

AN ACT concerning criminal law.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 1. Reference to Act. This Act may be referred to as the Diversion of Unfit Misdemeanants Act.

Section 5. Purpose. The General Assembly recognizes that there are a substantial number of persons with mental illnesses who are charged with misdemeanors and are found unfit to stand trial under Article 104 of the Code of Criminal Procedure of 1963. Many of these defendants remain in the criminal justice system for periods of time longer than they would have served had they been convicted of the misdemeanor with which they have been charged. These defendants impose a substantial financial burden on county jails, the criminal court system, and State-operated mental health facilities where they are frequently committed under Section 104-17 of the Code of Criminal Procedure of 1963. Additionally, despite extended involvement in the criminal justice system, many of these defendants do not receive the mental health treatment needed to reduce the likelihood that they will commit future offenses and are not successfully linked to ongoing mental health services when their involvement in the criminal justice system ends, including community-based treatment programs. The

General Assembly finds that the interests of public safety, the welfare of persons with mental illnesses charged with misdemeanors, and the efficient and effective use of public resources may be served by creating programs which remove these defendants from the criminal justice system and use behavioral health services, case management, and substance use disorder treatment, including, but not limited to, treatment authorized under Articles IV, VII, and VII-A and Section 3-801.5 of Article VIII of the Mental Health and Developmental Disabilities Code.

Section 10. The Code of Criminal Procedure of 1963 is amended by changing Sections 104-11, 104-13, 104-15, and 104-17 and by adding Section 104-32 and Article 104A as follows:

(725 ILCS 5/104-11) (from Ch. 38, par. 104-11)

Sec. 104-11. Raising Issue; Burden; Fitness Motions.)

(a) The issue of the defendant's fitness for trial, to plead, or to be sentenced may be raised by the defense, the State or the Court at any appropriate time before a plea is entered or before, during, or after trial. When a bonafide doubt of the defendant's fitness is raised, other than for eligible defendants charged with one or more misdemeanors subject to Section 104A-1, the court shall order a

determination of the issue before proceeding further.

(b) Upon request of the defendant that a qualified expert be appointed to examine him or her to determine prior to trial if a bonafide doubt as to his or her fitness to stand trial may be raised, the court, in its discretion, may order an appropriate examination. However, no order entered pursuant to this subsection shall prevent further proceedings in the case. An expert so appointed shall examine the defendant and make a report as provided in Section 104-15. Upon the filing with the court of a verified statement of services rendered, the court shall enter an order on the county board to pay such expert a reasonable fee stated in the order.

(c) When a bonafide doubt of the defendant's fitness has been raised, the burden of proving that the defendant is fit by a preponderance of the evidence and the burden of going forward with the evidence are on the State. However, the court may call its own witnesses and conduct its own inquiry.

(d) Following a finding of unfitness, the court may hear and rule on any pretrial motion or motions if the defendant's presence is not essential to a fair determination of the issues. A motion may be reheard upon a showing that evidence is available which was not available, due to the defendant's unfitness, when the motion was first decided.

(Source: P.A. 81-1217.)

(725 ILCS 5/104-13) (from Ch. 38, par. 104-13)

Sec. 104-13. Fitness examination.

(a) When the issue of fitness involves the defendant's mental condition, the court shall order an examination of the defendant by one or more licensed physicians, clinical psychologists, or psychiatrists chosen by the court. No physician, clinical psychologist or psychiatrist employed by the Department of Human Services shall be ordered to perform, in his official capacity, an examination under this Section.

(a-1) The Administrative Office of the Illinois Courts is encouraged to establish standards and a certification process for court-appointed fitness evaluators designed to increase the availability of qualified evaluators statewide and to increase access, consistency, and fairness within fitness-to-stand-trial proceedings and subsequent placement recommendations.

(b) If the issue of fitness involves the defendant's physical condition, the court shall appoint one or more physicians and in addition, such other experts as it may deem appropriate to examine the defendant and to report to the court regarding the defendant's condition.

(c) An examination ordered under this Section shall be given at the place designated by the person who will conduct the examination, except that if the defendant is being held in custody, the examination shall take place at such location as the court directs. No examinations under this Section shall be ordered to take place at mental health or developmental

disabilities facilities operated by the Department of Human Services. If the defendant fails to keep appointments without reasonable cause or if the person conducting the examination reports to the court that diagnosis requires hospitalization or extended observation, the court may order the defendant admitted to an appropriate facility for an examination, other than a screening examination, for not more than 7 days. ~~The court may, upon a showing of good cause, grant an additional 7 days to complete the examination.~~

(d) Pretrial ~~Release on pretrial release or on recognizance~~ shall not be revoked and an application therefor shall not be denied on the grounds that an examination has been ordered.

(e) Upon request by the defense and if the defendant is indigent, the court may appoint, in addition to the expert or experts chosen pursuant to subsection (a) of this Section, a qualified expert selected by the defendant to examine him and to make a report as provided in Section 104-15. Upon the filing with the court of a verified statement of services rendered, the court shall enter an order on the county board to pay such expert a reasonable fee stated in the order.

(Source: P.A. 101-652, eff. 1-1-23.)

(725 ILCS 5/104-15) (from Ch. 38, par. 104-15)

Sec. 104-15. Report.

(a) The person or persons conducting an examination of the

defendant, pursuant to paragraph (a) or (b) of Section 104-13 shall submit a written report to the court, the State, and the defense within 30 days of the date of the order. The report shall include:

(1) A diagnosis and an explanation as to how it was reached and the facts upon which it is based;

(2) A description of the defendant's mental or physical disability, if any; its severity; and an opinion as to whether and to what extent it impairs the defendant's ability to understand the nature and purpose of the proceedings against him or to assist in his defense, or both.

(b) If the report indicates that the defendant is not fit to stand trial or to plead because of a disability, the report shall include an opinion as to the likelihood of the defendant attaining fitness within the statutory ~~a~~ period of time from the date of the finding of unfitness if provided with a course of treatment. For a defendant charged with a felony, the period of time shall be one year. For a defendant charged with a misdemeanor, the period of time shall be no longer than the maximum term of imprisonment for the most serious offense. The period of commitment shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior as provided in Section 5-4-1 of the Unified Code of Corrections. Defendants charged with petty offenses or infraction of a municipal ordinance are not

eligible for fitness restoration services. If the person or persons preparing the initial fitness report are unable to form such an opinion, the report shall state the reasons therefor. The report shall ~~may~~ include a general description of the type of treatment needed and of the least physically restrictive form of treatment therapeutically appropriate. If inpatient treatment is recommended, the report must articulate the evaluator's assessment of risk, protective factors, and treatment needs as related to the defendant's mental disorder. Risk shall not be determined solely by the nature of the defendant's criminal charges.

(c) The report shall indicate what information, if any, contained therein may be harmful to the mental condition of the defendant if made known to him.

(d) In addition to the report, a person retained or appointed by the State or the defense to conduct an examination shall, upon written request, make his or her notes, other evaluations reviewed or relied upon by the testifying witness, and any videotaped interviews available to another examiner of the defendant. All forensic interviews conducted by a person retained or appointed by the State or the defense shall be videotaped unless doing so would be impractical. In the event that the interview is not videotaped, the examiner may still testify as to the person's fitness and the court may only consider the lack of compliance in according the weight and not the admissibility of the

expert testimony. An examiner may use these materials as part of his or her diagnosis and explanation but shall not otherwise disclose the contents, including at a hearing before the court, except as otherwise provided in Section 104-14 of this Code.

(Source: P.A. 100-424, eff. 1-1-18.)

(725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

Sec. 104-17. Commitment for treatment; treatment plan.

(a) If the defendant is eligible to be or has been released on pretrial release ~~or on his own recognizance~~, the court shall select the least physically restrictive form of treatment therapeutically appropriate and consistent with the treatment plan. The placement may be ordered either on an inpatient or an outpatient basis. Placement shall be on an outpatient basis unless the court determines that:

(1) treatment on an outpatient basis is reasonably expected to inflict serious physical harm upon the defendant or another. No defendant may be ordered to inpatient restoration unless at least one licensed physician, clinical psychologist, or psychiatrist who has examined the defendant testifies in person at the hearing. The defendant may waive the requirement of the testimony subject to the approval of the court; or

(2) treatment that will restore the defendant to fitness within a reasonable period of time is not



available on an outpatient basis.

(b) If the defendant's disability is mental, the court may order him placed for secure treatment in the custody of the Department of Human Services, or the court may order him placed in the custody of any other appropriate public or private mental health facility or treatment program which has agreed to provide treatment to the defendant. If the most serious charge faced by the defendant is a misdemeanor, the court shall order outpatient treatment, unless the court finds ~~good cause~~ on the record that the defendant is reasonably expected to inflict serious physical harm on the defendant or another due to mental illness. No defendant may be ordered to inpatient restoration unless at least one licensed physician, clinical psychologist, or psychiatrist who has examined the defendant testifies in person at the hearing. The defendant may waive the requirement of the testimony subject to the approval of the court ~~to order inpatient treatment~~. If the court orders the defendant to inpatient treatment in the custody of the Department of Human Services, the Department shall evaluate the defendant to determine the most appropriate secure facility to receive the defendant and, within 20 days of the transmittal by the clerk of the circuit court of the court's placement order, notify the court of the designated facility to receive the defendant. The Department shall admit the defendant to a secure facility within 60 days of the transmittal of the court's placement order, unless the

Department can demonstrate good faith efforts at placement and a lack of bed and placement availability. If placement cannot be made within 60 days of the transmittal of the court's placement order and the Department has demonstrated good faith efforts at placement and a lack of bed and placement availability, the Department shall provide an update to the ordering court every 30 days until the defendant is placed. Once bed and placement availability is determined, the Department shall notify the sheriff who shall promptly transport the defendant to the designated facility. If the defendant is placed in the custody of the Department of Human Services, the defendant shall be placed in a secure setting. During the period of time required to determine bed and placement availability at the designated facility, the defendant shall remain in jail. If during the course of evaluating the defendant for placement, the Department of Human Services determines that the defendant is currently fit to stand trial, it shall immediately notify the court and shall submit a written report within 7 days. In that circumstance the placement shall be held pending a court hearing on the Department's report. Otherwise, upon completion of the placement process, including identifying bed and placement availability, the sheriff shall be notified and shall transport the defendant to the designated facility. If, within 60 days of the transmittal by the clerk of the circuit court of the court's placement order, the Department fails to

provide the sheriff with notice of bed and placement availability at the designated facility, the sheriff shall contact the Department to inquire about when a placement will become available at the designated facility as well as bed and placement availability at other secure facilities. The Department shall respond to the sheriff within 2 business days of the notice and inquiry by the sheriff seeking the transfer and the Department shall provide the sheriff with the status of the evaluation, information on bed and placement availability, and an estimated date of admission for the defendant and any changes to that estimated date of admission. If the Department notifies the sheriff during the 2 business day period of a facility operated by the Department with placement availability, the sheriff shall promptly transport the defendant to that facility. The placement may be ordered either on an inpatient or an outpatient basis.

(c) If the defendant's disability is physical, the court may order him placed under the supervision of the Department of Human Services which shall place and maintain the defendant in a suitable treatment facility or program, or the court may order him placed in an appropriate public or private facility or treatment program which has agreed to provide treatment to the defendant. The placement may be ordered either on an inpatient or an outpatient basis.

(d) The clerk of the circuit court shall within 5 days of the entry of the order transmit to the Department, agency or

institution, if any, to which the defendant is remanded for treatment, the following:

(1) a certified copy of the order to undergo treatment. Accompanying the certified copy of the order to undergo treatment shall be the complete copy of any report prepared under Section 104-15 of this Code or other report prepared by a forensic examiner for the court;

(2) the county and municipality in which the offense was committed;

(3) the county and municipality in which the arrest took place;

(4) a copy of the arrest report, criminal charges, arrest record; and

(5) all additional matters which the Court directs the clerk to transmit.

(e) Within 30 days of admission to the designated facility, the person supervising the defendant's treatment shall file with the court, the State, and the defense a report assessing the facility's or program's capacity to provide appropriate treatment for the defendant and indicating his opinion as to the probability of the defendant's attaining fitness within a period of time from the date of the finding of unfitness. For a defendant charged with a felony, the period of time shall be one year. For a defendant charged with a misdemeanor, the period of time shall be no longer than the sentence if convicted of the most serious offense, less credit

for good behavior as provided in Section 5-4-1 of the Unified Code of Corrections. If the report indicates that there is a substantial probability that the defendant will attain fitness within the time period, the treatment supervisor shall also file a treatment plan which shall include:

(1) A diagnosis of the defendant's disability;

(2) A description of treatment goals with respect to rendering the defendant fit, a specification of the proposed treatment modalities, and an estimated timetable for attainment of the goals;

(3) An identification of the person in charge of supervising the defendant's treatment.

(Source: P.A. 101-652, eff. 1-1-23; 102-1118, eff. 1-18-23.)

(725 ILCS 5/104-32 new)

Sec. 104-32. Fitness to Stand Trial Task Force.

(a) There is created the Fitness to Stand Trial Task Force hereinafter referred to as the Task Force. The Task Force shall conduct a thorough review of the statutory and regulatory provisions governing the procedures by which individuals facing criminal charges may be unfit to stand trial. This review includes, but is not limited to, the determination of fitness, the housing and custodial status of persons undergoing fitness restoration, the rights of individuals found unfit, and the obligations of the Department of Human Services.

(b) The Task Force shall consist of 15 members, appointed as follows:

(1) a member of the House of Representatives, appointed by the Speaker of the House, who shall serve as co-chair of the Task Force;

(2) a member of the House of Representatives, appointed by the Minority Leader of the House;

(3) a member of the Senate appointed by the President of the Senate, who shall serve as co-chair of the Task Force;

(4) a member of the Senate, appointed by the Minority Leader of the Senate;

(5) 2 members appointed by the Illinois Supreme Court;

(6) the Secretary of Human Services or the Secretary's designee;

(7) a member nominated by a statewide organization that represents State's Attorneys and appointed by the Governor;

(8) a member nominated by a statewide organization that represents public defenders and appointed by the Governor;

(9) a member nominated by a statewide organization that represents sheriffs and appointed by the Governor;

(10) a member representing the federally mandated Protection and Advocacy System for people with mental illness in the State of Illinois, appointed by the

Governor;

(11) a member representing an organization or agency providing community-based mental health services, appointed by the Governor;

(12) a member representing a nonprofit organization dedicated to the promotion of mental health, well-being, and illness prevention, appointed by the Governor;

(13) a member who is a licensed clinical psychologist with specialized forensic training and experience conducting court-ordered fitness evaluations in Illinois, appointed by the Governor; and

(14) a member who is a licensed clinical psychologist with specialized forensic training and experience providing fitness restoration services in Illinois, appointed by the Governor.

(c) The Department shall provide administrative and technical support for the Task Force and is responsible for ensuring that the requirements of the Task Force are met.

(d) The Task Force shall hold its first meeting no later than October 1, 2025.

(e) The Task Force shall submit a report containing its findings and any recommendations to the Supreme Court and the General Assembly on or before November 1, 2026.

(f) The Task Force may at any time identify legislative proposals in support of its mission prior to the issuance of its final report.

(g) The Task Force shall be dissolved following the submission of its report to the Supreme Court and the General Assembly.

(725 ILCS 5/Art. 104A heading new)

ARTICLE 104A. DIVERSION OF UNFIT MISDEMEANANTS

(725 ILCS 5/104A-1 new)

Sec. 104A-1. Eligibility. A defendant charged with one or more misdemeanors and for whom a court has determined under Section 104-11 of this Code that a bona fide doubt of the defendant's fitness has been raised may be admitted into an unfit misdemeanor diversion program only upon the approval of the court.

(725 ILCS 5/104A-2 new)

Sec. 104A-2. Rulemaking. The Illinois Supreme Court or any circuit court of this State may adopt rules establishing unfit misdemeanor diversion programs consistent with this Article.

(725 ILCS 5/104A-3 new)

Sec. 104A-3. Procedure. The court shall require an eligibility screening and an assessment of the defendant to determine whether the defendant may be able to receive mental health services under the Mental Health and Developmental Disabilities Code which shall reasonably assure his or her



safety and that of the public and his or her continued participation in treatment. If, following this screening, the State and the defendant agree to the diversion and the court determines that the defendant is appropriate for diversion, the criminal charges may be dismissed. If the parties do not agree or the court does not approve, the court shall order a fitness examination under Section 104-13 of this Code and the matter shall be governed by any other relevant provisions of Article 104.

(725 ILCS 5/104A-4 new)

Sec. 104A-4. Mental health and substance use treatment. The misdemeanor diversion program may maintain or collaborate with mental health and substance use treatment providers necessary to provide a continuum of treatment options commensurate with the needs of the defendant and available resources. Treatment programs shall comply with all relevant statutes and rules. The Department of Human Services shall provide care to persons determined to be subject to involuntary admission on an inpatient basis as defined in Section 1-119 of the Mental Health and Developmental Disabilities Code or may make arrangements with any other appropriate inpatient mental health facility to provide those services.

Section 99. Effective date. This Section and Section 104-32 of the Code of Criminal Procedure of 1963 take effect

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upon becoming law.