

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: (1) 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, or (2) that clinically  
19 appropriate outpatient treatment is not accessible, or  
20 optimal, due to cost, waiting lists, treatment limits, or  
21 other barriers. If the court determines that placement on an  
22 outpatient basis is not appropriate ~~(b) If the defendant's~~  
23 ~~disability is mental,~~ the court shall ~~may~~ order the defendant

1 ~~him~~ placed for treatment in the custody of the Department of  
2 Human Services which shall place and maintain the defendant in  
3 a suitable treatment facility or program, or the court may  
4 order him or her placed in the custody of any other appropriate  
5 public or private inpatient mental health facility ~~or~~  
6 ~~treatment program~~ which has agreed to provide treatment to the  
7 defendant. Unless there are no beds available in a  
8 State-operated facility, the defendant shall be placed in such  
9 a facility. If the court determines that placement on an  
10 outpatient basis is appropriate, the court shall order the  
11 defendant placed in the custody of any appropriate public or  
12 private outpatient treatment program which has been approved  
13 by the Department of Human Services and has agreed to provide  
14 treatment to the defendant.

15 (b) If the defendant is in custody and ~~If~~ the court orders  
16 the defendant placed in the custody of the Department of Human  
17 Services, the Department shall evaluate the defendant to  
18 determine to which secure facility the defendant shall be  
19 transported and, within 20 days of the transmittal by the  
20 clerk of the circuit court of the placement court order,  
21 notify the sheriff of the designated facility. Upon receipt of  
22 that notice, the sheriff shall promptly transport the  
23 defendant to the designated facility. If the defendant is  
24 placed in the custody of the Department of Human Services, the  
25 defendant shall be placed in a secure setting. During the  
26 period of time required to determine the appropriate placement

1 the defendant shall remain in jail. If during the course of  
2 evaluating the defendant for placement, the Department of  
3 Human Services determines that the defendant is currently fit  
4 to stand trial, it shall immediately notify the court and  
5 shall submit a written report within 7 days. In that  
6 circumstance the placement shall be held pending a court  
7 hearing on the Department's report. Otherwise, upon completion  
8 of the placement process, the sheriff shall be notified and  
9 shall transport the defendant to the designated facility. If,  
10 within 20 days of the transmittal by the clerk of the circuit  
11 court of the placement court order, the Department fails to  
12 notify the sheriff of the identity of the facility to which the  
13 defendant shall be transported, the sheriff shall contact a  
14 designated person within the Department to inquire about when  
15 a placement will become available at the designated facility  
16 and bed availability at other facilities. If, within 20 days  
17 of the transmittal by the clerk of the circuit court of the  
18 placement court order, the Department fails to notify the  
19 sheriff of the identity of the facility to which the defendant  
20 shall be transported, the sheriff shall notify the Department  
21 of its intent to transfer the defendant to the nearest secure  
22 mental health facility operated by the Department and inquire  
23 as to the status of the placement evaluation and availability  
24 for admission to such facility operated by the Department by  
25 contacting a designated person within the Department. The  
26 Department shall respond to the sheriff within 2 business days

1 of the notice and inquiry by the sheriff seeking the transfer  
2 and the Department shall provide the sheriff with the status  
3 of the evaluation, information on bed and placement  
4 availability, and an estimated date of admission for the  
5 defendant and any changes to that estimated date of admission.  
6 If the Department notifies the sheriff during the 2 business  
7 day period of a facility operated by the Department with  
8 placement availability, the sheriff shall promptly transport  
9 the defendant to that facility. If the Department determines  
10 that a defendant, who has been placed in the Department's  
11 custody for treatment on an inpatient basis, can be treated on  
12 an outpatient basis, the Department shall provide written  
13 notification to the court, the State's Attorney, and counsel  
14 for defendant of that determination, which notification shall  
15 set forth in detail the basis for the Department's  
16 determination. If the court determines: (1) that outpatient  
17 treatment will provide reasonable assurances for the safety of  
18 the defendant and others and provides reasonable assurances  
19 that the defendant can be restored to fitness on an outpatient  
20 basis, or (2) that clinically appropriate outpatient treatment  
21 is not accessible, or optimal, due to cost, waiting lists,  
22 treatment limits or other barriers, the court shall order the  
23 defendant to undergo treatment on an outpatient basis as  
24 provided in subsection (a) of this Section ~~The placement may~~  
25 ~~be ordered either on an inpatient or an outpatient basis.~~

26 (c) If the defendant is not in custody and the court orders

1 the defendant placed in the custody of the Department of Human  
2 Services, the Department shall notify the defendant of the  
3 facility to which he or she must report and the date and time  
4 that the defendant must report to that facility. If the  
5 defendant fails to report to the facility, the Department  
6 shall notify the sheriff who shall transport the defendant to  
7 the designated facility. ~~If the defendant's disability is~~  
8 ~~physical, the court may order him placed under the supervision~~  
9 ~~of the Department of Human Services which shall place and~~  
10 ~~maintain the defendant in a suitable treatment facility or~~  
11 ~~program, or the court may order him placed in an appropriate~~  
12 ~~public or private facility or treatment program which has~~  
13 ~~agreed to provide treatment to the defendant. The placement~~  
14 ~~may be ordered either on an inpatient or an outpatient basis.~~

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

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

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

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

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

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

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

18 (e) Within 30 days of entry of an order to undergo  
19 treatment, the person supervising the defendant's treatment  
20 shall file with the court, the State, and the defense a report  
21 assessing the facility's or program's capacity to provide  
22 appropriate treatment for the defendant and indicating his  
23 opinion as to the probability of the defendant's attaining  
24 fitness within a period of time from the date of the finding of  
25 unfitness. For a defendant charged with a felony, the period  
26 of time shall be one year. For a defendant charged with a

1 misdemeanor, the period of time shall be no longer than the  
2 sentence if convicted of the most serious offense. If the  
3 report indicates that there is a substantial probability that  
4 the defendant will attain fitness within the time period, the  
5 treatment supervisor shall also file a treatment plan which  
6 shall include:

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

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

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

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