



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB5131

Introduced 2/8/2024, by Rep. Dennis Tipsword, Jr. - Michael J. Coffey, Jr. - Wayne A Rosenthal and Dave Severin

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-17

from Ch. 38, par. 104-17

Amends the Code of Criminal Procedure of 1963 concerning a defendant's commitment for mental health treatment. Provides that if the Department of Human Services does not provide placement within the 20 days of transmittal from the circuit court clerk, the Department shall provide payment to the sheriff, as prescribed by the sheriff, including, but not limited to, housing and mental health services for each day after 20 days have passed from the time the defendant was first placed in the sheriff's custody. Provides that the sheriff shall not be held liable for any issues encountered after the 20th day the defendant remains in his or her care. Deletes provision that 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. Deletes 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.

LRB103 36005 RLC 66092 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.

14 (b) If the defendant's disability is mental, the court may  
15 order him placed for secure treatment in the custody of the  
16 Department of Human Services, or the court may order him  
17 placed in the custody of any other appropriate public or  
18 private mental health facility or treatment program which has  
19 agreed to provide treatment to the defendant. If the most  
20 serious charge faced by the defendant is a misdemeanor, the  
21 court shall order outpatient treatment, unless the court finds  
22 good cause on the record to order inpatient treatment. If the  
23 court orders the defendant to inpatient treatment in the

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

1 court and shall submit a written report within 7 days. In that  
2 circumstance the placement shall be held pending a court  
3 hearing on the Department's report. Otherwise, upon completion  
4 of the placement process, including identifying bed and  
5 placement availability, the sheriff shall be notified and  
6 shall transport the defendant to the designated facility. If,  
7 within 60 days of the transmittal by the clerk of the circuit  
8 court of the court's placement order, the Department fails to  
9 provide the sheriff with notice of bed and placement  
10 availability at the designated facility, the sheriff shall  
11 contact the Department to inquire about when a placement will  
12 become available at the designated facility as well as bed and  
13 placement availability at other secure facilities. The  
14 Department shall respond to the sheriff within 2 business days  
15 of the notice and inquiry by the sheriff seeking the transfer  
16 and the Department shall provide the sheriff with the status  
17 of the evaluation, information on bed and placement  
18 availability, and an estimated date of admission for the  
19 defendant and any changes to that estimated date of admission.  
20 If the Department notifies the sheriff during the 2 business  
21 day period of a facility operated by the Department with  
22 placement availability, the sheriff shall promptly transport  
23 the defendant to that facility. The placement may be ordered  
24 either on an inpatient or an outpatient basis. If the  
25 Department does not provide placement within the 20 days of  
26 transmittal from the clerk, the Department shall provide

1 payment to the sheriff, as prescribed by the sheriff,  
2 including, but not limited to, housing and mental health  
3 services for each day after 20 days have passed from the time  
4 the defendant was first placed in the sheriff's custody. The  
5 sheriff shall not be held liable for any issues encountered  
6 after the 20th day the defendant remains in his or her care.

7 (c) If the defendant's disability is physical, the court  
8 may order him placed under the supervision of the Department  
9 of Human Services which shall place and maintain the defendant  
10 in a suitable treatment facility or program, or the court may  
11 order him placed in an appropriate public or private facility  
12 or treatment program which has agreed to provide treatment to  
13 the defendant. The placement may be ordered either on an  
14 inpatient or an outpatient basis.

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

19 (1) a certified copy of the order to undergo  
20 treatment. Accompanying the certified copy of the order to  
21 undergo treatment shall be the complete copy of any report  
22 prepared under Section 104-15 of this Code or other report  
23 prepared by a forensic examiner for the court;

24 (2) the county and municipality in which the offense  
25 was committed;

26 (3) the county and municipality in which the arrest

1           took place;

2           (4) a copy of the arrest report, criminal charges,  
3           arrest record; and

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

6           (e) Within 30 days of admission to the designated  
7           facility, the person supervising the defendant's treatment  
8           shall file with the court, the State, and the defense a report  
9           assessing the facility's or program's capacity to provide  
10          appropriate treatment for the defendant and indicating his  
11          opinion as to the probability of the defendant's attaining  
12          fitness within a period of time from the date of the finding of  
13          unfitness. For a defendant charged with a felony, the period  
14          of time shall be one year. For a defendant charged with a  
15          misdemeanor, the period of time shall be no longer than the  
16          sentence if convicted of the most serious offense. If the  
17          report indicates that there is a substantial probability that  
18          the defendant will attain fitness within the time period, the  
19          treatment supervisor shall also file a treatment plan which  
20          shall include:

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

22                 (2) A description of treatment goals with respect to  
23                 rendering the defendant fit, a specification of the  
24                 proposed treatment modalities, and an estimated timetable  
25                 for attainment of the goals;

26                 (3) An identification of the person in charge of

1 supervising the defendant's treatment.

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