



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

HB3572

Introduced 2/18/2025, by Rep. Lindsey LaPointe

SYNOPSIS AS INTRODUCED:

See Index

Amends the Code of Criminal Procedure of 1963. Adds a Diversion of Unfit Misdemeanants Article to the Code. Provides that a defendant charged with one or more misdemeanors and for whom a court has determined that a bona fide doubt of the defendant's fitness has been raised may be admitted into an unfit misdemeanor diversion program only upon the approval of the court. Provides that the Illinois Supreme Court or any circuit court of the State may adopt rules establishing unfit misdemeanor diversion programs consistent with the Article. Provides that the court shall require an eligibility screening and an assessment of the defendant to determine whether the defendant may be able to receive mental health services under the Mental Health and Developmental Disabilities Code which shall reasonably assure his or her safety and that of the public and his or her continued participation in treatment. Provides that if, following this screening, the State and the defendant agree to the diversion and the court determines that the defendant is appropriate for diversion, the criminal charges may be dismissed with prejudice. Provides that if the court does not approve, the court shall order a fitness examination and the matter shall be governed by any other relevant provisions of the Fitness for Trial, To Plead, or to be Sentenced Article of the Code. Provides that the misdemeanor diversion program may maintain or collaborate with mental health and substance use treatment providers necessary to provide a continuum of treatment options commensurate with the needs of the defendant and available resources. Treatment programs shall comply with all relevant statutes and rules. Requires the Department of Human Services to provide care to persons determined to be subject to involuntary admission on an inpatient basis as defined in the Mental Health and Developmental Disabilities Code or may make arrangements with any other appropriate inpatient mental health facility to provide those services. Makes conforming changes in the Fitness for Trial, To Plead, or to be Sentenced Article of the Code. Provides that the Act may be referred to as the Diversion of Unfit Misdemeanants Act.

LRB104 10652 RLC 20729 b

A BILL FOR

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 1. Reference to Act. This Act may be referred to as
5 the Diversion of Unfit Misdemeanants Act.

6 Section 5. Purpose. The General Assembly recognizes that
7 there are a substantial number of persons with mental
8 illnesses who are charged with misdemeanors and are found
9 unfit to stand trial under Article 104 of the Code of Criminal
10 Procedure of 1963. Many of these defendants remain in the
11 criminal justice system for periods of time longer than they
12 would have served had they been convicted of the misdemeanor
13 with which they have been charged. These defendants impose a
14 substantial financial burden on county jails, the criminal
15 court system, and State-operated mental health facilities
16 where they are frequently committed under Section 104-17 of
17 the Code of Criminal Procedure of 1963. Additionally, despite
18 extended involvement in the criminal justice system, many of
19 these defendants do not receive the mental health treatment
20 needed to reduce the likelihood that they will commit future
21 offenses and are not successfully linked to on-going mental
22 health services when their involvement in the criminal justice
23 system ends, including community-based treatment programs. The

1 General Assembly finds that the interests of public safety,
2 the welfare of persons with mental illnesses charged with
3 misdemeanors, and the efficient and effective use of public
4 resources may be served by creating programs which remove
5 these defendants from the criminal justice system and use
6 behavioral health services, case management, and substance use
7 disorder treatment, including, but not limited to, treatment
8 authorized under Articles IV, VII, and VII-A and Section
9 3-801.5 of Article VIII of the Mental Health and Developmental
10 Disabilities Code.

11 Section 10. The Code of Criminal Procedure of 1963 is
12 amended by changing Sections 104-13, 104-15, and 104-17 and by
13 adding Article 104A as follows:

14 (725 ILCS 5/104-13) (from Ch. 38, par. 104-13)

15 Sec. 104-13. Fitness examination.

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

23 (a-1) The Administrative Office of the Illinois Courts is
24 encouraged to establish standards and a certification process

1 for court-appointed fitness evaluators designed to increase
2 the availability of qualified evaluators statewide and to
3 increase access, consistency, and fairness within
4 fitness-to-stand-trial proceedings and subsequent placement
5 recommendations.

6 (b) If the issue of fitness involves the defendant's
7 physical condition, the court shall appoint one or more
8 physicians and in addition, such other experts as it may deem
9 appropriate to examine the defendant and to report to the
10 court regarding the defendant's condition.

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

26 (d) Pretrial Release ~~on pretrial release or on~~

1 ~~recognizance~~ shall not be revoked and an application therefor
2 shall not be denied on the grounds that an examination has been
3 ordered.

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 him and
8 to make a report as provided in Section 104-15. Upon the filing
9 with the court of a verified statement of services rendered,
10 the court shall enter an order on the county board to pay such
11 expert a reasonable fee stated in the order.

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

13 (725 ILCS 5/104-15) (from Ch. 38, par. 104-15)

14 Sec. 104-15. Report.

15 (a) The person or persons conducting an examination of the
16 defendant, pursuant to paragraph (a) or (b) of Section 104-13
17 shall submit a written report to the court, the State, and the
18 defense within 30 days of the date of the order. The report
19 shall include:

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

22 (2) A description of the defendant's mental or
23 physical disability, if any; its severity; and an opinion
24 as to whether and to what extent it impairs the
25 defendant's ability to understand the nature and purpose

1 of the proceedings against him or to assist in his
2 defense, or both.

3 (b) If the report indicates that the defendant is not fit
4 to stand trial or to plead because of a disability, the report
5 shall include an opinion as to the likelihood of the defendant
6 attaining fitness within the statutory ~~a~~ period of time from
7 the date of the finding of unfitness if provided with a course
8 of treatment. For a defendant charged with a felony, the
9 period of time shall be one year. For a defendant charged with
10 a Class A misdemeanor, the period of time shall be no longer
11 than the maximum term of imprisonment for the most serious
12 offense. The period of commitment shall not exceed the maximum
13 length of time that the defendant would have been required to
14 serve, less credit for good behavior as provided in Section
15 5-4-1 of the Unified Code of Corrections. Defendants charged
16 with Class B and C misdemeanors, petty offenses, infraction of
17 a municipal ordinance, or violation of the Illinois Vehicle
18 Code are not eligible for fitness restoration services. If the
19 person or persons preparing the initial fitness report are
20 unable to form such an opinion, the report shall state the
21 reasons therefore ~~therefor~~. The report shall ~~may~~ include a
22 general description of the type of treatment needed and of the
23 least physically restrictive form of treatment therapeutically
24 appropriate. Should inpatient treatment be recommended, the
25 report must articulate the evaluator's assessment of risk,
26 protective factors, and treatment needs as related to their

1 mental disorder. Risk shall not be determined solely by the
2 nature of the defendant's criminal charges.

3 (c) The report shall indicate what information, if any,
4 contained therein may be harmful to the mental condition of
5 the defendant if made known to him.

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

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

24 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

1 (a) If the defendant is eligible to be or has been released
2 on pretrial release ~~or on his own recognizance~~, the court
3 shall select the least physically restrictive form of
4 treatment therapeutically appropriate and consistent with the
5 treatment plan. The placement may be ordered either on an
6 inpatient or an outpatient basis. Placement shall be on an
7 outpatient basis unless the court determines that:

8 (1) treatment on an outpatient basis is reasonably
9 expected to inflict serious physical harm upon himself,
10 herself, or another; or

11 (2) treatment that will restore the defendant to
12 fitness within a reasonable period of time is not
13 available on an outpatient basis.

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

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

1 circumstance the placement shall be held pending a court
2 hearing on the Department's report. Otherwise, upon completion
3 of the placement process, including identifying bed and
4 placement availability, the sheriff shall be notified and
5 shall transport the defendant to the designated facility. If,
6 within 60 days of the transmittal by the clerk of the circuit
7 court of the court's placement order, the Department fails to
8 provide the sheriff with notice of bed and placement
9 availability at the designated facility, the sheriff shall
10 contact the Department to inquire about when a placement will
11 become available at the designated facility as well as bed and
12 placement availability at other secure facilities. The
13 Department shall respond to the sheriff within 2 business days
14 of the notice and inquiry by the sheriff seeking the transfer
15 and the Department shall provide the sheriff with the status
16 of the evaluation, information on bed and placement
17 availability, and an estimated date of admission for the
18 defendant and any changes to that estimated date of admission.
19 If the Department notifies the sheriff during the 2 business
20 day period of a facility operated by the Department with
21 placement availability, the sheriff shall promptly transport
22 the defendant to that facility. The placement may be ordered
23 either on an inpatient or an outpatient basis.

24 (c) If the defendant's disability is physical, the court
25 may order him placed under the supervision of the Department
26 of Human Services which shall place and maintain the defendant

1 in a suitable treatment facility or program, or the court may
2 order him placed in an appropriate public or private facility
3 or treatment program which has agreed to provide treatment to
4 the defendant. The placement may be ordered either on an
5 inpatient or an outpatient basis.

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

10 (1) a certified copy of the order to undergo
11 treatment. Accompanying the certified copy of the order to
12 undergo treatment shall be the complete copy of any report
13 prepared under Section 104-15 of this Code or other report
14 prepared by a forensic examiner for the court;

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

17 (3) the county and municipality in which the arrest
18 took place;

19 (4) a copy of the arrest report, criminal charges,
20 arrest record; and

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

23 (e) Within 30 days of admission to the designated
24 facility, the person supervising the defendant's treatment
25 shall file with the court, the State, and the defense a report
26 assessing the facility's or program's capacity to provide

1 appropriate treatment for the defendant and indicating his
2 opinion as to the probability of the defendant's attaining
3 fitness within a period of time from the date of the finding of
4 unfitness. For a defendant charged with a felony, the period
5 of time shall be one year. For a defendant charged with a
6 misdemeanor, the period of time shall be no longer than the
7 sentence if convicted of the most serious offense, less credit
8 for good behavior as provided in Section 5-4-1 of the Unified
9 Code of Corrections. If the report indicates that there is a
10 substantial probability that the defendant will attain fitness
11 within the time period, the treatment supervisor shall also
12 file a treatment plan which shall include:

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

14 (2) A description of treatment goals with respect to
15 rendering the defendant fit, a specification of the
16 proposed treatment modalities, and an estimated timetable
17 for attainment of the goals;

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

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

21 (725 ILCS 5/Art. 104A heading new)

22 ARTICLE 104A. DIVERSION OF UNFIT MISDEMEANANTS

23 (725 ILCS 5/104A-1 new)

24 Sec. 104A-1. Eligibility. A defendant charged with one or

1 more misdemeanors and for whom a court has determined under
2 Section 104-11 of this Code that a bona fide doubt of the
3 defendant's fitness has been raised may be admitted into an
4 unfit misdemeanant diversion program only upon the approval of
5 the court.

6 (725 ILCS 5/104A-2 new)

7 Sec. 104A-2. Rulemaking. The Illinois Supreme Court or any
8 circuit court of this State may adopt rules establishing unfit
9 misdemeanant diversion programs consistent with this Article.

10 (725 ILCS 5/104A-3 new)

11 Sec. 104A-3. Procedure. The court shall require an
12 eligibility screening and an assessment of the defendant to
13 determine whether the defendant may be able to receive mental
14 health services under the Mental Health and Developmental
15 Disabilities Code which shall reasonably assure his or her
16 safety and that of the public and his or her continued
17 participation in treatment. If, following this screening, the
18 State and the defendant agree to the diversion and the court
19 determines that the defendant is appropriate for diversion,
20 the criminal charges may be dismissed with prejudice. If the
21 court does not approve, the court shall order a fitness
22 examination under Section 104-13 of this Code and the matter
23 shall be governed by any other relevant provisions of Article
24 104.

1 (725 ILCS 5/104A-4 new)

2 Sec. 104A-4. Mental health and substance use treatment.

3 The misdemeanor diversion program may maintain or collaborate
4 with mental health and substance use treatment providers
5 necessary to provide a continuum of treatment options
6 commensurate with the needs of the defendant and available
7 resources. Treatment programs shall comply with all relevant
8 statutes and rules. The Department of Human Services shall
9 provide care to persons determined to be subject to
10 involuntary admission on an inpatient basis as defined in
11 Section 1-119 of the Mental Health and Developmental
12 Disabilities Code or may make arrangements with any other
13 appropriate inpatient mental health facility to provide those
14 services.

1 INDEX

2 Statutes amended in order of appearance

3 725 ILCS 5/104-13 from Ch. 38, par. 104-13

4 725 ILCS 5/104-15 from Ch. 38, par. 104-15

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

6 725 ILCS 5/Art. Art. 104A

7 heading new

8 725 ILCS 5/104A-1 new

9 725 ILCS 5/104A-2 new

10 725 ILCS 5/104A-3 new

11 725 ILCS 5/104A-4 new