



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

**SB3444**

Introduced 2/8/2024, by Sen. Ann Gillespie

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Code of Criminal Procedure of 1963 concerning defendants found unfit to stand trial. Provides that if the defendant is remanded to the custody of the Department of Human Services for inpatient services, the defendant shall be placed in a secure setting. Provides that during the period of time required to determine bed and placement availability at the designated facility, the defendant shall remain in jail and the pretrial release provisions do not apply. Provides that no physician or other person employed by the Department of Human Services shall be ordered to perform, in the person's official capacity, an examination of the defendant's fitness. Provides that if the defendant with mental disabilities is ordered to outpatient treatment, the defendant shall be released from custody with instructions to contact the Department of Human Services to schedule the receipt of restoration services in the community. Provides that a defendant who either fails to arrange for the receipt of community restoration services or whom the Department reports has failed to comply in any other respect with the outpatient treatment order shall be remanded to the Department to receive inpatient services at a secure facility designated by the Department. Provides that the initial fitness report shall indicate what information, if any, contained in the report may be harmful to the mental condition of the defendant if made known to the defendant and the Court may determine if the defendant is restricted from receiving the report. Provides that if the defendant is unfit due to a traumatic brain injury or organic brain disease such as Alzheimer's or dementia, or any other condition other than one treatable as a mental illness or developmental disability, the Court may order the defendant placed in a suitable public or private treatment facility or program that has agreed to provide treatment to the defendant. Provides that no person who has not been determined to be unfit due to an identified condition may be placed in a facility operated by the Department of Human Services. Makes other changes. Defines terms.

LRB103 38699 RLC 68836 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 Sections 104-10, 104-11, 104-12, 104-13,  
6 104-14, 104-15, 104-16, 104-17, 104-18, 104-19, 104-20,  
7 104-21, 104-22, 104-23, 104-24, 104-25, 104-26, 104-27,  
8 104-28, 104-29, 104-30, and 104-31 and by adding Section  
9 102-24 as follows:

10 (725 ILCS 5/102-24 new)

11 Sec. 102-24. Treatment supervisor, supervisor of the  
12 defendant's treatment, person supervising the defendant's  
13 treatment, or qualified professional. "Treatment supervisor",  
14 "supervisor of the defendant's treatment", "person supervising  
15 the defendant's treatment", or "qualified professional" as  
16 referenced in Article 104 means the person in charge of  
17 overseeing fitness restoration for the defendant and may be a  
18 physician, physician assistant, psychiatrist, clinical  
19 psychologist, nurse practitioner, licensed clinical social  
20 worker, or nurse who is working under the supervision of a  
21 properly licensed physician, psychiatrist, or clinical  
22 psychologist.

1 (725 ILCS 5/104-10) (from Ch. 38, par. 104-10)

2 Sec. 104-10. Presumption of Fitness; Fitness Standard.) A  
3 defendant is presumed to be fit to stand trial or to plead, and  
4 be sentenced. A defendant is unfit if, because of the  
5 defendant's ~~his~~ mental or physical condition, the defendant ~~he~~  
6 is unable to either understand the nature and purpose of the  
7 proceedings against the defendant ~~him~~ or to meaningfully  
8 assist in the defendant's ~~his~~ defense.

9 (Source: P.A. 81-1217.)

10 (725 ILCS 5/104-11) (from Ch. 38, par. 104-11)

11 Sec. 104-11. Raising Issue; Burden; Fitness Motions.) (a)  
12 The issue of the defendant's fitness for trial, to plead, or to  
13 be sentenced may be raised by the defense, the State or the  
14 Court at any ~~appropriate~~ time before a plea is entered or  
15 before, during, or after trial. When a bonafide doubt of the  
16 defendant's fitness is raised, the Court ~~court~~ shall order a  
17 determination of the issue by the county's expert before  
18 proceeding further.

19 However, no order entered pursuant to this subsection  
20 shall prevent further proceedings in the case. An expert so  
21 appointed shall examine the defendant and make a report as  
22 provided in Section 104-15. Upon the filing with the Court of a  
23 verified statement of services rendered, the Court shall enter  
24 an order directed to the county board to pay such expert a  
25 reasonable fee as stated in the order.

1           (b) (Blank). ~~Upon request of the defendant that a~~  
2 ~~qualified expert be appointed to examine him or her to~~  
3 ~~determine prior to trial if a bonafide doubt as to his or her~~  
4 ~~fitness to stand trial may be raised, the court, in its~~  
5 ~~discretion, may order an appropriate examination. However, no~~  
6 ~~order entered pursuant to this subsection shall prevent~~  
7 ~~further proceedings in the case. An expert so appointed shall~~  
8 ~~examine the defendant and make a report as provided in Section~~  
9 ~~104-15. Upon the filing with the court of a verified statement~~  
10 ~~of services rendered, the court shall enter an order on the~~  
11 ~~county board to pay such expert a reasonable fee stated in the~~  
12 ~~order.~~

13           (c) When a bonafide doubt of the defendant's fitness has  
14 been raised, the burden of proving that the defendant is fit by  
15 a preponderance of the evidence and the burden of going  
16 forward with the evidence are on the State. However, the Court  
17 ~~court~~ may call its own witnesses and conduct its own inquiry.

18           (d) Following a finding of unfitness, the Court ~~court~~ may  
19 hear and rule on any pretrial motion or motions if the  
20 defendant's presence is not essential to a fair determination  
21 of the issues. A motion may be reheard upon a showing that  
22 evidence is available which was not previously available, due  
23 to the defendant's unfitness, when the motion was first  
24 decided.

25           (Source: P.A. 81-1217.)

1 (725 ILCS 5/104-12) (from Ch. 38, par. 104-12)

2 Sec. 104-12. Right to Jury.) The issue of the defendant's  
3 fitness may be determined in the first instance by the Court  
4 ~~court~~ or by a jury. The defense or the State may demand a jury  
5 or the Court ~~court~~ on its own motion may order a jury. However,  
6 when the issue is raised after trial has begun or after  
7 conviction but before sentencing, or when the issue is to be  
8 redetermined under Section 104-20 or 104-27, the issue shall  
9 be determined by the Court ~~court~~.

10 (Source: P.A. 81-1217.)

11 (725 ILCS 5/104-13) (from Ch. 38, par. 104-13)

12 Sec. 104-13. Fitness examination.

13 (a) When the issue of fitness involves the defendant's  
14 mental condition, the Court ~~court~~ shall order an examination  
15 of the defendant by one or more licensed physicians, clinical  
16 psychologists, or psychiatrists chosen by the Court ~~court~~. No  
17 physician, or other person ~~clinical psychologist or~~  
18 ~~psychiatrist~~ employed by the Department of Human Services  
19 shall be ordered to perform, in the person's ~~his~~ official  
20 capacity, an examination under this subsection ~~Section~~.

21 (b) If the issue of fitness involves the defendant's  
22 physical condition, the Court ~~court~~ shall appoint one or more  
23 physicians and in addition, such other experts as it may deem  
24 appropriate to examine the defendant and to report to the  
25 Court ~~court~~ regarding the defendant's condition. No physician

1 or other person employed by the Department of Human Services  
2 shall be ordered to perform, in the person's official  
3 capacity, an examination under this subsection.

4 (c) An initial fitness examination ordered under this  
5 Section shall be given at the place designated by the person  
6 who will conduct the examination, except that if the defendant  
7 is being held in custody, the examination shall take place at  
8 such location as the Court ~~court~~ directs. No examinations  
9 under this Section shall be ordered to take place at mental  
10 health or developmental disabilities facilities operated by  
11 the Department of Human Services. If ~~the defendant fails to~~  
12 ~~keep appointments without reasonable cause or if~~ the county  
13 expert person conducting the examination reports to the Court  
14 ~~court~~ that diagnosis requires hospitalization or extended  
15 observation, the Court ~~court~~ may order the defendant admitted  
16 to an appropriate facility for an examination, other than an  
17 initial fitness examination or placement ~~a~~ screening  
18 ~~examination~~, for not more than 7 days. The Court ~~court~~ may,  
19 upon a showing of good cause, grant an additional 7 days to  
20 complete the examination and submit a diagnosis to the Court.

21 (d) Release on pretrial release or on recognizance shall  
22 not be revoked and an application therefor shall not be denied  
23 on the grounds that an examination has been ordered, unless  
24 the Court has determined that the defendant must remain in  
25 custody for the defendant's own safety or the safety of  
26 others.

1 (e) Upon request by the defense and if the defendant is  
2 indigent, the Court ~~court~~ may appoint, in addition to the  
3 expert or experts chosen pursuant to subsection (a) of this  
4 Section, a qualified expert selected by the defendant to  
5 examine him and to make a report as provided in Section 104-15.  
6 Upon the filing with the Court ~~court~~ of a verified statement of  
7 services rendered, the Court ~~court~~ shall enter an order on the  
8 county board to pay such expert a reasonable fee stated in the  
9 order.

10 (Source: P.A. 101-652, eff. 1-1-23.)

11 (725 ILCS 5/104-14) (from Ch. 38, par. 104-14)

12 Sec. 104-14. Use of Statements Made During Examination or  
13 Treatment.) (a) Statements made by the defendant and  
14 information gathered in the course of any examination or  
15 treatment ordered under Section 104-13, 104-17 or 104-20 shall  
16 not be admissible against the defendant unless the defendant  
17 ~~he~~ raises the defense of insanity or the defense of drugged or  
18 intoxicated condition, in which case they shall be admissible  
19 only on the issue of whether the defendant ~~he~~ was insane,  
20 drugged, or intoxicated. The refusal of the defendant to  
21 cooperate in such examinations shall not preclude the raising  
22 of the aforesaid defenses but shall preclude the defendant  
23 from offering expert evidence or testimony tending to support  
24 such defenses if the expert evidence or testimony is based  
25 upon the expert's examination of the defendant.

1 (b) Except as provided in paragraph (a) of this Section,  
2 no statement made by the defendant in the course of any  
3 examination or treatment ordered under Section 104-13, 104-17  
4 or 104-20, which relates to the crime charged or to other  
5 criminal acts, shall be disclosed by persons conducting the  
6 examination or rendering ~~the~~ treatment, except to members of  
7 the examining or treating team. The defendant, however, may  
8 consent to the release of such information if the defendant is  
9 competent to do so. ~~, without the informed written consent of~~  
10 ~~the defendant, who is competent at the time of giving such~~  
11 ~~consent.~~

12 (c) The Court ~~court~~ shall advise the defendant of the  
13 limitations on the use of any statements made or information  
14 gathered in the course of the fitness examination or  
15 subsequent treatment as provided in this Section. It shall  
16 also advise the defendant ~~him~~ that the defendant ~~he~~ may refuse  
17 to cooperate with the person conducting the examination, but  
18 that such ~~his~~ refusal may be admitted ~~admissible~~ into evidence  
19 on the issue of the defendant's ~~his~~ mental or physical  
20 condition.

21 (Source: P.A. 81-1217.)

22 (725 ILCS 5/104-15) (from Ch. 38, par. 104-15)

23 Sec. 104-15. Initial Fitness Report.

24 (a) The person or persons conducting an initial fitness  
25 examination of the defendant, pursuant to paragraph (a) or (b)



1 of Section 104-13 shall submit a written report to the Court  
2 ~~court~~, the State, and the defense within 30 days of the date of  
3 the order. The report shall include:

4 (1) A diagnosis and an explanation as to how it was  
5 reached and the facts upon which it is based;

6 (2) A description of the defendant's mental or  
7 physical disability, if any; its severity; and an opinion  
8 as to whether and to what extent it impairs the  
9 defendant's ability to understand the nature and purpose  
10 of the proceedings against them ~~him~~ or to meaningfully  
11 assist in his defense, or both.

12 (b) If the report indicates that the defendant is not fit  
13 to stand trial or to plead because of a disability, the report  
14 shall include an opinion as to the likelihood of the defendant  
15 attaining fitness within the statutory a period of time from  
16 the date of the finding of unfitness if provided with a course  
17 of treatment. For a defendant charged with a felony, the  
18 period of time shall be one year. For a defendant charged with  
19 a Class A or Class B misdemeanor, the period of time shall be  
20 no longer than the maximum term of imprisonment for the most  
21 serious offense. Defendants charged with Class C misdemeanors,  
22 petty offenses, infraction of a municipal ordinance, or  
23 violation of the Illinois Vehicle Code are not eligible for  
24 fitness restoration services, unless the penalty therefore may  
25 include incarceration for a period of 180 days or longer. If  
26 the person or persons preparing the initial fitness report are

1 unable to form such an opinion, the report shall state the  
2 reasons therefor. The report shall ~~may~~ include a general  
3 description of the type of treatment needed and of the least  
4 physically restrictive form of treatment therapeutically  
5 appropriate. If the most serious charge facing the defendant is  
6 a misdemeanor and inpatient treatment is recommended, the  
7 report shall state reasons why outpatient treatment is not  
8 appropriate.

9 (c) The initial fitness report shall indicate what  
10 information, if any, contained therein may be harmful to the  
11 mental condition of the defendant if made known to the  
12 defendant and the Court may determine if the defendant is  
13 restricted from receiving the report. ~~him.~~

14 (d) In addition to the report, a person ~~retained or~~  
15 appointed by the Court ~~State or the defense~~ to conduct an  
16 initial fitness examination under Section 13 shall, upon  
17 written request, make the defendant's ~~his or her~~ notes, other  
18 evaluations reviewed or relied upon ~~by the testifying witness,~~  
19 and any videotaped interviews available to another examiner of  
20 the defendant. All forensic interviews conducted by a person  
21 retained or appointed by the Court ~~State or the defense~~ shall  
22 be videotaped unless doing so would be impractical. In the  
23 event that the interview is not videotaped, the examiner may  
24 still testify as to the person's fitness and the Court ~~court~~  
25 may only consider the lack of compliance in according the  
26 weight and not the admissibility of the expert testimony. An

1 examiner may use these materials as part of the defendant's  
2 ~~his or her~~ diagnosis and explanation but shall not otherwise  
3 disclose the contents, including at a hearing before the Court  
4 ~~court~~, except as otherwise provided in Section 104-14 of this  
5 Code.

6 (Source: P.A. 100-424, eff. 1-1-18.)

7 (725 ILCS 5/104-16) (from Ch. 38, par. 104-16)

8 Sec. 104-16. Fitness Hearing.) (a) The Court ~~court~~  
9 shall conduct a hearing to determine the issue of the  
10 defendant's fitness within 45 days of receipt of the final  
11 written report of the person or persons conducting the  
12 examination or upon conclusion of the matter then pending  
13 before it, subject to continuances allowed pursuant to Section  
14 114-4 of this Act.

15 (b) Subject to the rules of evidence, matters admissible  
16 on the issue of the defendant's fitness include, but are not  
17 limited to, the following:

18 (1) The defendant's knowledge and understanding of the  
19 charge, the proceedings, the consequences of a plea, judgment  
20 or sentence, and the functions of the participants in the  
21 trial process;

22 (2) The defendant's ability to observe, recollect and  
23 relate occurrences, especially those concerning the incidents  
24 alleged, and to effectively communicate with counsel;

25 (3) The defendant's social behavior and abilities;

1 orientation as to time and place; recognition of persons,  
2 places and things; and performance of motor processes.

3 (c) The defendant has the right to be present at every  
4 hearing on the issue of his fitness. The defendant's presence  
5 may be waived only if there is filed with the Court ~~court~~ a  
6 certificate stating that the defendant is physically unable to  
7 be present due to a disability ~~and the reasons therefor~~. The  
8 certificate shall be signed by a licensed physician, physician  
9 assistant, or nurse practitioner who, within 7 days, has  
10 examined the defendant. A disability is a mental or physical  
11 condition that, in the opinion of a physician, physician  
12 assistant, or nurse practitioner, prevents the defendant from  
13 safely attending a hearing in person. The defendant's mere  
14 refusal to attend a hearing shall not by itself constitute a  
15 disability.

16 (d) On the basis of the evidence before it, the Court ~~court~~  
17 or jury shall determine whether the defendant is fit to stand  
18 trial, ~~or~~ or to plead or to be sentenced. If it finds that the  
19 defendant is unfit, the Court ~~court~~ or the jury shall  
20 determine whether there is substantial probability that the  
21 defendant, if provided with a course of treatment, will attain  
22 fitness within one year, except where the defendant is facing  
23 either a Class A or B Misdemeanors, in which case the period of  
24 time shall be no longer than the maximum for the most serious  
25 offense. ~~If the court or the jury finds that there is not a~~  
26 ~~substantial probability, the court shall proceed as provided~~

1 ~~in Section 104-23.~~ If such probability is found or if the Court  
2 ~~court~~ or the jury is unable to determine whether a substantial  
3 probability exists, the Court ~~court~~ shall order the defendant  
4 to undergo treatment for the purpose of rendering them ~~him~~  
5 fit. In the event that a defendant is ordered to undergo  
6 treatment with ~~when there has been~~ no initial determination as  
7 to the probability of ~~his~~ attaining fitness within the  
8 statutory timeframe, the Court ~~court~~ shall conduct a hearing  
9 as soon as possible following the receipt of the treatment  
10 supervisor's report filed pursuant to subsection (g) ~~paragraph~~  
11 ~~(d)~~ of Section 104-17, unless the hearing is waived by the  
12 defense, and shall make a determination as to whether a  
13 substantial probability of attaining fitness within the  
14 statutory timeframe exists. If the Court or the jury finds  
15 that there is not a substantial probability that the defendant  
16 may be rendered fit within the statutory limitations, the  
17 Court shall proceed as provided in Section 104-23.

18 (e) An order finding the defendant unfit is a final order  
19 for purposes of appeal by the State or the defendant.

20 (Source: P.A. 81-1217.)

21 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

23 (a) If the defendant is eligible to be or has been released  
24 on pretrial release or on the defendant's ~~his~~ own  
25 recognizance, the Court ~~court~~ shall select the least

1 physically restrictive form of treatment therapeutically  
2 appropriate and consistent with the safety of the defendant or  
3 the safety of others. ~~treatment plan.~~ The treatment placement  
4 may be ordered on either ~~on~~ an inpatient or an outpatient  
5 basis.

6 (b) If the defendant ~~defendant's~~ is unfit due to mental  
7 illness or developmental disability as identified in the  
8 Mental Health and Developmental Disabilities Code ~~disability is~~  
9 ~~mental,~~ the Court ~~court~~ may order them into the ~~him placed for~~  
10 ~~secure treatment in the~~ custody of the Department of Human  
11 Services. ~~, or~~ The Court ~~the court~~ may also order the defendant  
12 to be ~~him~~ placed in the custody of any other appropriate public  
13 or private mental health facility or treatment program which  
14 has agreed to provide treatment to the defendant. If the  
15 defendant is remanded to the custody of the Department of  
16 Human Services for inpatient services, the defendant shall be  
17 placed in a secure setting. During the period of time required  
18 to determine bed and placement availability at the designated  
19 facility, the defendant shall remain in jail and the pretrial  
20 release provisions of Section 110-2 do not apply. If the most  
21 serious charge faced by the defendant is a Class A or Class B  
22 misdemeanor, the Court ~~court~~ shall order outpatient treatment,  
23 unless the Court ~~court~~ finds good cause on the record to order  
24 secure, inpatient treatment. If the Court ~~court~~ orders the  
25 defendant to inpatient treatment in the custody of the  
26 Department of Human Services, the Department shall conduct a

1 placement screening ~~evaluate the defendant~~ to determine the  
2 most appropriate placement option for secure facility to  
3 ~~receive~~ the defendant and, within 20 days of the successful  
4 transmittal by the Clerk of Circuit Court ~~clerk of the circuit~~  
5 ~~court~~ of the Court's ~~court's~~ placement order, if inpatient  
6 treatment is most appropriate, notify the Court ~~court~~ of the  
7 designated secure facility to receive the defendant. In such  
8 case, the ~~The~~ Department shall admit the defendant to a secure  
9 facility within 60 days of the transmittal of the Court's  
10 remand ~~court's placement~~ order, unless the Department can  
11 demonstrate good faith efforts at placement and a lack of bed  
12 and placement availability. If placement cannot be made within  
13 60 days of successful ~~the~~ transmittal of the Court's remand  
14 ~~court's placement~~ order and the Department has demonstrated  
15 good faith efforts at placement and a lack of bed and placement  
16 availability, the Department shall provide the Court with an  
17 update and shall continue ~~an update~~ to update the ordering  
18 Court ~~court~~ every 30 days thereafter until the defendant is  
19 placed. Once bed and placement availability is determined, the  
20 Department shall notify the sheriff who shall promptly  
21 transport the defendant to the designated facility. ~~If the~~  
22 ~~defendant is placed in the custody of the Department of Human~~  
23 ~~Services, the defendant shall be placed in a secure setting.~~  
24 ~~During the period of time required to determine bed and~~  
25 ~~placement availability at the designated facility, the~~  
26 ~~defendant shall remain in jail.~~ If during the course of

1 screening ~~evaluating~~ the defendant for placement, the  
2 Department of Human Services determines that the defendant is  
3 currently fit to stand trial, suitable for outpatient  
4 treatment, or unfit without a substantial probability of being  
5 rendered fit within the statutory timeframe, it shall  
6 immediately notify the Court ~~court~~ and shall submit a written  
7 report within 7 days. In any of those circumstances ~~that~~  
8 ~~circumstance~~ the placement shall be held pending a Court ~~court~~  
9 hearing on the Department's report. Otherwise, upon completion  
10 of the placement process, including identifying bed and  
11 placement availability, the sheriff shall be notified and  
12 shall transport the defendant to the designated facility. If,  
13 within 60 days of the successful transmittal by the Clerk  
14 ~~clerk~~ of the Circuit Court ~~circuit court~~ of the Court's remand  
15 ~~court's placement~~ order, the Department has not provided the  
16 Court ~~fails to provide the sheriff~~ with notice of bed and  
17 placement availability at the designated facility, the sheriff  
18 shall contact the Department to inquire about when a placement  
19 will become available at the designated facility as well as  
20 bed and placement availability at other secure facilities. The  
21 Department shall respond to the sheriff within 2 business days  
22 ~~of the notice and inquiry by the sheriff seeking the transfer~~  
23 and ~~the Department~~ shall provide the sheriff with the status  
24 of the placement screening, currently designated facility  
25 ~~evaluation,~~ information on bed and placement availability, ~~and~~  
26 an estimated date of admission for the defendant, and any



1 changes to the ~~that~~ estimated date of admission. If the  
2 Department notifies the sheriff during the 2 business day  
3 period of an alternate secure ~~a~~ facility operated by the  
4 Department with current placement availability, the sheriff  
5 shall promptly transport the defendant to that facility. ~~The~~  
6 ~~placement may be ordered either on an inpatient or an~~  
7 ~~outpatient basis.~~

8 (c) If the defendant's disability is physical, the Court  
9 ~~court~~ may order placement at a medical hospital or other  
10 residential care facility or program that has agreed to  
11 provide treatment to the defendant. Only such physical  
12 conditions that may be overcome by special assistance or  
13 provisions as referenced in Section 104-22 qualify as physical  
14 disabilities under this subsection. ~~him placed under the~~  
15 ~~supervision of the Department of Human Services which shall~~  
16 ~~place and maintain the defendant in a suitable treatment~~  
17 ~~facility or program, or the court may order him placed in an~~  
18 ~~appropriate public or private facility or treatment program~~  
19 ~~which has agreed to provide treatment to the defendant.~~ The  
20 placement may be ordered either on an inpatient or an  
21 outpatient basis.

22 (d) If the defendant with mental disabilities is ordered  
23 to outpatient treatment, the defendant shall be released from  
24 custody with instructions to contact the Department of Human  
25 Services to schedule the receipt of restoration services in  
26 the community. A defendant who either fails to arrange for the

1 receipt of community restoration services or whom the  
2 Department reports has failed to comply in any other respect  
3 with the outpatient treatment order shall be remanded to the  
4 Department pursuant to subsection (b) hereof to receive  
5 inpatient services at a secure facility designated by the  
6 Department.

7 (e) If the defendant is unfit due to a traumatic brain  
8 injury or organic brain disease such as Alzheimer's or  
9 dementia, or any other condition other than one treatable as a  
10 mental illness or developmental disability, the Court may  
11 order the defendant placed in a suitable public or private  
12 treatment facility or program that has agreed to provide  
13 treatment to the defendant. No person who has not been  
14 determined to be unfit due to a condition identified in this  
15 subsection (e) may be placed in a facility operated by the  
16 Department of Human Services.

17 (f)-(d) The Clerk ~~clerk~~ of the Circuit Court ~~circuit court~~  
18 shall within 5 days of the entry of the order transmit to the  
19 Department, hospital, facility, agency or program institution,  
20 if any, to which the defendant is remanded for treatment, the  
21 following:

22 (1) a certified copy of the order to undergo  
23 treatment. Accompanying the certified copy of the order to  
24 undergo treatment shall be the complete copy of any  
25 initial fitness report prepared under Section 104-15 of  
26 this Code or other report prepared by a forensic examiner

1 for the court;

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

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

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

8 (5) all additional matters which the Court directs the  
9 Clerk ~~clerk~~ to transmit.

10 (g)(e) Within 30 days of admission to the hospital,  
11 facility or program designated under this Section ~~facility,~~  
12 the person supervising the defendant's treatment shall file  
13 with the Court ~~court~~, the State, and the defense a report  
14 assessing the hospital's, facility's or program's capacity to  
15 provide appropriate treatment for the defendant and indicating  
16 an ~~his~~ opinion as to the probability of the defendant's  
17 attaining fitness within a period of time from the date of the  
18 finding of unfitness. For a defendant charged with a felony,  
19 the period of time shall be one year. For a defendant charged  
20 with a Class A or Class B misdemeanor, the period of time shall  
21 be no longer than the sentence if convicted of the most serious  
22 offense. Defendants charged with Class C misdemeanors, petty  
23 offenses, infraction of a municipal ordinance, or violation of  
24 the Illinois Vehicle Code are not eligible for fitness  
25 restoration services, unless the statutory penalty therefor  
26 may include a sentence for a period of 180 days or longer. If

1 the report indicates that there is a substantial probability  
2 that the defendant will attain fitness within the statutory  
3 time period, the treatment supervisor shall also file a  
4 treatment plan which shall include:

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

6 (2) A description of treatment goals with respect to  
7 rendering the defendant fit, a specification of the  
8 proposed treatment modalities, and an estimated timetable  
9 for attainment of the goals;

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

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

13 (725 ILCS 5/104-18) (from Ch. 38, par. 104-18)

14 Sec. 104-18. Progress reports.

15 (a) The treatment supervisor shall submit a written  
16 progress report to the Court ~~court~~, the State, and the  
17 defense:

18 (1) At least 7 days prior to the date for any hearing  
19 on the issue of the defendant's fitness;

20 (2) Whenever he believes that the defendant has  
21 attained fitness, provided the treatment supervisor has  
22 been notified by the Court of such date sufficiently in  
23 advance;

24 (3) Whenever there is an opinion by the treatment  
25 supervisor ~~he believes~~ that there is not a substantial

1 probability that the defendant will attain fitness, with  
2 treatment, within the statutory time period ~~set in~~  
3 ~~subsection (c) of Section 104-17 of this Code~~ from the  
4 date of the original finding of unfitness.

5 (b) The progress report shall contain:

6 (1) The clinical findings of the treatment supervisor  
7 and the facts upon which the findings are based;

8 (2) The opinion of the treatment supervisor as to  
9 whether the defendant has attained fitness, ~~or as to~~  
10 ~~whether the defendant is making progress, under treatment,~~  
11 toward attaining fitness within the statutory time period  
12 ~~set in subsection (c) of Section 104-17 of this Code~~ from  
13 the date of the original finding of unfitness, or there is  
14 not a substantially probability that the defendant will  
15 attain fitness within the statutory time period;

16 (3) If the defendant is receiving medication,  
17 information from the prescribing physician indicating the  
18 type, the dosage and the effect of the medication on the  
19 defendant's appearance, actions and demeanor.

20 (c) Whenever the Court ~~court~~ is sent a report from the  
21 supervisor of the defendant's treatment under either paragraph  
22 (2) or (3) of subsection (a) of this Section it shall, within  
23 48 hours, enter an order upon the Sheriff to return the  
24 defendant to the County jail. Upon receipt of such order, the  
25 treatment supervisor ~~provider~~ shall arrange directly with the  
26 county sheriff ~~jail~~ for the immediate return of the defendant

1 to the county jail as provided under subsection (e) of Section  
2 104-20 of this Code.

3 (d) Whenever the Court receives a report from the  
4 supervisor of the defendant's treatment supervisor pursuant to  
5 paragraph (2) or (3) of subsection (a) hereof, the Court shall  
6 forthwith set the matter for a first hearing within 14 days,  
7 unless good cause is demonstrated why the hearing cannot be  
8 held within that time and shall set the hearing at the first  
9 available opportunity thereafter.

10 (Source: P.A. 99-78, eff. 7-20-15; 100-27, eff. 1-1-18.)

11 (725 ILCS 5/104-19) (from Ch. 38, par. 104-19)

12 Sec. 104-19. Records.) Any report filed of record with the  
13 Court ~~court~~ concerning diagnosis, treatment or treatment plans  
14 made pursuant to this Article shall not be placed in the  
15 defendant's court record but shall be maintained separately by  
16 the Clerk ~~clerk~~ of the Circuit Court ~~court~~ and shall be  
17 available only to the Court ~~court~~ or an appellate court, the  
18 State and the defense, the Department, a hospital, facility or  
19 program which is providing treatment to the defendant pursuant  
20 to an order of the Court ~~court~~ or such other persons as the  
21 Court ~~court~~ may direct.

22 (Source: P.A. 81-1217.)

23 (725 ILCS 5/104-20) (from Ch. 38, par. 104-20)

24 Sec. 104-20. Ninety-day hearings; continuing treatment.)

1 (a) Upon entry or continuation of any order to undergo  
2 fitness restoration treatment, the Court ~~court~~ shall set a  
3 date for hearing to reexamine the issue of the defendant's  
4 fitness not more than 90 days from the original finding of  
5 unfitness and at 90-day intervals thereafter. The Clerk of the  
6 Circuit Court shall notify the hospital, facility or program  
7 providing treatment to the defendant of all upcoming hearing  
8 dates. ~~In addition, whenever the court receives a report from~~  
9 ~~the supervisor of the defendant's treatment pursuant to~~  
10 ~~subparagraph (3) of paragraph (a) of Section 104-18, the court~~  
11 ~~shall forthwith set the matter for a first hearing within 14~~  
12 ~~days unless good cause is demonstrated why the hearing cannot~~  
13 ~~be held.~~ Unless waived by the defense, on ~~On~~ the date set ~~or~~  
14 ~~upon conclusion of the matter then pending before it,~~ the  
15 Court ~~court~~, sitting without a jury, shall conduct a hearing,  
16 ~~unless waived by the defense,~~ and shall determine:

17 (1) Whether the defendant is fit to stand trial or to  
18 plead; or ~~and~~ if not,

19 (2) Whether the defendant is making progress ~~under~~  
20 ~~treatment~~ toward attainment of fitness within the  
21 statutory time period ~~set in subsection (e) of Section~~  
22 ~~104-17 of this Code~~ from the date of the original finding  
23 of unfitness; or ~~or~~

24 (3) Whether there is not a substantial probability  
25 that the defendant may be restored to fitness within the  
26 statutory timeframe.

1 (b) If the Court ~~court~~ finds the defendant to be fit  
2 pursuant to this Section, the Court ~~court~~ shall set the matter  
3 for trial and if in secure custody, order that the defendant be  
4 returned to the County to stand trial. ~~provided that if the~~  
5 ~~defendant is in need of continued care or treatment and the~~  
6 ~~supervisor of the defendant's treatment agrees to continue to~~  
7 ~~provide it, the court may enter any order it deems appropriate~~  
8 ~~for the continued care or treatment of the defendant by the~~  
9 ~~facility or program pending the conclusion of the criminal~~  
10 ~~proceedings.~~

11 (c) If the Court ~~court~~ finds that the defendant is still  
12 unfit but that the defendant ~~he~~ is making progress toward  
13 attaining fitness, the Court ~~court~~ may continue or modify the  
14 ~~its~~ original treatment order entered pursuant to Section  
15 104-17.

16 (d) If the Court ~~court~~ finds that the defendant is still  
17 unfit and that the defendant ~~he~~ is not making progress toward  
18 attaining fitness such that there is not a substantial  
19 probability that he will attain fitness within the time  
20 statutory period ~~set in subsection (c) of Section 104-17 of~~  
21 ~~this Code~~ from the date of the original finding of unfitness,  
22 if in secure custody, the Court ~~court~~ shall order that the  
23 defendant be returned to the County and shall otherwise  
24 proceed pursuant to Section 104-23. ~~However, if the defendant~~  
25 ~~is in need of continued care and treatment and the supervisor~~  
26 ~~of the defendant's treatment agrees to continue to provide it,~~



1 ~~the court may enter any order it deems appropriate for the~~  
2 ~~continued care or treatment by the facility or program pending~~  
3 ~~the conclusion of the criminal proceedings.~~

4 (e) Whenever the Court ~~court~~ receives a report from the  
5 supervisor of the defendant's treatment under paragraphs  
6 ~~paragraph~~ (2) or (3) of subsection (a) of Section 104-18 of  
7 this Code, the Court ~~court~~ shall, within 48 hours, ~~immediately~~  
8 enter an order directing the sheriff to return the defendant  
9 to the county jail and set the matter for trial. At any time  
10 thereafter, the issue of the defendant's fitness can be raised  
11 again under Section 104-11 of this Code. If the Court ~~court~~  
12 finds that the defendant is still unfit after being  
13 recommended as fit by the supervisor of the defendant's  
14 treatment and, that it is substantially probable that the  
15 defendant may be restored to fitness within the statutory  
16 timeframe, the Court ~~court~~ shall attach a copy of any written  
17 report that identifies the relevant factors in favor thereof  
18 ~~the finding that the defendant continues to be unfit~~, prepared  
19 by a licensed physician, clinical psychologist, or  
20 psychiatrist, to the court order remanding the person for  
21 further treatment.

22 (Source: P.A. 99-140, eff. 1-1-16; 100-27, eff. 1-1-18.)

23 (725 ILCS 5/104-21) (from Ch. 38, par. 104-21)

24 Sec. 104-21. Medication.

25 (a) A defendant who is ordered into the custody of the

1 Department of Human Services after a finding of unfitness is  
2 subject to the involuntary administration of medication under  
3 Section 2-107.1 of the Mental Health and Developmental  
4 Disabilities Code. The petition may be filed in either the  
5 county where the defendant is located or with the Court having  
6 jurisdiction over the defendant. A defendant receiving  
7 psychotropic drugs shall not be presumed to be unfit to stand  
8 trial solely by virtue of the receipt of those drugs or  
9 medications.

10 (a-5) The court-ordered custodian of a defendant who is  
11 subject to the involuntary administration of medication under  
12 this Section shall be entitled to receive the treatment notes,  
13 records and reports relative to the defendant upon written  
14 request., A prior treatment provider who is provided with a  
15 copy of the Court's custody order shall respond to the  
16 custodian's records request within 5 business days. No records  
17 received pursuant to this Section may be used for any purposes  
18 except to determine whether the defendant meets the criteria  
19 for court-ordered treatment under Section 2-107.1 or to  
20 prepare for and participate in hearings under Section 2-107.1.

21 (a-7) A petition filed on behalf of a defendant who is in  
22 custody under this Article shall be heard within 7 days,  
23 unless good cause is stated on the record why the hearing  
24 cannot be so held within the statutory timeframe. In no event,  
25 however, shall such hearing be delayed beyond 14 days from the  
26 date the petition is filed. The Court shall adjudicate the

1 petition within 3 working days of the conclusion of the  
2 medication hearing.

3 (b) Whenever a defendant who is receiving medication under  
4 medical direction is transferred between a place of custody  
5 and a treatment facility or program, a written report from the  
6 prescribing physician shall accompany the defendant. The  
7 report shall state the type and dosage of the defendant's  
8 medication and the duration of the prescription. The chief  
9 officer of the place of custody or the treatment supervisor at  
10 the facility or program shall insure that such medication is  
11 provided according to the directions of the prescribing  
12 physician or until superseded by order of a physician who has  
13 examined the defendant.

14 (c) (Blank). ~~If a defendant refuses psychotropic~~  
15 ~~medication, it may be administered over the defendant's~~  
16 ~~objections in accord with the Mental Health and Developmental~~  
17 ~~Disabilities Code. If court authorized medications are sought,~~  
18 ~~the petition, prepared in accord with Section 2-107.1 of the~~  
19 ~~Mental Health and Developmental Disabilities Code may be filed~~  
20 ~~in the county where the defendant is located or with the court~~  
21 ~~having jurisdiction over the defendant.~~

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

23 (725 ILCS 5/104-22) (from Ch. 38, par. 104-22)

24 Sec. 104-22. Trial with special provisions and  
25 assistance.) (a) On motion of the defendant, the State or on

1 the Court's ~~court's~~ own accord ~~motion~~, the Court ~~court~~ shall  
2 determine whether special provisions or assistance will render  
3 the defendant fit to stand trial as defined in Section 104-10.

4 (b) Such special provisions or assistance may include but  
5 are not limited to:

6 (1) The administration of medication.

7 (2) ~~(1)~~ Appointment of qualified translators who shall  
8 simultaneously translate all testimony at trial into  
9 language understood by the defendant.

10 (3) ~~(2)~~ Appointment of experts qualified to assist a  
11 defendant who because of a disability is unable to  
12 understand the proceedings or communicate with his or her  
13 attorney.

14 (c) The case may proceed to trial only if the Court ~~court~~  
15 determines that such provisions or assistance compensate for a  
16 defendant's disabilities so as to render the defendant fit as  
17 defined in Section 104-10. In such cases the Court ~~court~~ shall  
18 state for the record the following:

19 (1) The qualifications and experience of the experts or  
20 other persons appointed to provide special assistance to the  
21 defendant;

22 (2) The Court's ~~court's~~ reasons for selecting or  
23 appointing the particular experts or other persons to provide  
24 the special assistance to the defendant;

25 (3) How the appointment of the particular expert or other  
26 persons will serve the goal of rendering the defendant fit in

1 view of the appointee's qualifications and experience, taken  
2 in conjunction with the particular disabilities of the  
3 defendant; and

4 (4) Any other factors considered by the court in  
5 determining that the defendant is fit with special provisions  
6 or assistance. ~~appointing that individual.~~

7 (Source: P.A. 81-1217.)

8 (725 ILCS 5/104-23) (from Ch. 38, par. 104-23)

9 Sec. 104-23. Unfit defendants. Cases involving ~~an unfit~~  
10 ~~defendant who demands a discharge hearing or a defendant whom~~  
11 the defendant's treatment supervisor has reported as unfit  
12 without a substantial probability of attaining fitness within  
13 the statutory time period ~~who cannot become fit to stand trial~~  
14 and for whom no special provisions or assistance can  
15 compensate for his disability and render him fit shall proceed  
16 in the following manner:

17 (a) ~~Upon a determination that there is not a substantial~~  
18 ~~probability that the defendant will attain fitness within the~~  
19 ~~time period set in subsection (c) of Section 104-17 of this~~  
20 ~~Code from the original finding of unfitness, the court~~ The  
21 Court shall hold a ~~discharge~~ hearing within 14 ~~60~~ days, unless  
22 good cause is shown for the delay.

23 (b) If at the hearing ~~at any time~~ the Court ~~court~~  
24 determines that there is not a substantial probability that  
25 the defendant will attain fitness ~~become fit to stand trial or~~

1 ~~to plead~~ within the statutory time period it shall proceed as  
2 follows: ~~set in subsection (c) of Section 104-17 of this Code~~  
3 ~~from the date of the original finding of unfitness, or if at~~  
4 ~~the end of the time period set in subsection (c) of Section~~  
5 ~~104-17 of this Code from that date the court finds the~~  
6 ~~defendant still unfit and for whom no special provisions or~~  
7 ~~assistance can compensate for his disabilities and render him~~  
8 ~~fit, the State shall request the court:~~

9 (1) To set the matter for a discharge hearing pursuant  
10 to Section 25 hereof ~~104-25 unless a hearing has already~~  
11 ~~been held pursuant to paragraph (a) of this Section;~~ or

12 (2) To release the defendant from custody and to  
13 dismiss with prejudice the charges against them ~~him~~; or

14 (3) To remand the defendant to the custody of the  
15 Department of Human Services and order an involuntary  
16 civil commitment ~~a~~ hearing ~~to~~ be conducted pursuant to the  
17 provisions of the Mental Health and Developmental  
18 Disabilities Code, as now or hereafter amended. The  
19 Department of Human Services shall have 7 days from the  
20 date it receives the defendant to prepare and file the  
21 necessary petition and certificates that are required for  
22 commitment on an inpatient or outpatient basis under the  
23 Mental Health and Developmental Disabilities Code subject  
24 to a 7 day extension upon a showing of good cause. If the  
25 defendant is committed to the Department of Human Services  
26 pursuant to such hearing, the court having jurisdiction

1 over the criminal matter shall dismiss the charges against  
2 the defendant, with the leave to reinstate. In such cases  
3 the Department of Human Services shall notify the Court  
4 ~~court~~, the State's attorney and the defense attorney upon  
5 the discharge of the defendant. A former defendant so  
6 committed shall be otherwise treated in the same manner as  
7 any other civilly committed patient for all purposes  
8 including admission, selection of the place of treatment  
9 and the treatment modalities, entitlement to rights and  
10 privileges, transfer, and discharge. If the defendant does  
11 not qualify for involuntary commitment, but has expressed  
12 a willingness to be admitted on a voluntary basis and the  
13 facility director determines that the defendant is  
14 clinically suitable for voluntary admission, the  
15 Department shall so advise the Court, the State and the  
16 defense. The Court may consider this factor in determining  
17 whether to proceed under subparagraph (1) or (2) of  
18 paragraph (b) of this Section. Should the Court dismiss  
19 with prejudice the charges against the defendant, the  
20 defendant shall then be admitted to the Department on a  
21 voluntary basis pursuant to the Mental Health and  
22 Developmental Disabilities Code as now or hereafter  
23 amended. If a defendant who does not qualify for  
24 involuntary commitment is unwilling or unsuitable for  
25 voluntary admission, the Department shall so advise the  
26 Court, the State and the defense. Upon receipt of such a

1        notice, the Court ~~A defendant who is not committed~~ shall ,  
2        within 48 hours, enter an order for the sheriff to  
3        transport the defendant to the county jail ~~be remanded to~~  
4        ~~the court having jurisdiction of the criminal matter for~~  
5        further disposition pursuant to subsection ~~subparagraph~~  
6        (1) or (2) of paragraph (b) of this Section.

7        (c) Where charges have not been dismissed with prejudice,  
8        if ~~if~~ the defendant is later restored to fitness and the  
9        original charges ~~against him~~ are reinstated, the speedy trial  
10       provisions of Section 103-5 shall commence to run.

11       (Source: P.A. 102-1118, eff. 1-18-23.)

12       (725 ILCS 5/104-24) (from Ch. 38, par. 104-24)

13       Sec. 104-24. Time Credit. Time spent in custody pursuant  
14       to orders issued under this Article ~~Section 104-17 or 104-20~~  
15       ~~or pursuant to a commitment to the Department of Human~~  
16       ~~Services following a finding of unfitness or incompetency~~  
17       ~~under prior law,~~ shall be credited against any sentence  
18       imposed on the defendant in the pending criminal case or in any  
19       other case arising out of the same conduct. The Court shall  
20       calculate the time credit to be applied when considering the  
21       maximum period of time that a defendant may remain in custody.  
22       The Department of Human Services shall not be authorized to  
23       independently apply or calculate time credit.

24       (Source: P.A. 89-507, eff. 7-1-97.)



1 (725 ILCS 5/104-25) (from Ch. 38, par. 104-25)

2 Sec. 104-25. Discharge hearing.

3 (a) As provided for in ~~paragraph (a) of Section 104-23 and~~  
4 subparagraph (1) of paragraph (b) of Section 104-23 a hearing  
5 to determine the sufficiency of the evidence shall be held.  
6 Such hearing shall be conducted by the Court ~~court~~ without a  
7 jury. The State and the defendant may introduce evidence  
8 relevant to the question of defendant's guilt of the crime  
9 charged.

10 The Court ~~court~~ may admit hearsay or affidavit evidence on  
11 secondary matters such as testimony to establish the chain of  
12 possession of physical evidence, laboratory reports,  
13 authentication of transcripts taken by official reporters,  
14 court and business records, and public documents.

15 (b) If the evidence presented by the State does not prove  
16 the defendant guilty beyond a reasonable doubt, the Court  
17 ~~court~~ shall enter a judgment of acquittal; however nothing  
18 herein shall prevent the State from requesting the Court ~~court~~  
19 to commit the defendant to the Department of Human Services  
20 under the provisions of the Mental Health and Developmental  
21 Disabilities Code.

22 (c) If after considering the evidence, the defendant is  
23 found not guilty by reason of insanity, the Court ~~court~~ shall  
24 enter a judgment of acquittal and the proceedings after  
25 acquittal by reason of insanity under Section 5-2-4 of the  
26 Unified Code of Corrections shall apply.

1 (d) If the discharge hearing does not result in an  
2 acquittal of the charge under subsection (b) or (c), the  
3 defendant may be remanded for further treatment and the  
4 statutory ~~one year~~ time limit for restoration set forth in  
5 Section 104-23 shall be extended as follows:

6 (1) If the most serious charge upon which the State  
7 sustained its burden of proof was a Class 1 or Class X  
8 felony, the treatment period may be extended up to a  
9 maximum treatment period of 2 years;

10 (1.1) If the most serious charge upon which the State  
11 sustained its burden of proof was ~~if~~ a Class 2, 3, or 4  
12 felony, the treatment period may be extended up to a  
13 maximum of 15 months;

14 (2) If the State sustained its burden of proof on a  
15 charge of first degree murder, the treatment period may be  
16 extended up to a maximum treatment period of 5 years.

17 (3) Defendants facing misdemeanor charges are not  
18 subject to extension of the treatment period unless they  
19 are also facing felony charges on the same conduct.

20 (e) Transcripts of testimony taken at a discharge hearing  
21 may be admitted in evidence at a subsequent trial of the case,  
22 subject to the rules of evidence, if the witness who gave such  
23 testimony is legally unavailable at the time of the subsequent  
24 trial.

25 (f) If the Court ~~court~~ fails to enter an order of acquittal  
26 the defendant may appeal from such judgment in the same manner

1 provided for an appeal from a conviction in a criminal case.

2 (g) At the expiration of an extended period of treatment  
3 ordered pursuant to subsection (d) of this Section:

4 (1) Upon a finding that the defendant is fit or can be  
5 rendered fit consistent with special provisions or  
6 assistance pursuant to Section 104-22 if in custody, the  
7 Court shall, within 48 hours, order the sheriff to return  
8 the defendant to the County and the Court ~~court~~ may  
9 otherwise proceed with trial.

10 (2) If the defendant continues to be unfit to stand  
11 trial, the Court ~~court~~ shall determine whether the  
12 defendant ~~he or she~~ is subject to involuntary admission  
13 under the Mental Health and Developmental Disabilities  
14 Code ~~or constitutes a serious threat to the public safety~~.  
15 If so found, the defendant shall be remanded to the  
16 Department of Human Services for further treatment and  
17 shall be treated in the same manner as a civilly committed  
18 patient for all purposes, except that the defendant shall  
19 be placed in a secure setting unless the court determines  
20 that there are compelling reasons why such placement is  
21 not necessary. In addition, the criminal ~~original~~ court  
22 having jurisdiction over the defendant shall be required  
23 to approve any conditional release or discharge of the  
24 defendant, for the period of commitment equal to the  
25 maximum sentence to which the defendant would have been  
26 subject had the defendant ~~he or she~~ been convicted in the

1        underlying a criminal proceeding. The Court shall  
2        calculate the maximum period of civil commitment under  
3        this subsection and no credits may be applied against such  
4        term other than those considered and applied by the Court.  
5        ~~During this period of commitment, the original court~~  
6        ~~having jurisdiction over the defendant shall hold hearings~~  
7        ~~under clause (i) of this paragraph (2). However, if the~~  
8        ~~defendant is remanded to the Department of Human Services,~~  
9        ~~the defendant shall be placed in a secure setting unless~~  
10       ~~the court determines that there are compelling reasons why~~  
11       ~~such placement is not necessary.~~

12       If the defendant does not have a current treatment  
13       plan, ~~then~~ within 3 days of admission under this  
14       subsection subdivision (g) (2), the defendant's treatment  
15       supervisor shall submit a treatment plan to the Court, the  
16       State, and the defense shall be prepared for each  
17       ~~defendant and entered into his or her record.~~ The plan  
18       shall include (i) an assessment of the defendant's  
19       treatment needs, (ii) a description of the services  
20       recommended for treatment, (iii) the goals of each type of  
21       element of service, (iv) an anticipated timetable for the  
22       accomplishment of the goals, and (v) a designation of the  
23       qualified professional responsible for the implementation  
24       of the plan. The plan shall be reviewed and updated as the  
25       clinical condition warrants, but not less than every 30  
26       days.

1           Every 90 days after the entry of an initial admission  
2           order under this subsection ~~subdivision (g)(2)~~, the  
3           defendant's treatment supervisor ~~facility director~~ shall  
4           submit ~~file~~ a progress ~~typed treatment plan~~ report to the  
5           Court, the State, and the defense ~~with the original court~~  
6           ~~having jurisdiction over the defendant~~. The report shall  
7           include an opinion as to whether the defendant is: (i) fit  
8           to stand trial, or (ii) if not, ~~and~~ whether the defendant  
9           is currently subject to involuntary admission. If so, the  
10          treatment supervisor shall also state whether the  
11          defendant is ~~in~~ need of mental health services on an  
12          inpatient basis ~~or~~ in need of mental health services on  
13          an outpatient basis. The report shall also summarize the  
14          basis for those findings and provide a current summary of  
15          the 5 items required in a treatment plan. A copy of the  
16          report shall be forwarded to the Clerk ~~clerk~~ of the  
17          Circuit Court to be filed in accordance with Section  
18          104-19 with a copy provided to the State and the defense,  
19          if the defendant is represented by counsel. If the report  
20          states that the defendant is fit to stand trial, the Court  
21          shall conduct a fitness hearing. If the defendant is found  
22          fit, the Court shall, within 48 hours, order the County  
23          sheriff to return the defendant to the county jail to  
24          stand trial.

25           Upon request of the defendant's treatment supervisor,  
26          the State, the defense, or on the Court's ~~court, the State's~~

1 ~~Attorney, and the defendant's attorney if the defendant is~~  
2 ~~represented by counsel. The court on its own motion, it may~~  
3 order a hearing to review the treatment plan. ~~The defendant or~~  
4 ~~the State's Attorney may request a treatment plan review every~~  
5 ~~90 days and the court shall review the current treatment plan~~  
6 ~~to determine whether the plan complies with the requirements~~  
7 ~~of this Section.~~ The Court ~~court~~ may also order an independent  
8 examination of the defendant on its own initiative or at the  
9 request of ~~and shall order such an evaluation if~~ either the  
10 defense recipient or the State ~~State's Attorney so requests~~  
11 ~~and has demonstrated to the court that the plan cannot be~~  
12 ~~effectively reviewed by the court without such an examination.~~  
13 Under no circumstances shall the Court ~~court~~ be required to  
14 order an independent examination pursuant to this Section.  
15 However, if it does, it may not do so more than once each  
16 12-month period ~~year~~. The examination shall be conducted by a  
17 psychiatrist or clinical psychologist as defined in Section  
18 1-103 of the Mental Health and Developmental Disabilities Code  
19 who is not in the employ of the Department of Human Services.

20 If, during the period within which the defendant is  
21 confined in a secure setting, the Court ~~court~~ enters an  
22 order that requires the defendant to appear, the Court  
23 ~~court~~ shall timely transmit a copy of the order or writ to  
24 the director of the hospital, ~~particular Department of~~  
25 ~~Human Services~~ facility or program providing services to  
26 the defendant ~~where the defendant resides~~ authorizing the

1 transportation of the defendant to the Court ~~court~~ for the  
2 purpose of the hearing.

3 (i) 180 days after a defendant is remanded to the  
4 Department of Human Services, under paragraph (2) of  
5 subsection (g) paragraph (2), and every 180 days  
6 thereafter for so long as the defendant is confined  
7 under the order entered thereunder, the Court ~~court~~  
8 shall set a hearing and shall direct that notice of the  
9 time and place of the hearing be served upon the  
10 defendant, the facility director, the State's  
11 Attorney, and the defendant's attorney. If requested  
12 by either the State or the defense or if the Court  
13 ~~court~~ determines that it is appropriate, an impartial  
14 examination of the defendant by a psychiatrist or  
15 clinical psychologist as defined in Section 1-103 of  
16 the Mental Health and Developmental Disabilities Code  
17 who is not in the employ of the Department of Human  
18 Services shall be ordered, and the report considered  
19 at the time of the hearing. If the defendant is not  
20 currently represented by counsel, the Court ~~court~~  
21 shall appoint the public defender to represent the  
22 defendant at the hearing. The Court ~~court~~ shall make a  
23 finding as to whether the defendant is: ~~(A)~~ subject to  
24 involuntary admission and, if so, whether the  
25 defendant is, ~~or (B)~~ in need of mental health services  
26 in the form of inpatient care, ~~or (C)~~ in need of mental

1 health services on an outpatient basis ~~but not subject~~  
2 ~~to involuntary admission nor inpatient care.~~

3 The findings of the Court ~~court~~ shall be established  
4 by clear and convincing evidence and the burden of  
5 proof and the burden of going forward with the  
6 evidence shall rest with the State ~~State's Attorney~~.  
7 The Court ~~Upon finding by the court, the court~~ shall  
8 enter its findings on ~~and~~ an appropriate order.

9 (ii) The terms "subject to involuntary admission",  
10 "in need of mental health services in the form of  
11 inpatient care" and "in need of mental health services  
12 on an outpatient basis ~~but not subject to involuntary~~  
13 ~~admission nor inpatient care~~" shall have the meanings  
14 ascribed to them in clause (a-1) ~~(d)(3)~~ of Section  
15 5-2-4 of the Unified Code of Corrections.

16 (3) If the defendant is not committed pursuant to this  
17 Section, the defendant ~~he or she~~ shall be released.

18 (4) In no event may the treatment period be extended  
19 to exceed the maximum sentence to which a defendant would  
20 have been subject had the defendant ~~he or she~~ been  
21 convicted in the ~~a~~ criminal proceeding on the most serious  
22 offense. For purposes of this Section, the maximum  
23 sentence shall be determined by Section 5-8-1 (730 ILCS  
24 5/5-8-1) or Article 4.5 of Chapter V of the "Unified Code  
25 of Corrections", excluding any sentence of natural life.

26 (5) If the treatment supervisor reports the defendant



1       as fit, the Court shall immediately, within 48 hours,  
2       order the sheriff to return the defendant to the county  
3       jail to stand trial, plead, or be sentenced.

4       (Source: P.A. 95-1052, eff. 7-1-09.)

5               (725 ILCS 5/104-26) (from Ch. 38, par. 104-26)

6       Sec. 104-26. Disposition of Defendants suffering  
7       disabilities.

8       (a) A defendant convicted following a trial conducted  
9       under the provisions of Section 104-22 shall not be sentenced  
10       before a written presentence report of investigation is  
11       presented to and considered by the Court ~~court~~. The  
12       presentence report shall be prepared pursuant to Sections  
13       5-3-2, 5-3-3 and 5-3-4 of the Unified Code of Corrections, as  
14       now or hereafter amended, and shall include a physical and  
15       mental examination unless the Court ~~court~~ finds that the  
16       reports of prior physical and mental examinations conducted  
17       pursuant to this Article are adequate and recent enough so  
18       that additional examinations would be unnecessary.

19       (b) (Blank).

20       (c) A defendant convicted following a trial under Section  
21       104-22 shall be sentenced according to the procedures and  
22       dispositions authorized under the Unified Code of Corrections,  
23       as now or hereafter amended, subject to the following  
24       provisions:

25               (1) The Court ~~court~~ shall not impose a sentence of

1 imprisonment upon the offender if the Court ~~court~~ believes  
2 that because of his disability a sentence of imprisonment  
3 would not serve the ends of justice and the interests of  
4 society and the offender or that because of a ~~his~~  
5 disability, a sentence of imprisonment would subject the  
6 offender to excessive hardship. In addition to any other  
7 conditions of a sentence of conditional discharge or  
8 probation, the Court ~~court~~ may require that the offender  
9 undergo treatment appropriate for the defendant's ~~to his~~  
10 mental or physical condition.

11 (2) (Blank). ~~After imposing a sentence of imprisonment~~  
12 ~~upon an offender who has a mental disability, the court~~  
13 ~~may remand him to the custody of the Department of Human~~  
14 ~~Services and order a hearing to be conducted pursuant to~~  
15 ~~the provisions of the Mental Health and Developmental~~  
16 ~~Disabilities Code, as now or hereafter amended. If the~~  
17 ~~offender is committed following such hearing, he shall be~~  
18 ~~treated in the same manner as any other civilly committed~~  
19 ~~patient for all purposes except as provided in this~~  
20 ~~Section. If the defendant is not committed pursuant to~~  
21 ~~such hearing, he shall be remanded to the sentencing court~~  
22 ~~for disposition according to the sentence imposed.~~

23 (3) If the Court ~~court~~ imposes a sentence of  
24 imprisonment upon an offender who has a mental disability  
25 ~~but does not proceed under subparagraph (2) of paragraph~~  
26 ~~(c) of this Section, it shall order the Department of~~

1 Corrections to proceed pursuant to Section 3-8-5 of the  
2 Unified Code of Corrections, as now or hereafter amended.

3 (3.5) If the Court ~~court~~ imposes a sentence of  
4 imprisonment upon an offender who has a mental disability,  
5 ~~it the court~~ shall direct the Clerk of the Circuit Court  
6 ~~circuit court clerk~~ to immediately notify the Illinois  
7 State Police, Firearm Owner's Identification (FOID)  
8 Office, in a form and manner prescribed by the Illinois  
9 State Police and shall forward a copy of the court order to  
10 the Department.

11 (4) If the Court ~~court~~ imposes a sentence of  
12 imprisonment upon an offender who has a physical  
13 disability, it may authorize the Department of Corrections  
14 to place the offender in a public or private facility  
15 which is able to provide care or treatment for the  
16 offender's disability and which agrees to do so.

17 (5) When an offender is placed with ~~the Department of~~  
18 ~~Human Services or~~ another facility pursuant to  
19 subparagraph ~~(2) or~~ (4) of this paragraph (c), the public  
20 ~~or Department or~~ private facility shall not discharge or  
21 allow the offender to be at large in the community without  
22 prior approval of the Court ~~court~~. ~~If the defendant is~~  
23 ~~placed in the custody of the Department of Human Services,~~  
24 ~~the defendant shall be placed in a secure setting unless~~  
25 ~~the court determines that there are compelling reasons why~~  
26 ~~such placement is not necessary.~~ The offender shall accrue

1        all good time credits as determined by the Court while in  
2        the custody of the public or private facility and shall be  
3        eligible for parole in the same manner as if the offender  
4        ~~he~~ were serving the defendant's ~~his~~ sentence within the  
5        Department of Corrections. If the sentence has not yet  
6        expired when ~~When~~ the offender no longer requires  
7        hospitalization, care, or treatment, the public or private  
8        ~~Department of Human Services or the~~ facility shall  
9        transfer the offender ~~him,~~ ~~if his sentence has not~~  
10       ~~expired,~~ to the Department of Corrections. If an offender  
11       is transferred to the Department of Corrections, the  
12       facility ~~Department of Human Services~~ shall transfer to  
13       the Department of Corrections all related records  
14       pertaining to length of custody and treatment services  
15       provided during the time the offender was held.

16       (6) The Department of Corrections shall notify the  
17       public or private ~~Department of Human Services~~ or a  
18       facility in which an offender has been placed pursuant to  
19       subparagraph ~~(2)~~ or (4) of paragraph (c) of this Section  
20       of the expiration of the ~~his~~ sentence. Thereafter, an  
21       offender so placed ~~in the Department of Human Services~~  
22       shall continue to be treated pursuant to the defendant's  
23       ~~his~~ commitment order and shall be considered a civilly  
24       committed patient for all purposes including discharge. An  
25       offender who is in a facility pursuant to subparagraph (4)  
26       of paragraph (c) of this Section shall be informed by the

1 facility of the expiration of his sentence, and shall  
2 either consent to the continuation of the defendant's ~~his~~  
3 care or treatment by the facility, or shall be discharged.  
4 (Source: P.A. 102-538, eff. 8-20-21; 103-51, eff. 1-1-24.)

5 (725 ILCS 5/104-30) (from Ch. 38, par. 104-30)

6 Sec. 104-30. Notice to Law Enforcement Agencies Regarding  
7 Release of Defendants.

8 (a) Prior to the release by the Department of Human  
9 Services of any person admitted pursuant to any provision of  
10 this Article, the Department of Human Services shall give  
11 written notice to the Sheriff of the county from which the  
12 defendant was admitted. In cases where the arrest of the  
13 defendant or the commission of the offense took place in any  
14 municipality with a population of more than 25,000 persons,  
15 the Department of Human Services shall also give written  
16 notice to the proper law enforcement agency for said  
17 municipality, provided the municipality has requested such  
18 notice in writing.

19 (b) Where a defendant in the custody of the Department of  
20 Human Services under any provision of this Article is released  
21 pursuant to an order of court, the Clerk ~~clerk~~ of the Circuit  
22 Court ~~circuit court~~ shall, after the entry of the order,  
23 transmit a certified copy of the order of release to the  
24 Department of Human Services and the Sheriff of the county  
25 from which the defendant was admitted. In cases where the

1 arrest of the defendant or the commission of the offense took  
2 place in any municipality with a population of more than  
3 25,000 persons, the Clerk of the Circuit Court ~~circuit court~~  
4 shall also send a certified copy of the order of release to the  
5 proper law enforcement agency for said municipality provided  
6 the municipality has requested such notice in writing.

7 (Source: P.A. 89-507, eff. 7-1-97.)

8 (725 ILCS 5/104-31) (from Ch. 38, par. 104-31)

9 Sec. 104-31. No defendant placed in a setting of the  
10 Department of Human Services pursuant to the provisions of  
11 Sections 104-17, 104-25, or 104-26 shall be permitted outside  
12 the facility's housing unit unless escorted or accompanied by  
13 personnel of the Department of Human Services or authorized by  
14 court order. Any defendant, transported to court hearings or  
15 other necessary appointments off facility grounds by personnel  
16 of the Department of Human Services, may be placed in security  
17 devices or otherwise secured during the period of  
18 transportation to assure secure transport of the defendant and  
19 the safety of Department of Human Services personnel and  
20 others. These security measures shall not constitute restraint  
21 as defined in the Mental Health and Developmental Disabilities  
22 Code. Nor shall any defendant be permitted any off-grounds  
23 privileges, either with or without escort by personnel of the  
24 Department of Human Services or any unsupervised on-ground  
25 privileges, unless such off-grounds or unsupervised on-grounds

1 privileges have been approved by specific court order, which  
2 order may include such conditions on the defendant as the  
3 court may deem appropriate and necessary to reasonably assure  
4 the defendant's satisfactory progress in treatment and the  
5 safety of the defendant or others. Whenever the Court ~~court~~  
6 receives a report from the supervisor of the defendant's  
7 treatment recommending the defendant for any off-grounds or  
8 unsupervised on-grounds privileges, the Court ~~court~~ shall set  
9 the matter for a first hearing within 21 days unless good cause  
10 is demonstrated why the hearing cannot be held. The changes  
11 made to this Section by this amendatory Act of the 96th General  
12 Assembly are declarative of existing law and shall not be  
13 construed as a new enactment.

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

15 (725 ILCS 5/104-27 rep.)

16 (725 ILCS 5/104-28 rep.)

17 Section 10. The Code of Criminal Procedure of 1963 is  
18 amended by repealing Sections 104-27 and 104-28.

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