



Rep. Lakesia Collins

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10300HB1294ham001

LRB103 24989 RLC 58550 a

1 AMENDMENT TO HOUSE BILL 1294

2 AMENDMENT NO. _____. Amend House Bill 1294 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Juvenile Court Act of 1987 is amended by
5 adding Part 5A to Article V as follows:

6 (705 ILCS 405/Art. V Pt. 5A heading new)

7 PART 5A. FITNESS TO STAND TRIAL

8 (705 ILCS 405/5-5A-101 new)

9 Sec. 5-5A-101. Purpose. This Part recognizes that children
10 are substantially different from adults and therefore creates
11 procedures to establish fitness to stand trial that
12 accommodate these differences. This Part is intended to
13 support children through practices that are trauma-informed
14 and that protect children's rights and dignity; questions of
15 interpretation shall be resolved in line with these practices.

1 This Part recognizes that the ability to understand charges
2 and to participate meaningfully in one's own defense evolve
3 gradually throughout childhood and early adulthood and that
4 each child deserves developmentally appropriate responses that
5 reflect the best understanding of the child's current
6 abilities.

7 (705 ILCS 405/5-5A-105 new)

8 Sec. 5-5A-105. Definitions. As used in this Part:

9 "Child" means a person under the age of 21, regardless of
10 whether the person is subject to this Act or prosecuted under
11 the criminal laws of this State.

12 "Child traumatic stress" means exposure to one or more
13 traumatic events over the course of a child's life that result
14 in that child developing reactions that persist and that
15 interfere with the child's functional, social, adaptive, or
16 intellectual ability.

17 "Chronological immaturity" means a lack of functional,
18 social, adaptive, or intellectual ability due to chronological
19 age.

20 "Developmental disability" means a disability that is
21 attributable to an intellectual disability, cerebral palsy,
22 epilepsy, autism, a learning disability, or any other
23 condition that results in impaired functional, social,
24 adaptive, or intellectual ability.

25 "Mental illness" means a mental or emotional disorder that

1 substantially impairs a person's thought, perception of
2 reality, emotional process, judgment, behavior, or ability to
3 cope with the ordinary demands of life.

4 "Relative immaturity" means a lack of functional, social,
5 adaptive, or intellectual ability when a child is compared to
6 other children of the same chronological age.

7 "Substance use disorder" has the meaning given to that
8 term in Section 1-10 of the Substance Use Disorder Act.

9 (705 ILCS 405/5-5A-110 new)

10 Sec. 5-5A-110. Unfitness standard. Unfitness may result
11 from the presence of any condition or confluence of
12 conditions, including, but not limited to, mental illness,
13 substance use disorder, developmental disability,
14 chronological immaturity, relative immaturity, or child
15 traumatic stress. Other than chronological immaturity, any of
16 these conditions could look differently in similarly aged
17 children. A diagnosis is not required for a finding of
18 unfitness. A child is unfit when the child either:

19 (1) lacks sufficient present ability to consult with the
20 child's attorney with a reasonable degree of rational
21 understanding, as evidenced by lacking the ability to disclose
22 to the attorney facts pertinent to the proceedings at issue
23 and to assist in the child's defense; or

24 (2) lacks a rational or a factual understanding of the
25 proceedings against the child, as evidenced by any one or more

1 of the following:

2 (A) a lack of ability to identify who the participants
3 are, including the judge, child's attorney, State's
4 Attorney, or qualified expert;

5 (B) a lack of ability to differentiate the multiple
6 roles a single participant could serve in different
7 proceedings the child is involved in;

8 (C) a lack of understanding of the allegations in the
9 petition for adjudication of delinquency;

10 (D) a lack of understanding of the range of possible
11 dispositions that may be imposed in the proceedings;

12 (E) a lack of ability to use the factual
13 understandings and factors in (A) through (D) of this
14 paragraph to make rational decisions; or

15 (F) a lack of any other factors that a qualified
16 expert deems relevant.

17 (705 ILCS 405/5-5A-115 new)

18 Sec. 5-5A-115. Raising the issue of unfitness.

19 (a) The issue of the child's fitness to stand trial, to
20 plead, or to be sentenced may be raised by the child's
21 attorney, the State, or the court at any time before a plea is
22 entered or before, during, or after trial.

23 (b) When the issue of the child's fitness is raised, the
24 court must determine whether there is a bona fide doubt that
25 the child is fit. The court shall find a bona fide doubt when

1 evidence is presented or proffered that suggests that the
2 child could be unfit. If the court finds that there is a bona
3 fide doubt, the court shall order a fitness evaluation under
4 Section 5-5A-125 before proceeding further. Nothing in this
5 Section shall operate to extinguish any rights of a child
6 established by attorney-client privilege.

7 (c) When a child is being prosecuted under the criminal
8 laws of this State under Section 5-130 or 5-805, the criminal
9 court shall apply the fitness standards in this Part. If the
10 issue of the child's fitness is raised prior to the resolution
11 of a transfer proceeding under Section 5-805, the juvenile
12 court shall apply the fitness standards as set forth in this
13 Part.

14 (705 ILCS 405/5-5A-120 new)

15 Sec. 5-5A-120. Burdens and presumptions. In making
16 determinations concerning a child's fitness, the following
17 burdens of proof and presumptions shall apply:

18 (1) when the court finds a bona fide doubt as to the
19 fitness of a child under Section 5-5A-115, the State bears
20 the burden of proving that the child is fit by clear and
21 convincing evidence; and

22 (2) a child who is receiving medication shall not be
23 presumed to be fit or unfit to stand trial solely by virtue
24 of the receipt of that medication.

1 (705 ILCS 405/5-5A-125 new)

2 Sec. 5-5A-125. Fitness evaluation. When the court orders a
3 fitness evaluation under subsection (b) of Section 5-5A-115,
4 the court must appoint one or more qualified experts under
5 Section 5-5A-135. Each expert must evaluate whether the child
6 is fit and must submit a report of the expert's findings to the
7 court under Section 5-5A-160. No expert employed or contracted
8 by the Department of Human Services shall be ordered to
9 perform, in the expert's official capacity, an initial fitness
10 examination under this Section.

11 (705 ILCS 405/5-5A-130 new)

12 Sec. 5-5A-130. Location of evaluation. A fitness
13 evaluation ordered under subsection (b) of Section 5-5A-115
14 must be conducted in the least restrictive environment for the
15 child. The evaluation must be conducted in person whenever
16 possible. Video technology for a remote evaluation may be used
17 only as a last resort. If video technology is used, it must be
18 a secure platform. No facility of the Department of Human
19 Services shall be utilized for this purpose.

20 (705 ILCS 405/5-5A-135 new)

21 Sec. 5-5A-135. Qualification of experts. An expert
22 evaluating the child under Section 5-5A-125 must either be a
23 licensed clinical psychologist or psychiatrist with training
24 and experience in forensics, child development, and child

1 trauma.

2 (705 ILCS 405/5-5A-140 new)

3 Sec. 5-5A-140. Timeline for evaluation. The fitness
4 evaluation ordered under subsection (b) of Section 5-5A-115
5 and report written under Section 5-5A-160 must be completed
6 within 30 days of a court order entered pursuant to subsection
7 (b) of Section 5-5A-115. The time for completion of the
8 fitness evaluation may be extended an additional 30 days for
9 good cause if the child is not in custody.

10 (705 ILCS 405/5-5A-145 new)

11 Sec. 5-5A-145. Counsel at evaluation. The child's counsel
12 must be allowed to be present at the evaluation conducted, if
13 requested by the child's counsel, under Section 5-5A-125.

14 (705 ILCS 405/5-5A-150 new)

15 Sec. 5-5A-150. Statements made during evaluation. No
16 statement made by the child during the evaluation conducted
17 under Section 5-5A-125 shall be used against the child in the
18 current court proceedings or in any future proceedings. No
19 statement made by the child relating to the alleged offense or
20 other offenses shall be included in the report required under
21 Section 5-5A-160. The court must advise the child before the
22 evaluation takes place that no statement made during the
23 evaluation shall be used against the child.

1 (705 ILCS 405/5-5A-155 new)

2 Sec. 5-5A-155. Recordings of evaluations and privacy.

3 (a) An evaluation of the child conducted under Section
4 5-5A-125 shall be video recorded.

5 (b) The video recording of a fitness evaluation is
6 confidential and may be viewed only by the court, the expert
7 conducting the evaluation defined in Section 5-5A-125, the
8 child's attorney, the State, and any other expert in the
9 proceedings deemed necessary by the court and under Section
10 5-910.

11 (705 ILCS 405/5-5A-160 new)

12 Sec. 5-5A-160. Contents of evaluation report.

13 (a) When an evaluation is conducted under Section
14 5-5A-125, the appointed expert must submit a written report of
15 the findings to the court. The evaluation report must detail
16 the methods and tools used during the evaluation and be made in
17 writing.

18 (b) The evaluation report must contain:

19 (1) An assessment of any mental illness, substance use
20 disorder, or developmental disability of the child,
21 including:

22 (A) the results of a mental status exam;

23 (B) a description of the history and current
24 status of any symptoms of any mental illness or

1 developmental disability, or both (a diagnosis is not
2 required);

3 (2) an assessment of the child's chronological and
4 relative immaturity;

5 (3) an assessment of any child traumatic stress,
6 including a description of the child's history of exposure
7 to traumatic events;

8 (4) an assessment of any other condition of the child
9 that could impact the child's functional abilities related
10 to fitness to stand trial;

11 (5) an assessment of the child's rational and factual
12 understandings related to fitness to stand trial, the
13 unfitness standard in Section 5-5A-110, and the
14 relationship of these abilities to any conditions of the
15 child as assessed in paragraphs (1) through (4);

16 (6) whether the expert, based on the evaluation and in
17 the expert's professional judgment, believes the child is
18 fit;

19 (7) if the expert believes that the child is unfit,
20 whether the expert believes there is a substantial
21 probability that the child will attain fitness within the
22 statutory period to attain fitness;

23 (8) recommendations, if the expert believes the child
24 is unfit, including:

25 (A) services that would help the child attain
26 fitness;

1 (B) placement for services to attain fitness; and

2 (C) risk assessments needed prior to placement;

3 and

4 (9) opinions on:

5 (A) the likelihood of the success of the services
6 recommended; and

7 (B) the length of time anticipated to attain
8 fitness.

9 (705 ILCS 405/5-5A-165 new)

10 Sec. 5-5A-165. Hearing to determine fitness.

11 (a) When a bona fide doubt of fitness has been raised, the
12 court shall conduct a hearing to determine the issue of the
13 child's fitness within 30 days of receipt of the evaluation
14 report described in Section 5-5A-160, unless the timeline is
15 waived by the child's counsel.

16 (b) The child has the right to be present at every hearing
17 on the issue of the child's fitness.

18 (c) On the basis of the evidence before it, the court must
19 determine whether the child is unfit to stand trial pursuant
20 to Section 5-5A-110. If the court finds that the child is
21 unfit, the court shall determine:

22 (1) whether in-court assistance under Section 5-5A-190
23 would render the child fit; and

24 (2) whether there is a substantial probability that
25 the child, if provided with services to attain fitness

1 under Section 5-5A-170, will attain fitness within the
2 period to attain fitness set forth in Section 5-5A-175.

3 (d) If the court finds that the child is unfit and there is
4 not a substantial probability the child will attain fitness
5 within the statutory period as set forth in Section 5-5A-175,
6 the court shall proceed under Section 5-5A-210.

7 (e) If the court finds the child is unfit but that there is
8 a substantial probability that the child will become fit
9 within the period to attain fitness set forth in Section
10 5-5A-175, or if the court is unable to determine whether a
11 substantial probability exists, the court shall order the
12 child to receive services to attain fitness at a placement
13 under Section 5-5A-170. If the court is unable to determine
14 whether a substantial probability exists and orders the child
15 to receive services to attain fitness, the court shall conduct
16 a hearing as soon as possible following the receipt of the
17 report filed under Section 5-5A-180 to determine whether there
18 is a substantial probability that the child will attain
19 fitness within the statutory period.

20 (f) If the court finds that the child is unfit to stand
21 trial, it shall proceed under this Act. If the court finds that
22 the child could be rendered fit with in-court assistance, the
23 court shall order in-court assistance pursuant to Section
24 5-5A-190.

25 (g) An order finding the child unfit to stand trial is a
26 final order for purposes of appeal by the State or the child.

1 (705 ILCS 405/5-5A-170 new)

2 Sec. 5-5A-170. Services to attain fitness.

3 (a) When the court orders services to attain fitness under
4 Section 5-5A-165, the court shall determine if the child will
5 receive services on an inpatient or outpatient basis. If
6 inpatient, the child shall be placed at a facility approved by
7 the Department of Human Services to provide residential,
8 restoration care and treatment. If the court orders the child
9 to receive services on an outpatient basis, such services
10 shall be rendered in the community at a program approved by the
11 Department of Human Services. Court-ordered services and
12 placements shall be consistent with the recommendations in the
13 evaluation report. All services shall be trauma-informed,
14 developmentally appropriate, and provided in the least
15 restrictive environment considering the needs and best
16 interests of the child. A placement may be ordered on an
17 inpatient basis only when the child exhibits needs warranting
18 a hospital level of care.

19 (b) Within 5 days of a court order for services to attain
20 fitness entered under Section 5-5A-165, the clerk of the
21 circuit court shall transmit, to the Department of Human
22 Services, and any other agency or institution providing
23 services to attain fitness to the child, the following:

24 (1) a certified copy of the order to receive services
25 and the complete copy of any report on the child's fitness

1 prepared under this Part;

2 (2) the county and municipality in which the alleged
3 offense occurred;

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

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

8 (5) all additional matters that the court directs the
9 clerk to transmit.

10 (705 ILCS 405/5-5A-175 new)

11 Sec. 5-5A-175. Period to attain fitness. For a child
12 charged with a felony, the maximum total time a court may order
13 a child to receive services to attain fitness shall be one
14 year. For a child charged with a misdemeanor, the maximum
15 total period shall be no longer than the length of the sentence
16 that could be imposed if the child were adjudicated delinquent
17 of the misdemeanor offense for which the child was charged, or
18 one year whichever is shorter. The period to attain fitness
19 shall begin with the court's first finding of unfitness during
20 a fitness hearing under Section 5-5A-165.

21 (705 ILCS 405/5-5A-180 new)

22 Sec. 5-5A-180. Initial and subsequent progress reports.

23 (a) Within 30 days of entry of an order to receive services
24 to attain fitness under Sections 5-5A-170 and 5-5A-175, the

1 person in charge of supervising the child's services shall
2 file with the court an initial report assessing the program's
3 capacity to provide appropriate services for the child and
4 indicating the person's opinion as to the probability of the
5 child attaining fitness within the period to attain fitness
6 provided in Section 5-5A-175. If the initial report indicates
7 that there is a substantial probability that the child will
8 attain fitness within the allowed statutory period, the
9 supervisor shall also file a services plan which shall
10 include:

11 (1) a description of the goals of services to attain
12 fitness with respect to rendering the child fit, a
13 specification of the proposed modalities of services, and
14 an estimated timetable for attainment of the goals; and

15 (2) an identification of the person in charge of
16 supervising the child's services.

17 (b) The supervisor shall submit a subsequent written
18 progress report to the court at least 7 days prior to the date
19 of any hearing on the issue of the child's fitness.

20 (c) If the supervisor determines that any of the following
21 circumstances are met, the supervisor shall notify the court
22 in writing as soon as possible but no later than 7 days after
23 the determination is made:

24 (1) if the supervisor believes that the child has
25 attained fitness;

26 (2) if the supervisor believes that there is not a

1 substantial probability that the child will attain
2 fitness, with services, within the period to attain
3 fitness under Section 5-5A-175; or

4 (3) if the supervisor believes a change in services or
5 placement is necessary.

6 (d) The initial and subsequent progress reports shall
7 contain:

8 (1) the clinical findings of the supervisor and the
9 facts upon which the findings are based;

10 (2) the opinion of the supervisor as to whether the
11 child has attained fitness and as to whether the child is
12 making progress, with services, toward attaining fitness
13 within the period set in Section 5-5A-175;

14 (3) whether the current services to attain fitness and
15 placement continue to be in the least restrictive
16 environment necessary, whether a different level of care
17 is needed, and the basis for that recommendation; and

18 (4) any other changes in recommendations of services
19 to attain fitness.

20 (e) If the supervisor of the child's services determines,
21 under paragraph (3) of subsection (d) of this Section, that
22 the child is not in the least restrictive environment
23 necessary to attain fitness, upon receipt of the progress
24 report, the court shall ensure that the child is immediately
25 moved to the least restrictive environment necessary.

1 (705 ILCS 405/5-5A-185 new)

2 Sec. 5-5A-185. Periodic hearings. Upon entry or
3 continuation of any order to receive services to attain
4 fitness, the court shall set a date for hearing to reexamine
5 the issue of the child's fitness not more than 90 days
6 thereafter. In addition, whenever the court receives a report
7 from the supervisor of the child's services under subsection
8 (c) of Section 5-5A-180, the court shall set the matter for a
9 hearing within 14 days unless good cause is demonstrated why
10 the hearing cannot be held. On the date set, the court shall
11 conduct a hearing to redetermine the child's fitness under
12 Section 5-5A-165.

13 (705 ILCS 405/5-5A-190 new)

14 Sec. 5-5A-190. In-court assistance to render a child fit.
15 (a) If the court determines that the child could be
16 rendered fit with in-court assistance under Section 5-5A-165,
17 the court shall order in-court assistance under subsection
18 (b). A child found unfit because of chronological immaturity
19 cannot be rendered fit with in-court assistance. A child found
20 unfit because of relative immaturity or child traumatic stress
21 cannot be rendered fit solely with in-court assistance.
22 (b) In-court assistance may include, but is not limited
23 to:
24 (1) appointment of a qualified translator who shall
25 simultaneously translate all court proceedings into a

1 language understood by the child; and

2 (2) appointment of an expert qualified to assist a
3 child who, because of a disability, is unable to
4 communicate with the child's attorney.

5 (c) If in-court assistance is provided, the case may
6 proceed to trial only if the court determines that in-court
7 assistance renders the child fit. In such cases, the court
8 shall state for the record the following:

9 (1) the qualifications and experience of the experts
10 or other persons appointed to provide in-court assistance
11 to the child;

12 (2) the court's reasons for selecting or appointing
13 the particular experts or other persons to provide the
14 in-court assistance to the child;

15 (3) how the appointment of the particular expert or
16 other persons will serve the goal of rendering the child
17 fit, based on the appointee's qualifications and
18 experience, and the lack of functional, social, adaptive,
19 or intellectual abilities of the child; and

20 (4) any other factors considered by the court in
21 appointing the experts or other persons.

22 (d) A child adjudicated delinquent following a trial
23 conducted with in-court assistance provided under this Section
24 shall not be sentenced before a written report of social
25 investigation is presented to and considered by the court. The
26 written report of social investigation shall be prepared under

1 Section 5-701 and shall include a physical and mental
2 examination unless the court finds that the reports of prior
3 physical and mental examinations conducted under this Part are
4 adequate and recent enough to render additional examinations
5 unnecessary.

6 (705 ILCS 405/5-5A-195 new)

7 Sec. 5-5A-195. Time credit. A sentence imposed on the
8 child in the pending case or in any other case arising out of
9 the same conduct shall be reduced by time spent:

10 (1) in custody under orders issued under Section
11 5-5A-170 or under a commitment to the Department of Human
12 Services following a finding of unfitness under this Part;

13 (2) in any court-ordered out-of-home placement;
14 including, but not limited to, a detention facility,
15 rehabilitation center, or inpatient hospital; or

16 (3) home detention or electronic monitoring pursuant
17 to Section 5-7A-110.

18 (705 ILCS 405/5-5A-200 new)

19 Sec. 5-5A-200. Court organization of records. Any report
20 filed with the court concerning diagnosis, evaluation,
21 progress, or services made under this Part shall not be placed
22 in the child's court record but shall be maintained separately
23 by the clerk of the court and shall be available only to the
24 court or an appellate court, the State, the child, the child's

1 attorney, the child's parent or guardian, or a facility or
2 program that provides services to the child under an order of
3 the court. These records of the child shall be privileged and
4 shall not be disclosed except under the conditions set forth
5 in Section 5-910. Nothing in this Section shall operate to
6 extinguish any rights of a child established by law,
7 including, but not limited to: attorney-client,
8 physician-patient, psychologist-client, or social
9 worker-client privileges, except as otherwise provided by law.

10 (705 ILCS 405/5-5A-205 new)

11 Sec. 5-5A-205. Sentencing guidelines for a child who
12 attains fitness. The court shall not impose a commitment to
13 the Department of Juvenile Justice upon the child if the court
14 believes that because of the child's condition, such a
15 sentence would not be in the interests of society and the
16 child, or would subject the child to excessive hardship. In
17 addition to any other conditions of a sentence of conditional
18 discharge or probation, the court may require that the child
19 receive additional services for the child's condition.

20 (705 ILCS 405/5-5A-210 new)

21 Sec. 5-5A-210. Legal disposition if fitness cannot be
22 attained. The court shall dismiss the charges against the
23 child with prejudice if the court finds the child is unfit
24 under Section 5-5A-165 and that the child:

1 (1) cannot attain fitness within the period to attain
2 fitness defined in Section 5-5A-175 or that there is not a
3 substantial probability that the child will attain fitness
4 within the period to attain fitness defined under Section
5 5-5A-175; and

6 (2) cannot attain fitness with in-court assistance
7 under Section 5-5A-190.

8 (705 ILCS 405/5-5A-215 new)

9 Sec. 5-5A-215. Follow-up study and recommendations. The
10 Illinois Juvenile Justice Commission shall develop and
11 recommend mechanisms to collect and analyze data,
12 disaggregated by race, ethnicity, gender, geography, age, and
13 socioeconomic status, resulting from the implementation of
14 this Part. The report and recommendations shall be submitted
15 to the General Assembly by January 1, 2024.

16 Section 97. Severability. The provisions of this Act are
17 severable under Section 1.31 of the Statute on Statutes.

18 Section 99. Effective date. This Act takes effect July 1,
19 2023."