



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5863

Introduced 1/4/2023, by Rep. Lakesia Collins

SYNOPSIS AS INTRODUCED:

See Index

Amends the Specialized Mental Health Rehabilitation Act of 2013. Excludes from definition of "consumer" under the Act an individual who has been found unfit to stand trial, or not guilty by reason of insanity, and is currently subject to a court order requiring placement in secure, inpatient care in the custody of the Department of Human Services pursuant to the Code of Criminal Procedure of 1963 or the Unified Code of Corrections, as applicable. Amends the Code of Criminal Procedure of 1963 concerning defendants unfit to stand trial. Provides that a defendant whose disability is mental and the most serious offense charged against the defendant is a misdemeanor, the court shall order outpatient treatment, unless the court finds good cause on the record to order inpatient treatment. Provides that 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. Provides that 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. Deletes language providing that if, within 20 days of the transmittal by the clerk of the circuit court of the placement court 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 of its intent to transfer the defendant to the nearest secure mental health facility operated by the Department and inquire as to the status of the placement evaluation and availability for admission to such facility operated by the Department by contacting a designated person within the Department. Provides that, upon a determination that there is not a substantial probability that the defendant will attain fitness within the period specified in the Code from the original finding of unfitness, the court shall hold a discharge hearing within 60 days, unless good cause is shown for the delay. Makes other changes.

LRB102 30106 RLC 42329 b

A BILL FOR

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 Specialized Mental Health Rehabilitation
5 Act of 2013 is amended by changing Section 1-102 as follows:

6 (210 ILCS 49/1-102)

7 Sec. 1-102. Definitions. For the purposes of this Act,
8 unless the context otherwise requires:

9 "Abuse" means any physical or mental injury or sexual
10 assault inflicted on a consumer other than by accidental means
11 in a facility.

12 "Accreditation" means any of the following:

13 (1) the Joint Commission;

14 (2) the Commission on Accreditation of Rehabilitation
15 Facilities;

16 (3) the Healthcare Facilities Accreditation Program;

17 or

18 (4) any other national standards of care as approved
19 by the Department.

20 "APRN" means an Advanced Practice Registered Nurse,
21 nationally certified as a mental health or psychiatric nurse
22 practitioner and licensed under the Nurse Practice Act.

23 "Applicant" means any person making application for a

1 license or a provisional license under this Act.

2 "Consumer" means a person, 18 years of age or older,
3 admitted to a mental health rehabilitation facility for
4 evaluation, observation, diagnosis, treatment, stabilization,
5 recovery, and rehabilitation.

6 "Consumer" does not mean any of the following:

7 (i) an individual requiring a locked setting;

8 (ii) an individual requiring psychiatric
9 hospitalization because of an acute psychiatric crisis;

10 (iii) an individual under 18 years of age;

11 (iv) an individual who is actively suicidal or violent
12 toward others;

13 (v) an individual who has been found unfit to stand
14 trial and is currently subject to a court order requiring
15 placement in secure, inpatient care in the custody of the
16 Department of Human Services pursuant to Section 104-17 of
17 the Code of Criminal Procedure of 1963;

18 (vi) an individual who has been found not guilty by
19 reason of insanity and is currently subject to a court
20 order requiring placement in secure, inpatient care in the
21 custody of the Department of Human Services pursuant to
22 Section 5-2-4 of the Unified Code of Corrections ~~based on~~
23 ~~committing a violent act, such as sexual assault, assault~~
24 ~~with a deadly weapon, arson, or murder;~~

25 (vii) an individual subject to temporary detention and
26 examination under Section 3-607 of the Mental Health and

1 Developmental Disabilities Code;

2 (viii) an individual deemed clinically appropriate for
3 inpatient admission in a State psychiatric hospital; and

4 (ix) an individual transferred by the Department of
5 Corrections pursuant to Section 3-8-5 of the Unified Code
6 of Corrections.

7 "Consumer record" means a record that organizes all
8 information on the care, treatment, and rehabilitation
9 services rendered to a consumer in a specialized mental health
10 rehabilitation facility.

11 "Controlled drugs" means those drugs covered under the
12 federal Comprehensive Drug Abuse Prevention Control Act of
13 1970, as amended, or the Illinois Controlled Substances Act.

14 "Department" means the Department of Public Health.

15 "Discharge" means the full release of any consumer from a
16 facility.

17 "Drug administration" means the act in which a single dose
18 of a prescribed drug or biological is given to a consumer. The
19 complete act of administration entails removing an individual
20 dose from a container, verifying the dose with the
21 prescriber's orders, giving the individual dose to the
22 consumer, and promptly recording the time and dose given.

23 "Drug dispensing" means the act entailing the following of
24 a prescription order for a drug or biological and proper
25 selection, measuring, packaging, labeling, and issuance of the
26 drug or biological to a consumer.

1 "Emergency" means a situation, physical condition, or one
2 or more practices, methods, or operations which present
3 imminent danger of death or serious physical or mental harm to
4 consumers of a facility.

5 "Facility" means a specialized mental health
6 rehabilitation facility that provides at least one of the
7 following services: (1) triage center; (2) crisis
8 stabilization; (3) recovery and rehabilitation supports; or
9 (4) transitional living units for 3 or more persons. The
10 facility shall provide a 24-hour program that provides
11 intensive support and recovery services designed to assist
12 persons, 18 years or older, with mental disorders to develop
13 the skills to become self-sufficient and capable of increasing
14 levels of independent functioning. It includes facilities that
15 meet the following criteria:

16 (1) 100% of the consumer population of the facility
17 has a diagnosis of serious mental illness;

18 (2) no more than 15% of the consumer population of the
19 facility is 65 years of age or older;

20 (3) none of the consumers are non-ambulatory;

21 (4) none of the consumers have a primary diagnosis of
22 moderate, severe, or profound intellectual disability; and

23 (5) the facility must have been licensed under the
24 Specialized Mental Health Rehabilitation Act or the
25 Nursing Home Care Act immediately preceding July 22, 2013
26 (the effective date of this Act) and qualifies as an

1 institute for mental disease under the federal definition
2 of the term.

3 "Facility" does not include the following:

4 (1) a home, institution, or place operated by the
5 federal government or agency thereof, or by the State of
6 Illinois;

7 (2) a hospital, sanitarium, or other institution whose
8 principal activity or business is the diagnosis, care, and
9 treatment of human illness through the maintenance and
10 operation as organized facilities therefor which is
11 required to be licensed under the Hospital Licensing Act;

12 (3) a facility for child care as defined in the Child
13 Care Act of 1969;

14 (4) a community living facility as defined in the
15 Community Living Facilities Licensing Act;

16 (5) a nursing home or sanitarium ~~sanatorium~~ operated
17 solely by and for persons who rely exclusively upon
18 treatment by spiritual means through prayer, in accordance
19 with the creed or tenets of any well-recognized church or
20 religious denomination; however, such nursing home or
21 sanitarium ~~sanatorium~~ shall comply with all local laws and
22 rules relating to sanitation and safety;

23 (6) a facility licensed by the Department of Human
24 Services as a community-integrated living arrangement as
25 defined in the Community-Integrated Living Arrangements
26 Licensure and Certification Act;

1 (7) a supportive residence licensed under the
2 Supportive Residences Licensing Act;

3 (8) a supportive living facility in good standing with
4 the program established under Section 5-5.01a of the
5 Illinois Public Aid Code, except only for purposes of the
6 employment of persons in accordance with Section 3-206.01
7 of the Nursing Home Care Act;

8 (9) an assisted living or shared housing establishment
9 licensed under the Assisted Living and Shared Housing Act,
10 except only for purposes of the employment of persons in
11 accordance with Section 3-206.01 of the Nursing Home Care
12 Act;

13 (10) an Alzheimer's disease management center
14 alternative health care model licensed under the
15 Alternative Health Care Delivery Act;

16 (11) a home, institution, or other place operated by
17 or under the authority of the Illinois Department of
18 Veterans' Affairs;

19 (12) a facility licensed under the ID/DD Community
20 Care Act;

21 (13) a facility licensed under the Nursing Home Care
22 Act after July 22, 2013 (the effective date of this Act);
23 or

24 (14) a facility licensed under the MC/DD Act.

25 "Executive director" means a person who is charged with
26 the general administration and supervision of a facility

1 licensed under this Act and who is a licensed nursing home
2 administrator, licensed practitioner of the healing arts, or
3 qualified mental health professional.

4 "Guardian" means a person appointed as a guardian of the
5 person or guardian of the estate, or both, of a consumer under
6 the Probate Act of 1975.

7 "Identified offender" means a person who meets any of the
8 following criteria:

9 (1) Has been convicted of, found guilty of,
10 adjudicated delinquent for, found not guilty by reason of
11 insanity for, or found unfit to stand trial for, any
12 felony offense listed in Section 25 of the Health Care
13 Worker Background Check Act, except for the following:

14 (i) a felony offense described in Section 10-5 of
15 the Nurse Practice Act;

16 (ii) a felony offense described in Section 4, 5,
17 6, 8, or 17.02 of the Illinois Credit Card and Debit
18 Card Act;

19 (iii) a felony offense described in Section 5,
20 5.1, 5.2, 7, or 9 of the Cannabis Control Act;

21 (iv) a felony offense described in Section 401,
22 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois
23 Controlled Substances Act; and

24 (v) a felony offense described in the
25 Methamphetamine Control and Community Protection Act.

26 (2) Has been convicted of, adjudicated delinquent for,

1 found not guilty by reason of insanity for, or found unfit
2 to stand trial for, any sex offense as defined in
3 subsection (c) of Section 10 of the Sex Offender
4 Management Board Act.

5 "Transitional living units" are residential units within a
6 facility that have the purpose of assisting the consumer in
7 developing and reinforcing the necessary skills to live
8 independently outside of the facility. The duration of stay in
9 such a setting shall not exceed 120 days for each consumer.
10 Nothing in this definition shall be construed to be a
11 prerequisite for transitioning out of a facility.

12 "Licensee" means the person, persons, firm, partnership,
13 association, organization, company, corporation, or business
14 trust to which a license has been issued.

15 "Misappropriation of a consumer's property" means the
16 deliberate misplacement, exploitation, or wrongful temporary
17 or permanent use of a consumer's belongings or money without
18 the consent of a consumer or his or her guardian.

19 "Neglect" means a facility's failure to provide, or
20 willful withholding of, adequate medical care, mental health
21 treatment, psychiatric rehabilitation, personal care, or
22 assistance that is necessary to avoid physical harm and mental
23 anguish of a consumer.

24 "Personal care" means assistance with meals, dressing,
25 movement, bathing, or other personal needs, maintenance, or
26 general supervision and oversight of the physical and mental

1 well-being of an individual who is incapable of maintaining a
2 private, independent residence or who is incapable of managing
3 his or her person, whether or not a guardian has been appointed
4 for such individual. "Personal care" shall not be construed to
5 confine or otherwise constrain a facility's pursuit to develop
6 the skills and abilities of a consumer to become
7 self-sufficient and capable of increasing levels of
8 independent functioning.

9 "Recovery and rehabilitation supports" means a program
10 that facilitates a consumer's longer-term symptom management
11 and stabilization while preparing the consumer for
12 transitional living units by improving living skills and
13 community socialization. The duration of stay in such a
14 setting shall be established by the Department by rule.

15 "Restraint" means:

16 (i) a physical restraint that is any manual method or
17 physical or mechanical device, material, or equipment
18 attached or adjacent to a consumer's body that the
19 consumer cannot remove easily and restricts freedom of
20 movement or normal access to one's body; devices used for
21 positioning, including, but not limited to, bed rails,
22 gait belts, and cushions, shall not be considered to be
23 restraints for purposes of this Section; or

24 (ii) a chemical restraint that is any drug used for
25 discipline or convenience and not required to treat
26 medical symptoms; the Department shall, by rule, designate

1 certain devices as restraints, including at least all
2 those devices that have been determined to be restraints
3 by the United States Department of Health and Human
4 Services in interpretive guidelines issued for the
5 purposes of administering Titles XVIII and XIX of the
6 federal Social Security Act. For the purposes of this Act,
7 restraint shall be administered only after utilizing a
8 coercive free environment and culture.

9 "Self-administration of medication" means consumers shall
10 be responsible for the control, management, and use of their
11 own medication.

12 "Crisis stabilization" means a secure and separate unit
13 that provides short-term behavioral, emotional, or psychiatric
14 crisis stabilization as an alternative to hospitalization or
15 re-hospitalization for consumers from residential or community
16 placement. The duration of stay in such a setting shall not
17 exceed 21 days for each consumer.

18 "Therapeutic separation" means the removal of a consumer
19 from the milieu to a room or area which is designed to aid in
20 the emotional or psychiatric stabilization of that consumer.

21 "Triage center" means a non-residential 23-hour center
22 that serves as an alternative to emergency room care,
23 hospitalization, or re-hospitalization for consumers in need
24 of short-term crisis stabilization. Consumers may access a
25 triage center from a number of referral sources, including
26 family, emergency rooms, hospitals, community behavioral

1 health providers, federally qualified health providers, or
2 schools, including colleges or universities. A triage center
3 may be located in a building separate from the licensed
4 location of a facility, but shall not be more than 1,000 feet
5 from the licensed location of the facility and must meet all of
6 the facility standards applicable to the licensed location. If
7 the triage center does operate in a separate building, safety
8 personnel shall be provided, on site, 24 hours per day and the
9 triage center shall meet all other staffing requirements
10 without counting any staff employed in the main facility
11 building.

12 (Source: P.A. 102-1053, eff. 6-10-22; revised 8-24-22.)

13 Section 10. The Code of Criminal Procedure of 1963 is
14 amended by changing Sections 104-17 and 104-23 as follows:

15 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

17 (a) If the defendant is eligible to be or has been released
18 on pretrial release or on his own recognizance, the court
19 shall select the least physically restrictive form of
20 treatment therapeutically appropriate and consistent with the
21 treatment plan. The placement may be ordered either on an
22 inpatient or an outpatient basis.

23 (b) If the defendant's disability is mental, the court may
24 order him placed for secure treatment in the custody of the

1 Department of Human Services, or the court may order him
2 placed in the custody of any other appropriate public or
3 private mental health facility or treatment program which has
4 agreed to provide treatment to the defendant. If the most
5 serious charge against the defendant is a misdemeanor, the
6 court shall order outpatient treatment, unless the court finds
7 good cause on the record to order inpatient treatment. If the
8 court orders the defendant to inpatient treatment ~~placed~~ in
9 the custody of the Department of Human Services, the
10 Department shall evaluate the defendant to determine the most
11 appropriate ~~to which~~ secure facility to receive the defendant,
12 ~~shall be transported~~ and, within 20 days of the transmittal by
13 the clerk of the circuit court of the court's placement ~~court~~
14 order, notify the court ~~sheriff~~ of the designated facility to
15 receive the defendant. The Department shall admit the
16 defendant to a secure facility within 60 days of the
17 transmittal of the court's placement order, unless the
18 Department can demonstrate good faith efforts at placement and
19 a lack of bed and placement availability. If placement cannot
20 be made within 60 days of the transmittal of the court's
21 placement order and the Department has demonstrated good faith
22 efforts at placement and a lack of bed and placement
23 availability, the Department shall provide an update to the
24 ordering court every 30 days until the defendant is placed.
25 Once bed and placement availability are determined, the
26 Department shall notify . ~~Upon receipt of that notice, the~~

1 sheriff, who shall promptly transport the defendant to the
2 designated facility. If the defendant is placed in the custody
3 of the Department of Human Services, the defendant shall be
4 placed in a secure setting. During the period of time required
5 to determine bed and placement availability at the designated
6 facility, ~~the appropriate placement~~ the defendant shall remain
7 in jail. If during the course of evaluating the defendant for
8 placement, the Department of Human Services determines that
9 the defendant is currently fit to stand trial, it shall
10 immediately notify the court and shall submit a written report
11 within 7 days. In that circumstance the placement shall be
12 held pending a court hearing on the Department's report.
13 Otherwise, upon completion of the placement process, including
14 identifying bed and placement availability, the sheriff shall
15 be notified and shall transport the defendant to the
16 designated facility. If, within 60 ~~20~~ days of the transmittal
17 by the clerk of the circuit court of the court's placement
18 ~~court~~ order, the Department fails to provide ~~notify~~ the
19 sheriff with notice of bed and placement availability at the
20 designated facility ~~of the identity of the facility to which~~
21 ~~the defendant shall be transported~~, the sheriff shall contact
22 ~~a designated person within~~ the Department to inquire about
23 when a placement will become available at the designated
24 facility as well as ~~and~~ bed and placement availability at
25 other secure facilities. ~~If, within 20 days of the transmittal~~
26 ~~by the clerk of the circuit court of the placement court order,~~

1 ~~the Department fails to notify the sheriff of the identity of~~
2 ~~the facility to which the defendant shall be transported, the~~
3 ~~sheriff shall notify the Department of its intent to transfer~~
4 ~~the defendant to the nearest secure mental health facility~~
5 ~~operated by the Department and inquire as to the status of the~~
6 ~~placement evaluation and availability for admission to such~~
7 ~~facility operated by the Department by contacting a designated~~
8 ~~person within the Department.~~ The Department shall respond to
9 the sheriff within 2 business days of the notice and inquiry by
10 the sheriff, ~~seeking the transfer~~ and the Department shall
11 provide the sheriff with the status of the evaluation,
12 information on bed and placement availability, and an
13 estimated date of admission for the defendant and any changes
14 to the designated facility or ~~that~~ estimated date of
15 admission. If the Department notifies the sheriff during the 2
16 business day period of a facility operated by the Department
17 with bed and placement availability, the sheriff shall
18 promptly transport the defendant to that facility. ~~The~~
19 ~~placement may be ordered either on an inpatient or an~~
20 ~~outpatient basis.~~

21 (c) If the defendant's disability is physical, the court
22 may order him placed under the supervision of the Department
23 of Human Services which shall place and maintain the defendant
24 in a suitable treatment facility or program, or the court may
25 order him placed in an appropriate public or private facility
26 or treatment program which has agreed to provide treatment to

1 the defendant. The placement may be ordered either on an
2 inpatient or an outpatient basis.

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

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

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

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

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

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

20 (e) Within 30 days of admission to the designated facility
21 ~~entry of an order to undergo treatment~~, the person supervising
22 the defendant's treatment shall file with the court, the
23 State, and the defense a report assessing the facility's or
24 program's capacity to provide appropriate treatment for the
25 defendant and indicating his opinion as to the probability of
26 the defendant's attaining fitness within a period of time from

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

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

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

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

16 (Source: P.A. 100-27, eff. 1-1-18; 101-652, eff. 1-1-23.)

17 (725 ILCS 5/104-23) (from Ch. 38, par. 104-23)

18 Sec. 104-23. Unfit defendants. Cases involving an unfit
19 defendant who demands a discharge hearing or a defendant who
20 cannot become fit to stand trial and for whom no special
21 provisions or assistance can compensate for his disability and
22 render him fit shall proceed in the following manner:

23 (a) Upon a determination that there is not a substantial
24 probability that the defendant will attain fitness within the
25 time period set in subsection (e) of Section 104-17 of this

1 Code from the original finding of unfitness, the court shall
2 hold a discharge hearing within 60 days, unless good cause is
3 shown for the delay ~~a defendant or the attorney for the~~
4 ~~defendant may move for a discharge hearing pursuant to the~~
5 ~~provisions of Section 104-25. The discharge hearing shall be~~
6 ~~held within 120 days of the filing of a motion for a discharge~~
7 ~~hearing, unless the delay is occasioned by the defendant.~~

8 (b) If at any time the court determines that there is not a
9 substantial probability that the defendant will become fit to
10 stand trial or to plead within the time period set in
11 subsection (e) of Section 104-17 of this Code from the date of
12 the original finding of unfitness, or if at the end of the time
13 period set in subsection (e) of Section 104-17 of this Code
14 from that date the court finds the defendant still unfit and
15 for whom no special provisions or assistance can compensate
16 for his disabilities and render him fit, the State shall
17 request the court:

18 (1) To set the matter for hearing pursuant to Section
19 104-25 unless a hearing has already been held pursuant to
20 paragraph (a) of this Section; or

21 (2) To release the defendant from custody and to
22 dismiss with prejudice the charges against him; or

23 (3) To remand the defendant to the custody of the
24 Department of Human Services and order a hearing to be
25 conducted pursuant to the provisions of the Mental Health
26 and Developmental Disabilities Code, as now or hereafter

1 amended. The Department of Human Services shall have 7
2 days from the date it receives the defendant to prepare
3 and file the necessary petition and certificates that are
4 required for commitment under the Mental Health and
5 Developmental Disabilities Code. If the defendant is
6 committed to the Department of Human Services pursuant to
7 such hearing, the court having jurisdiction over the
8 criminal matter shall dismiss the charges against the
9 defendant, with the leave to reinstate. In such cases the
10 Department of Human Services shall notify the court, the
11 State's Attorney ~~attorney~~ and the defense attorney upon
12 the discharge of the defendant. A former defendant so
13 committed shall be treated in the same manner as any other
14 civilly committed patient for all purposes including
15 admission, selection of the place of treatment and the
16 treatment modalities, entitlement to rights and
17 privileges, transfer, and discharge. A defendant who is
18 not committed shall be remanded to the court having
19 jurisdiction of the criminal matter for disposition
20 pursuant to subparagraph (1) or (2) of paragraph (b) of
21 this Section.

22 (c) If the defendant is restored to fitness and the
23 original charges against him are reinstated, the speedy trial
24 provisions of Section 103-5 shall commence to run.

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

1 INDEX

2 Statutes amended in order of appearance

3 210 ILCS 49/1-102

4 725 ILCS 5/104-17 from Ch. 38, par. 104-17

5 725 ILCS 5/104-23 from Ch. 38, par. 104-23