



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB4012

Introduced 1/21/2022, by Sen. Rachelle Crowe

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-17

from Ch. 38, par. 104-17

Amends the Code of Criminal Procedure of 1963. Provides that if a defendant is found unfit to stand trial, the failure to meet the 20 day timeline for evaluating the defendant to determine to which secure facility the defendant shall be transported and failure within 20 days of the transmittal by the clerk of the circuit court of the placement court order to notify the sheriff of the designated facility shall be considered contempt of court and the Department of Human Services shall pay the sheriff the daily rate and reimbursement for any additional costs, as determined by the sheriff. Provides that the Department of Human Services shall also ensure that a sufficient number of placements exist to meet this requirement.

LRB102 25900 RLC 35259 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 (Text of Section before amendment by P.A. 101-652)

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

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

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

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

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

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

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.)

15 (Text of Section after amendment by P.A. 101-652)

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

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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 treatment in the custody of the  
25 Department of Human Services, or the court may order him

1 placed in the custody of any other appropriate public or  
2 private mental health facility or treatment program which has  
3 agreed to provide treatment to the defendant. If the court  
4 orders the defendant placed in the custody of the Department  
5 of Human Services, the Department shall evaluate the defendant  
6 to determine to which secure facility the defendant shall be  
7 transported and, within 20 days of the transmittal by the  
8 clerk of the circuit court of the placement court order,  
9 notify the sheriff of the designated facility. Failure to meet  
10 the 20 day timeline shall be considered contempt of court and  
11 the Department shall pay the sheriff the daily rate and  
12 reimbursement for any additional costs, as determined by the  
13 sheriff. The Department shall also ensure that a sufficient  
14 number of placements exist to meet this requirement. Upon  
15 receipt of that notice, the sheriff shall promptly transport  
16 the defendant to the designated facility. If the defendant is  
17 placed in the custody of the Department of Human Services, the  
18 defendant shall be placed in a secure setting. During the  
19 period of time required to determine the appropriate placement  
20 the defendant shall remain in jail. If during the course of  
21 evaluating the defendant for placement, the Department of  
22 Human Services determines that the defendant is currently fit  
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22 was committed;

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24 took place;

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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  
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5 shall file with the court, the State, and the defense a report  
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11 of 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  
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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. 100-27, eff. 1-1-18; 101-652, eff. 1-1-23.)

1           Section 95. No acceleration or delay. Where this Act makes  
2 changes in a statute that is represented in this Act by text  
3 that is not yet or no longer in effect (for example, a Section  
4 represented by multiple versions), the use of that text does  
5 not accelerate or delay the taking effect of (i) the changes  
6 made by this Act or (ii) provisions derived from any other  
7 Public Act.