



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1276

Introduced 2/9/2017, by Sen. Jason A. Barickman

SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-15
730 ILCS 5/5-2-4

from Ch. 38, par. 104-15
from Ch. 38, par. 1005-2-4

Amends the Code of Criminal Procedure of 1963 concerning unfit defendants. Provides that if the report to the court, the State, and the defense 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 a period of time from the date of the finding of unfitness (rather than one year) if provided with a course of treatment. Provides that for a defendant charged with a felony, the period of time shall be one year. Provides that 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. Provides that not more than 30 days after admission and every 90 (rather than 60) days thereafter so long as the initial order remains in effect, the facility director shall file a treatment plan report in writing with the court and forward a copy of the treatment plan report to the clerk of the court, the State's Attorney, and the defendant's attorney, if the defendant is represented by counsel, or to a person authorized by the defendant under the Mental Health and Developmental Disabilities Confidentiality Act to be sent a copy of the report. Effective January 1, 2018.

LRB100 00366 RLC 10370 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 104-15 as follows:

6 (725 ILCS 5/104-15) (from Ch. 38, par. 104-15)
7 Sec. 104-15. Report.

8 (a) The person or persons conducting an examination of the
9 defendant, pursuant to paragraph (a) or (b) of Section 104-13
10 shall submit a written report to the court, the State, and the
11 defense within 30 days of the date of the order. The report
12 shall include:

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

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

21 (b) If the report indicates that the defendant is not fit
22 to stand trial or to plead because of a disability, the report
23 shall include an opinion as to the likelihood of the defendant

1 attaining fitness within a period of time from the date of the
2 finding of unfitness ~~one year~~ if provided with a course of
3 treatment. For a defendant charged with a felony, the period of
4 time shall be one year. For a defendant charged with a
5 misdemeanor, the period of time shall be no longer than the
6 maximum term of imprisonment for the most serious offense. If
7 the person or persons preparing the report are unable to form
8 such an opinion, the report shall state the reasons therefor.
9 The report may include a general description of the type of
10 treatment needed and of the least physically restrictive form
11 of treatment therapeutically appropriate.

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

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

1 these materials as part of his or her diagnosis and explanation
2 but shall not otherwise disclose the contents, including at a
3 hearing before the court, except as otherwise provided in
4 Section 104-14 of this Code.

5 (Source: P.A. 98-1025, eff. 1-1-15.)

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

8 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

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

11 (a) After a finding or verdict of not guilty by reason of
12 insanity under Sections 104-25, 115-3 or 115-4 of the Code of
13 Criminal Procedure of 1963, the defendant shall be ordered to
14 the Department of Human Services for an evaluation as to
15 whether he is in need of mental health services. The order
16 shall specify whether the evaluation shall be conducted on an
17 inpatient or outpatient basis. If the evaluation is to be
18 conducted on an inpatient basis, the defendant shall be placed
19 in a secure setting. With the court order for evaluation shall
20 be sent a copy of the arrest report, criminal charges, arrest
21 record, jail record, any report prepared under Section 115-6 of
22 the Code of Criminal Procedure of 1963, and any victim impact
23 statement prepared under Section 6 of the Rights of Crime
24 Victims and Witnesses Act. After the evaluation and during the

1 period of time required to determine the appropriate placement,
2 the defendant shall remain in jail. Individualized placement
3 evaluations by the Department of Human Services determine the
4 most appropriate setting for forensic treatment based upon a
5 number of factors including mental health diagnosis, proximity
6 to surviving victims, security need, age, gender, and proximity
7 to family. Upon completion of the placement process the sheriff
8 shall be notified and shall transport the defendant to the
9 designated facility.

10 The Department shall provide the Court with a report of its
11 evaluation within 30 days of the date of this order. The Court
12 shall hold a hearing as provided under the Mental Health and
13 Developmental Disabilities Code to determine if the individual
14 is: (a) in need of mental health services on an inpatient
15 basis; (b) in need of mental health services on an outpatient
16 basis; (c) a person not in need of mental health services. The
17 Court shall enter its findings.

18 If the defendant is found to be in need of mental health
19 services on an inpatient care basis, the Court shall order the
20 defendant to the Department of Human Services. The defendant
21 shall be placed in a secure setting. Such defendants placed in
22 a secure setting shall not be permitted outside the facility's
23 housing unit unless escorted or accompanied by personnel of the
24 Department of Human Services or with the prior approval of the
25 Court for unsupervised on-grounds privileges as provided
26 herein. Any defendant placed in a secure setting pursuant to

1 this Section, transported to court hearings or other necessary
2 appointments off facility grounds by personnel of the
3 Department of Human Services, shall be placed in security
4 devices or otherwise secured during the period of
5 transportation to assure secure transport of the defendant and
6 the safety of Department of Human Services personnel and
7 others. These security measures shall not constitute restraint
8 as defined in the Mental Health and Developmental Disabilities
9 Code. If the defendant is found to be in need of mental health
10 services, but not on an inpatient care basis, the Court shall
11 conditionally release the defendant, under such conditions as
12 set forth in this Section as will reasonably assure the
13 defendant's satisfactory progress and participation in
14 treatment or rehabilitation and the safety of the defendant and
15 others. If the Court finds the person not in need of mental
16 health services, then the Court shall order the defendant
17 discharged from custody.

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

19 (A) (Blank).

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

26 (C) "In need of mental health services on an outpatient

1 basis" means: a defendant who has been found not guilty by
2 reason of insanity who is not in need of mental health
3 services on an inpatient basis, but is in need of
4 outpatient care, drug and/or alcohol rehabilitation
5 programs, community adjustment programs, individual,
6 group, or family therapy, or chemotherapy.

7 (D) "Conditional Release" means: the release from
8 either the custody of the Department of Human Services or
9 the custody of the Court of a person who has been found not
10 guilty by reason of insanity under such conditions as the
11 Court may impose which reasonably assure the defendant's
12 satisfactory progress in treatment or habilitation and the
13 safety of the defendant and others. The Court shall
14 consider such terms and conditions which may include, but
15 need not be limited to, outpatient care, alcoholic and drug
16 rehabilitation programs, community adjustment programs,
17 individual, group, family, and chemotherapy, random
18 testing to ensure the defendant's timely and continuous
19 taking of any medicines prescribed to control or manage his
20 or her conduct or mental state, and periodic checks with
21 the legal authorities and/or the Department of Human
22 Services. The Court may order as a condition of conditional
23 release that the defendant not contact the victim of the
24 offense that resulted in the finding or verdict of not
25 guilty by reason of insanity or any other person. The Court
26 may order the Department of Human Services to provide care

1 to any person conditionally released under this Section.
2 The Department may contract with any public or private
3 agency in order to discharge any responsibilities imposed
4 under this Section. The Department shall monitor the
5 provision of services to persons conditionally released
6 under this Section and provide periodic reports to the
7 Court concerning the services and the condition of the
8 defendant. Whenever a person is conditionally released
9 pursuant to this Section, the State's Attorney for the
10 county in which the hearing is held shall designate in
11 writing the name, telephone number, and address of a person
12 employed by him or her who shall be notified in the event
13 that either the reporting agency or the Department decides
14 that the conditional release of the defendant should be
15 revoked or modified pursuant to subsection (i) of this
16 Section. Such conditional release shall be for a period of
17 five years. However, the defendant, the person or facility
18 rendering the treatment, therapy, program or outpatient
19 care, the Department, or the State's Attorney may petition
20 the Court for an extension of the conditional release
21 period for an additional 5 years. Upon receipt of such a
22 petition, the Court shall hold a hearing consistent with
23 the provisions of paragraph (a), this paragraph (a-1), and
24 paragraph (f) of this Section, shall determine whether the
25 defendant should continue to be subject to the terms of
26 conditional release, and shall enter an order either

1 extending the defendant's period of conditional release
2 for an additional 5 year period or discharging the
3 defendant. Additional 5-year periods of conditional
4 release may be ordered following a hearing as provided in
5 this Section. However, in no event shall the defendant's
6 period of conditional release continue beyond the maximum
7 period of commitment ordered by the Court pursuant to
8 paragraph (b) of this Section. These provisions for
9 extension of conditional release shall only apply to
10 defendants conditionally released on or after August 8,
11 2003. However the extension provisions of Public Act
12 83-1449 apply only to defendants charged with a forcible
13 felony.

14 (E) "Facility director" means the chief officer of a
15 mental health or developmental disabilities facility or
16 his or her designee or the supervisor of a program of
17 treatment or habilitation or his or her designee.
18 "Designee" may include a physician, clinical psychologist,
19 social worker, nurse, or clinical professional counselor.

20 (b) If the Court finds the defendant in need of mental
21 health services on an inpatient basis, the admission,
22 detention, care, treatment or habilitation, treatment plans,
23 review proceedings, including review of treatment and
24 treatment plans, and discharge of the defendant after such
25 order shall be under the Mental Health and Developmental
26 Disabilities Code, except that the initial order for admission

1 of a defendant acquitted of a felony by reason of insanity
2 shall be for an indefinite period of time. Such period of
3 commitment shall not exceed the maximum length of time that the
4 defendant would have been required to serve, less credit for
5 good behavior as provided in Section 5-4-1 of the Unified Code
6 of Corrections, before becoming eligible for release had he
7 been convicted of and received the maximum sentence for the
8 most serious crime for which he has been acquitted by reason of
9 insanity. The Court shall determine the maximum period of
10 commitment by an appropriate order. During this period of time,
11 the defendant shall not be permitted to be in the community in
12 any manner, including but not limited to off-grounds
13 privileges, with or without escort by personnel of the
14 Department of Human Services, unsupervised on-grounds
15 privileges, discharge or conditional or temporary release,
16 except by a plan as provided in this Section. In no event shall
17 a defendant's continued unauthorized absence be a basis for
18 discharge. Not more than 30 days after admission and every 90
19 ~~60~~ days thereafter so long as the initial order remains in
20 effect, the facility director shall file a treatment plan
21 report in writing with the court and forward a copy of the
22 treatment plan report to the clerk of the court, the State's
23 Attorney, and the defendant's attorney, if the defendant is
24 represented by counsel, or to a person authorized by the
25 defendant under the Mental Health and Developmental
26 Disabilities Confidentiality Act to be sent a copy of the

1 report. The report shall include an opinion as to whether the
2 defendant is currently in need of mental health services on an
3 inpatient basis or in need of mental health services on an
4 outpatient basis. The report shall also summarize the basis for
5 those findings and provide a current summary of the following
6 items from the treatment plan: (1) an assessment of the
7 defendant's treatment needs, (2) a description of the services
8 recommended for treatment, (3) the goals of each type of
9 element of service, (4) an anticipated timetable for the
10 accomplishment of the goals, and (5) a designation of the
11 qualified professional responsible for the implementation of
12 the plan. The report may also include unsupervised on-grounds
13 privileges, off-grounds privileges (with or without escort by
14 personnel of the Department of Human Services), home visits and
15 participation in work programs, but only where such privileges
16 have been approved by specific court order, which order may
17 include such conditions on the defendant as the Court may deem
18 appropriate and necessary to reasonably assure the defendant's
19 satisfactory progress in treatment and the safety of the
20 defendant and others.

21 (c) Every defendant acquitted of a felony by reason of
22 insanity and subsequently found to be in need of mental health
23 services shall be represented by counsel in all proceedings
24 under this Section and under the Mental Health and
25 Developmental Disabilities Code.

26 (1) The Court shall appoint as counsel the public

1 defender or an attorney licensed by this State.

2 (2) Upon filing with the Court of a verified statement
3 of legal services rendered by the private attorney
4 appointed pursuant to paragraph (1) of this subsection, the
5 Court shall determine a reasonable fee for such services.
6 If the defendant is unable to pay the fee, the Court shall
7 enter an order upon the State to pay the entire fee or such
8 amount as the defendant is unable to pay from funds
9 appropriated by the General Assembly for that purpose.

10 (d) When the facility director determines that:

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

13 (2) the defendant may be conditionally released
14 because he or she is still in need of mental health
15 services or that the defendant may be discharged as not in
16 need of any mental health services; or

17 (3) (blank);

18 the facility director shall give written notice to the Court,
19 State's Attorney and defense attorney. Such notice shall set
20 forth in detail the basis for the recommendation of the
21 facility director, and specify clearly the recommendations, if
22 any, of the facility director, concerning conditional release.
23 Any recommendation for conditional release shall include an
24 evaluation of the defendant's need for psychotropic
25 medication, what provisions should be made, if any, to ensure
26 that the defendant will continue to receive psychotropic

1 medication following discharge, and what provisions should be
2 made to assure the safety of the defendant and others in the
3 event the defendant is no longer receiving psychotropic
4 medication. Within 30 days of the notification by the facility
5 director, the Court shall set a hearing and make a finding as
6 to whether the defendant is:

7 (i) (blank); or

8 (ii) in need of mental health services in the form of
9 inpatient care; or

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

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

13 (v) (blank).

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

17 (e) A defendant admitted pursuant to this Section, or any
18 person on his behalf, may file a petition for treatment plan
19 review or discharge or conditional release under the standards
20 of this Section in the Court which rendered the verdict. Upon
21 receipt of a petition for treatment plan review or discharge or
22 conditional release, the Court shall set a hearing to be held
23 within 120 days. Thereafter, no new petition may be filed for
24 180 days without leave of the Court.

25 (f) The Court shall direct that notice of the time and
26 place of the hearing be served upon the defendant, the facility

1 director, the State's Attorney, and the defendant's attorney.
2 If requested by either the State or the defense or if the Court
3 feels it is appropriate, an impartial examination of the
4 defendant by a psychiatrist or clinical psychologist as defined
5 in Section 1-103 of the Mental Health and Developmental
6 Disabilities Code who is not in the employ of the Department of
7 Human Services shall be ordered, and the report considered at
8 the time of the hearing.

9 (g) The findings of the Court shall be established by clear
10 and convincing evidence. The burden of proof and the burden of
11 going forth with the evidence rest with the defendant or any
12 person on the defendant's behalf when a hearing is held to
13 review a petition filed by or on behalf of the defendant. The
14 evidence shall be presented in open Court with the right of
15 confrontation and cross-examination. Such evidence may
16 include, but is not limited to:

17 (1) whether the defendant appreciates the harm caused
18 by the defendant to others and the community by his or her
19 prior conduct that resulted in the finding of not guilty by
20 reason of insanity;

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

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

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

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

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

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

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

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

11 (10) any family participation or involvement expected
12 upon release and what is the willingness and ability of the
13 family to participate or be involved;

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

16 (12) any other factor or factors the Court deems
17 appropriate.

18 (h) Before the court orders that the defendant be
19 discharged or conditionally released, it shall order the
20 facility director to establish a discharge plan that includes a
21 plan for the defendant's shelter, support, and medication. If
22 appropriate, the court shall order that the facility director
23 establish a program to train the defendant in self-medication
24 under standards established by the Department of Human
25 Services. If the Court finds, consistent with the provisions of
26 this Section, that the defendant is no longer in need of mental

1 health services it shall order the facility director to
2 discharge the defendant. If the Court finds, consistent with
3 the provisions of this Section, that the defendant is in need
4 of mental health services, and no longer in need of inpatient
5 care, it shall order the facility director to release the
6 defendant under such conditions as the Court deems appropriate
7 and as provided by this Section. Such conditional release shall
8 be imposed for a period of 5 years as provided in paragraph (D)
9 of subsection (a-1) and shall be subject to later modification
10 by the Court as provided by this Section. If the Court finds
11 consistent with the provisions in this Section that the
12 defendant is in need of mental health services on an inpatient
13 basis, it shall order the facility director not to discharge or
14 release the defendant in accordance with paragraph (b) of this
15 Section.

16 (i) If within the period of the defendant's conditional
17 release the State's Attorney determines that the defendant has
18 not fulfilled the conditions of his or her release, the State's
19 Attorney may petition the Court to revoke or modify the
20 conditional release of the defendant. Upon the filing of such
21 petition the defendant may be remanded to the custody of the
22 Department, or to any other mental health facility designated
23 by the Department, pending the resolution of the petition.
24 Nothing in this Section shall prevent the emergency admission
25 of a defendant pursuant to Article VI of Chapter III of the
26 Mental Health and Developmental Disabilities Code or the

1 voluntary admission of the defendant pursuant to Article IV of
2 Chapter III of the Mental Health and Developmental Disabilities
3 Code. If the Court determines, after hearing evidence, that the
4 defendant has not fulfilled the conditions of release, the
5 Court shall order a hearing to be held consistent with the
6 provisions of paragraph (f) and (g) of this Section. At such
7 hearing, if the Court finds that the defendant is in need of
8 mental health services on an inpatient basis, it shall enter an
9 order remanding him or her to the Department of Human Services
10 or other facility. If the defendant is remanded to the
11 Department of Human Services, he or she shall be placed in a
12 secure setting unless the Court determines that there are
13 compelling reasons that such placement is not necessary. If the
14 Court finds that the defendant continues to be in need of
15 mental health services but not on an inpatient basis, it may
16 modify the conditions of the original release in order to
17 reasonably assure the defendant's satisfactory progress in
18 treatment and his or her safety and the safety of others in
19 accordance with the standards established in paragraph (D) of
20 subsection (a-1). Nothing in this Section shall limit a Court's
21 contempt powers or any other powers of a Court.

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

24 (k) In the event of a conflict between this Section and the
25 Mental Health and Developmental Disabilities Code or the Mental
26 Health and Developmental Disabilities Confidentiality Act, the

1 provisions of this Section shall govern.

2 (l) This amendatory Act shall apply to all persons who have
3 been found not guilty by reason of insanity and who are
4 presently committed to the Department of Mental Health and
5 Developmental Disabilities (now the Department of Human
6 Services).

7 (m) The Clerk of the Court shall transmit a certified copy
8 of the order of discharge or conditional release to the
9 Department of Human Services, to the sheriff of the county from
10 which the defendant was admitted, to the Illinois Department of
11 State Police, to the proper law enforcement agency for the
12 municipality where the offense took place, and to the sheriff
13 of the county into which the defendant is conditionally
14 discharged. The Illinois Department of State Police shall
15 maintain a centralized record of discharged or conditionally
16 released defendants while they are under court supervision for
17 access and use of appropriate law enforcement agencies.

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

19 Section 99. Effective date. This Act takes effect January
20 1, 2018.