



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB3903

Introduced 2/26/2009, by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-17	from Ch. 38, par. 104-17
725 ILCS 5/104-18	from Ch. 38, par. 104-18
725 ILCS 5/104-20	from Ch. 38, par. 104-20
725 ILCS 5/104-23	from Ch. 38, par. 104-23

Amends the Code of Criminal Procedure of 1963. Provides that the treatment period for a defendant found unfit to stand trial to attain fitness shall be one year from the date of the finding of unfitness for a defendant charged with a felony and 6 months from that date for a defendant charged with a misdemeanor. Effective immediately.

LRB096 04205 RLC 14250 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 104-17, 104-18, 104-20, and 104-23  
6 as follows:

7 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

8 Sec. 104-17. Commitment for Treatment; Treatment Plan.

9 (a) If the defendant is eligible to be or has been released  
10 on bail or on his own recognizance, the court shall select the  
11 least physically restrictive form of treatment therapeutically  
12 appropriate and consistent with the treatment plan.

13 (b) If the defendant's disability is mental, the court may  
14 order him placed for treatment in the custody of the Department  
15 of Human Services, or the court may order him placed in the  
16 custody of any other appropriate public or private mental  
17 health facility or treatment program which has agreed to  
18 provide treatment to the defendant. If the defendant is placed  
19 in the custody of the Department of Human Services, the  
20 defendant shall be placed in a secure setting unless the court  
21 determines that there are compelling reasons why such placement  
22 is not necessary. During the period of time required to  
23 determine the appropriate placement the defendant shall remain

1 in jail. Upon completion of the placement process, the sheriff  
2 shall be notified and shall transport the defendant to the  
3 designated facility. The placement may be ordered either on an  
4 inpatient or an outpatient basis.

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

13 (d) The clerk of the circuit court shall transmit to the  
14 Department, agency or institution, if any, to which the  
15 defendant is remanded for treatment, the following:

- 16 (1) a certified copy of the order to undergo treatment;  
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, jail record, and the report prepared under  
23 Section 104-15; and  
24 (5) all additional matters which the Court directs the  
25 clerk to transmit.

26 (e) Within 30 days of entry of an order to undergo

1 treatment, the person supervising the defendant's treatment  
2 shall file with the court, the State, and the defense a report  
3 assessing the facility's or program's capacity to provide  
4 appropriate treatment for the defendant and indicating his  
5 opinion as to the probability of the defendant's attaining  
6 fitness within a period of time ~~one year~~ from the date of the  
7 finding of unfitness. For a defendant charged with a felony the  
8 period of time shall be one year. For a defendant charged with  
9 a misdemeanor the time period shall be 6 months. If the report  
10 indicates that there is a substantial probability that the  
11 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. 95-296, eff. 8-20-07.)

22 (725 ILCS 5/104-18) (from Ch. 38, par. 104-18)

23 Sec. 104-18. Progress Reports.) (a) The treatment  
24 supervisor shall submit a written progress report to the court,  
25 the State, and the defense:

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

3 (2) Whenever he believes that the defendant has attained  
4 fitness;

5 (3) Whenever he believes that there is not a substantial  
6 probability that the defendant will attain fitness, with  
7 treatment, within the time period set forth in subsection (e)  
8 of Section 104-17 ~~one year~~ from the date of the original  
9 finding of unfitness.

10 (b) The progress report shall contain:

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

13 (2) The opinion of the treatment supervisor as to whether  
14 the defendant has attained fitness or as to whether the  
15 defendant is making progress, under treatment, toward  
16 attaining fitness within the time period set forth in  
17 subsection (e) of Section 104-17 ~~one year~~ from the date of the  
18 original finding of unfitness;

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

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

24 (725 ILCS 5/104-20) (from Ch. 38, par. 104-20)

25 Sec. 104-20. Ninety-Day Hearings; Continuing Treatment.)

1           (a) Upon entry or continuation of any order to undergo  
2 treatment, the court shall set a date for hearing to reexamine  
3 the issue of the defendant's fitness not more than 90 days  
4 thereafter. In addition, whenever the court receives a report  
5 from the supervisor of the defendant's treatment pursuant to  
6 subparagraph (2) or (3) of paragraph (a) of Section 104-18, the  
7 court shall forthwith set the matter for a first hearing within  
8 21 days unless good cause is demonstrated why the hearing  
9 cannot be held. On the date set or upon conclusion of the  
10 matter then pending before it, the court, sitting without a  
11 jury, shall conduct a hearing, unless waived by the defense,  
12 and shall determine:

13           (1) Whether the defendant is fit to stand trial or to  
14 plead; and if not,

15           (2) Whether the defendant is making progress under  
16 treatment toward attainment of fitness within the time  
17 period set forth in subsection (e) of Section 104-17 ~~one~~  
18 ~~year~~ from the date of the original finding of unfitness.

19           (b) If the court finds the defendant to be fit pursuant to  
20 this Section, the court shall set the matter for trial;  
21 provided that if the defendant is in need of continued care or  
22 treatment and the supervisor of the defendant's treatment  
23 agrees to continue to provide it, the court may enter any order  
24 it deems appropriate for the continued care or treatment of the  
25 defendant by the facility or program pending the conclusion of  
26 the criminal proceedings.

1 (c) If the court finds that the defendant is still unfit  
2 but that he is making progress toward attaining fitness, the  
3 court may continue or modify its original treatment order  
4 entered pursuant to Section 104-17.

5 (d) If the court finds that the defendant is still unfit  
6 and that he is not making progress toward attaining fitness  
7 such that there is not a substantial probability that he will  
8 attain fitness within the time period set forth in subsection

9 (e) of Section 104-17 ~~one year~~ from the date of the original  
10 finding of unfitness, the court shall proceed pursuant to  
11 Section 104-23. However, if the defendant is in need of  
12 continued care and treatment and the supervisor of the  
13 defendant's treatment agrees to continue to provide it, the  
14 court may enter any order it deems appropriate for the  
15 continued care or treatment by the facility or program pending  
16 the conclusion of the criminal proceedings.

17 (Source: P.A. 94-191, eff. 7-12-05.)

18 (725 ILCS 5/104-23) (from Ch. 38, par. 104-23)

19 Sec. 104-23. Unfit defendants. Cases involving an unfit  
20 defendant who demands a discharge hearing or a defendant who  
21 cannot become fit to stand trial and for whom no special  
22 provisions or assistance can compensate for his disability and  
23 render him fit shall proceed in the following manner:

24 (a) Upon a determination that there is not a substantial  
25 probability that the defendant will attain fitness within the

1 time period set forth in subsection (e) of Section 104-17 ~~one~~  
2 ~~year~~ from the original finding of unfitness, a defendant or the  
3 attorney for the defendant may move for a discharge hearing  
4 pursuant to the provisions of Section 104-25. The discharge  
5 hearing shall be held within 120 days of the filing of a motion  
6 for a discharge hearing, unless the delay is occasioned by the  
7 defendant.

8 (b) If at any time the court determines that there is not a  
9 substantial probability that the defendant will become fit to  
10 stand trial or to plead within the time period set forth in  
11 subsection (e) of Section 104-17 ~~one year~~ from the date of the  
12 original finding of unfitness, or if at the end of the time  
13 period set forth in subsection (e) of Section 104-17 ~~one year~~  
14 from that date the court finds the defendant still unfit and  
15 for whom no special provisions or assistance can compensate for  
16 his disabilities and render him fit, the State shall request  
17 the court:

18 (1) To set the matter for hearing pursuant to Section  
19 104-25 unless a hearing has already been held pursuant to  
20 paragraph (a) of this Section; or

21 (2) To release the defendant from custody and to  
22 dismiss with prejudice the charges against him; or

23 (3) To remand the defendant to the custody of the  
24 Department of Human Services and order a hearing to be  
25 conducted pursuant to the provisions of the Mental Health  
26 and Developmental Disabilities Code, as now or hereafter



1 amended. The Department of Human Services shall have 7 days  
2 from the date it receives the defendant to prepare and file  
3 the necessary petition and certificates that are required  
4 for commitment under the Mental Health and Developmental  
5 Disabilities Code. If the defendant is committed to the  
6 Department of Human Services pursuant to such hearing, the  
7 court having jurisdiction over the criminal matter shall  
8 dismiss the charges against the defendant, with the leave  
9 to reinstate. In such cases the Department of Human  
10 Services shall notify the court, the State's attorney and  
11 the defense attorney upon the discharge of the defendant. A  
12 former defendant so committed shall be treated in the same  
13 manner as any other civilly committed patient for all  
14 purposes including admission, selection of the place of  
15 treatment and the treatment modalities, entitlement to  
16 rights and privileges, transfer, and discharge. A  
17 defendant who is not committed shall be remanded to the  
18 court having jurisdiction of the criminal matter for  
19 disposition pursuant to subparagraph (1) or (2) of  
20 paragraph (b) of this Section.

21 (c) If the defendant is restored to fitness and the  
22 original charges against him are reinstated, the speedy trial  
23 provisions of Section 103-5 shall commence to run.

24 (Source: P.A. 89-439, eff. 6-1-96; 89-507, eff. 7-1-97.)

25 Section 99. Effective date. This Act takes effect upon  
26 becoming law.