



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB4243

Introduced 11/14/2022, by Sen. Cristina H. Pacione-Zayas

SYNOPSIS AS INTRODUCED:

See Index

Amends the Delinquent Minors Article of the Juvenile Court Act of 1987. Adds a Part concerning Fitness to Stand Trial. Specifies the unfitness standard for a child. Sets forth procedures to raise the issue of the unfitness of a child. Specifies the burden of proof and a presumption. Provides requirements for a fitness evaluation and hearing to determine the fitness of a child. Provides the requirements for the services to attain fitness, the period to obtain fitness, initial and subsequent progress reports, periodic hearings, and in-court assistance to render a child fit. Specifies time credit and sentencing guidelines for a child who attains fitness. Provides for the legal disposition of a child if fitness cannot be attained. Contains other provisions. Effective July 1, 2023.

LRB102 29019 NLB 40921 b

1 AN ACT concerning courts.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 adding Part 5A to Article V as follows:

6 (705 ILCS 405/Art. V Pt. 5A heading new)

7 PART 5A. FITNESS TO STAND TRIAL

8 (705 ILCS 405/5-5A-101 new)

9 Sec. 5-5A-101. Purpose. This Part recognizes that children
10 are substantially different from adults and therefore creates
11 procedures to establish fitness to stand trial that
12 accommodate these differences. This Part is intended to
13 support children through practices that are trauma-informed
14 and that protect children's rights and dignity; questions of
15 interpretation shall be resolved in line with these practices.
16 This Part recognizes that the ability to understand charges
17 and to participate meaningfully in one's own defense evolve
18 gradually throughout childhood and early adulthood and that
19 each child deserves developmentally appropriate responses that
20 reflect the best understanding of the child's current
21 abilities.

1 (705 ILCS 405/5-5A-105 new)

2 Sec. 5-5A-105. Definitions. As used in this Part:

3 (a) "Child" means a person under the age of 21, regardless
4 of whether the person is subject to this Act or prosecuted
5 under the criminal laws of this State.

6 (b) "Child traumatic stress" means exposure to one or more
7 traumatic events over the course of a child's life that result
8 in that child developing reactions that persist and that
9 interfere with the child's functional, social, adaptive, or
10 intellectual ability.

11 (c) "Chronological immaturity" means a lack of functional,
12 social, adaptive, or intellectual ability due to chronological
13 age.

14 (d) "Developmental disability" means a disability that is
15 attributable to an intellectual disability, cerebral palsy,
16 epilepsy, autism, a learning disability, or any other
17 condition that results in impaired functional, social,
18 adaptive, or intellectual ability.

19 (e) "Mental illness" means a mental or emotional disorder
20 that substantially impairs a person's thought, perception of
21 reality, emotional process, judgment, behavior, or ability to
22 cope with the ordinary demands of life.

23 (f) "Relative immaturity" means a lack of functional,
24 social, adaptive, or intellectual ability when a child is
25 compared to other children of the same chronological age.

26 (g) "Substance use disorder" has the same meaning as

1 provided in Section 1-10 of the Substance Use Disorder Act.

2 (705 ILCS 405/5-5A-110 new)

3 Sec. 5-5A-110. Unfitness standard. Unfitness may result
4 from the presence of any condition or conditions, including,
5 but not limited to, mental illness, substance use disorder,
6 developmental disability, chronological immaturity, relative
7 immaturity, or child traumatic stress. Other than
8 chronological immaturity, any of these conditions could look
9 differently in similarly aged children. A diagnosis is not
10 required for a finding of unfitness. A child is unfit when the
11 child either:

12 (a) lacks sufficient present ability to consult with the
13 child's attorney with a reasonable degree of rational
14 understanding, as evidenced by lacking the ability to disclose
15 to the attorney facts pertinent to the proceedings at issue
16 and to assist in the child's defense; or

17 (b) lacks a rational or a factual understanding of the
18 proceedings against the child, as evidenced by any one of the
19 following:

20 (1) a lack of ability to identify who the participants
21 are, including the judge, child's attorney, State's
22 Attorney, or qualified expert;

23 (2) a lack of ability to differentiate the multiple
24 roles a single participant could serve in different
25 proceedings the child is involved in;

1 (3) a lack of understanding of the allegations in the
2 petition;

3 (4) a lack of understanding of the range of possible
4 dispositions that may be imposed in the proceedings;

5 (5) a lack of ability to use the factual
6 understandings and factors in (1) through (4) of this
7 subsection to make rational decisions; or

8 (6) a lack of any other factors that a qualified
9 expert deems relevant.

10 (705 ILCS 405/5-5A-115 new)

11 Sec. 5-5A-115. Raising the issue of unfitness.

12 (a) The issue of the child's fitness to stand trial, to
13 plead, or to be sentenced may be raised by the child's
14 attorney, the State, or the court at any time before a plea is
15 entered or before, during, or after trial.

16 (b) When the issue of the child's fitness is raised, the
17 court must determine whether there is a bona fide doubt that
18 the child is fit. The court shall find a bona fide doubt if any
19 evidence presented or proffered suggests that the child could
20 be unfit. If the court finds that there is a bona fide doubt,
21 the court shall order a fitness evaluation pursuant to Section
22 5-5A-125 before proceeding further. Nothing in this Section
23 shall operate to extinguish any rights of a child established
24 by attorney-client privilege.

25 (c) When a child is being prosecuted under the criminal

1 laws of this State pursuant to Section 5-130 or 5-805, the
2 criminal court shall apply the fitness standards in this Part.
3 If the issue of the child's fitness is raised prior to the
4 resolution of a transfer proceeding pursuant to Section 5-805,
5 the juvenile court shall apply the fitness standards in this
6 Part.

7 (705 ILCS 405/5-5A-120 new)

8 Sec. 5-5A-120. Burdens and presumptions. In making
9 determinations on the issue of a child's fitness, the
10 following burdens of proof and presumptions shall apply:

11 (1) when the court finds a bona fide doubt as to the
12 fitness of a child pursuant to Section 5-5A-115, the State
13 bears the burden of proving that the child is fit by clear
14 and convincing evidence; and

15 (2) a child who is receiving medication shall not be
16 presumed to be fit or unfit to stand trial solely by virtue
17 of the receipt of that medication.

18 (705 ILCS 405/5-5A-125 new)

19 Sec. 5-5A-125. Fitness evaluation. When the court orders a
20 fitness evaluation pursuant to paragraph (b) of Section
21 5-5A-115, the court must appoint one or more qualified experts
22 pursuant to Section 5-5A-135. Each expert must evaluate
23 whether the child is fit and must submit a report of the
24 expert's findings to the court pursuant to Section 5-5A-160.

1 (705 ILCS 405/5-5A-130 new)

2 Sec. 5-5A-130. Location of evaluation. A fitness
3 evaluation ordered pursuant to paragraph (b) of Section
4 5-5A-115 must be conducted in the least restrictive
5 environment for the child. The evaluation must be conducted in
6 person whenever possible. Video technology for a remote
7 evaluation may be used only as a last resort. If video
8 technology is used, it must be a secure platform.

9 (705 ILCS 405/5-5A-135 new)

10 Sec. 5-5A-135. Qualification of experts. An expert
11 evaluating the child pursuant to Section 5-5A-125 must either
12 be a licensed clinical psychologist or psychiatrist with
13 training and experience in forensics, child development, and
14 child trauma.

15 (705 ILCS 405/5-5A-140 new)

16 Sec. 5-5A-140. Timeline for evaluation. The fitness
17 evaluation ordered pursuant to paragraph (b) of Section
18 5-5A-115 and report written pursuant to Section 5-5A-160 must
19 be completed within 30 days of a court order entered pursuant
20 to paragraph (b) of Section 5-5A-115. The time for completion
21 of the fitness evaluation may be extended an additional 30
22 days for good cause if the child is not in custody.

1 (705 ILCS 405/5-5A-145 new)

2 Sec. 5-5A-145. Counsel at evaluation. The child's counsel
3 must be allowed to be present at the evaluation conducted
4 pursuant to Section 5-5A-125.

5 (705 ILCS 405/5-5A-150 new)

6 Sec. 5-5A-150. Statements made during evaluation. No
7 statement made by the child during the evaluation conducted
8 pursuant to Section 5-5A-125 shall be used against the child
9 in the current court proceedings or in any future proceedings.
10 No statement made by the child relating to the alleged offense
11 or other offenses shall be included in the report required
12 under Section 5-5A-160. The court must advise the child before
13 the evaluation takes place that no statement made during the
14 evaluation shall be used against the child.

15 (705 ILCS 405/5-5A-155 new)

16 Sec. 5-5A-155. Recordings of evaluations and privacy.

17 (a) An evaluation of the child conducted pursuant to
18 Section 5-5A-125 shall be video recorded.

19 (b) The video recording of a fitness evaluation is
20 confidential and may be viewed only by the court, the expert
21 conducting the evaluation defined in Section 5-5A-125, the
22 child's attorney, the State, and any other expert in the
23 proceedings deemed necessary by the court and pursuant to
24 Section 5-910.

1 (705 ILCS 405/5-5A-160 new)

2 Sec. 5-5A-160. Contents of evaluation report.

3 (a) When an evaluation is conducted pursuant to Section
4 5-5A-125, the appointed expert must submit a written report of
5 the findings to the court. The evaluation report must detail
6 the methods and tools used during the evaluation and be made in
7 writing.

8 (b) The evaluation report must contain:

9 (1) An assessment of any mental illness, substance use
10 disorder, or developmental disability of the child,
11 including:

12 (A) the results of a mental status exam;

13 (B) a description of the history and current
14 status of any symptoms of any mental illness and
15 developmental disability (a diagnosis is not
16 required);

17 (2) an assessment of the child's chronological and
18 relative immaturity;

19 (3) an assessment of any child traumatic stress,
20 including a description of the child's history of exposure
21 to traumatic events;

22 (4) an assessment of any other condition of the child
23 that could impact the child's functional abilities related
24 to fitness to stand trial;

25 (5) an assessment of the child's rational and factual

1 understandings related to fitness to stand trial, the
2 unfitness standard in Section 5-5A-110, and the
3 relationship of these abilities to any conditions of the
4 child as assessed in paragraphs (1) through (4);

5 (6) whether the expert, based on the evaluation and in
6 the expert's professional judgment, believes the child is
7 fit;

8 (7) if the expert believes that the child is unfit,
9 whether the expert believes there is a substantial
10 probability that the child will attain fitness within the
11 period to attain fitness;

12 (8) recommendations, if the expert believes the child
13 is unfit, including:

14 (A) services that would help the child attain
15 fitness;

16 (B) placement for services to attain fitness; and

17 (C) risk assessments needed prior to placement;

18 and

19 (9) opinions on:

20 (A) the likelihood of the success of the services
21 recommended; and

22 (B) the length of time anticipated to attain
23 fitness.

24 (705 ILCS 405/5-5A-165 new)

25 Sec. 5-5A-165. Hearing to determine fitness.

1 (a) When a bona fide doubt of fitness has been raised, the
2 court shall conduct a hearing to determine the issue of the
3 child's fitness within 30 days of receipt of the evaluation
4 report described in Section 5-5A-160.

5 (b) Subject to the rules of evidence, matters admissible
6 on the issue of the child's fitness include, but are not
7 limited to, the unfitness standard under Section 5-5A-110.

8 (c) The child has the right to be present at every hearing
9 on the issue of the child's fitness.

10 (d) On the basis of the evidence before it, the court must
11 determine whether the child is unfit to stand trial pursuant
12 to Section 5-5A-110. If the court finds that the child is
13 unfit, the court shall determine:

14 (1) whether in-court assistance pursuant to Section
15 5-5A-190 would render the child fit; and

16 (2) whether there is a substantial probability that
17 the child, if provided with services to attain fitness
18 pursuant to Section 5-5A-170, will attain fitness within
19 the period to attain fitness set forth in Section
20 5-5A-175.

21 (e) If the court finds that the child is unfit and there is
22 not a substantial probability the child will attain fitness
23 within the period to attain fitness set forth in Section
24 5-5A-175, the court shall proceed under Section 5-5A-210.

25 (f) If the court finds the child is unfit but that there is
26 a substantial probability that the child will become fit

1 within the period to attain fitness set forth in Section
2 5-5A-175, or if the court is unable to determine whether a
3 substantial probability exists, the court shall order the
4 child to receive services to attain fitness at a placement
5 pursuant to Section 5-5A-170. If the court is unable to
6 determine whether a substantial probability exists and orders
7 the child to receive services to attain fitness, the court
8 shall conduct a hearing as soon as possible following the
9 receipt of the report filed pursuant to Section 5-5A-180 to
10 determine whether there is a substantial probability that the
11 child will attain fitness within the period to attain fitness.

12 (g) If the court finds that the child is unfit to stand
13 trial, it shall proceed pursuant to this Act. If the court
14 finds that the child could be rendered fit with in-court
15 assistance, the court shall order in-court assistance pursuant
16 to Section 5-5A-190.

17 (h) An order finding the child unfit to stand trial is a
18 final order for purposes of appeal by the State or the child.

19 (705 ILCS 405/5-5A-170 new)

20 Sec. 5-5A-170. Services to attain fitness.

21 (a) When the court orders services to attain fitness
22 pursuant to Section 5-5A-165, the court shall place the child
23 under the supervision of the Department of Human Services.
24 Court-ordered services and placement shall be consistent with
25 the recommendations in the evaluation report. All services

1 shall be trauma-informed, developmentally appropriate, and
2 provided in the least restrictive environment considering the
3 best interest of the child. A placement may be made on an
4 inpatient basis only when the child has a condition warranting
5 hospital-level care.

6 (b) Within 5 days of a court order for services to attain
7 fitness entered pursuant to Section 5-5A-165, the clerk of the
8 circuit court shall transmit, to the Department of Human
9 Services, and any other agency or institution providing
10 services to attain fitness to the child, the following:

11 (1) a certified copy of the order to receive services
12 and the complete copy of any report on the child's fitness
13 prepared pursuant to this Part;

14 (2) the county and municipality in which the alleged
15 offense occurred;

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

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

20 (5) all additional matters that the court directs the
21 clerk to transmit.

22 (705 ILCS 405/5-5A-175 new)

23 Sec. 5-5A-175. Period to attain fitness. For a child
24 charged with a felony, the maximum total time a court may order
25 a child to receive services to attain fitness shall be one

1 year. For a child charged with a misdemeanor, the maximum
2 total period shall be no longer than the sentence that could be
3 imposed if the child were adjudicated delinquent of the most
4 serious misdemeanor offense. The period to attain fitness
5 shall begin with the court's first finding of unfitness during
6 a fitness hearing pursuant to Section 5-5A-165.

7 (705 ILCS 405/5-5A-180 new)

8 Sec. 5-5A-180. Initial and subsequent progress reports.

9 (a) Within 30 days of entry of an order to receive services
10 to attain fitness pursuant to Sections 5-5A-170 and 5-5A-175,
11 the person in charge of supervising the child's services shall
12 file with the court an initial report assessing the program's
13 capacity to provide appropriate services for the child and
14 indicating the person's opinion as to the probability of the
15 child attaining fitness within the period to attain fitness
16 provided in Section 5-5A-175. If the initial report indicates
17 that there is a substantial probability that the child will
18 attain fitness within the allowed period, the supervisor shall
19 also file a services plan which shall include:

20 (1) a description of the goals of services to attain
21 fitness with respect to rendering the child fit, a
22 specification of the proposed modalities of services, and
23 an estimated timetable for attainment of the goals; and

24 (2) an identification of the person in charge of
25 supervising the child's services.

1 (b) The supervisor shall submit a subsequent written
2 progress report to the court at least 7 days prior to the date
3 of any hearing on the issue of the child's fitness.

4 (c) If the supervisor determines that any of the following
5 circumstances are met, the supervisor shall notify the court
6 in writing as soon as possible but no later than 7 days after
7 the determination is made:

8 (1) if the supervisor believes that the child has
9 attained fitness;

10 (2) if the supervisor believes that there is not a
11 substantial probability that the child will attain
12 fitness, with services, within the period to attain
13 fitness under Section 5-5A-175; or

14 (3) if the supervisor believes a change in services or
15 placement is necessary.

16 (d) The initial and subsequent progress reports shall
17 contain:

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

20 (2) the opinion of the supervisor as to whether the
21 child has attained fitness and as to whether the child is
22 making progress, with services, toward attaining fitness
23 within the period set in Section 5-5A-175;

24 (3) whether the current services to attain fitness and
25 placement continue to be in the least restrictive
26 environment necessary, whether a different level of care

1 is needed, and the basis for that recommendation; and
2 (4) any other changes in recommendations of services
3 to attain fitness.

4 (e) If the supervisor of the child's services determines,
5 pursuant to paragraph (3) of subsection (d) of this Section,
6 that the child is not in the least restrictive environment
7 necessary to attain fitness, upon receipt of the progress
8 report, the court shall ensure that the child is immediately
9 moved to the least restrictive environment necessary.

10 (705 ILCS 405/5-5A-185 new)

11 Sec. 5-5A-185. Periodic hearings. Upon entry or
12 continuation of any order to receive services to attain
13 fitness, the court shall set a date for hearing to reexamine
14 the issue of the child's fitness not more than 90 days
15 thereafter. In addition, whenever the court receives a report
16 from the supervisor of the child's services pursuant to
17 paragraph (c) of Section 5-5A-180, the court shall set the
18 matter for a hearing within 14 days unless good cause is
19 demonstrated why the hearing cannot be held. On the date set,
20 the court shall conduct a hearing to redetermine the child's
21 fitness pursuant to Section 5-5A-165.

22 (705 ILCS 405/5-5A-190 new)

23 Sec. 5-5A-190. In-court assistance to render a child fit.
24 (a) If the court determines that the child could be

1 rendered fit with in-court assistance under Section 5-5A-165,
2 the court shall order in-court assistance under subsection
3 (b). A child found unfit because of chronological immaturity
4 cannot be rendered fit with in-court assistance. A child found
5 unfit because of relative immaturity or child traumatic stress
6 cannot be rendered fit solely with in-court assistance.

7 (b) In-court assistance may include, but is not limited
8 to:

9 (1) appointment of a qualified translator who shall
10 simultaneously translate all court proceedings into a
11 language understood by the child; and

12 (2) appointment of an expert qualified to assist a
13 child who, because of a disability, is unable to
14 communicate with the child's attorney.

15 (c) If in-court assistance is provided, the case may
16 proceed to trial only if the court determines that in-court
17 assistance renders the child fit. In such cases, the court
18 shall state for the record the following:

19 (1) the qualifications and experience of the experts
20 or other persons appointed to provide in-court assistance
21 to the child;

22 (2) the court's reasons for selecting or appointing
23 the particular experts or other persons to provide the
24 in-court assistance to the child;

25 (3) how the appointment of the particular expert or
26 other persons will serve the goal of rendering the child

1 fit, based on the appointee's qualifications and
2 experience, and the lack of functional, social, adaptive,
3 or intellectual abilities of the child; and

4 (4) any other factors considered by the court in
5 appointing the experts or other persons.

6 (d) A child adjudicated delinquent following a trial
7 conducted with in-court assistance provided under this Section
8 shall not be sentenced before a written report of social
9 investigation is presented to and considered by the court. The
10 written report of social investigation shall be prepared
11 pursuant to Section 5-701 and shall include a physical and
12 mental examination unless the court finds that the reports of
13 prior physical and mental examinations conducted pursuant to
14 this Part are adequate and recent enough to render additional
15 examinations unnecessary.

16 (705 ILCS 405/5-5A-195 new)

17 Sec. 5-5A-195. Time Credit. A sentence imposed on the
18 child in the pending case or in any other case arising out of
19 the same conduct shall be reduced by time spent:

20 (1) in custody pursuant to orders issued under Section
21 5-5A-170 or pursuant to a commitment to the Department of
22 Human Services following a finding of unfitness under this
23 Part;

24 (2) in any court-ordered out-of-home placement;
25 including, but not limited to, a detention facility,

1 rehabilitation center, or inpatient hospital; or

2 (3) home detention or electronic monitoring pursuant
3 to Section 5-7A-110.

4 (705 ILCS 405/5-5A-200 new)

5 Sec. 5-5A-200. Court organization of records. Any report
6 filed with the court concerning diagnosis, evaluation,
7 progress, or services made pursuant to this Part shall not be
8 placed in the child's court record but shall be maintained
9 separately by the clerk of the court and shall be available
10 only to the court or an appellate court, the State, the child,
11 the child's attorney, the child's parent, or a facility or
12 program that provides services to the child pursuant to an
13 order of the court. These records of the child shall be
14 privileged and shall not be disclosed except under the
15 conditions set forth in Section 5-910. Nothing in this Section
16 shall operate to extinguish any rights of a child established
17 by law, including, but not limited to: attorney-client,
18 physician-patient, psychologist-client, or social
19 worker-client privileges, except as otherwise provided by law.

20 (705 ILCS 405/5-5A-205 new)

21 Sec. 5-5A-205. Sentencing guidelines for a child who
22 attains fitness. The court shall not impose a commitment to
23 the Department of Juvenile Justice upon the child if the court
24 believes that because of the child's condition, such a

1 sentence would not be in the interests of society and the
2 child, or would subject the child to excessive hardship. In
3 addition to any other conditions of a sentence of conditional
4 discharge or probation, the court may require that the child
5 receive additional services for the child's condition.

6 (705 ILCS 405/5-5A-210 new)

7 Sec. 5-5A-210. Legal disposition if fitness cannot be
8 attained. The court shall dismiss the charges against the
9 child with prejudice if the court finds the child is unfit
10 under Section 5-5A-165 and that the child:

11 (1) cannot attain fitness within the period to attain
12 fitness defined in Section 5-5A-175 or that there is not a
13 substantial probability that the child will attain fitness
14 within the period to attain fitness defined under Section
15 5-5A-175; and

16 (2) cannot attain fitness with in-court assistance
17 pursuant to Section 5-5A-190.

18 (705 ILCS 405/5-5A-215 new)

19 Sec. 5-5A-215. Follow-up study and recommendations. The
20 Illinois Juvenile Justice Commission shall develop and
21 recommend mechanisms to collect and analyze data,
22 disaggregated by race, ethnicity, gender, geography, age, and
23 socioeconomic status, resulting from the implementation of
24 this Part. The report and recommendations shall be submitted

1 to the General Assembly by January 1, 2024.

2 Section 97. Severability. The provisions of this Act are
3 severable under Section 1.31 of the Statute on Statutes.

4 Section 99. Effective date. This Act takes effect July 1,
5 2023.

1 INDEX

2 Statutes amended in order of appearance

3 705 ILCS 405/Art. V Pt. 5A

4 heading new

5 705 ILCS 405/5-5A-101 new

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7 705 ILCS 405/5-5A-110 new

8 705 ILCS 405/5-5A-115 new

9 705 ILCS 405/5-5A-120 new

10 705 ILCS 405/5-5A-125 new

11 705 ILCS 405/5-5A-130 new

12 705 ILCS 405/5-5A-135 new

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14 705 ILCS 405/5-5A-145 new

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- 1 705 ILCS 405/5-5A-205 new
- 2 705 ILCS 405/5-5A-210 new
- 3 705 ILCS 405/5-5A-215 new