



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1938

Introduced 2/20/2015, by Sen. Tim Bivins

SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-17
725 ILCS 5/104-20

from Ch. 38, par. 104-17
from Ch. 38, par. 104-20

Amends the Code of Criminal Procedure of 1963. Provides that the clerk of the circuit court shall transmit to the Department of Human Services, agency or institution, if any, to which an unfit defendant is remanded for treatment the complete copy of any fitness report prepared or other report prepared by a forensic examiner for the court. Provides that if the court finds that the defendant is still unfit after being recommended as fit by the supervisor of the defendant's treatment, the court shall attach a copy of any written report that identifies the factors in the finding that the defendant continues to be unfit, prepared by a licensed physician, clinical psychologist, or psychiatrist, to the court order remanding the person for further treatment.

LRB099 09944 RLC 30162 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 and 104-20 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 bail or on his own recognizance, the court shall select the
10 least physically restrictive form of treatment therapeutically
11 appropriate and consistent with the treatment plan.

12 (b) If the defendant's disability is mental, the court may
13 order him placed for treatment in the custody of the Department
14 of Human Services, or the court may order him placed in the
15 custody of any other appropriate public or private mental
16 health facility or treatment program which has agreed to
17 provide treatment to the defendant. If the defendant is placed
18 in the custody of the Department of Human Services, the
19 defendant shall be placed in a secure setting. During the
20 period of time required to determine the appropriate placement
21 the defendant shall remain in jail. If upon the completion of
22 the placement process the Department of Human Services
23 determines that the defendant is currently fit to stand trial,

1 it shall immediately notify the court and shall submit a
2 written report within 7 days. In that circumstance the
3 placement shall be held pending a court hearing on the
4 Department's report. Otherwise, upon completion of the
5 placement process, the sheriff shall be notified and shall
6 transport the defendant to the designated facility. The
7 placement may be ordered either on an inpatient or an
8 outpatient basis.

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

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

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

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

1 (3) the county and municipality in which the arrest
2 took place;

3 (4) a copy of the arrest report, criminal charges,
4 arrest record, ~~jail record, and the report prepared under~~
5 ~~Section 104-15~~; and

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

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

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

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

1 for attainment of the goals;

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

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

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

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

7 (a) Upon entry or continuation of any order to undergo
8 treatment, the court shall set a date for hearing to reexamine
9 the issue of the defendant's fitness not more than 90 days
10 thereafter. In addition, whenever the court receives a report
11 from the supervisor of the defendant's treatment pursuant to
12 subparagraph (2) or (3) of paragraph (a) of Section 104-18, the
13 court shall forthwith set the matter for a first hearing within
14 14 days unless good cause is demonstrated why the hearing
15 cannot be held. On the date set or upon conclusion of the
16 matter then pending before it, the court, sitting without a
17 jury, shall conduct a hearing, unless waived by the defense,
18 and shall determine:

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

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

25 (b) If the court finds the defendant to be fit pursuant to

1 this Section, the court shall set the matter for trial;
2 provided that if the defendant is in need of continued care or
3 treatment and the supervisor of the defendant's treatment
4 agrees to continue to provide it, the court may enter any order
5 it deems appropriate for the continued care or treatment of the
6 defendant by the facility or program pending the conclusion of
7 the criminal proceedings.

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

12 (d) If the court finds that the defendant is still unfit
13 and that he is not making progress toward attaining fitness
14 such that there is not a substantial probability that he will
15 attain fitness within the time period set in subsection (e) of
16 Section 104-17 of this Code from the date of the original
17 finding of unfitness, the court shall proceed pursuant to
18 Section 104-23. However, if the defendant is in need of
19 continued care and treatment and the supervisor of the
20 defendant's treatment agrees to continue to provide it, the
21 court may enter any order it deems appropriate for the
22 continued care or treatment by the facility or program pending
23 the conclusion of the criminal proceedings.

24 (e) If the court finds that the defendant is still unfit
25 after being recommended as fit by the supervisor of the
26 defendant's treatment, the court shall attach a copy of any

1 written report that identifies the factors in the finding that
2 the defendant continues to be unfit, prepared by a licensed
3 physician, clinical psychologist, or psychiatrist, to the
4 court order remanding the person for further treatment.

5 (Source: P.A. 97-37, eff. 6-28-11; 98-1025, eff. 8-22-14.)