



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB4251

Introduced 1/3/2023, by Sen. Doris Turner

SYNOPSIS AS INTRODUCED:

See Index

Amends the Specialized Mental Health Rehabilitation Act of 2013. Excludes from definition of "consumer" under the Act an individual who has been found unfit to stand trial, or not guilty by reason of insanity, and is currently subject to a court order requiring placement in secure, inpatient care in the custody of the Department of Human Services pursuant to the Code of Criminal Procedure of 1963 or the Unified Code of Corrections, as applicable. Amends the Code of Criminal Procedure of 1963 concerning defendants unfit to stand trial. Provides that a defendant whose disability is mental and the most serious offense charged against the defendant is a misdemeanor, the court shall order outpatient treatment, unless the court finds good cause on the record to order inpatient treatment. Provides that the Department shall admit the defendant to a secure facility within 60 days of the transmittal of the court's placement order, unless the Department can demonstrate good faith efforts at placement and a lack of bed and placement availability. Provides that if placement cannot be made within 60 days of the transmittal of the court's placement order and the Department has demonstrated good faith efforts at placement and a lack of bed and placement availability, the Department shall provide an update to the ordering court every 30 days until the defendant is placed. Deletes language providing that if, within 20 days of the transmittal by the clerk of the circuit court of the placement court order, the Department fails to notify the sheriff of the identity of the facility to which the defendant shall be transported, the sheriff shall notify the Department of its intent to transfer the defendant to the nearest secure mental health facility operated by the Department and inquire as to the status of the placement evaluation and availability for admission to such facility operated by the Department by contacting a designated person within the Department. Provides that, upon a determination that there is not a substantial probability that the defendant will attain fitness within the period specified in the Code from the original finding of unfitness, the court shall hold a discharge hearing within 60 days, unless good cause is shown for the delay. Makes other changes.

LRB102 29848 RLC 41983 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 5. The Specialized Mental Health Rehabilitation
5 Act of 2013 is amended by changing Section 1-102 as follows:

6 (210 ILCS 49/1-102)

7 Sec. 1-102. Definitions. For the purposes of this Act,
8 unless the context otherwise requires:

9 "Abuse" means any physical or mental injury or sexual
10 assault inflicted on a consumer other than by accidental means
11 in a facility.

12 "Accreditation" means any of the following:

13 (1) the Joint Commission;

14 (2) the Commission on Accreditation of Rehabilitation
15 Facilities;

16 (3) the Healthcare Facilities Accreditation Program;

17 or

18 (4) any other national standards of care as approved
19 by the Department.

20 "APRN" means an Advanced Practice Registered Nurse,
21 nationally certified as a mental health or psychiatric nurse
22 practitioner and licensed under the Nurse Practice Act.

23 "Applicant" means any person making application for a

1 license or a provisional license under this Act.

2 "Consumer" means a person, 18 years of age or older,
3 admitted to a mental health rehabilitation facility for
4 evaluation, observation, diagnosis, treatment, stabilization,
5 recovery, and rehabilitation.

6 "Consumer" does not mean any of the following:

7 (i) an individual requiring a locked setting;

8 (ii) an individual requiring psychiatric
9 hospitalization because of an acute psychiatric crisis;

10 (iii) an individual under 18 years of age;

11 (iv) an individual who is actively suicidal or violent
12 toward others;

13 (v) an individual who has been found unfit to stand
14 trial and is currently subject to a court order requiring
15 placement in secure, inpatient care in the custody of the
16 Department of Human Services pursuant to Section 104-17 of
17 the Code of Criminal Procedure of 1963;

18 (vi) an individual who has been found not guilty by
19 reason of insanity and is currently subject to a court
20 order requiring placement in secure, inpatient care in the
21 custody of the Department of Human Services pursuant to
22 Section 5-2-4 of the Unified Code of Corrections ~~based on~~
23 ~~committing a violent act, such as sexual assault, assault~~
24 ~~with a deadly weapon, arson, or murder;~~

25 (vii) an individual subject to temporary detention and
26 examination under Section 3-607 of the Mental Health and

1 Developmental Disabilities Code;

2 (viii) an individual deemed clinically appropriate for
3 inpatient admission in a State psychiatric hospital; and

4 (ix) an individual transferred by the Department of
5 Corrections pursuant to Section 3-8-5 of the Unified Code
6 of Corrections.

7 "Consumer record" means a record that organizes all
8 information on the care, treatment, and rehabilitation
9 services rendered to a consumer in a specialized mental health
10 rehabilitation facility.

11 "Controlled drugs" means those drugs covered under the
12 federal Comprehensive Drug Abuse Prevention Control Act of
13 1970, as amended, or the Illinois Controlled Substances Act.

14 "Department" means the Department of Public Health.

15 "Discharge" means the full release of any consumer from a
16 facility.

17 "Drug administration" means the act in which a single dose
18 of a prescribed drug or biological is given to a consumer. The
19 complete act of administration entails removing an individual
20 dose from a container, verifying the dose with the
21 prescriber's orders, giving the individual dose to the
22 consumer, and promptly recording the time and dose given.

23 "Drug dispensing" means the act entailing the following of
24 a prescription order for a drug or biological and proper
25 selection, measuring, packaging, labeling, and issuance of the
26 drug or biological to a consumer.

1 "Emergency" means a situation, physical condition, or one
2 or more practices, methods, or operations which present
3 imminent danger of death or serious physical or mental harm to
4 consumers of a facility.

5 "Facility" means a specialized mental health
6 rehabilitation facility that provides at least one of the
7 following services: (1) triage center; (2) crisis
8 stabilization; (3) recovery and rehabilitation supports; or
9 (4) transitional living units for 3 or more persons. The
10 facility shall provide a 24-hour program that provides
11 intensive support and recovery services designed to assist
12 persons, 18 years or older, with mental disorders to develop
13 the skills to become self-sufficient and capable of increasing
14 levels of independent functioning. It includes facilities that
15 meet the following criteria:

16 (1) 100% of the consumer population of the facility
17 has a diagnosis of serious mental illness;

18 (2) no more than 15% of the consumer population of the
19 facility is 65 years of age or older;

20 (3) none of the consumers are non-ambulatory;

21 (4) none of the consumers have a primary diagnosis of
22 moderate, severe, or profound intellectual disability; and

23 (5) the facility must have been licensed under the
24 Specialized Mental Health Rehabilitation Act or the
25 Nursing Home Care Act immediately preceding July 22, 2013
26 (the effective date of this Act) and qualifies as an

1 institute for mental disease under the federal definition
2 of the term.

3 "Facility" does not include the following:

4 (1) a home, institution, or place operated by the
5 federal government or agency thereof, or by the State of
6 Illinois;

7 (2) a hospital, sanitarium, or other institution whose
8 principal activity or business is the diagnosis, care, and
9 treatment of human illness through the maintenance and
10 operation as organized facilities therefor which is
11 required to be licensed under the Hospital Licensing Act;

12 (3) a facility for child care as defined in the Child
13 Care Act of 1969;

14 (4) a community living facility as defined in the
15 Community Living Facilities Licensing Act;

16 (5) a nursing home or sanitarium ~~sanatorium~~ operated
17 solely by and for persons who rely exclusively upon
18 treatment by spiritual means through prayer, in accordance
19 with the creed or tenets of any well-recognized church or
20 religious denomination; however, such nursing home or
21 sanitarium ~~sanatorium~~ shall comply with all local laws and
22 rules relating to sanitation and safety;

23 (6) a facility licensed by the Department of Human
24 Services as a community-integrated living arrangement as
25 defined in the Community-Integrated Living Arrangements
26 Licensure and Certification Act;

1 (7) a supportive residence licensed under the
2 Supportive Residences Licensing Act;

3 (8) a supportive living facility in good standing with
4 the program established under Section 5-5.01a of the
5 Illinois Public Aid Code, except only for purposes of the
6 employment of persons in accordance with Section 3-206.01
7 of the Nursing Home Care Act;

8 (9) an assisted living or shared housing establishment
9 licensed under the Assisted Living and Shared Housing Act,
10 except only for purposes of the employment of persons in
11 accordance with Section 3-206.01 of the Nursing Home Care
12 Act;

13 (10) an Alzheimer's disease management center
14 alternative health care model licensed under the
15 Alternative Health Care Delivery Act;

16 (11) a home, institution, or other place operated by
17 or under the authority of the Illinois Department of
18 Veterans' Affairs;

19 (12) a facility licensed under the ID/DD Community
20 Care Act;

21 (13) a facility licensed under the Nursing Home Care
22 Act after July 22, 2013 (the effective date of this Act);

23 or

24 (14) a facility licensed under the MC/DD Act.

25 "Executive director" means a person who is charged with
26 the general administration and supervision of a facility

1 licensed under this Act and who is a licensed nursing home
2 administrator, licensed practitioner of the healing arts, or
3 qualified mental health professional.

4 "Guardian" means a person appointed as a guardian of the
5 person or guardian of the estate, or both, of a consumer under
6 the Probate Act of 1975.

7 "Identified offender" means a person who meets any of the
8 following criteria:

9 (1) Has been convicted of, found guilty of,
10 adjudicated delinquent for, found not guilty by reason of
11 insanity for, or found unfit to stand trial for, any
12 felony offense listed in Section 25 of the Health Care
13 Worker Background Check Act, except for the following:

14 (i) a felony offense described in Section 10-5 of
15 the Nurse Practice Act;

16 (ii) a felony offense described in Section 4, 5,
17 6, 8, or 17.02 of the Illinois Credit Card and Debit
18 Card Act;

19 (iii) a felony offense described in Section 5,
20 5.1, 5.2, 7, or 9 of the Cannabis Control Act;

21 (iv) a felony offense described in Section 401,
22 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois
23 Controlled Substances Act; and

24 (v) a felony offense described in the
25 Methamphetamine Control and Community Protection Act.

26 (2) Has been convicted of, adjudicated delinquent for,

1 found not guilty by reason of insanity for, or found unfit
2 to stand trial for~~7~~ any sex offense as defined in
3 subsection (c) of Section 10 of the Sex Offender
4 Management Board Act.

5 "Transitional living units" are residential units within a
6 facility that have the purpose of assisting the consumer in
7 developing and reinforcing the necessary skills to live
8 independently outside of the facility. The duration of stay in
9 such a setting shall not exceed 120 days for each consumer.
10 Nothing in this definition shall be construed to be a
11 prerequisite for transitioning out of a facility.

12 "Licensee" means the person, persons, firm, partnership,
13 association, organization, company, corporation, or business
14 trust to which a license has been issued.

15 "Misappropriation of a consumer's property" means the
16 deliberate misplacement, exploitation, or wrongful temporary
17 or permanent use of a consumer's belongings or money without
18 the consent of a consumer or his or her guardian.

19 "Neglect" means a facility's failure to provide, or
20 willful withholding of, adequate medical care, mental health
21 treatment, psychiatric rehabilitation, personal care, or
22 assistance that is necessary to avoid physical harm and mental
23 anguish of a consumer.

24 "Personal care" means assistance with meals, dressing,
25 movement, bathing, or other personal needs, maintenance, or
26 general supervision and oversight of the physical and mental

1 well-being of an individual who is incapable of maintaining a
2 private, independent residence or who is incapable of managing
3 his or her person, whether or not a guardian has been appointed
4 for such individual. "Personal care" shall not be construed to
5 confine or otherwise constrain a facility's pursuit to develop
6 the skills and abilities of a consumer to become
7 self-sufficient and capable of increasing levels of
8 independent functioning.

9 "Recovery and rehabilitation supports" means a program
10 that facilitates a consumer's longer-term symptom management
11 and stabilization while preparing the consumer for
12 transitional living units by improving living skills and
13 community socialization. The duration of stay in such a
14 setting shall be established by the Department by rule.

15 "Restraint" means:

16 (i) a physical restraint that is any manual method or
17 physical or mechanical device, material, or equipment
18 attached or adjacent to a consumer's body that the
19 consumer cannot remove easily and restricts freedom of
20 movement or normal access to one's body; devices used for
21 positioning, including, but not limited to, bed rails,
22 gait belts, and cushions, shall not be considered to be
23 restraints for purposes of this Section; or

24 (ii) a chemical restraint that is any drug used for
25 discipline or convenience and not required to treat
26 medical symptoms; the Department shall, by rule, designate

1 certain devices as restraints, including at least all
2 those devices that have been determined to be restraints
3 by the United States Department of Health and Human
4 Services in interpretive guidelines issued for the
5 purposes of administering Titles XVIII and XIX of the
6 federal Social Security Act. For the purposes of this Act,
7 restraint shall be administered only after utilizing a
8 coercive free environment and culture.

9 "Self-administration of medication" means consumers shall
10 be responsible for the control, management, and use of their
11 own medication.

12 "Crisis stabilization" means a secure and separate unit
13 that provides short-term behavioral, emotional, or psychiatric
14 crisis stabilization as an alternative to hospitalization or
15 re-hospitalization for consumers from residential or community
16 placement. The duration of stay in such a setting shall not
17 exceed 21 days for each consumer.

18 "Therapeutic separation" means the removal of a consumer
19 from the milieu to a room or area which is designed to aid in
20 the emotional or psychiatric stabilization of that consumer.

21 "Triage center" means a non-residential 23-hour center
22 that serves as an alternative to emergency room care,
23 hospitalization, or re-hospitalization for consumers in need
24 of short-term crisis stabilization. Consumers may access a
25 triage center from a number of referral sources, including
26 family, emergency rooms, hospitals, community behavioral

1 health providers, federally qualified health providers, or
2 schools, including colleges or universities. A triage center
3 may be located in a building separate from the licensed
4 location of a facility, but shall not be more than 1,000 feet
5 from the licensed location of the facility and must meet all of
6 the facility standards applicable to the licensed location. If
7 the triage center does operate in a separate building, safety
8 personnel shall be provided, on site, 24 hours per day and the
9 triage center shall meet all other staffing requirements
10 without counting any staff employed in the main facility
11 building.

12 (Source: P.A. 102-1053, eff. 6-10-22; revised 8-24-22.)

13 Section 10. The Code of Criminal Procedure of 1963 is
14 amended by changing Sections 104-17 and 104-23 as follows:

15 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

16 (Text of Section before amendment by P.A. 101-652)

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

18 (a) If the defendant is eligible to be or has been released
19 on bail or on his own recognizance, the court shall select the
20 least physically restrictive form of treatment therapeutically
21 appropriate and consistent with the treatment plan. The
22 placement may be ordered either on an inpatient or an
23 outpatient basis.

24 (b) If the defendant's disability is mental, the court may

1 order him placed for treatment in the custody of the
2 Department of Human Services, or the court may order him
3 placed in the custody of any other appropriate public or
4 private mental health facility or treatment program which has
5 agreed to provide treatment to the defendant. If the court
6 orders the defendant placed in the custody of the Department
7 of Human Services, the Department shall evaluate the defendant
8 to determine to which secure facility the defendant shall be
9 transported and, within 20 days of the transmittal by the
10 clerk of the circuit court of the placement court order,
11 notify the sheriff of the designated facility. Upon receipt of
12 that notice, the sheriff shall promptly transport the
13 defendant to the designated facility. If the defendant is
14 placed in the custody of the Department of Human Services, the
15 defendant shall be placed in a secure setting. During the
16 period of time required to determine the appropriate placement
17 the defendant shall remain in jail. If during the course of
18 evaluating the defendant for placement, the Department of
19 Human Services determines that the defendant is currently fit
20 to stand trial, it shall immediately notify the court and
21 shall submit a written report within 7 days. In that
22 circumstance the placement shall be held pending a court
23 hearing on the Department's report. Otherwise, upon completion
24 of the placement process, the sheriff shall be notified and
25 shall transport the defendant to the designated facility. If,
26 within 20 days of the transmittal by the clerk of the circuit

1 court of the placement court order, the Department fails to
2 notify the sheriff of the identity of the facility to which the
3 defendant shall be transported, the sheriff shall contact a
4 designated person within the Department to inquire about when
5 a placement will become available at the designated facility
6 and bed availability at other facilities. If, within 20 days
7 of the transmittal by the clerk of the circuit court of the
8 placement court order, the Department fails to notify the
9 sheriff of the identity of the facility to which the defendant
10 shall be transported, the sheriff shall notify the Department
11 of its intent to transfer the defendant to the nearest secure
12 mental health facility operated by the Department and inquire
13 as to the status of the placement evaluation and availability
14 for admission to such facility operated by the Department by
15 contacting a designated person within the Department. The
16 Department shall respond to the sheriff within 2 business days
17 of the notice and inquiry by the sheriff seeking the transfer
18 and the Department shall provide the sheriff with the status
19 of the evaluation, information on bed and placement
20 availability, and an estimated date of admission for the
21 defendant and any changes to that estimated date of admission.
22 If the Department notifies the sheriff during the 2 business
23 day period of a facility operated by the Department with
24 placement availability, the sheriff shall promptly transport
25 the defendant to that facility. The placement may be ordered
26 either on an inpatient or an outpatient basis.

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

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

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

18 (2) the county and municipality in which the offense
19 was committed;

20 (3) the county and municipality in which the arrest
21 took place;

22 (4) a copy of the arrest report, criminal charges,
23 arrest record; and

24 (5) all additional matters which the Court directs the
25 clerk to transmit.

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

1 treatment, the person supervising the defendant's treatment
2 shall file with the court, the State, and the defense a report
3 assessing the facility's or program's capacity to provide
4 appropriate treatment for the defendant and indicating his
5 opinion as to the probability of the defendant's attaining
6 fitness within a period of time from the date of the finding of
7 unfitness. For a defendant charged with a felony, the period
8 of time shall be one year. For a defendant charged with a
9 misdemeanor, the period of time shall be no longer than the
10 sentence if convicted of the most serious offense. If the
11 report indicates that there is a substantial probability that
12 the defendant will attain fitness within the time period, the
13 treatment supervisor shall also file a treatment plan which
14 shall include:

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

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

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

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

23 (Text of Section after amendment by P.A. 101-652)

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

25 (a) If the defendant is eligible to be or has been released

1 on pretrial release or on his own recognizance, the court
2 shall select the least physically restrictive form of
3 treatment therapeutically appropriate and consistent with the
4 treatment plan. The placement may be ordered either on an
5 inpatient or an outpatient basis.

6 (b) If the defendant's disability is mental, the court may
7 order him placed for secure treatment in the custody of the
8 Department of Human Services, or the court may order him
9 placed in the custody of any other appropriate public or
10 private mental health facility or treatment program which has
11 agreed to provide treatment to the defendant. If the most
12 serious charge against the defendant is a misdemeanor, the
13 court shall order outpatient treatment, unless the court finds
14 good cause on the record to order inpatient treatment. If the
15 court orders the defendant to inpatient treatment ~~placed~~ in
16 the custody of the Department of Human Services, the
17 Department shall evaluate the defendant to determine the most
18 appropriate to which secure facility to receive the defendant
19 ~~shall be transported~~ and, within 20 days of the transmittal by
20 the clerk of the circuit court of the court's placement ~~court~~
21 order, notify the court ~~sheriff~~ of the designated facility to
22 receive the defendant. The Department shall admit the
23 defendant to a secure facility within 60 days of the
24 transmittal of the court's placement order, unless the
25 Department can demonstrate good faith efforts at placement and
26 a lack of bed and placement availability. If placement cannot

1 be made within 60 days of the transmittal of the court's
2 placement order and the Department has demonstrated good faith
3 efforts at placement and a lack of bed and placement
4 availability, the Department shall provide an update to the
5 ordering court every 30 days until the defendant is placed.
6 Once bed and placement availability are determined, the
7 Department shall notify ~~Upon receipt of that notice,~~ the
8 sheriff who shall promptly transport the defendant to the
9 designated facility. If the defendant is placed in the custody
10 of the Department of Human Services, the defendant shall be
11 placed in a secure setting. During the period of time required
12 to determine bed and placement availability at the designated
13 facility, ~~the appropriate placement~~ the defendant shall remain
14 in jail. If during the course of evaluating the defendant for
15 placement, the Department of Human Services determines that
16 the defendant is currently fit to stand trial, it shall
17 immediately notify the court and shall submit a written report
18 within 7 days. In that circumstance the placement shall be
19 held pending a court hearing on the Department's report.
20 Otherwise, upon completion of the placement process, including
21 identifying bed and placement availability, the sheriff shall
22 be notified and shall transport the defendant to the
23 designated facility. If, within 60 ~~20~~ days of the transmittal
24 by the clerk of the circuit court of the court's placement
25 ~~court~~ order, the Department fails to provide ~~notify~~ the
26 sheriff with notice of bed and placement availability at the

1 ~~designated facility of the identity of the facility to which~~
2 ~~the defendant shall be transported,~~ the sheriff shall contact
3 ~~a designated person within~~ the Department to inquire about
4 when a placement will become available at the designated
5 facility as well as ~~and~~ bed and placement availability at
6 other secure facilities. ~~If, within 20 days of the transmittal~~
7 ~~by the clerk of the circuit court of the placement court order,~~
8 ~~the Department fails to notify the sheriff of the identity of~~
9 ~~the facility to which the defendant shall be transported, the~~
10 ~~sheriff shall notify the Department of its intent to transfer~~
11 ~~the defendant to the nearest secure mental health facility~~
12 ~~operated by the Department and inquire as to the status of the~~
13 ~~placement evaluation and availability for admission to such~~
14 ~~facility operated by the Department by contacting a designated~~
15 ~~person within the Department.~~ The Department shall respond to
16 the sheriff within 2 business days of the notice and inquiry by
17 the sheriff, ~~seeking the transfer~~ and the Department shall
18 provide the sheriff with the status of the evaluation,
19 information on bed and placement availability, and an
20 estimated date of admission for the defendant and any changes
21 to the designated facility or ~~that~~ estimated date of
22 admission. If the Department notifies the sheriff during the 2
23 business day period of a facility operated by the Department
24 with bed and placement availability, the sheriff shall
25 promptly transport the defendant to that facility. ~~The~~
26 ~~placement may be ordered either on an inpatient or an~~

1 ~~outpatient basis.~~

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

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

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

19 (2) the county and municipality in which the offense
20 was committed;

21 (3) the county and municipality in which the arrest
22 took place;

23 (4) a copy of the arrest report, criminal charges,
24 arrest record; and

25 (5) all additional matters which the Court directs the
26 clerk to transmit.

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

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

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

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

23 (Source: P.A. 100-27, eff. 1-1-18; 101-652, eff. 1-1-23.)

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

25 Sec. 104-23. Unfit defendants. Cases involving an unfit

1 defendant who demands a discharge hearing or a defendant who
2 cannot become fit to stand trial and for whom no special
3 provisions or assistance can compensate for his disability and
4 render him fit shall proceed in the following manner:

5 (a) Upon a determination that there is not a substantial
6 probability that the defendant will attain fitness within the
7 time period set in subsection (e) of Section 104-17 of this
8 Code from the original finding of unfitness, the court shall
9 hold a discharge hearing within 60 days, unless good cause is
10 shown for the delay ~~a defendant or the attorney for the~~
11 ~~defendant may move for a discharge hearing pursuant to the~~
12 ~~provisions of Section 104-25. The discharge hearing shall be~~
13 ~~held within 120 days of the filing of a motion for a discharge~~
14 ~~hearing, unless the delay is occasioned by the defendant.~~

15 (b) If at any time the court determines that there is not a
16 substantial probability that the defendant will become fit to
17 stand trial or to plead within the time period set in
18 subsection (e) of Section 104-17 of this Code from the date of
19 the original finding of unfitness, or if at the end of the time
20 period set in subsection (e) of Section 104-17 of this Code
21 from that date the court finds the defendant still unfit and
22 for whom no special provisions or assistance can compensate
23 for his disabilities and render him fit, the State shall
24 request the court:

25 (1) To set the matter for hearing pursuant to Section
26 104-25 unless a hearing has already been held pursuant to

1 paragraph (a) of this Section; or

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

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

1 pursuant to subparagraph (1) or (2) of paragraph (b) of
2 this Section.

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

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

7 Section 95. No acceleration or delay. Where this Act makes
8 changes in a statute that is represented in this Act by text
9 that is not yet or no longer in effect (for example, a Section
10 represented by multiple versions), the use of that text does
11 not accelerate or delay the taking effect of (i) the changes
12 made by this Act or (ii) provisions derived from any other
13 Public Act.

1 INDEX

2 Statutes amended in order of appearance

3 210 ILCS 49/1-102

4 725 ILCS 5/104-17 from Ch. 38, par. 104-17

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