SR3-7. The circuit court subsequently placed him on an alcohol-monitoring ankle bracelet. SUP SR7. These conditions and restrictions were put in place because the circuit court concluded they were necessary to adequately protect the public from the danger posed by the presence of a sexually dangerous person in the community while furthering Kastman's path to recovery. SR3; 725 ILCS 205/9(e) (West 2021). Kastman remains a ward of the committing court and could be re-confined in a secure setting should he violate any of these conditions of conditional release. *People v. Cooper*, 132 Ill. 2d 347, 355 (1989). The circuit court's conditional release order therefore did not terminate the civil commitment or the Director's guardianship.

C. The Circuit Court Acted Within Its Authority Under The Act When It Ordered The Director, As Guardian, To Contribute To Kastman's Essential Expenses On Conditional Release That He Could No Longer Afford.

Because neither the civil commitment nor the Director's guardianship terminated upon the entry of Kastman's conditional release order, the Director has a continuing duty to "keep safely" and provide "care and treatment" for Kastman. As the appellate court stated, "a person who has been conditionally released has *not* been considered to have recovered and has not been discharged; therefore, the Director remains the guardian of a conditionally released sexually dangerous person, and the Director is obliged to provide 'care and treatment' designed to effect his ward's recovery and to keep his ward safe." *People v. Kastman*, 2021 IL App (2d) 210158, ¶ 17; *People v. Wilcoxen*, 358 Ill. App. 3d 1076, 1078-1079 (3d Dist. 2005); *People v. Carter*, 392 Ill. App. 3d 520 (2d Dist. 2009); *People v. Downs*, 371 Ill. App. 3d 1187 (5th Dist. 2007). The circuit court correctly determined that the Director's duties in this regard made him the appropriate source of payment for Kastman's necessary expenses. *Id.* ¶ 24.

Before it issued the order that is the subject of this appeal, the circuit court considered Kastman's financial situation and the impact it could have on his continued compliance on conditional release. Because he has not "recovered," Kastman's continued compliance with GPS and SCRAM monitoring, sex offender treatment, and the other conditions of release are essential to adequately protect the public while he pursues his recovery on conditional release. The court concluded that Kastman could no longer afford to pay for his essential expenses and determined that the Director, as guardian, was the appropriate source of payment for the shortfall. The circuit court acted well within its discretion in so doing. Thus, while sexually dangerous persons on conditional release "are

able to seek employment and otherwise attend to their needs" as the Director argues, Appellant's Br. 24, the committing court also has a duty to act when that person's continued success on conditional release is jeopardized by their indigency. "Courts also have an independent duty 'not limited to express statutory terms' to supervise appointed guardians and 'to judicially interfere and protect the ward if the guardian is about to do anything that would cause harm.'" *People v. Kastman*, 2015 IL App (2d) 141245, ¶ 20, *citing In re Mark W.*, 228 Ill. 2d 365, 375 (2008). As the appellate court correctly observed, "a guardian's inaction may cause harm as well." *People v. Kastman*, 2021 IL App (2d) 210158, ¶ 22. The circuit court appropriately exercised its supervisory power over the guardian when it ordered the Director to contribute to Kastman's expenses.

The Director argues that the financial support of a person on conditional release is not "consistent with the purpose of conditional release," and claims that the circuit court must be "able to determine if that person is ready to enter society *without supervision*." Appellant's Br. 26-27 (emphasis added). Of course, the purpose of conditional release is not to place a mentally disordered individual in society without guidance and supervision. *People v. Parrott*, 244 Ill. App. 3d 424, 431 (3rd Dist. 1993) ("Sexually dangerous persons on conditional release … are both mentally disturbed and potentially dangerous.") The purpose of conditional release to determine "whether a person who no longer appears to be sexually dangerous is able to function in a non-institutional setting." *Id.* Allowing an indigent sexually dangerous person to be deprived of supervision on conditional release due solely to his indigency is not consistent with the purpose of conditional release, particularly in light of the committing court's power to intervene to remedy the situation.

In this case, the circuit court correctly observed that "[o]ne has to look at the big picture and make a determination as to how anyone can move forward from being actually confined at Big Muddy." SUP SR9. It also stated, "[i]t's the Court's hope that as he goes forward, [Kastman] will be in a better position to take on more of the responsibilities with regard to pulling his weight financially in the outside placement." SUP SR10-11. Certainly, then, the circuit court properly balanced both Kastman's current inability as well as his future need to become self-sustaining as he continues on his path to recovery.

Moreover, the Director's suggestion that a sexually dangerous person's inability to pay for treatment and housing could not be grounds for recommitment is shortsighted. *See* Appellant's Br. 33. While it is true that under Section 5-6-4(d) of the Code of Corrections, conditional release may not be revoked solely due to a ward's inability to pay for conditions of release that impose financial obligations without a finding of willfulness, 730 ILCS 5/5-6-4(d) (West 2021) , it does not follow that if Kastman became homeless, disengaged from treatment, and removed his GPS and SCRAM devices, all due to his inability to pay for them, that his conditional release could not be revoked. Unrestrained in this manner, he would certainly run afoul of one of the myriad other conditions of the conditional release order. The circuit court put those conditions in place to adequately protect the public while Kastman, a mentally disordered person who has the propensity to commit sex offenses, is not confined. Placing Kastman in a position where his indigency would strip himself of these conditions would frustrate the very purpose of the conditional release order.

In careful consideration of the needs of its ward, the circuit court chose to enforce its commitment order by compelling the Director to contribute to Kastman's expenses pursuant to the Director's express statutory duties as guardian. Each of the expenses to

which the circuit court ordered the Director to contribute relate directly to these statutory duties. Kastman's rent, medical and utility bills, and groceries all relate directly to the Director's duty to "keep safely" and his duty to provide "care." The SCRAM bracelet, sex offender treatment, and cable bill (through which Kastman may access telehealth services for sex offender treatment) all implicate the Director's duty to provide "care and treatment" designed to effect recovery. Certainly, the Act does not require the Director to provide financial support for conditionally released sexually dangerous persons as a matter of law in all cases. However, on the facts before it, the circuit court acted within its authority under the Act when it ordered the Director to contribute to Kastman's necessary expenses of conditional release. "It is axiomatic that the committing court may enter any order necessary to enforce its commitment order." *People v. Kastman*, 2015 IL App (2d) 141245, ¶ 20, *citing In re Baker*, 71 Ill. 2d 480, 484 (1978).

The Director correctly points out that the appellate court in this case relied on *Wilcoxen*, *Downs*, and *Carter* for the proposition that the guardian is the proper source of payment for a ward's necessary expenses, and that the legislature amended Section 5 the Act in 2013, after *Wilcoxen*, *Downs*, and *Carter* were decided. Appellant's Br. 33. Section 5 now provides that the county in which the proceeding is brought shall pay for the costs of legal counsel for indigent respondents. Pub. Act 99-88, § 5 (eff. July 15, 2013). However, this amendment did not fundamentally alter the Director's guardianship duties under the Act or abrogate the large body of guardianship law under the Probate Act of 1975, 755 ILCS 5/1-1, *et seq*. (West 2021). The courts in *Wilcoxen*, *Downs*, and *Carter* were asked to decide whether the county or the Director should pay for the costs of court-appointed counsel in recovery proceedings for a person committed under the Act.

Wilcoxen, 358 Ill. App. 3d at 1076; *Downs*, 371 Ill. App. 3d at 1188; *Carter*, 392 Ill. App. 3d at 522). Citing the Director's guardianship obligations under Section 8, the *Wilcoxen* court concluded that the Director was "the correct source of payment for the person's essential expenses," which included the cost of legal representation. *Wilcoxen*, 358 Ill. App. 3d at 1078. The *Downs* and *Carter* courts both reached the same result. *Downs*, 371 Ill. App. 3d at 1190; *Carter*, 392 Ill. App. 3d at 525-26).

The *Carter* court cited this Court's opinion in *In re Lawrence M.*, 172 Ill. 2d 523, 527 (1996). In that case, this Court considered whether the juvenile court acted within its authority under the Juvenile Court Act when it ordered the Department of Children and Family Services (DCFS), as guardian, to provide and pay for drug treatment services for mothers whose children had been removed from their custody due to drug-related neglect. *In re Lawrence M.*, 172 Ill. 2d at 529. This Court concluded that it did because the Juvenile Court Act and other statutory provisions made it clear that "drug treatment for parents of neglected and abused children was among the services the legislature intended DCFS to provide." *Id.* at 530. *In re Lawrence M.* thus provides support for the notion that the guardian is the appropriate source of payment for a person's essential expenses, particularly when the legislature provided guidance to the guardian regarding services it intended it to provide. Under the Act, the legislature clearly intended that the Director's duties include the safe-keeping of persons committed to him and the provision of care and treatment designed to effect their recovery, as the circuit court in this case recognized.

While *Wilcoxen*, *Downs*, and *Carter* were superceded by the amendment to Section 5 of the Act, their reasoning was not overruled as the Director suggests. Appellant's Br. 33. Because the amendment to Section 5 of the Act is more specific than the general body

of guardianship law, it carved out an exception to that body of law insofar as it relates to payment of legal fees for indigent respondents. *People v. Sharp*, 2021 IL App (5th) 190190, ¶ 19. The proposition that the guardian is "the correct source of payment for the person's essential expenses" remains good law. When the legislature amended the Act after *Wilcoxen*, *Downs*, and *Carter*, it could easily specified that the Director shall not be answerable for the ward's essential expenses incurred outside of the institutional setting. It did not. In light of the amendment the legislature did make, *Wilcoxen*, *Downs* and *Carter* are no longer viable for the proposition that one of those expenses may be legal fees incurred in connection with commitment proceedings under the Act. Because the circuit court's order in this case is unrelated to attorney's fees, Section 5 of the Act is not controlling.

Moreover, the appellate court's conclusion that the circuit court acted within its authority under the Act was not guided solely by *Wilcoxen*, *Downs* and *Carter*. In response to the Director's argument that the Act did not include a specific provision regarding financial assistance for conditionally released sexually dangerous persons, the appellate court stated:

> Even the most comprehensive legislation cannot exhaustively define each object it seeks to address. What is more compelling is that the Act frequently uses the term "guardian" to describe the Director's relationship to his ward, and guardianship is a paradigmatic legal and judicial relationship that involves the court, the guardian (who acts as the hand of the court), and the ward. The legislature, of course, knows how to provide for limited guardianship in certain contexts; however, in contrast to the Act, other statutes do not require that guardians appointed under those acts devote themselves to their ward's treatment or recovery. *See* 755 ILCS 5/11a-17 (West 2018) (duties of guardian of the person); *id.* § 11a-18 (duties of guardian of the estate); 20 ILCS 3955/32 (West 2018) (providing that the State Guardian shall have the same powers and duties as a private guardian as provided in the Probate Act of 1975).

People v. Kastman, 2021 IL App (2d) 210158, ¶ 20. Ultimately, however, the question before this Court is the correctness of the result reached below and not the correctness of the reasoning upon which that result was reached. *See People v. Johnson*, 208 Ill. 2d 118, 128 (2003). Because the circuit court acted within its authority under the Act when it ordered the Director to contribute to Kastman's necessary expenses on conditional release, its order should be upheld.

IV. The Director Misconstrues The Legislature's Use Of The Various Forms of The Word "Commitment" In The Act.

Throughout his brief, the Director's main argument is essentially that only confined persons are committed. The Director reasons that due to the way the legislature used the various forms of the word "commitment" in the Act, Kastman's conditional release marked an end to his civil commitment. For instance, he argues that because Sections 9(e) and 10 of the Act set forth procedures to "recommit" a person who violates conditional release, a person on conditional release must not be committed. Appellant's Br. 23-24. Similarly, he claims that because Section 10 permits him to seek the conditional release of any person "committed" to him, conditional release must terminate the civil commitment. Appellant's Br. 23. In the Director's view, a person is "committed" only for as long as he remains confined in a secure facility operated by the Director. Appellant's Br. 21, 24. Because of this, he concludes that Section 8's use of the phrase "so committed" abrogates his guardianship duties. Appellant's Br. 22-23. The Director misinterprets the Act.

The Act's use of the various forms of the word "commitment" is far broader than the Director suggests. The Act is itself a statutory civil commitment regime. Section 2 of the Act, which vests the circuit court with jurisdiction to conduct all proceedings under the Act, describes "proceedings" as "*commitment and detention*" hearings. 725 ILCS 205/2

(West 2021) (emphasis added). One such "proceeding" is the initial commitment hearing at which "the burden of proof to *commit a defendant to confinement*" is proof beyond a reasonable doubt. *Id.* § 3.01 (emphasis added). Another such "proceeding" is the Section 9(a) recovery hearing, the statutory mechanism for obtaining conditional release, at which the State has the burden to prove that the person remains sexually dangerous, which necessarily includes a finding that "the person *subject to the commitment proceeding* will engage in the commission of sex offenses in the future if not confined." *Id.* § 4.05 (emphasis added), § 9(a).

Perhaps most importantly, the legislature's use of the terms "committed" and "so committed" under Section 8 functions as announcement of the civil commitment and should not be misconstrued as a limitation of the Director's obligations when used interchangeably. *See id.* § 8. Section 8 describes the outcome of an initial commitment proceeding if the State prevails. The first sentence of Section 8 states that, "[i]f the respondent is found to be a sexually dangerous person then the court shall appoint the Director of Corrections guardian of the person found to be sexually dangerous and such person shall stand *committed* to the custody of such guardian." *Id.* (emphasis added). In effect, Section 8 announces the *event* that triggers the remedy of civil commitment. A person is "so committed" once that event has occurred. *Id.* The next sentences describe the Director's obligations after that event: (1) he must "keep safely" the person "so committed" until he recovers and is released; (2) he must provide care and treatment designed to effect recovery by qualified treatment providers; and (3) he may place the person "in any facility in the Department of Corrections ... set aside for the care and treatment of sexually dangerous persons" or in the care and treatment of another state

department or agency. *Id.* Wherever the ward may be placed, the Director remains guardian. *Id.* Thus, a person is "so committed" once the State has prevailed on its petition at trial; the term does not function as a limit on the Director's obligations.

Any ambiguity is attributable to the mechanics of civil commitment under the Act. When the State prevails on a Section 3 petition, the only possible placement for a civilly committed person under Section 8 is in secure confinement. *Id.* §§ 3, 8. A court may not even consider whether conditional release is an appropriate placement until the person files a Section 9(a) recovery application. *Id.* §§ 8, 9(a). Because of this, the Director conflates civil commitment with confinement.

However, when a statute is unclear, a court may look to similar statutes as an aid to construction. *People v. Masterson*, 207 Ill. 2d 305, 329 (2003). Under the Illinois Sexually Violent Persons Act (SVPA), the procedure after a successful civil commitment petition is more illuminating. 725 ILCS 207/1, *et seq*. (West 2021). While the Act and the SVPA relate to two different classes of sexual recidivists, *People v. Burns*, 209 Ill. 2d 551, 571 (2004) , the two enactments, both civil commitment regimes, "are obviously closely related in subject and proximity, and they are undoubtedly governed by one spirit and a single policy." *People v. Masterson*, 207 Ill. 2d 305, 329 (2003). Accordingly, it is appropriate to look to the SVPA to resolve the ambiguity in the Act. *Id.* (construing an unclear provision of the Act by looking to the SVPA as an aid to construction); *People v. Trainor*, 196 Ill. 2d 318, 336-338 (2001) (resolving ambiguity as to the burden of proof in a recovery hearing under the Act by looking to the SVPA).

Under the SVPA, after the State prevails on a commitment petition, the court must "order the person to be committed to the custody of the Department [of Human Services]

for control, care and treatment until such time as the person is no longer a sexually violent person." 725 ILCS 207/40(a) (West 2021). However, that does not end the committing court's inquiry. "An order for *commitment* under this Section shall specify either institutional care in a secure facility, …, or *conditional release*." *Id.* § 40(b)(2) (emphasis added). Clearly then, under the SVPA, a person on conditional release remains civilly committed.

Other provisions of the SVPA support this proposition. A committed person who is "supervised" on conditional release, *id.* § 40(b)(4), retains the statutory right to "petition the committing court for discharge from custody or supervision," which triggers a hearing to determine whether "the condition of the *committed person* has so changed that he or she is no longer a sexually violent person." *Id.* § 65(b)(1). And Section 75(b) of the SVPA provides for notice to certain crime victims when "the court places a civilly committed sexually violent person on conditional release under Section 40 or 60 of this Act." *Id.* § 65(b)(1).

As with the SVPA, the impairment to freedom that civil commitment entails under the Act is intended to last only as long as the person satisfies the definitional propositions that led to the initial commitment. *Compare* 725 ILCS 205/9(b), 9(e) (West 2021), *with* 725 ILCS 207/65(b)(2), (b)(3) (West 2021). That impairment persists while a committed person is on conditional release. It is therefore clear that under both the Act and the SVPA, a person who has been civilly committed at an initial commitment hearing remains *so committed* when placed on conditional release by the court. The Director's argument to the contrary must be rejected. Appellant's Br. At 23. Neither the commitment, nor the

Director's guardianship obligations under it, terminated when Kastman was conditionally released.

V. The Director's Argument That A Conditionally Released Person Is Not "Committed" Because He Can Be "Recommitted" Would Render The Act's Current Revocation Procedures Unconstitutional.

Citing Sections 9(e) and 10, the Director argues that "if a person on conditional release remained committed to the Director's custody, the legislature would not have specified that he should be recommitted for violating the terms of his conditional release." Appellant's Br. 24. Sections 9(e) and 10 are alike in that they both provide that, "[i]n the event the person violates any of the conditions of [the conditional release] order, the court shall revoke such conditional release and re-commit the person pursuant to Section 5-6-4 of the Unified Code of Corrections under the terms of the original commitment." 725 ILCS 205/9(e), 10 (West 2021). Essentially then, the Director's argument is that a person who violates conditional release is not committed and therefore must be recommitted "under the terms of the original commitment." *See id.* In other words, the Director's argument implies that the phrase "under the terms of the original commitment" means that the commitment of the person should start anew.

While violations of conditional release orders are dealt with in "recommit[ment]" or conditional release revocation proceedings, it does not follow, as the Director suggests, that the original commitment ended upon entry of the conditional release order. To adopt the Director's reasoning would have serious due process implications. At both an initial commitment hearing and a recovery hearing under the Act, a sexually dangerous person has a right to a jury trial at which the State bears a heightened burden of proof. *Id.* §§ 3.01, 5, 9(b). The "drastic impairment to liberty and reputation that results from civil

commitment" under the SDPA must satisfy due process. *People v. Pembrock*, 62 Ill. 2d 317, 321 (1976) (Due process requires proof beyond a reasonable doubt at an initial commitment hearing); *see also People v. Trainor*, 196 Ill. 2d 318, 325 (2001) (Due process requires that the State, not the respondent, bear the burden of proof in a recovery proceeding); *People v. Craig*, 403 Ill. App. 3d 762, 769 (5th Dist. 2010) (The clear and convincing burden of proof at a recovery proceeding meets the minimum demands of due process). "The Illinois legislature could have rationally concluded that in an initial commitment proceeding a respondent should be the beneficiary of the more stringent beyond-a-reasonable-doubt standard of proof because he has not been previously convicted of a sexual offense or found to be sexually dangerous in any prior proceeding and that the State should carry nearly all the risk of an erroneous determination." *Craig*, 403 Ill. App. 3d at 769. "Additionally, the legislature could have rationally concluded that in a recovery proceeding the State should bear the slightly less stringent clear-and-convincing burden of proof because it has already proven beyond a reasonable doubt that a respondent is a sexually dangerous person." *Id.*

However, in a proceeding to revoke conditional release, the State's burden of proof is preponderance of the evidence at a hearing before a judge sitting without a jury. 725 205/9(e) (West 2021), *citing* 730 ILCS 5/5-6-4(c) (West 2021). If violations of conditional release triggered a new commitment proceeding as the Director's argument suggests, Appellant's Br. 24, then the procedures outlined in Section 5-6-4 of the Unified Code of Corrections could not possibly satisfy due process. If the person were no longer civilly committed, as the Director suggests, then due process would require a jury trial at which the burden of proof is beyond a reasonable doubt in order to civilly commit the person

"under the terms of the original commitment." 725 ILCS 205/9(e), 10. Clearly, that was not the legislature's intent because it specified that recommitment proceedings merely require the less stringent civil burden of proof by a preponderance of the evidence at a bench trial. *Id.* The legislature chose this less stringent burden of proof because the person has already been found to be a sexually dangerous person beyond a reasonable doubt and remains civilly committed as a sexually dangerous person when facing recommitment proceedings. It satisfies due process precisely because of this. *See People v. Parrott*, 244 Ill. App. 3d 424, 430-31 (3d Dist. 1993).

In re Det. of Kish, 395 Ill. App. 3d 546 (3d Dist. 2009) is illuminating on this point. There, the defendant argued that because the revocation of conditional release requires recommitment "under the terms of the original commitment," and the burden of proof for an original commitment was beyond a reasonable doubt, the burden of proof for revocation should also be beyond a reasonable doubt. *Id.* at 554. The court rejected the argument. "An SDP retains his status as sexually dangerous regardless of the outcome of the revocation proceedings." *Id.* at 556, *citing Cooper,* 132 Ill. 2d 347, 354-355 (1989). Just as in probation revocation proceedings, where the State is not required to prove violations beyond a reasonable doubt "because a probationer has already been convicted and retains his status as a convicted criminal regardless of the outcome of the revocation proceedings," conditional release revocation proceedings "do not require proof beyond a reasonable doubt because the State is not required to prove that a respondent is an SDP for a second time." *Id.* (c*iting People v. Beard,* 59 Ill. 2d 220 (1974), *and People v. Cooper,* 132 Ill. 2d 347 (1989)); *see also People v. Parrott,* 244 Ill. App. 3d 424, 430 (3d Dist. 1993). This is further proof that the Director has misconstrued the legislature's intent.

The legislature used the term "recommit" to merely signify the return of a civilly committed person, who is "at large" on conditional release, to an institutional setting, *i.e.* "under the terms of the original commitment." *See* 725 ILCS 205/9(e), 10. It is not an indication that the legislature intended the court to "recommit" the person, thus commencing a new civil commitment proceeding requiring a jury trial and proof beyond a reasonable doubt." Until the person is discharged, he remains civilly committed as a sexually dangerous person, whether confined to an institution or "at large" on conditional release. Thus, the use of the term "recommit" in Section 9(e) and Section 10 does not indicate that a sexually dangerous person on conditional release is no longer civilly committed, and the Director's argument must be rejected.

VI. The Director's Argument That Conditional Release Terminated His Section 8 Guardianship Duties Is Without Merit.

In his brief, the Director does not deny that he remains Kastman's guardian. Nor could he. When he initially sought leave to intervene in the circuit court, he admitted that "he is the court-appointed guardian for Defendant Richard Kastman," and that "as legal guardian," his duty to provide care and treatment for Kastman was implicated. SR26-29. Similarly, in his response to Kastman's motion, he conceded that he "does not deny his guardianship of [Kastman]," but argued that his guardianship duties did not include the payment of necessary costs of a ward on conditional release. SR42-44. More recently, on January 5, 2022, after he filed his brief, the Director moved for leave to intervene in the circuit court, and again acknowledged that he is Kastman's guardian. SUP SR2. Despite his acknowledgment of his guardianship, the Director now argues that Kastman is no longer committed to him on conditional release, and his duty as guardian is therefore one of mere supervision. Appellant's Br. 24-25.

The Director's argument fails for a number of reasons. For one, it runs contrary to the position he took in the circuit court. In both his petition to intervene and his response to Kastman's motion to compel, the Director utilized the word "supervision" synonymously with the phrase "care and treatment." He argued that Kastman had been "granted re-entry into the community to *complete his treatment* under the *continued supervision* of the IDOC Director," and stated that Kastman's motion to compel should therefore variously be construed as a challenge to the "adequacy of *treatment* provided by IDOC Director," (as he argued in his motion to intervene), or as a request by "a ward under the *supervision* of the IDOC Director" for "financial assistance from the IDOC Director." SR27, 40-41. (emphasis added). More importantly, he did not dispute that he had a duty to provide care and treatment; rather, he claimed that this duty did not extend to the payment of necessary expenses because the SDPA did not "establish a mandate or authority that the guardian is responsible for a ward's housing or treatment expenses after their release from confinement." SR43. Therefore, his argument that he has some lesser duty of mere supervision that is inconsistent with care and treatment is forfeited and should be rejected. *See In re Stephen K.*, 373 Ill. App. 3d 7, 25 (1st Dist. 2007).

Even if the Court were to reach this issue, the Director's argument is unavailing. He claims that the legislature's use of the term "supervision" in Section 9(e) narrowed his obligations vis-à-vis Kastman. Appellant's Br. 25. However, the provisions of the SDPA must be construed "in light of other relevant provisions and the statute as a whole." *People v. Spurlock*, 388 Ill. App. 3d 365, 371 (3d Dist. 2009). When two sections of the same statute are read together as a whole, apparent conflicts are to be construed in harmony with one another. *Corbett v. Cty. of Lake*, 2017 IL 121536, ¶ 34.

While Section 8 establishes the duration and duties of the guardianship, nothing in Section 9(e) expressly terminates the Director's guardianship, which would necessarily place it at odds with Section 8. See 725 ILCS 205/9(e) (West 2021). Because Kastman has not recovered, the Director continues to have a duty under Section 8 to provide "care and treatment … designed to effect recovery." 725 ILCS 205/8 (West 2021). Read in harmony with Section 8, Section 9(e) charges the Director with the additional guardianship duty of supervising a person on conditional release in a manner consistent with the circuit court's directives, while continuing to provide the care and treatment designed to effect recovery mandated by Section 8. The Director finds conflict in the Act where there is none; his interpretation should be rejected.

The Director's claim that his duty to supervise persons on conditional release signifies an end to the commitment, Appellant's Br. 24, is undercut by his citation to other statutes that require him to "supervise" individuals outside of an institutional setting who are nevertheless "committed" to him. Appellant's Br. 25m, *citing* 730 ILCS 5/3-1-2(k) (West 2021) ("'Parole' means the conditional and revocable release of a person *committed* to the Department of Corrections under the *supervision* of a parole officer") (emphasis added); 730 ILCS 5/3-2-2(1) (requiring the Director to "establish a system of *supervision* and guidance of *committed* persons in the community") (emphasis added). The Director's continued guardianship distinguishes sexually dangerous persons on conditional release from other "committed" persons the Director has a duty to "supervise." *See* Appellant's Br. 25. Those "committed persons" are not under the guardianship of the Director; individuals on conditional release are. The Director's argument that requiring him to pay

for Kastman's essential expenses could have the unintended consequence of making him liable for the living expenses of other "committed persons" is therefore without merit.

VII. The Director's Policy Other Policy Arguments Are Unfounded.

The Director argues that if he were required to pay for Kastman's treatment and living expenses, it would undermine the Act's goal of rehabilitation and provide a financial incentive for Kastman to remain on conditional release instead of pursuing full discharge. Appellant's Br. 27-28. Nothing of record suggests that the circuit court's ability to determine whether Kastman can function in society has been or will be impaired by the Director's contribution to his expenses. In fact, the conditional release order provides for periodic court appearances to evaluate Kastman's progress. SR3. As to whether Kastman has a financial incentive to remain on conditional release, it is noteworthy that the expenses the Director has been ordered to pay are those of compliance with the circuit court's conditional release order. If Kastman successfully petitioned for discharge, he would not have to pay for a SCRAM bracelet, sex offender treatment, or rent and utilities at a house that has been approved by the circuit court and the Director. He could also rid himself of the obligations of compliance and restrictions on his liberty that his civil commitment entails. Certainly, the prospect of regaining his liberty is a more powerful incentive for him than the Director's financial assistance. Moreover, the circuit court in this case ordered Kastman to contribute $500.00 per month toward his expenses and indicated it would re-evaluate his level of contribution in the hope that he could "take on more of the responsibilities with regard to pulling his weight financially" in the future. SUP SR10-11. Nothing in the Act prevents the Director from intervening and asking the circuit court to

review his continued financial obligation should Kastman's financial situation materially change. The Director's concerns are speculative and overblown.

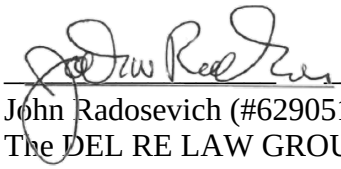
The Director may also want to reconsider the consequences of resisting contribution in this case. As the appellate court observed, the $2,412.00 per month that the circuit court ordered the Director to pay "appears to be less expensive than the cost of his confinement." *People v. Kastman*, 2021 IL App (2d) 210158, ¶ 21. Of course, if Kastman violated conditional release due to his indigency, the Director would bear the cost of keeping him confined. The appellate court stated that if the Director wished to rid himself of his financial responsibility under the circuit court's order, "he should make every effort to see that Kastman is not merely released but has truly recovered." *Id.*, ¶ 22. The Director would do well to heed the appellate court's advice.

The Director also complains that he cannot petition for discharge which deprives him of the means to terminate his financial obligations. Appellant's Br. 28. However, the SDPA makes no provision for the Director to petition for discharge even in cases where a sexually dangerous person remains confined. That he also does not have that right once a person has been conditionally released is therefore irrelevant. Of note is that the Director also had no role in deciding whether to assume the obligations of guardian. Certainly, his appointment comes with substantial cost to house civilly committed sex offenders and provide them care and treatment designed to effect recovery. However, the legislature created the Act and directed the circuit court to appoint him as guardian. He now complains that it would be absurd for him to have no role in deciding when his guardianship obligations terminate. Appellant's Br. 28. Because the scope and term of his appointment are statutorily created, he should seek relief from the legislature, not the courts.

CONCLUSION

For the foregoing reasons, Defendant-Appellee Richard Kastman respectfully requests that the Court affirm the circuit court's March 3, 2021 ruling.

Respectfully Submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 341 (c), I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 32 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on February 2, 2022, I electronically filed the foregoing Appellee's Brief with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that the following participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system:

Carson Griffis
carson.griffis@ilag.gov

I also certify that the other participant in this matter, named below, is not a registered service contact in the Odyssey eFileIL system, and thus was served by placing a copy of said motion in an envelope bearing proper postage and directed to the address indicated below, and depositing the envelope in the United States mail in Waukegan, Illinois before 5:00pm on February 2, 2022.

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Under penalties of perjury as provided pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information and belief.

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