



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0649

by Rep. Arthur Turner

SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-17
730 ILCS 5/5-2-4

from Ch. 38, par. 104-17
from Ch. 38, par. 1005-2-4

Amends the Code of Criminal Procedure of 1963 and the Unified Code of Corrections concerning defendants found unfit to stand trial and found not guilty by reason of insanity. Provides that if the court orders the defendant placed in the custody of the Department of Human Services, the Department shall evaluate the defendant to determine to which secure facility the defendant shall be transported and, within 7 days of the entry of the placement order, notify the sheriff of the designated facility. Upon receipt of that notice, the sheriff shall promptly transport the defendant to the designated facility. Provides that if, within 7 days of the entry of the placement order, the Department fails to notify the sheriff of the identity of the facility to which the defendant shall be transported, the sheriff shall notify the Department that the defendant will be transported to the nearest secure mental health facility operated by the Department unless, within 24 hours of receiving the notice, the Department notifies the sheriff that the defendant should be transported to another facility. Provides that if, during this 24-hour period the Department notifies the sheriff of another facility, the sheriff shall transport the defendant to that facility. If the notice is not received, the sheriff shall transport the defendant to the nearest secure mental health facility operated by the Department.

LRB100 06743 RLC 16784 b

1 AN ACT concerning criminal law.

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

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 104-17 as follows:

6 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

7 Sec. 104-17. Commitment for Treatment; Treatment Plan.

8 (a) If the defendant is eligible to be or has been released
9 on bail or on his own recognizance, the court shall select the
10 least physically restrictive form of treatment therapeutically
11 appropriate and consistent with the treatment plan. The
12 placement may be ordered either on an inpatient or an
13 outpatient basis.

14 (b) If the defendant's disability is mental, the court may
15 order him placed for treatment in the custody of the Department
16 of Human Services, or the court may order him placed in the
17 custody of any other appropriate public or private mental
18 health facility or treatment program which has agreed to
19 provide treatment to the defendant. If the court orders the
20 defendant placed in the custody of the Department of Human
21 Services, the Department shall evaluate the defendant to
22 determine to which secure facility the defendant shall be
23 transported and, within 7 days of the entry of the placement

1 order, notify the sheriff of the designated facility. Upon
2 receipt of that notice, the sheriff shall promptly transport
3 the defendant to the designated facility. ~~If the defendant is~~
4 ~~placed in the custody of the Department of Human Services, the~~
5 ~~defendant shall be placed in a secure setting.~~ During the
6 period of time required to determine the appropriate placement
7 the defendant shall remain in jail. If during the course of
8 evaluating the defendant for placement, ~~upon the completion of~~
9 ~~the placement process~~ the Department of Human Services
10 determines that the defendant is currently fit to stand trial,
11 it shall immediately notify the court and shall submit a
12 written report within 7 days. In that circumstance the
13 placement shall be held pending a court hearing on the
14 Department's report. Otherwise, upon completion of the
15 placement process, the sheriff shall be notified and shall
16 transport the defendant to the designated facility. If, within
17 7 days of the entry of the placement order, the Department
18 fails to notify the sheriff of the identity of the facility to
19 which the defendant shall be transported, the sheriff shall
20 notify the Department that the defendant will be transported to
21 the nearest secure mental health facility operated by the
22 Department unless, within 24 hours of receiving the notice, the
23 Department notifies the sheriff that the defendant should be
24 transported to another facility. If, during this 24-hour period
25 the Department notifies the sheriff of another facility, the
26 sheriff shall transport the defendant to that facility. If the

1 notice is not received, the sheriff shall transport the
2 defendant to the nearest secure mental health facility operated
3 by the Department. ~~The placement may be ordered either on an~~
4 ~~inpatient or an outpatient basis.~~

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

13 (d) The clerk of the circuit court shall transmit to the
14 Department, agency or institution, if any, to which the
15 defendant is remanded for treatment, the following:

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

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

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

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

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

3 (e) Within 30 days of entry of an order to undergo
4 treatment, the person supervising the defendant's treatment
5 shall file with the court, the State, and the defense a report
6 assessing the facility's or program's capacity to provide
7 appropriate treatment for the defendant and indicating his
8 opinion as to the probability of the defendant's attaining
9 fitness within a period of time from the date of the finding of
10 unfitness. For a defendant charged with a felony, the period of
11 time shall be one year. For a defendant charged with a
12 misdemeanor, the period of time shall be no longer than the
13 sentence if convicted of the most serious offense. If the
14 report indicates that there is a substantial probability that
15 the defendant will attain fitness within the time period, the
16 treatment supervisor shall also file a treatment plan which
17 shall include:

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

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

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

25 (Source: P.A. 98-1025, eff. 8-22-14; 99-140, eff. 1-1-16.)

1 Section 10. The Unified Code of Corrections is amended by
2 changing Section 5-2-4 as follows:

3 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

4 Sec. 5-2-4. Proceedings after Acquittal by Reason of
5 Insanity.

6 (a) After a finding or verdict of not guilty by reason of
7 insanity under Sections 104-25, 115-3 or 115-4 of the Code of
8 Criminal Procedure of 1963, the defendant shall be ordered to
9 the Department of Human Services for an evaluation as to
10 whether he is in need of mental health services. The order
11 shall specify whether the evaluation shall be conducted on an
12 inpatient or outpatient basis. If the evaluation is to be
13 conducted on an inpatient basis, the defendant shall be placed
14 in a secure setting. With the court order for evaluation shall
15 be sent a copy of the arrest report, criminal charges, arrest
16 record, jail record, any report prepared under Section 115-6 of
17 the Code of Criminal Procedure of 1963, and any victim impact
18 statement prepared under Section 6 of the Rights of Crime
19 Victims and Witnesses Act. If the court orders that the
20 evaluation be done on an inpatient basis, the Department shall
21 evaluate the defendant to determine to which secure facility
22 the defendant shall be transported and, within 7 days of the
23 entry of the placement order, notify the sheriff of the
24 designated facility. Upon receipt of that notice, the sheriff
25 shall promptly transport the defendant to the designated

1 facility. During ~~After the evaluation and during~~ the period of
2 time required to determine the appropriate placement, the
3 defendant shall remain in jail. If, within 7 days of the entry
4 of the placement order, the Department fails to notify the
5 sheriff of the identity of the facility to which the defendant
6 shall be transported, the sheriff shall notify the Department
7 that the defendant will be transported to the nearest secure
8 mental health facility operated by the Department unless,
9 within 24 hours of receiving the notice, the Department
10 notifies the sheriff that the defendant should be transported
11 to another facility. If, during this 24-hour period the
12 Department notifies the sheriff of another facility, the
13 sheriff shall transport the defendant to that facility. If the
14 notice is not received, the sheriff shall transport the
15 defendant to the nearest secure mental health facility operated
16 by the Department. Individualized placement evaluations by the
17 ~~Department of Human Services determine the most appropriate~~
18 ~~setting for forensic treatment based upon a number of factors~~
19 ~~including mental health diagnosis, proximity to surviving~~
20 ~~victims, security need, age, gender, and proximity to family.~~
21 ~~Upon completion of the placement process the sheriff shall be~~
22 ~~notified and shall transport the defendant to the designated~~
23 ~~facility.~~

24 The Department shall provide the Court with a report of its
25 evaluation within 30 days of the date of this order. The Court
26 shall hold a hearing as provided under the Mental Health and

1 Developmental Disabilities Code to determine if the individual
2 is: (a) in need of mental health services on an inpatient
3 basis; (b) in need of mental health services on an outpatient
4 basis; (c) a person not in need of mental health services. The
5 Court shall enter its findings.

6 If the defendant is found to be in need of mental health
7 services on an inpatient care basis, the Court shall order the
8 defendant to the Department of Human Services. The defendant
9 shall be placed in a secure setting. Such defendants placed in
10 a secure setting shall not be permitted outside the facility's
11 housing unit unless escorted or accompanied by personnel of the
12 Department of Human Services or with the prior approval of the
13 Court for unsupervised on-grounds privileges as provided
14 herein. Any defendant placed in a secure setting pursuant to
15 this Section, transported to court hearings or other necessary
16 appointments off facility grounds by personnel of the
17 Department of Human Services, shall be placed in security
18 devices or otherwise secured during the period of
19 transportation to assure secure transport of the defendant and
20 the safety of Department of Human Services personnel and
21 others. These security measures shall not constitute restraint
22 as defined in the Mental Health and Developmental Disabilities
23 Code. If the defendant is found to be in need of mental health
24 services, but not on an inpatient care basis, the Court shall
25 conditionally release the defendant, under such conditions as
26 set forth in this Section as will reasonably assure the

1 defendant's satisfactory progress and participation in
2 treatment or rehabilitation and the safety of the defendant and
3 others. If the Court finds the person not in need of mental
4 health services, then the Court shall order the defendant
5 discharged from custody.

6 (a-1) Definitions. For the purposes of this Section:

7 (A) (Blank).

8 (B) "In need of mental health services on an inpatient
9 basis" means: a defendant who has been found not guilty by
10 reason of insanity but who due to mental illness is
11 reasonably expected to inflict serious physical harm upon
12 himself or another and who would benefit from inpatient
13 care or is in need of inpatient care.

14 (C) "In need of mental health services on an outpatient
15 basis" means: a defendant who has been found not guilty by
16 reason of insanity who is not in need of mental health
17 services on an inpatient basis, but is in need of
18 outpatient care, drug and/or alcohol rehabilitation
19 programs, community adjustment programs, individual,
20 group, or family therapy, or chemotherapy.

21 (D) "Conditional Release" means: the release from
22 either the custody of the Department of Human Services or
23 the custody of the Court of a person who has been found not
24 guilty by reason of insanity under such conditions as the
25 Court may impose which reasonably assure the defendant's
26 satisfactory progress in treatment or habilitation and the

1 safety of the defendant and others. The Court shall
2 consider such terms and conditions which may include, but
3 need not be limited to, outpatient care, alcoholic and drug
4 rehabilitation programs, community adjustment programs,
5 individual, group, family, and chemotherapy, random
6 testing to ensure the defendant's timely and continuous
7 taking of any medicines prescribed to control or manage his
8 or her conduct or mental state, and periodic checks with
9 the legal authorities and/or the Department of Human
10 Services. The Court may order as a condition of conditional
11 release that the defendant not contact the victim of the
12 offense that resulted in the finding or verdict of not
13 guilty by reason of insanity or any other person. The Court
14 may order the Department of Human Services to provide care
15 to any person conditionally released under this Section.
16 The Department may contract with any public or private
17 agency in order to discharge any responsibilities imposed
18 under this Section. The Department shall monitor the
19 provision of services to persons conditionally released
20 under this Section and provide periodic reports to the
21 Court concerning the services and the condition of the
22 defendant. Whenever a person is conditionally released
23 pursuant to this Section, the State's Attorney for the
24 county in which the hearing is held shall designate in
25 writing the name, telephone number, and address of a person
26 employed by him or her who shall be notified in the event

1 that either the reporting agency or the Department decides
2 that the conditional release of the defendant should be
3 revoked or modified pursuant to subsection (i) of this
4 Section. Such conditional release shall be for a period of
5 five years. However, the defendant, the person or facility
6 rendering the treatment, therapy, program or outpatient
7 care, the Department, or the State's Attorney may petition
8 the Court for an extension of the conditional release
9 period for an additional 5 years. Upon receipt of such a
10 petition, the Court shall hold a hearing consistent with
11 the provisions of paragraph (a), this paragraph (a-1), and
12 paragraph (f) of this Section, shall determine whether the
13 defendant should continue to be subject to the terms of
14 conditional release, and shall enter an order either
15 extending the defendant's period of conditional release
16 for an additional 5 year period or discharging the
17 defendant. Additional 5-year periods of conditional
18 release may be ordered following a hearing as provided in
19 this Section. However, in no event shall the defendant's
20 period of conditional release continue beyond the maximum
21 period of commitment ordered by the Court pursuant to
22 paragraph (b) of this Section. These provisions for
23 extension of conditional release shall only apply to
24 defendants conditionally released on or after August 8,
25 2003. However the extension provisions of Public Act
26 83-1449 apply only to defendants charged with a forcible

1 felony.

2 (E) "Facility director" means the chief officer of a
3 mental health or developmental disabilities facility or
4 his or her designee or the supervisor of a program of
5 treatment or habilitation or his or her designee.

6 "Designee" may include a physician, clinical psychologist,
7 social worker, nurse, or clinical professional counselor.

8 (b) If the Court finds the defendant in need of mental
9 health services on an inpatient basis, the admission,
10 detention, care, treatment or habilitation, treatment plans,
11 review proceedings, including review of treatment and
12 treatment plans, and discharge of the defendant after such
13 order shall be under the Mental Health and Developmental
14 Disabilities Code, except that the initial order for admission
15 of a defendant acquitted of a felony by reason of insanity
16 shall be for an indefinite period of time. Such period of
17 commitment shall not exceed the maximum length of time that the
18 defendant would have been required to serve, less credit for
19 good behavior as provided in Section 5-4-1 of the Unified Code
20 of Corrections, before becoming eligible for release had he
21 been convicted of and received the maximum sentence for the
22 most serious crime for which he has been acquitted by reason of
23 insanity. The Court shall determine the maximum period of
24 commitment by an appropriate order. During this period of time,
25 the defendant shall not be permitted to be in the community in
26 any manner, including but not limited to off-grounds

1 privileges, with or without escort by personnel of the
2 Department of Human Services, unsupervised on-grounds
3 privileges, discharge or conditional or temporary release,
4 except by a plan as provided in this Section. In no event shall
5 a defendant's continued unauthorized absence be a basis for
6 discharge. Not more than 30 days after admission and every 60
7 days thereafter so long as the initial order remains in effect,
8 the facility director shall file a treatment plan report in
9 writing with the court and forward a copy of the treatment plan
10 report to the clerk of the court, the State's Attorney, and the
11 defendant's attorney, if the defendant is represented by
12 counsel, or to a person authorized by the defendant under the
13 Mental Health and Developmental Disabilities Confidentiality
14 Act to be sent a copy of the report. The report shall include
15 an opinion as to whether the defendant is currently in need of
16 mental health services on an inpatient basis or in need of
17 mental health services on an outpatient basis. The report shall
18 also summarize the basis for those findings and provide a
19 current summary of the following items from the treatment plan:
20 (1) an assessment of the defendant's treatment needs, (2) a
21 description of the services recommended for treatment, (3) the
22 goals of each type of element of service, (4) an anticipated
23 timetable for the accomplishment of the goals, and (5) a
24 designation of the qualified professional responsible for the
25 implementation of the plan. The report may also include
26 unsupervised on-grounds privileges, off-grounds privileges

1 (with or without escort by personnel of the Department of Human
2 Services), home visits and participation in work programs, but
3 only where such privileges have been approved by specific court
4 order, which order may include such conditions on the defendant
5 as the Court may deem appropriate and necessary to reasonably
6 assure the defendant's satisfactory progress in treatment and
7 the safety of the defendant and others.

8 (c) Every defendant acquitted of a felony by reason of
9 insanity and subsequently found to be in need of mental health
10 services shall be represented by counsel in all proceedings
11 under this Section and under the Mental Health and
12 Developmental Disabilities Code.

13 (1) The Court shall appoint as counsel the public
14 defender or an attorney licensed by this State.

15 (2) Upon filing with the Court of a verified statement
16 of legal services rendered by the private attorney
17 appointed pursuant to paragraph (1) of this subsection, the
18 Court shall determine a reasonable fee for such services.
19 If the defendant is unable to pay the fee, the Court shall
20 enter an order upon the State to pay the entire fee or such
21 amount as the defendant is unable to pay from funds
22 appropriated by the General Assembly for that purpose.

23 (d) When the facility director determines that:

24 (1) the defendant is no longer in need of mental health
25 services on an inpatient basis; and

26 (2) the defendant may be conditionally released

1 because he or she is still in need of mental health
2 services or that the defendant may be discharged as not in
3 need of any mental health services; or

4 (3) (blank);

5 the facility director shall give written notice to the Court,
6 State's Attorney and defense attorney. Such notice shall set
7 forth in detail the basis for the recommendation of the
8 facility director, and specify clearly the recommendations, if
9 any, of the facility director, concerning conditional release.
10 Any recommendation for conditional release shall include an
11 evaluation of the defendant's need for psychotropic
12 medication, what provisions should be made, if any, to ensure
13 that the defendant will continue to receive psychotropic
14 medication following discharge, and what provisions should be
15 made to assure the safety of the defendant and others in the
16 event the defendant is no longer receiving psychotropic
17 medication. Within 30 days of the notification by the facility
18 director, the Court shall set a hearing and make a finding as
19 to whether the defendant is:

20 (i) (blank); or

21 (ii) in need of mental health services in the form of
22 inpatient care; or

23 (iii) in need of mental health services but not subject
24 to inpatient care; or

25 (iv) no longer in need of mental health services; or

26 (v) (blank).

1 Upon finding by the Court, the Court shall enter its
2 findings and such appropriate order as provided in subsections
3 (a) and (a-1) of this Section.

4 (e) A defendant admitted pursuant to this Section, or any
5 person on his behalf, may file a petition for treatment plan
6 review or discharge or conditional release under the standards
7 of this Section in the Court which rendered the verdict. Upon
8 receipt of a petition for treatment plan review or discharge or
9 conditional release, the Court shall set a hearing to be held
10 within 120 days. Thereafter, no new petition may be filed for
11 180 days without leave of the Court.

12 (f) The Court shall direct that notice of the time and
13 place of the hearing be served upon the defendant, the facility
14 director, the State's Attorney, and the defendant's attorney.
15 If requested by either the State or the defense or if the Court
16 feels it is appropriate, an impartial examination of the
17 defendant by a psychiatrist or clinical psychologist as defined
18 in Section 1-103 of the Mental Health and Developmental
19 Disabilities Code who is not in the employ of the Department of
20 Human Services shall be ordered, and the report considered at
21 the time of the hearing.

22 (g) The findings of the Court shall be established by clear
23 and convincing evidence. The burden of proof and the burden of
24 going forth with the evidence rest with the defendant or any
25 person on the defendant's behalf when a hearing is held to
26 review a petition filed by or on behalf of the defendant. The

1 evidence shall be presented in open Court with the right of
2 confrontation and cross-examination. Such evidence may
3 include, but is not limited to:

4 (1) whether the defendant appreciates the harm caused
5 by the defendant to others and the community by his or her
6 prior conduct that resulted in the finding of not guilty by
7 reason of insanity;

8 (2) Whether the person appreciates the criminality of
9 conduct similar to the conduct for which he or she was
10 originally charged in this matter;

11 (3) the current state of the defendant's illness;

12 (4) what, if any, medications the defendant is taking
13 to control his or her mental illness;

14 (5) what, if any, adverse physical side effects the
15 medication has on the defendant;

16 (6) the length of time it would take for the
17 defendant's mental health to deteriorate if the defendant
18 stopped taking prescribed medication;

19 (7) the defendant's history or potential for alcohol
20 and drug abuse;

21 (8) the defendant's past criminal history;

22 (9) any specialized physical or medical needs of the
23 defendant;

24 (10) any family participation or involvement expected
25 upon release and what is the willingness and ability of the
26 family to participate or be involved;

1 (11) the defendant's potential to be a danger to
2 himself, herself, or others; and

3 (12) any other factor or factors the Court deems
4 appropriate.

5 (h) Before the court orders that the defendant be
6 discharged or conditionally released, it shall order the
7 facility director to establish a discharge plan that includes a
8 plan for the defendant's shelter, support, and medication. If
9 appropriate, the court shall order that the facility director
10 establish a program to train the defendant in self-medication
11 under standards established by the Department of Human
12 Services. If the Court finds, consistent with the provisions of
13 this Section, that the defendant is no longer in need of mental
14 health services it shall order the facility director to
15 discharge the defendant. If the Court finds, consistent with
16 the provisions of this Section, that the defendant is in need
17 of mental health services, and no longer in need of inpatient
18 care, it shall order the facility director to release the
19 defendant under such conditions as the Court deems appropriate
20 and as provided by this Section. Such conditional release shall
21 be imposed for a period of 5 years as provided in paragraph (D)
22 of subsection (a-1) and shall be subject to later modification
23 by the Court as provided by this Section. If the Court finds
24 consistent with the provisions in this Section that the
25 defendant is in need of mental health services on an inpatient
26 basis, it shall order the facility director not to discharge or

1 release the defendant in accordance with paragraph (b) of this
2 Section.

3 (i) If within the period of the defendant's conditional
4 release the State's Attorney determines that the defendant has
5 not fulfilled the conditions of his or her release, the State's
6 Attorney may petition the Court to revoke or modify the
7 conditional release of the defendant. Upon the filing of such
8 petition the defendant may be remanded to the custody of the
9 Department, or to any other mental health facility designated
10 by the Department, pending the resolution of the petition.
11 Nothing in this Section shall prevent the emergency admission
12 of a defendant pursuant to Article VI of Chapter III of the
13 Mental Health and Developmental Disabilities Code or the
14 voluntary admission of the defendant pursuant to Article IV of
15 Chapter III of the Mental Health and Developmental Disabilities
16 Code. If the Court determines, after hearing evidence, that the
17 defendant has not fulfilled the conditions of release, the
18 Court shall order a hearing to be held consistent with the
19 provisions of paragraph (f) and (g) of this Section. At such
20 hearing, if the Court finds that the defendant is in need of
21 mental health services on an inpatient basis, it shall enter an
22 order remanding him or her to the Department of Human Services
23 or other facility. If the defendant is remanded to the
24 Department of Human Services, he or she shall be placed in a
25 secure setting unless the Court determines that there are
26 compelling reasons that such placement is not necessary. If the

1 Court finds that the defendant continues to be in need of
2 mental health services but not on an inpatient basis, it may
3 modify the conditions of the original release in order to
4 reasonably assure the defendant's satisfactory progress in
5 treatment and his or her safety and the safety of others in
6 accordance with the standards established in paragraph (D) of
7 subsection (a-1). Nothing in this Section shall limit a Court's
8 contempt powers or any other powers of a Court.

9 (j) An order of admission under this Section does not
10 affect the remedy of habeas corpus.

11 (k) In the event of a conflict between this Section and the
12 Mental Health and Developmental Disabilities Code or the Mental
13 Health and Developmental Disabilities Confidentiality Act, the
14 provisions of this Section shall govern.

15 (l) This amendatory Act shall apply to all persons who have
16 been found not guilty by reason of insanity and who are
17 presently committed to the Department of Mental Health and
18 Developmental Disabilities (now the Department of Human
19 Services).

20 (m) The Clerk of the Court shall transmit a certified copy
21 of the order of discharge or conditional release to the
22 Department of Human Services, to the sheriff of the county from
23 which the defendant was admitted, to the Illinois Department of
24 State Police, to the proper law enforcement agency for the
25 municipality where the offense took place, and to the sheriff
26 of the county into which the defendant is conditionally

1 discharged. The Illinois Department of State Police shall
2 maintain a centralized record of discharged or conditionally
3 released defendants while they are under court supervision for
4 access and use of appropriate law enforcement agencies.

5 (Source: P.A. 98-1025, eff. 8-22-14.)