



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

HB3468

Introduced 2/18/2025, by Rep. Terra Costa Howard

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.

LRB104 10125 RLC 20197 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, 104-13, 104-14,
6 104-15, 104-16, 104-17, 104-18, 104-19, 104-20, 104-21,
7 104-22, 104-23, 104-24, 104-25, and 104-26 and by adding
8 Sections 102-24 and 102-25 as follows:

9 (725 ILCS 5/102-24 new)

10 Sec. 102-24. Mental condition or physical condition.
11 "Mental condition" or "physical condition" means a condition
12 that substantially impairs a person's thought, perception of
13 reality, emotional process, judgment, behavior, or ability to
14 communicate with counsel, or both, but does not include
15 traumatic brain injury, organic brain disease such as dementia
16 or Alzheimer's, alcohol or cannabis use, substance use
17 disorder, or an abnormality manifested only by repeated
18 criminal or otherwise antisocial behavior.

19 (725 ILCS 5/102-25 new)

20 Sec. 102-25. Treatment supervisor, supervisor of the
21 defendant's treatment, person supervising the defendant's
22 treatment, or qualified professional. "Treatment supervisor",

1 "supervisor of the defendant's treatment", "person supervising
2 the defendant's treatment", or "qualified professional" as
3 referenced in Article 104 means the person in charge of
4 overseeing fitness restoration for the defendant and may be a
5 physician, physician assistant, psychiatrist, clinical
6 psychologist, nurse practitioner, licensed clinical social
7 worker, or nurse who is working under the supervision of a
8 properly licensed physician, psychiatrist, or clinical
9 psychologist. Persons with any of the above designations are
10 deemed qualified to opine on the issue of fitness of the
11 defendant.

12 (725 ILCS 5/104-10) (from Ch. 38, par. 104-10)
13 Sec. 104-10. Presumption of Fitness; Fitness Standard.) A
14 defendant is presumed to be fit to stand trial or to plead, and
15 be sentenced. A defendant is unfit if, because of the
16 defendant's ~~his~~ mental or physical condition, the defendant ~~he~~
17 is unable to either understand the nature and purpose of the
18 proceedings against the defendant ~~him~~ or to meaningfully
19 assist in the defendant's ~~his~~ defense.

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

21 (725 ILCS 5/104-11) (from Ch. 38, par. 104-11)
22 Sec. 104-11. Raising Issue; Burden; Fitness Motions.) (a)
23 The issue of the defendant's fitness for trial, to plead, or to
24 be sentenced may be raised by the defense, the State or the

1 Court at any ~~appropriate~~ time before a plea is entered or
2 before, during, or after trial. When a bona fide ~~bonafide~~
3 doubt of the defendant's fitness is raised, the court shall
4 order a determination of the issue by the county's expert
5 before proceeding further.

6 However, no order entered pursuant to this subsection
7 shall prevent further proceedings in the case. An expert so
8 appointed shall examine the defendant and make a report as
9 provided in Section 104-15. Upon the filing with the court of a
10 verified statement of services rendered, the court shall enter
11 an order directed to the county board to pay such expert a
12 reasonable fee as stated in the order.

13 (b) (Blank). ~~Upon request of the defendant that a~~
14 ~~qualified expert be appointed to examine him or her to~~
15 ~~determine prior to trial if a bonafide doubt as to his or her~~
16 ~~fitness to stand trial may be raised, the court, in its~~
17 ~~discretion, may order an appropriate examination. However, no~~
18 ~~order entered pursuant to this subsection shall prevent~~
19 ~~further proceedings in the case. An expert so appointed shall~~
20 ~~examine the defendant and make a report as provided in Section~~
21 ~~104-15. Upon the filing with the court of a verified statement~~
22 ~~of services rendered, the court shall enter an order on the~~
23 ~~county board to pay such expert a reasonable fee stated in the~~
24 ~~order.~~

25 (c) When a bona fide ~~bonafide~~ doubt of the defendant's
26 fitness has been raised, the burden of proving that the

1 defendant is fit by a preponderance of the evidence and the
2 burden of going forward with the evidence are on the State.
3 However, the court may call its own witnesses and conduct its
4 own inquiry.

5 (d) Following a finding of unfitness, the court may hear
6 and rule on any pretrial motion or motions if the defendant's
7 presence is not essential to a fair determination of the
8 issues. A motion may be reheard upon a showing that evidence is
9 available which was not previously available, due to the
10 defendant's unfitness, when the motion was first decided.

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

12 (725 ILCS 5/104-13) (from Ch. 38, par. 104-13)

13 Sec. 104-13. Fitness examination.

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

22 (b) If the issue of fitness involves the defendant's
23 physical condition, the court shall appoint one or more
24 physicians and in addition, such other experts as it may deem
25 appropriate to examine the defendant and to report to the

1 court regarding the defendant's condition. No physician or
2 other person employed by the Department of Human Services
3 shall be ordered to perform, in the person's official
4 capacity, an examination under this subsection.

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

24 (d) Release on pretrial release or on recognizance shall
25 not be revoked and an application therefor shall not be denied
26 on the grounds that an examination has been ordered, unless

1 the court has determined that the defendant must remain in
2 custody for the defendant's own safety or the safety of
3 others.

4 (e) Upon request by the defense and if the defendant is
5 indigent, the court may appoint, in addition to the expert or
6 experts chosen pursuant to subsection (a) of this Section, a
7 qualified expert selected by the defendant to examine the
8 defendant ~~him~~ and to 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 (Source: P.A. 101-652, eff. 1-1-23.)

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

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

1 from offering expert evidence or testimony tending to support
2 such defenses if the expert evidence or testimony is based
3 upon the expert's examination of the defendant.

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

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

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

25 (725 ILCS 5/104-15) (from Ch. 38, par. 104-15)

1 Sec. 104-15. Initial fitness report ~~Report~~.

2 (a) The person or persons conducting an initial fitness
3 examination of the defendant, pursuant to paragraph (a) or (b)
4 of Section 104-13 shall submit a written report to the court,
5 the State, and the defense within 30 days of the date of the
6 order. The report shall include:

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

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

16 (b) A person who, due to any of organic brain disease,
17 alcohol or substance use, cannabis use, antisocial personality
18 disorder or repeated criminal behavior may not be deemed unfit
19 under this Section unless accompanied by a mental health or
20 developmental disabilities diagnosis. Unfitness due to a
21 mental condition may be found if the defendant would benefit
22 from treatment in either a mental health or developmental
23 disabilities facility. Unfitness due to a physical condition
24 may be found if the defendant would benefit from treatment in a
25 medical hospital or other residential care facility or program
26 for the rehabilitation of persons with physical disabilities.

1 (c) ~~(b)~~ If the report indicates that the defendant is not
2 fit to stand trial or to plead because of a disability, the
3 report shall include an opinion as to the likelihood of the
4 defendant attaining fitness within the statutory a period of
5 time from the date of the finding of unfitness if provided with
6 a course of treatment. For a defendant charged with a felony,
7 the period of time shall be one year. For a defendant charged
8 with a Class A or Class B misdemeanor, the period of time shall
9 be no longer than the maximum term of imprisonment for the most
10 serious offense. Defendants charged with Class C misdemeanors,
11 petty offenses, infraction of a municipal ordinance, or
12 violation of the Illinois Vehicle Code are not eligible for
13 fitness restoration services, unless the penalty may include
14 incarceration for a period of 180 days or longer. If the person
15 or persons preparing the initial fitness report are unable to
16 form such an opinion, the report shall state the reasons
17 therefor. The report shall ~~may~~ include a general description
18 of the type of treatment needed and of the least physically
19 restrictive form of treatment therapeutically appropriate. If
20 the most serious charge facing the defendant is a misdemeanor
21 and inpatient treatment is recommended, the report shall state
22 reasons why outpatient treatment is not appropriate.

23 (d) ~~(e)~~ The initial fitness report shall indicate what
24 information, if any, contained therein may be harmful to the
25 mental condition of the defendant if made known to the
26 defendant and the court may determine if the defendant is

1 restricted from receiving the report. him.

2 (e) ~~(d)~~ In addition to the report, a person ~~retained or~~
3 appointed by the court ~~State or the defense~~ to conduct an
4 initial fitness examination under Section 104-13 shall, upon
5 written request, make the defendant's ~~his or her~~ notes, other
6 evaluations reviewed or relied upon ~~by the testifying witness,~~
7 and any videotaped interviews available to another examiner of
8 the defendant. All forensic interviews conducted by a person
9 retained or appointed by the court ~~State or the defense~~ shall
10 be videotaped unless doing so would be impractical. In the
11 event that the interview is not videotaped, the examiner may
12 still testify as to the person's fitness and the court may only
13 consider the lack of compliance in according the weight and
14 not the admissibility of the expert testimony. An examiner may
15 use these materials as part of the defendant's ~~his or her~~
16 diagnosis and explanation but shall not otherwise disclose the
17 contents, including at a hearing before the court, except as
18 otherwise provided in Section 104-14 of this Code.

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

20 (725 ILCS 5/104-16) (from Ch. 38, par. 104-16)

21 Sec. 104-16. Fitness Hearing.) (a) The court ~~court~~
22 shall conduct a hearing to determine the issue of the
23 defendant's fitness within 45 days of receipt of the final
24 written report of the person or persons conducting the
25 examination or upon conclusion of the matter then pending

1 before it, subject to continuances allowed pursuant to Section
2 114-4 of this Act.

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

6 (1) The defendant's knowledge and understanding of the
7 charge, the proceedings, the consequences of a plea, judgment
8 or sentence, and the functions of the participants in the
9 trial process;

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

13 (3) The defendant's ~~social behavior and abilities;~~
14 orientation as to time and place; recognition of persons,
15 places and things; and performance of motor processes.

16 (c) The defendant has the right to be present at every
17 hearing on the issue of his fitness. The defendant's presence
18 may be waived only if there is filed with the court a
19 certificate stating that the defendant is physically unable to
20 be present due to a disability ~~and the reasons therefor~~. The
21 certificate shall be signed by a licensed physician, physician
22 assistant, or nurse practitioner who, within 7 days, has
23 examined the defendant. A disability is a mental or physical
24 condition that, in the opinion of a physician, physician
25 assistant, or nurse practitioner, prevents the defendant from
26 safely attending a hearing in person. The defendant's mere

1 refusal to attend a hearing shall not by itself constitute a
2 disability, regardless of the person's mental state.

3 (d) On the basis of the evidence before it, the court or
4 jury shall determine whether the defendant is fit to stand
5 trial, ~~or~~ to plead, or to be sentenced. If it finds that the
6 defendant is unfit, the court or the jury shall determine
7 whether there is substantial probability that the defendant,
8 if provided with a course of treatment, will attain fitness
9 within one year, except if the defendant is facing either a
10 Class A or B misdemeanors, in which case the period of time
11 shall be no longer than the maximum for the most serious
12 offense. ~~If the court or the jury finds that there is not a~~
13 ~~substantial probability, the court shall proceed as provided~~
14 ~~in Section 104-23~~. If such probability is found or if the court
15 or the jury is unable to determine whether a substantial
16 probability exists, the court shall order the defendant to
17 undergo treatment for the purpose of rendering the defendant
18 ~~him~~ fit. In the event that a defendant is ordered to undergo
19 treatment with ~~when there has been~~ no initial determination as
20 to the probability of ~~his~~ attaining fitness within the
21 statutory timeframe, the court shall conduct a hearing as soon
22 as possible following the receipt of the treatment
23 supervisor's report filed pursuant to subsection (g) paragraph
24 ~~(d)~~ of Section 104-17, unless the hearing is waived by the
25 defense, and shall make a determination as to whether a
26 substantial probability of attaining fitness within the

1 statutory timeframe exists. If the court or the jury finds
2 that there is not a substantial probability that the defendant
3 may be rendered fit within the statutory limitations, the
4 court shall proceed as provided in Section 104-23.

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

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

8 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

10 (a) If the defendant is eligible to be or has been released
11 on pretrial release or on the defendant's ~~his~~ own
12 recognizance, the court shall select the least physically
13 restrictive form of treatment therapeutically appropriate and
14 consistent with the safety of the defendant or the safety of
15 others. ~~treatment plan.~~ The treatment placement may be ordered
16 on either ~~on~~ an inpatient or an outpatient basis.

17 (b) If the defendant ~~defendant's~~ is unfit due to mental
18 illness or developmental disability as identified in the
19 Mental Health and Developmental Disabilities Code ~~disability~~
20 ~~is mental~~, the court may order the defendant into the ~~him~~
21 ~~placed for secure treatment in the~~ custody of the Department
22 of Human Services. ~~or~~ The ~~the~~ court may also order the
23 defendant to be ~~him~~ placed in the custody of any other
24 appropriate public or private mental health facility or
25 treatment program which has agreed to provide treatment to the

1 defendant. If the defendant is remanded to the custody of the
2 Department of Human Services for inpatient services, the
3 defendant shall be placed in a secure setting. During the
4 period of time required to determine bed and placement
5 availability at the designated facility, the defendant shall
6 remain in jail and the pretrial release provisions of Section
7 110-2 do not apply. If the most serious charge faced by the
8 defendant is a Class A or Class B misdemeanor, the court shall
9 order outpatient treatment, unless the court finds good cause
10 on the record to order secure, inpatient treatment. If the
11 court orders the defendant to inpatient treatment in the
12 custody of the Department of Human Services, the Department
13 shall conduct a placement screening ~~evaluate the defendant~~ to
14 determine the most appropriate placement option for ~~secure~~
15 ~~facility to receive~~ the defendant and, within 20 days of the
16 successful transmittal by the clerk of the circuit court of
17 the court's placement order, if inpatient treatment is most
18 appropriate, notify the court, the State and the defense court
19 of the designated secure facility to receive the defendant. In
20 such case, the ~~The~~ Department shall admit the defendant to a
21 secure facility within 60 days of the transmittal of the
22 court's remand ~~court's placement~~ order, unless the Department
23 can demonstrate good faith efforts at placement and a lack of
24 bed and placement availability. If placement cannot be made
25 within 60 days of successful ~~the~~ transmittal of the court's
26 remand ~~court's placement~~ order and the Department has

1 demonstrated good faith efforts at placement and a lack of bed
2 and placement availability, the Department shall provide the
3 court, the State, and the defense with an update and shall
4 continue an update to update the ordering court, the State and
5 the defense court every 30 days thereafter until the defendant
6 is placed. Once bed and placement availability is determined,
7 the Department shall notify the sheriff who shall promptly
8 transport the defendant to the designated facility. ~~If the~~
9 ~~defendant is placed in the custody of the Department of Human~~
10 ~~Services, the defendant shall be placed in a secure setting.~~
11 ~~During the period of time required to determine bed and~~
12 ~~placement availability at the designated facility, the~~
13 ~~defendant shall remain in jail.~~ If during the course of
14 screening ~~evaluating~~ the defendant for placement, the
15 Department of Human Services determines that the defendant is
16 currently fit to stand trial, suitable for outpatient
17 treatment, or unfit without a substantial probability of being
18 rendered fit within the statutory timeframe, it shall
19 immediately notify the court, the State, and the defense court
20 and shall submit a written report within 7 days. In any of
21 those circumstances, ~~that circumstance~~ the placement shall be
22 held pending a court hearing on the Department's report.
23 Otherwise, upon completion of the placement process, including
24 identifying bed and placement availability, the sheriff shall
25 be notified and shall transport the defendant to the
26 designated facility. If, within 60 days of the successful

1 transmittal by the clerk of the circuit court of the court's
2 remand ~~court's placement~~ order, the Department has not
3 provided the court ~~fails to provide the sheriff~~ with notice of
4 bed and placement availability at the designated facility, the
5 sheriff shall contact the Department to inquire about when a
6 placement will become available at the designated facility as
7 well as bed and placement availability at other secure
8 facilities. The Department shall respond to the sheriff within
9 2 business days ~~of the notice and inquiry by the sheriff~~
10 ~~seeking the transfer~~ and ~~the Department~~ shall provide the
11 sheriff with the status of the placement screening, currently
12 designated facility evaluation, information on bed and
13 placement availability, ~~and~~ an estimated date of admission for
14 the defendant, and any changes to the ~~that~~ estimated date of
15 admission. If the Department notifies the sheriff during the 2
16 business day period of an alternate secure ~~a~~ facility operated
17 by the Department with current placement availability, the
18 sheriff shall promptly transport the defendant to that
19 facility. ~~The placement may be ordered either on an inpatient~~
20 ~~or an outpatient basis.~~

21 (c) If the defendant's disability is physical, the court
22 may order placement at a medical hospital or other residential
23 care facility or program that has agreed to provide treatment
24 to the defendant. Only such physical conditions that may be
25 overcome by special assistance or provisions as referenced in
26 Section 104-22 qualify as physical disabilities under this

1 ~~subsection. him placed under the supervision of the Department~~
2 ~~of Human Services which shall place and maintain the defendant~~
3 ~~in a suitable treatment facility or program, or the court may~~
4 ~~order him placed in an appropriate public or private facility~~
5 ~~or treatment program which has agreed to provide treatment to~~
6 ~~the defendant.~~ The placement may be ordered either on an
7 inpatient or an outpatient basis.

8 (d) If the defendant with mental disabilities is ordered
9 to outpatient treatment, the defendant shall be released from
10 custody with instructions to contact the Department of Human
11 Services to schedule the receipt of restoration services in
12 the community. A defendant who either fails to arrange for the
13 receipt of community restoration services or whom the
14 Department reports has failed to comply in any other respect
15 with the outpatient treatment order shall be remanded to the
16 Department pursuant to subsection (b) hereof to receive
17 inpatient services at a secure facility designated by the
18 Department.

19 (e) If the defendant is unfit due to any condition other
20 than a mental or physical condition as defined in Section
21 102-24, the court may order the defendant placed in a suitable
22 public or private treatment facility or program that has
23 agreed to provide treatment to the defendant. No person who
24 has not been determined to be unfit due to a mental or physical
25 condition identified in Section 102-24 may be placed in a
26 facility operated by the Department of Human Services.

1 ~~(f)-(d)~~ The clerk of the circuit court shall within 5 days
2 of the entry of the order transmit to the Department,
3 hospital, facility, agency or program institution, if any, to
4 which the defendant is remanded for treatment, the following:

5 (1) a certified copy of the order to undergo
6 treatment. Accompanying the certified copy of the order to
7 undergo treatment shall be the complete copy of any
8 initial fitness report prepared under Section 104-15 of
9 this Code or other report prepared by a forensic examiner
10 for the court;

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

13 (3) the county and municipality in which the arrest
14 took place;

15 (4) a copy of the arrest report, criminal charges,
16 arrest record; ~~and~~

17 (5) an order authorizing the Department, hospital,
18 facility or program to contact and receive information
19 from prior and current treatment providers and the
20 defendant's family concerning prior admissions, treatment,
21 medications and behaviors; and

22 (6) ~~(5)~~ all additional matters which the Court directs
23 the clerk to transmit.

24 ~~(g)-(e)~~ Within 30 days of admission to the hospital,
25 facility or program designated under this Section ~~facility,~~
26 the person supervising the defendant's treatment shall submit

1 ~~to file with~~ the court, the State, and the defense a report
2 assessing the hospital's, facility's or program's capacity to
3 provide appropriate treatment for the defendant and indicating
4 an ~~his~~ opinion as to the probability of the defendant's
5 attaining fitness within a period of time from the date of the
6 finding of unfitness. For a defendant charged with a felony,
7 the period of time shall be one year. For a defendant charged
8 with a Class A or Class B misdemeanor, the period of time shall
9 be no longer than the sentence if convicted of the most serious
10 offense. Defendants charged with Class C misdemeanors, petty
11 offenses, infraction of a municipal ordinance, or violation of
12 the Illinois Vehicle Code are not eligible for fitness
13 restoration services, unless the statutory penalty therefor
14 may include a sentence for a period of 180 days or longer. If
15 the report indicates that there is a substantial probability
16 that the defendant will attain fitness within the statutory
17 time period, the treatment supervisor shall also submit ~~file~~ a
18 treatment plan which shall include:

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

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

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

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

1 (725 ILCS 5/104-18) (from Ch. 38, par. 104-18)

2 Sec. 104-18. Progress reports.

3 (a) The treatment supervisor shall submit a written
4 progress report to the court, the State, and the defense:

5 (1) At least 7 days prior to the date for any hearing
6 on the issue of the defendant's fitness, provided the
7 treatment supervisor has been notified by the court of
8 such date sufficiently in advance;

9 (2) Whenever the treatment supervisor ~~he~~ believes that
10 the defendant has attained fitness;

11 (3) Whenever there is an opinion by the treatment
12 supervisor ~~he believes~~ that there is not a substantial
13 probability that the defendant will attain fitness, with
14 treatment, within the statutory time period ~~set in~~
15 ~~subsection (c) of Section 104-17 of this Code~~ from the
16 date of the original finding of unfitness.

17 (b) The progress report shall contain:

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

20 (2) The opinion of the treatment supervisor as to
21 whether the defendant has attained fitness, or as to
22 ~~whether the defendant~~ is making progress, ~~under treatment,~~
23 toward attaining fitness within the statutory time period
24 ~~set in subsection (c) of Section 104-17 of this Code~~ from
25 the date of the original finding of unfitness, or there is

1 not a substantially probability that the defendant will
2 attain fitness within the statutory time period;

3 (3) If the defendant is receiving medication,
4 information from the prescribing physician indicating the
5 type, the dosage and the effect of the medication on the
6 defendant's appearance, actions and demeanor.

7 (c) Whenever the court is sent a report from the
8 supervisor of the defendant's treatment under either paragraph
9 (2) or (3) of subsection (a) of this Section it shall, within
10 48 hours, enter an order upon the sheriff to return the
11 defendant to the county jail. Upon receipt of such order, the
12 treatment supervisor ~~provider~~ shall arrange directly with the
13 county sheriff ~~jail~~ for the immediate return of the defendant
14 to the county jail as provided under subsection (e) of Section
15 104-20 of this Code.

16 (d) Whenever the court receives a report from the
17 defendant's treatment supervisor pursuant to paragraph (2) or
18 (3) of subsection (a), the court shall forthwith set the
19 matter for a first hearing within 14 days, unless good cause is
20 demonstrated why the hearing cannot be held within that time
21 and shall set the hearing at the first available opportunity
22 thereafter.

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

24 (725 ILCS 5/104-19) (from Ch. 38, par. 104-19)

25 Sec. 104-19. Records.) Any report submitted to ~~filed of~~

1 ~~record with~~ the court concerning diagnosis, treatment or
2 treatment plans made pursuant to this Article shall not be
3 placed in the defendant's court record, but shall be
4 maintained separately by the clerk of the court and shall be
5 available only to the court or an appellate court, the State
6 and the defense, the Department, a hospital, facility or
7 program which is providing treatment to the defendant pursuant
8 to an order of the court or such other persons as the court may
9 direct.

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

11 (725 ILCS 5/104-20) (from Ch. 38, par. 104-20)

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

13 (a) Upon entry or continuation of any order to undergo
14 fitness restoration treatment, the court shall set a date for
15 hearing to reexamine the issue of the defendant's fitness not
16 more than 90 days from the original finding of unfitness and at
17 90-day intervals thereafter. The clerk of the circuit court
18 shall notify the hospital, facility or program providing
19 treatment to the defendant of all upcoming hearing dates. ~~In~~
20 ~~addition, whenever the court receives a report from the~~
21 ~~supervisor of the defendant's treatment pursuant to~~
22 ~~subparagraph (3) of paragraph (a) of Section 104-18, the court~~
23 ~~shall forthwith set the matter for a first hearing within 14~~
24 ~~days unless good cause is demonstrated why the hearing cannot~~
25 ~~be held.~~ Unless waived by the defense, on ~~On~~ the date set ~~or~~

1 ~~upon conclusion of the matter then pending before it,~~ the
2 court, sitting without a jury, shall conduct a hearing, ~~unless~~
3 ~~waived by the defense,~~ and shall determine:

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

6 (2) Whether the defendant is making progress ~~under~~
7 ~~treatment~~ toward attainment of fitness within the
8 statutory time period ~~set in subsection (e) of Section~~
9 ~~104-17 of this Code~~ from the date of the original finding
10 of unfitness; or.

11 (3) Whether there is not a substantial probability
12 that the defendant may be restored to fitness within the
13 statutory timeframe.

14 (b) If the court finds the defendant to be fit pursuant to
15 this Section, the court shall set the matter for trial and if
16 in secure custody, order that the defendant be returned to the
17 county to stand trial.; ~~provided that if the defendant is in~~
18 ~~need of continued care or treatment and the supervisor of the~~
19 ~~defendant's treatment agrees to continue to provide it, the~~
20 ~~court may enter any order it deems appropriate for the~~
21 ~~continued care or treatment of the defendant by the facility~~
22 ~~or program pending the conclusion of the criminal proceedings.~~

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

1 (d) If the court finds that the defendant is still unfit
2 and that the defendant ~~he~~ is not making progress toward
3 attaining fitness such that there is not a substantial
4 probability that the defendant ~~he~~ will attain fitness within
5 the time statutory period ~~set in subsection (c) of Section~~
6 ~~104-17 of this Code~~ from the date of the original finding of
7 unfitness, if in secure custody, the court shall order that
8 the defendant be returned to the county and shall otherwise
9 proceed pursuant to Section 104-23. ~~However, if the defendant~~
10 ~~is in need of continued care and treatment and the supervisor~~
11 ~~of the defendant's treatment agrees to continue to provide it,~~
12 ~~the court may enter any order it deems appropriate for the~~
13 ~~continued care or treatment by the facility or program pending~~
14 ~~the conclusion of the criminal proceedings.~~

15 (e) Whenever the court receives a report from the
16 supervisor of the defendant's treatment under paragraph (2) or
17 (3) of subsection (a) of Section 104-18 of this Code, the court
18 shall, within 48 hours, ~~immediately~~ enter an order directing
19 the sheriff to return the defendant to the county jail and set
20 the matter for trial. At any time thereafter, the issue of the
21 defendant's fitness can be raised again under Section 104-11
22 of this Code. If the court finds that the defendant is still
23 unfit after being recommended as fit by the supervisor of the
24 defendant's treatment and, that it is substantially probable
25 that the defendant may be restored to fitness within the
26 statutory timeframe, the court shall attach a copy of any

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

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

7 (725 ILCS 5/104-21) (from Ch. 38, par. 104-21)

8 Sec. 104-21. Medication.

9 (a) A defendant who is ordered into the custody of the
10 Department of Human Services after a finding of unfitness is
11 subject to the involuntary administration of medication under
12 Section 2-107.1 of the Mental Health and Developmental
13 Disabilities Code. The petition may be filed in either the
14 county where the defendant is located or with the court having
15 jurisdiction over the defendant. A defendant receiving
16 psychotropic drugs shall not be presumed to be unfit to stand
17 trial solely by virtue of the receipt of those drugs or
18 medications.

19 (a-5) The court-ordered custodian of a defendant who is
20 subject to the involuntary administration of medication under
21 this Section shall be entitled to receive the treatment notes,
22 records, and reports relative to the defendant upon written
23 request. A prior treatment provider who is provided with a
24 copy of the court's custody order shall respond to the
25 custodian's records request within 5 business days. No records

1 received pursuant to this Section may be used for any purposes
2 except to determine whether the defendant meets the criteria
3 for court-ordered treatment under Section 2-107.1 or to
4 prepare for and participate in hearings under Section 2-107.1.

5 (a-7) A petition filed on behalf of a defendant who is in
6 custody under this Article shall be heard within 7 days,
7 unless good cause is stated on the record why the hearing
8 cannot be so held within the statutory timeframe. In no event,
9 however, shall such hearing be delayed beyond 14 days from the
10 date the petition is filed. The court shall adjudicate the
11 petition within 3 working days of the conclusion of the
12 medication hearing.

13 (b) Whenever a defendant who is receiving medication under
14 medical direction is transferred between a place of custody
15 and a treatment facility or program, a written report from the
16 prescribing physician shall accompany the defendant. The
17 report shall state the type and dosage of the defendant's
18 medication and the duration of the prescription. The chief
19 officer of the place of custody or the treatment supervisor at
20 the facility or program shall ensure ~~insure~~ that such
21 medication is provided according to the directions of the
22 prescribing physician or until superseded by order of a
23 physician who has examined the defendant.

24 (c) (Blank). ~~If a defendant refuses psychotropic~~
25 ~~medication, it may be administered over the defendant's~~
26 ~~objections in accord with the Mental Health and Developmental~~

1 ~~Disabilities Code. If court authorized medications are sought,~~
2 ~~the petition, prepared in accord with Section 2-107.1 of the~~
3 ~~Mental Health and Developmental Disabilities Code may be filed~~
4 ~~in the county where the defendant is located or with the court~~
5 ~~having jurisdiction over the defendant.~~

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

7 (725 ILCS 5/104-22) (from Ch. 38, par. 104-22)

8 Sec. 104-22. Trial with special provisions and
9 assistance.) (a) On motion of the defendant, the State or on
10 the court's own accord ~~motion~~, the court shall determine
11 whether special provisions or assistance will render the
12 defendant fit to stand trial as defined in Section 104-10.

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

15 (1) The administration of medication.

16 (2) ~~(1)~~ Appointment of qualified translators who shall
17 simultaneously translate all testimony at trial into
18 language understood by the defendant.

19 (3) ~~(2)~~ Appointment of experts qualified to assist a
20 defendant who because of a disability is unable to
21 understand the proceedings or communicate with the
22 defendant's ~~his or her~~ attorney.

23 (c) The case may proceed to trial only if the court
24 determines that such provisions or assistance compensate for a
25 defendant's disabilities so as to render the defendant fit as

1 defined in Section 104-10. In such cases the court shall state
2 for the record the following:

3 (1) The qualifications and experience of the experts or
4 other persons appointed to provide special assistance to the
5 defendant;

6 (2) The court's reasons for selecting or appointing the
7 particular experts or other persons to provide the special
8 assistance to the defendant;

9 (3) How the appointment of the particular expert or other
10 persons will serve the goal of rendering the defendant fit in
11 view of the appointee's qualifications and experience, taken
12 in conjunction with the particular disabilities of the
13 defendant; and

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

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

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 whom
21 the defendant's treatment supervisor has reported as unfit
22 without a substantial probability of attaining fitness within
23 the statutory time period ~~who cannot become fit to stand trial~~
24 and for whom no special provisions or assistance can
25 compensate for the defendant's ~~his~~ disability and render the

1 defendant ~~him~~ fit shall proceed in the following manner:

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

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

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

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

25 (3) To remand the defendant to the custody of the
26 Department of Human Services and order an involuntary

1 civil commitment ~~a~~ hearing ~~to~~ be conducted pursuant to the
2 provisions of the Mental Health and Developmental
3 Disabilities Code, as now or hereafter amended. The
4 Department of Human Services shall have 7 days from the
5 date it receives the defendant assess the individual and
6 if warranted, to prepare and file the necessary petition
7 and certificates that are required for commitment on an
8 inpatient or outpatient basis under the Mental Health and
9 Developmental Disabilities Code subject to a 7 day
10 extension upon a showing of good cause. If the defendant
11 is committed to the Department of Human Services pursuant
12 to such hearing, the court having jurisdiction over the
13 criminal matter shall dismiss the charges against the
14 defendant, with the leave to reinstate. In such cases the
15 Department of Human Services shall notify the court, the
16 State's attorney and the defense attorney upon the
17 discharge of the defendant. A former defendant so
18 committed shall be otherwise treated in the same manner as
19 any other civilly committed patient for all purposes
20 including admission, selection of the place of treatment
21 and the treatment modalities, entitlement to rights and
22 privileges, transfer, and discharge. If the defendant does
23 not qualify for involuntary commitment, but has expressed
24 a willingness to be admitted on a voluntary basis and the
25 facility director determines that the defendant is
26 clinically suitable for voluntary admission, the

1 Department shall so advise the court, the State, and the
2 defense. The court may consider this factor in determining
3 whether to proceed under subparagraph (1) or (2) of
4 paragraph (b) of this Section. Should the court dismiss
5 with prejudice the charges against the defendant, the
6 defendant shall then be admission to the Department on a
7 voluntary basis pursuant to the Mental Health and
8 Developmental Disabilities Code. If a defendant who does
9 not qualify for involuntary commitment is unwilling or
10 unsuitable for voluntary admission, the Department shall
11 so advise the court, the State and the defense. Upon
12 receipt of such a notice, the court ~~A defendant who is not~~
13 ~~committed~~ shall, within 48 hours, enter an order for the
14 sheriff to transport the defendant to the county jail ~~be~~
15 ~~remanded to the court having jurisdiction of the criminal~~
16 ~~matter~~ for further disposition pursuant to subparagraph
17 (1) or (2) of paragraph (b) of this Section.

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

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

23 (725 ILCS 5/104-24) (from Ch. 38, par. 104-24)

24 Sec. 104-24. Time Credit. Time spent in custody pursuant
25 to orders issued under this Article ~~Section 104-17 or 104-20~~

1 ~~er pursuant to a commitment to the Department of Human~~
2 ~~Services following a finding of unfitness or incompetency~~
3 ~~under prior law,~~ shall be credited against any sentence
4 imposed on the defendant in the pending criminal case or in any
5 other case arising out of the same conduct. The court shall
6 calculate the time credit to be applied when considering the
7 maximum period of time that a defendant may remain in custody.
8 The Department of Human Services shall not be authorized to
9 independently apply or calculate time credit.

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

11 (725 ILCS 5/104-25) (from Ch. 38, par. 104-25)

12 Sec. 104-25. Discharge hearing.

13 (a) As provided for in ~~paragraph (a) of Section 104-23 and~~
14 subparagraph (1) of paragraph (b) of Section 104-23 a hearing
15 to determine the sufficiency of the evidence shall be held.
16 Such hearing shall be conducted by the court without a jury.
17 The State and the defendant may introduce evidence relevant to
18 the question of defendant's guilt of the crime charged.

19 The court may admit hearsay or affidavit evidence on
20 secondary matters such as testimony to establish the chain of
21 possession of physical evidence, laboratory reports,
22 authentication of transcripts taken by official reporters,
23 court and business records, and public documents.

24 (b) If the evidence presented by the State does not prove
25 the defendant guilty beyond a reasonable doubt, the court

1 shall enter a judgment of acquittal; however nothing herein
2 shall prevent the State from requesting the court to commit
3 the defendant to the Department of Human Services under the
4 provisions of the Mental Health and Developmental Disabilities
5 Code.

6 (c) If after considering the evidence, the defendant is
7 found not guilty by reason of insanity, the court shall enter a
8 judgment of acquittal and the proceedings after acquittal by
9 reason of insanity under Section 5-2-4 of the Unified Code of
10 Corrections shall apply.

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

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

20 (1.1) If the most serious charge upon which the State
21 sustained its burden of proof was ~~if~~ a Class 2, 3, or 4
22 felony, the treatment period may be extended up to a
23 maximum of 15 months;

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

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

4 (e) Transcripts of testimony taken at a discharge hearing
5 may be admitted in evidence at a subsequent trial of the case,
6 subject to the rules of evidence, if the witness who gave such
7 testimony is legally unavailable at the time of the subsequent
8 trial.

9 (f) If the court fails to enter an order of acquittal the
10 defendant may appeal from such judgment in the same manner
11 provided for an appeal from a conviction in a criminal case.

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

14 (1) Upon a finding that the defendant is fit or can be
15 rendered fit consistent with special provisions or
16 assistance pursuant to Section 104-22 if in custody, the
17 court shall, within 48 hours, order the sheriff to return
18 the defendant to the county and the court may otherwise
19 proceed with trial.

20 (2) If the defendant continues to be unfit to stand
21 trial, the court shall determine whether the defendant ~~he~~
22 ~~or she~~ is subject to involuntary admission under the
23 Mental Health and Developmental Disabilities Code ~~or~~
24 ~~constitutes a serious threat to the public safety.~~ If so
25 found, the defendant shall be remanded to the Department
26 of Human Services for further treatment and shall be

1 treated in the same manner as a civilly committed patient
2 for all purposes, except that the defendant shall be
3 placed in a secure setting unless the court determines
4 that there are compelling reasons why such placement is
5 not necessary. In addition, the criminal ~~original~~ court
6 having jurisdiction over the defendant shall be required
7 to approve any conditional release or discharge of the
8 defendant, for the period of commitment equal to the
9 maximum sentence to which the defendant would have been
10 subject had the defendant ~~he or she~~ been convicted in the
11 underlying ~~a~~ criminal proceeding. The court shall
12 calculate the maximum period of civil commitment under
13 this subsection and no credits may be applied against such
14 term other than those considered and applied by the court.
15 ~~During this period of commitment, the original court~~
16 ~~having jurisdiction over the defendant shall hold hearings~~
17 ~~under clause (i) of this paragraph (2). However, if the~~
18 ~~defendant is remanded to the Department of Human Services,~~
19 ~~the defendant shall be placed in a secure setting unless~~
20 ~~the court determines that there are compelling reasons why~~
21 ~~such placement is not necessary.~~

22 If the defendant does not have a current treatment
23 plan, ~~then~~ within 3 days of admission under this
24 subsection subdivision (g) (2), the defendant's treatment
25 supervisor shall submit a treatment plan to the court, the
26 State, and the defense shall be prepared for each

1 ~~defendant and entered into his or her record.~~ The plan
2 shall include (i) an assessment of the defendant's
3 treatment needs, (ii) a description of the services
4 recommended for treatment, (iii) the goals of each type of
5 element of service, (iv) an anticipated timetable for the
6 accomplishment of the goals, and (v) a designation of the
7 qualified professional responsible for the implementation
8 of the plan. The plan shall be reviewed and updated as the
9 clinical condition warrants, but not less than every 30
10 days.

11 Every 90 days after the entry of an initial admission
12 order under this subsection ~~subdivision (g) (2)~~, the
13 defendant's treatment supervisor ~~facility director~~ shall
14 submit ~~file~~ a progress ~~typed treatment plan~~ report to the
15 court, the State, and the defense ~~with the original court~~
16 ~~having jurisdiction over the defendant.~~ The report shall
17 include an opinion as to whether the defendant is: (i) fit
18 to stand trial, or (ii) if not, ~~and~~ whether the defendant
19 is currently subject to involuntary admission. If so, the
20 treatment supervisor shall also state whether the
21 defendant is ~~in~~ need of mental health services on an
22 inpatient basis ~~or~~ in need of mental health services on
23 an outpatient basis. The report shall also summarize the
24 basis for those findings and provide a current summary of
25 the 5 items required in a treatment plan. A copy of the
26 report shall be forwarded to the clerk of the circuit

1 court to be filed in accordance with Section 104-19 with a
2 copy provided to the State and the defense, if the
3 defendant is represented by counsel. If the report states
4 that the defendant is fit to stand trial, the court shall
5 conduct a fitness hearing. If the defendant is found fit,
6 the court shall, within 48 hours, order the county sheriff
7 to return the defendant to the county jail to stand trial.

8 Upon request of the defendant's treatment supervisor,
9 the State, the defense, or on the court's court, the State's
10 Attorney, and the defendant's attorney if the defendant is
11 represented by counsel. The court on its own motion, it may
12 order a hearing to review the treatment plan. The defendant or
13 the State's Attorney may request a treatment plan review every
14 90 days and the court shall review the current treatment plan
15 to determine whether the plan complies with the requirements
16 of this Section. The court may also order an independent
17 examination of the defendant on its own initiative or at the
18 request of and shall order such an evaluation if either the
19 defense recipient or the State State's Attorney so requests
20 and has demonstrated to the court that the plan cannot be
21 effectively reviewed by the court without such an examination.
22 Under no circumstances shall the court be required to order an
23 independent examination pursuant to this Section. However, if
24 it does, it may not do so more than once each 12-month period
25 year. The examination shall be conducted by a psychiatrist or
26 clinical psychologist as defined in Section 1-103 of the

1 Mental Health and Developmental Disabilities Code who is not
2 in the employ of the Department of Human Services.

3 If, during the period within which the defendant is
4 confined in a secure setting, the court enters an order
5 that requires the defendant to appear, the court shall
6 timely transmit a copy of the order or writ to the director
7 of the hospital, particular Department of Human Services
8 facility or program providing services to the defendant
9 ~~where the defendant resides~~ authorizing the transportation
10 of the defendant to the court for the purpose of the
11 hearing.

12 (i) 180 days after a defendant is remanded to the
13 Department of Human Services, under paragraph (2) of
14 subsection (g) paragraph (2), and every 180 days
15 thereafter for so long as the defendant is confined
16 under the order entered thereunder, the court shall
17 set a hearing and shall direct that notice of the time
18 and place of the hearing be served upon the defendant,
19 the facility director, the State's Attorney, and the
20 defendant's attorney. If requested by either the State
21 or the defense or if the court determines that it is
22 appropriate, an impartial examination of the defendant
23 by a psychiatrist or clinical psychologist as defined
24 in Section 1-103 of the Mental Health and
25 Developmental Disabilities Code who is not in the
26 employ of the Department of Human Services shall be

1 ordered, and the report considered at the time of the
2 hearing. If the defendant is not currently represented
3 by counsel, the court shall appoint the public
4 defender to represent the defendant at the hearing.
5 The court shall make a finding as to whether the
6 defendant is: ~~(A)~~ subject to involuntary admission
7 and, if so, whether the defendant is, ~~or (B)~~ in need of
8 mental health services in the form of inpatient care, ~~or~~
9 ~~(C)~~ in need of mental health services on an
10 outpatient basis ~~but not subject to involuntary~~
11 ~~admission nor inpatient care.~~

12 The findings of the court shall be established by
13 clear and convincing evidence and the burden of proof
14 and the burden of going forward with the evidence
15 shall rest with the State ~~State's Attorney~~. The court
16 ~~Upon finding by the court, the court~~ shall enter its
17 findings on ~~and~~ an appropriate order.

18 (ii) The terms "subject to involuntary admission",
19 "in need of mental health services in the form of
20 inpatient care" and "in need of mental health services
21 on an outpatient basis ~~but not subject to involuntary~~
22 ~~admission nor inpatient care"~~ shall have the meanings
23 ascribed to them in clause (a-1) ~~(d)(3)~~ of Section
24 5-2-4 of the Unified Code of Corrections.

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

1 (4) In no event may the treatment period be extended
2 to exceed the maximum sentence to which a defendant would
3 have been subject had the defendant ~~he or she~~ been
4 convicted in the a criminal proceeding on the most serious
5 offense. For purposes of this Section, the maximum
6 sentence shall be determined by Section 5-8-1 (730 ILCS
7 5/5-8-1) or Article 4.5 of Chapter V of the "Unified Code
8 of Corrections", excluding any sentence of natural life.

9 (5) If the treatment supervisor reports the defendant
10 as fit, the court shall immediately, within 48 hours,
11 order the sheriff to return the defendant to the county
12 jail to stand trial, plead, or be sentenced.

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

14 (725 ILCS 5/104-26) (from Ch. 38, par. 104-26)

15 Sec. 104-26. Disposition of Defendants suffering
16 disabilities.

17 (a) A defendant convicted following a trial conducted
18 under the provisions of Section 104-22 shall not be sentenced
19 before a written presentence report of investigation is
20 presented to and considered by the court. The presentence
21 report shall be prepared pursuant to Sections 5-3-2, 5-3-3 and
22 5-3-4 of the Unified Code of Corrections, as now or hereafter
23 amended, and shall include a physical and mental examination
24 unless the court finds that the reports of prior physical and
25 mental examinations conducted pursuant to this Article are

1 adequate and recent enough so that additional examinations
2 would be unnecessary.

3 (b) (Blank).

4 (c) A defendant convicted following a trial under Section
5 104-22 shall be sentenced according to the procedures and
6 dispositions authorized under the Unified Code of Corrections,
7 as now or hereafter amended, subject to the following
8 provisions:

9 (1) The court shall not impose a sentence of
10 imprisonment upon the offender if the court believes that
11 due to the presence of a ~~because of his~~ disability, a
12 sentence of imprisonment would not serve the ends of
13 justice and the interests of society and the offender or
14 that because of a ~~his~~ disability, a sentence of
15 imprisonment would subject the offender to excessive
16 hardship. In addition to any other conditions of a
17 sentence of conditional discharge or probation, the court
18 may require that the offender undergo treatment
19 appropriate for the defendant's ~~to his~~ mental or physical
20 condition.

21 (2) (Blank). ~~After imposing a sentence of imprisonment~~
22 ~~upon an offender who has a mental disability, the court~~
23 ~~may remand him to the custody of the Department of Human~~
24 ~~Services and order a hearing to be conducted pursuant to~~
25 ~~the provisions of the Mental Health and Developmental~~
26 ~~Disabilities Code, as now or hereafter amended. If the~~

1 ~~offender is committed following such hearing, he shall be~~
2 ~~treated in the same manner as any other civilly committed~~
3 ~~patient for all purposes except as provided in this~~
4 ~~Section. If the defendant is not committed pursuant to~~
5 ~~such hearing, he shall be remanded to the sentencing court~~
6 ~~for disposition according to the sentence imposed.~~

7 (3) If the court imposes a sentence of imprisonment
8 upon an offender who has a mental disability ~~but does not~~
9 ~~proceed under subparagraph (2) of paragraph (c) of this~~
10 ~~Section~~, it shall order the Department of Corrections to
11 proceed pursuant to Section 3-8-5 of the Unified Code of
12 Corrections, as now or hereafter amended.

13 (3.5) If the court imposes a sentence of imprisonment
14 upon an offender who has a mental disability, it ~~the court~~
15 shall direct the clerk of the circuit court ~~circuit court~~
16 ~~clerk~~ to immediately notify the Illinois State Police,
17 Firearm Owner's Identification (FOID) Office, in a form
18 and manner prescribed by the Illinois State Police and
19 shall forward a copy of the court order to the Department.

20 (4) If the court imposes a sentence of imprisonment
21 upon an offender who has a physical disability, it may
22 authorize the Department of Corrections to place the
23 offender in a public or private facility which is able to
24 provide care or treatment for the offender's disability
25 and which agrees to do so.

26 (5) When an offender is placed with ~~the Department of~~

1 ~~Human Services~~ or another facility pursuant to
2 subparagraph ~~(2) or~~ (4) of this paragraph (c), the public
3 ~~or Department~~ or private facility shall not discharge or
4 allow the offender to be at large in the community without
5 prior approval of the court. ~~If the defendant is placed in~~
6 ~~the custody of the Department of Human Services, the~~
7 ~~defendant shall be placed in a secure setting unless the~~
8 ~~court determines that there are compelling reasons why~~
9 ~~such placement is not necessary.~~ The offender shall accrue
10 all good time credits as determined by the court while in
11 the custody of the public or private facility and shall be
12 eligible for parole in the same manner as if the offender
13 ~~he~~ were serving the defendant's ~~his~~ sentence within the
14 Department of Corrections. If the sentence has not yet
15 expired when ~~When~~ the offender no longer requires
16 hospitalization, care, or treatment, the public or private
17 ~~Department of Human Services or the~~ facility shall
18 transfer the offender ~~him~~, if his sentence has not
19 ~~expired~~, to the Department of Corrections. If an offender
20 is transferred to the Department of Corrections, the
21 facility ~~Department of Human Services~~ shall transfer to
22 the Department of Corrections all related records
23 pertaining to length of custody and treatment services
24 provided during the time the offender was held.

25 (6) The Department of Corrections shall notify the
26 public or private ~~Department of Human Services~~ or a

1 facility in which an offender has been placed pursuant to
2 subparagraph ~~(2) or~~ (4) of paragraph (c) of this Section
3 of the expiration of the ~~his~~ sentence. Thereafter, an
4 offender so placed ~~in the Department of Human Services~~
5 shall continue to be treated pursuant to the defendant's
6 ~~his~~ commitment order and shall be considered a civilly
7 committed patient for all purposes including discharge. An
8 offender who is in a facility pursuant to subparagraph (4)
9 of paragraph (c) of this Section shall be informed by the
10 facility of the expiration of the defendant's ~~his~~
11 sentence, and shall either consent to the continuation of
12 the defendant's ~~his~~ care or treatment by the facility, or
13 shall be discharged.

14 (Source: P.A. 102-538, eff. 8-20-21; 103-51, eff. 1-1-24.)

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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