



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3616

Introduced 2/22/2021, by Rep. Justin Slaughter

SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-17

from Ch. 38, par. 104-17

Amends the Code of Criminal Procedure of 1963. Provides that in the case of an order of the court committing a defendant who has been found unfit to stand trial for treatment, the court shall order that the placement be on an outpatient basis unless the court determines that outpatient treatment will not provide reasonable assurances for the safety of the defendant and others or provide reasonable assurances that the defendant can be restored to fitness on an outpatient basis. Provides that if the court determines that placement on an outpatient basis is not appropriate, the court shall (rather than may) order the defendant placed for treatment in the custody of the Department of Human Services or the court may order him or her placed in the custody of any other appropriate public or private inpatient mental health facility (deletes treatment program) which has agreed to provide treatment to the defendant. Makes other changes.

LRB102 11834 RLC 17169 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. The court shall order that the placement be
14 on an outpatient basis unless the court determines that
15 outpatient treatment will not provide reasonable assurances
16 for the safety of the defendant and others or provide
17 reasonable assurances that the defendant can be restored to
18 fitness on an outpatient basis. If the court determines that
19 placement on an outpatient basis is not appropriate ~~(b) If the~~
20 ~~defendant's disability is mental,~~ the court shall may order
21 the defendant ~~him~~ placed for treatment in the custody of the
22 Department of Human Services which shall place and maintain
23 the defendant in a suitable treatment facility or program, or

1 the court may order him or her placed in the custody of any
2 other appropriate public or private inpatient mental health
3 facility ~~or treatment program~~ which has agreed to provide
4 treatment to the defendant. If the court determines that
5 placement on an outpatient basis is appropriate, the court
6 shall order the defendant placed in the custody of any
7 appropriate public or private outpatient treatment program
8 which has been approved by the Department of Human Services
9 and has agreed to provide treatment to the defendant.

10 (b) If the defendant is in custody and ~~If~~ the court orders
11 the defendant placed in the custody of the Department of Human
12 Services, the Department shall evaluate the defendant to
13 determine to which secure facility the defendant shall be
14 transported and, within 20 days of the transmittal by the
15 clerk of the circuit court of the placement court order,
16 notify the sheriff of the designated facility. Upon receipt of
17 that notice, the sheriff shall promptly transport the
18 defendant to the designated facility. If the defendant is
19 placed in the custody of the Department of Human Services, the
20 defendant shall be placed in a secure setting. During the
21 period of time required to determine the appropriate placement
22 the defendant shall remain in jail. If during the course of
23 evaluating the defendant for placement, the Department of
24 Human Services determines that the defendant is currently fit
25 to stand trial, it shall immediately notify the court and
26 shall submit a written report within 7 days. In that

1 circumstance the placement shall be held pending a court
2 hearing on the Department's report. Otherwise, upon completion
3 of the placement process, the sheriff shall be notified and
4 shall transport the defendant to the designated facility. If,
5 within 20 days of the transmittal by the clerk of the circuit
6 court of the placement court order, the Department fails to
7 notify the sheriff of the identity of the facility to which the
8 defendant shall be transported, the sheriff shall contact a
9 designated person within the Department to inquire about when
10 a placement will become available at the designated facility
11 and bed availability at other facilities. If, within 20 days
12 of the transmittal by the clerk of the circuit court of the
13 placement court order, the Department fails to notify the
14 sheriff of the identity of the facility to which the defendant
15 shall be transported, the sheriff shall notify the Department
16 of its intent to transfer the defendant to the nearest secure
17 mental health facility operated by the Department and inquire
18 as to the status of the placement evaluation and availability
19 for admission to such facility operated by the Department by
20 contacting a designated person within the Department. The
21 Department shall respond to the sheriff within 2 business days
22 of the notice and inquiry by the sheriff seeking the transfer
23 and the Department shall provide the sheriff with the status
24 of the evaluation, information on bed and placement
25 availability, and an estimated date of admission for the
26 defendant and any changes to that estimated date of admission.

1 If the Department notifies the sheriff during the 2 business
2 day period of a facility operated by the Department with
3 placement availability, the sheriff shall promptly transport
4 the defendant to that facility. If the Department determines
5 that a defendant, who has been placed in the Department's
6 custody for treatment on an inpatient basis, can be treated on
7 an outpatient basis, the Department shall provide written
8 notification to the court, the State's Attorney, and counsel
9 for defendant of that determination, which notification shall
10 set forth in detail the basis for the Department's
11 determination. If the court determines that outpatient
12 treatment will provide reasonable assurances for the safety of
13 the defendant and others and provides reasonable assurances
14 that the defendant can be restored to fitness on an outpatient
15 basis, the court shall order the defendant to undergo
16 treatment on an outpatient basis as provided in subsection (a)
17 of this Section ~~The placement may be ordered either on an~~
18 ~~inpatient or an outpatient basis.~~

19 (c) If the defendant is not in custody and the court orders
20 defendant placed in the custody of the Department of Human
21 Services, the Department shall notify the defendant of the
22 facility to which he or she must report and the date and time
23 that the defendant must report to that facility. If the
24 defendant fails to report to the facility, the Department
25 shall notify the sheriff who shall transport the defendant to
26 the designated facility. ~~If the defendant's disability is~~

1 ~~physical, the court may order him placed under the supervision~~
2 ~~of the Department of Human Services which shall place and~~
3 ~~maintain the defendant in a suitable treatment facility or~~
4 ~~program, or the court may order him placed in an appropriate~~
5 ~~public or private facility or treatment program which has~~
6 ~~agreed to provide treatment to the defendant. The placement~~
7 ~~may be ordered either on an inpatient or an outpatient basis.~~

8 (c-5) If the defendant has been placed in an outpatient
9 treatment program, that program shall promptly notify the
10 court, the Department, the State's Attorney and counsel for
11 defendant should the defendant fail to comply with the
12 provisions of the court order for treatment or should the
13 defendant no longer be appropriate for outpatient fitness
14 restoration. If the court determines that outpatient treatment
15 is no longer appropriate pursuant to the standard in
16 subsection (a), the court shall order the defendant to receive
17 treatment on an inpatient basis as provided in subsection (c).
18 Nothing in this Section shall limit a court's contempt powers
19 or any other powers of a court.

20 (d) The clerk of the circuit court shall within 5 days of
21 the entry of the order transmit to the Department, agency or
22 institution, if any, to which the defendant is remanded for
23 treatment, the following:

24 (1) a certified copy of the order to undergo
25 treatment. Accompanying the certified copy of the order to
26 undergo treatment shall be the complete copy of any report

1 prepared under Section 104-15 of this Code or other report
2 prepared by a forensic examiner for the court;

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

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

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

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

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

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

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

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

7 (Source: P.A. 99-140, eff. 1-1-16; 100-27, eff. 1-1-18.)