



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3764

Introduced 2/17/2023, 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. In a provision concerning commitment for treatment, provides that the court shall order that the placement be on an outpatient basis unless the court determines: (1) 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, or (2) that clinically appropriate outpatient treatment is not accessible, or optimal, due to cost, waiting lists, treatment limits, or other barriers. Provides that the defendant shall be placed in a State operated facility under certain circumstances unless there are no beds available. Provides that if the Department of Human Services determines that a defendant, who has been placed in the Department's custody for treatment on an inpatient basis, can be treated on an outpatient basis, the Department shall provide written notification to the court, the State's Attorney, and counsel for the defendant of that determination, which notification shall set forth in detail the basis for the Department's determination. Provides that if the court determines: (1) that outpatient treatment will provide reasonable assurances for the safety of the defendant and others and provides reasonable assurances that the defendant can be restored to fitness on an outpatient basis or (2) that clinically appropriate outpatient treatment is not accessible, or optimal, due to cost, waiting lists, treatment limits or other barriers, the court shall order the defendant to undergo treatment on an outpatient basis. Provides that if the defendant has been placed in an outpatient treatment program, that program shall promptly notify the court, the Department, the State's Attorney and counsel for the defendant should the defendant fail to comply with the provisions of the court order for treatment or should the defendant no longer be appropriate for outpatient fitness restoration. Provides that if the court determines that outpatient treatment is no longer appropriate, the court shall order the defendant to receive treatment on an inpatient basis.

LRB103 27307 RLC 53678 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 pretrial release or on his own recognizance, the court
10 shall select the least physically restrictive form of
11 treatment therapeutically appropriate and consistent with the
12 treatment plan. The placement may be ordered either on an
13 inpatient or an outpatient basis. The court shall order that
14 the placement be on an outpatient basis unless the court
15 determines: (1) that outpatient treatment will not provide
16 reasonable assurances for the safety of the defendant and
17 others or provide reasonable assurances that the defendant can
18 be restored to fitness on an outpatient basis, or (2) that
19 clinically appropriate outpatient treatment is not accessible,
20 or 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 secure treatment in the custody of the
2 Department of Human Services which shall place and maintain
3 the defendant in a suitable treatment facility or program, or
4 the court may order him or her placed in the custody of any
5 other appropriate public or private inpatient mental health
6 facility ~~or treatment program~~ which has agreed to provide
7 treatment to the defendant. Unless there are no beds available
8 in a State-operated facility, the defendant shall be placed in
9 such 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 most serious
16 charge faced by the defendant is a misdemeanor, the court
17 shall order outpatient treatment, unless the court finds good
18 cause on the record to order inpatient treatment. If the court
19 orders the defendant to inpatient treatment in the custody of
20 the Department of Human Services, the Department shall
21 evaluate the defendant to determine the most appropriate
22 secure facility to receive the defendant and, within 20 days
23 of the transmittal by the clerk of the circuit court of the
24 court's placement order, notify the court of the designated
25 facility to receive the defendant. The Department shall admit
26 the defendant to a secure facility within 60 days of the

1 transmittal of the court's placement order, unless the
2 Department can demonstrate good faith efforts at placement and
3 a lack of bed and placement availability. If placement cannot
4 be made within 60 days of the transmittal of the court's
5 placement order and the Department has demonstrated good faith
6 efforts at placement and a lack of bed and placement
7 availability, the Department shall provide an update to the
8 ordering court every 30 days until the defendant is placed.
9 Once bed and placement availability is determined, the
10 Department shall notify the sheriff who shall promptly
11 transport the defendant to the designated facility. If the
12 defendant is placed in the custody of the Department of Human
13 Services, the defendant shall be placed in a secure setting.
14 During the period of time required to determine bed and
15 placement availability at the designated facility, the
16 defendant shall remain in jail. If during the course of
17 evaluating the defendant for placement, the Department of
18 Human Services determines that the defendant is currently fit
19 to stand trial, it shall immediately notify the court and
20 shall submit a written report within 7 days. In that
21 circumstance the placement shall be held pending a court
22 hearing on the Department's report. Otherwise, upon completion
23 of the placement process, including identifying bed and
24 placement availability, the sheriff shall be notified and
25 shall transport the defendant to the designated facility. If,
26 within 60 days of the transmittal by the clerk of the circuit

1 court of the court's placement order, the Department fails to
2 provide the sheriff with notice of bed and placement
3 availability at the designated facility, the sheriff shall
4 contact the Department to inquire about when a placement will
5 become available at the designated facility as well as bed and
6 placement availability at other secure facilities. The
7 Department shall respond to the sheriff within 2 business days
8 of the notice and inquiry by the sheriff seeking the transfer
9 and the Department shall provide the sheriff with the status
10 of the evaluation, information on bed and placement
11 availability, and an estimated date of admission for the
12 defendant and any changes to that estimated date of admission.
13 If the Department notifies the sheriff during the 2 business
14 day period of a facility operated by the Department with
15 placement availability, the sheriff shall promptly transport
16 the defendant to that facility. If the Department determines
17 that a defendant, who has been placed in the Department's
18 custody for treatment on an inpatient basis, can be treated on
19 an outpatient basis, the Department shall provide written
20 notification to the court, the State's Attorney, and counsel
21 for the defendant of that determination, which notification
22 shall set forth in detail the basis for the Department's
23 determination. If the court determines: (1) that outpatient
24 treatment will provide reasonable assurances for the safety of
25 the defendant and others and provides reasonable assurances
26 that the defendant can be restored to fitness on an outpatient

1 basis or (2) that clinically appropriate outpatient treatment
2 is not accessible, or optimal, due to cost, waiting lists,
3 treatment limits or other barriers, the court shall order the
4 defendant to undergo treatment on an outpatient basis as
5 provided in subsection (a) of this Section ~~The placement may~~
6 ~~be ordered either on an inpatient or an outpatient basis.~~

7 (c) If the defendant is not in custody and the court orders
8 the defendant placed in the custody of the Department of Human
9 Services, the Department shall notify the defendant of the
10 facility to which he or she must report and the date and time
11 that the defendant must report to that facility. If the
12 defendant fails to report to the facility, the Department
13 shall notify the sheriff who shall transport the defendant to
14 the designated facility. ~~If the defendant's disability is~~
15 ~~physical, the court may order him placed under the supervision~~
16 ~~of the Department of Human Services which shall place and~~
17 ~~maintain the defendant in a suitable treatment facility or~~
18 ~~program, or the court may order him placed in an appropriate~~
19 ~~public or private facility or treatment program which has~~
20 ~~agreed to provide treatment to the defendant. The placement~~
21 ~~may be ordered either on an inpatient or an outpatient basis.~~

22 (c-5) If the defendant has been placed in an outpatient
23 treatment program, that program shall promptly notify the
24 court, the Department, the State's Attorney and counsel for
25 the defendant should the defendant fail to comply with the
26 provisions of the court order for treatment or should the

1 defendant no longer be appropriate for outpatient fitness
2 restoration. If the court determines that outpatient treatment
3 is no longer appropriate pursuant to the standard in
4 subsection (a), the court shall order the defendant to receive
5 treatment on an inpatient basis as provided in subsection (c).
6 Nothing in this Section shall limit a court's contempt powers
7 or any other powers of a court.

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

12 (1) a certified copy of the order to undergo
13 treatment. Accompanying the certified copy of the order to
14 undergo treatment shall be the complete copy of any report
15 prepared under Section 104-15 of this Code or other report
16 prepared by a forensic examiner for the court;

17 (2) the county and municipality in which the offense
18 was committed;

19 (3) the county and municipality in which the arrest
20 took place;

21 (4) a copy of the arrest report, criminal charges,
22 arrest record; and

23 (5) all additional matters which the Court directs the
24 clerk to transmit.

25 (e) Within 30 days of admission to the designated
26 facility, the person supervising the defendant's treatment

1 shall file with the court, the State, and the defense a report
2 assessing the facility's or program's capacity to provide
3 appropriate treatment for the defendant and indicating his
4 opinion as to the probability of the defendant's attaining
5 fitness within a period of time from the date of the finding of
6 unfitness. For a defendant charged with a felony, the period
7 of time shall be one year. For a defendant charged with a
8 misdemeanor, the period of time shall be no longer than the
9 sentence if convicted of the most serious offense. If the
10 report indicates that there is a substantial probability that
11 the defendant will attain fitness within the time period, the
12 treatment supervisor shall also file a treatment plan which
13 shall include:

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

15 (2) A description of treatment goals with respect to
16 rendering the defendant fit, a specification of the
17 proposed treatment modalities, and an estimated timetable
18 for attainment of the goals;

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

21 (Source: P.A. 101-652, eff. 1-1-23; 102-1118, eff. 1-18-23.)