



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3368

Introduced 2/7/2024, by Sen. Lakesia Collins

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. Provides for the legal disposition of a child if fitness cannot be attained. Provides that no facility of the Department of Human Services shall be utilized for performing a fitness evaluation. Provides that the child's counsel must be allowed to be present at the evaluation conducted, if requested by the child's counsel. Provides that when the court orders services to attain fitness, the court shall determine if the child will receive services on an inpatient or outpatient basis. If inpatient, the child shall be placed at a facility approved by the Department of Human Services to provide residential, restoration care and treatment. Provides that if the court orders the child to receive services on an outpatient basis, such services shall be rendered in the community at a program approved by the Department of Human Services. Provides that for a child charged with a misdemeanor, the maximum total period shall be no longer than the length of the sentence that could be imposed if the child were adjudicated delinquent of the misdemeanor offense for which the child was charged, or one year whichever is shorter. Contains a severability provision. Effective July 1, 2024.

LRB103 38627 RLC 68764 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 "Child" means a person under the age of 21, regardless of
4 whether the person is subject to this Act or prosecuted under
5 the criminal laws of this State.

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

14 "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 "Mental illness" means a mental or emotional disorder that
20 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 "Relative immaturity" means a lack of functional, social,
24 adaptive, or intellectual ability when a child is compared to
25 other children of the same chronological age.

26 "Substance use disorder" has the meaning given to that

1 term 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 confluence of
5 conditions, including, but not limited to, mental illness,
6 substance use disorder, developmental disability,
7 chronological immaturity, relative immaturity, or child
8 traumatic stress. Other than chronological immaturity, any of
9 these conditions could look differently in similarly aged
10 children. A diagnosis is not required for a finding of
11 unfitness. A child is unfit when the child either:

12 (1) 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 (2) lacks a rational or a factual understanding of the
18 proceedings against the child, as evidenced by any one or more
19 of the following:

20 (A) 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 (B) 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 (C) a lack of understanding of the allegations in the
2 petition for adjudication of delinquency;

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

5 (E) a lack of ability to use the factual
6 understandings and factors in (A) through (D) of this
7 paragraph to make rational decisions; or

8 (F) 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 when
19 evidence is presented or proffered that suggests that the
20 child could be unfit. If the court finds that there is a bona
21 fide doubt, the court shall order a fitness evaluation under
22 Section 5-5A-125 before proceeding further. Nothing in this
23 Section shall operate to extinguish any rights of a child
24 established by attorney-client privilege.

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

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

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

8 Sec. 5-5A-120. Burdens and presumptions. In making
9 determinations concerning a child's fitness, the following
10 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 under Section 5-5A-115, the State bears
13 the burden of proving that the child is fit by clear and
14 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 under subsection (b) of Section 5-5A-115,
21 the court must appoint one or more qualified experts under
22 Section 5-5A-135. Each expert must evaluate whether the child
23 is fit and must submit a report of the expert's findings to the
24 court under Section 5-5A-160. No expert employed or contracted

1 by the Department of Human Services shall be ordered to
2 perform, in the expert's official capacity, an initial fitness
3 examination under this Section.

4 (705 ILCS 405/5-5A-130 new)

5 Sec. 5-5A-130. Location of evaluation. A fitness
6 evaluation ordered under subsection (b) of Section 5-5A-115
7 must be conducted in the least restrictive environment for the
8 child. The evaluation must be conducted in person whenever
9 possible. Video technology for a remote evaluation may be used
10 only as a last resort. If video technology is used, it must be
11 a secure platform. No facility of the Department of Human
12 Services shall be utilized for this purpose.

13 (705 ILCS 405/5-5A-135 new)

14 Sec. 5-5A-135. Qualification of experts. An expert
15 evaluating the child under Section 5-5A-125 must either be a
16 licensed clinical psychologist or psychiatrist with training
17 and experience in forensics, child development, and child
18 trauma.

19 (705 ILCS 405/5-5A-140 new)

20 Sec. 5-5A-140. Timeline for evaluation. The fitness
21 evaluation ordered under subsection (b) of Section 5-5A-115
22 and report written under Section 5-5A-160 must be completed
23 within 30 days of a court order entered pursuant to subsection

1 (b) of Section 5-5A-115. The time for completion of the
2 fitness evaluation may be extended an additional 30 days for
3 good cause if the child is not in custody.

4 (705 ILCS 405/5-5A-145 new)

5 Sec. 5-5A-145. Counsel at evaluation. The child's counsel
6 must be allowed to be present at the evaluation conducted, if
7 requested by the child's counsel, under Section 5-5A-125.

8 (705 ILCS 405/5-5A-150 new)

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

18 (705 ILCS 405/5-5A-155 new)

19 Sec. 5-5A-155. Recordings of evaluations and privacy.
20 (a) An evaluation of the child conducted under Section
21 5-5A-125 shall be video recorded.
22 (b) The video recording of a fitness evaluation is
23 confidential and may be viewed only by the court, the expert

1 conducting the evaluation defined in Section 5-5A-125, the
2 child's attorney, the State, and any other expert in the
3 proceedings deemed necessary by the court and under Section
4 5-910.

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

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

7 (a) When an evaluation is conducted under Section
8 5-5A-125, the appointed expert must submit a written report of
9 the findings to the court. The evaluation report must detail
10 the methods and tools used during the evaluation and be made in
11 writing.

12 (b) The evaluation report must contain:

13 (1) An assessment of any mental illness, substance use
14 disorder, or developmental disability of the child,
15 including:

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

17 (B) a description of the history and current
18 status of any symptoms of any mental illness or
19 developmental disability, or both (a diagnosis is not
20 required);

21 (2) an assessment of the child's chronological and
22 relative immaturity;

23 (3) an assessment of any child traumatic stress,
24 including a description of the child's history of exposure
25 to traumatic events;

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

4 (5) an assessment of the child's rational and factual
5 understandings related to fitness to stand trial, the
6 unfitness standard in Section 5-5A-110, and the
7 relationship of these abilities to any conditions of the
8 child as assessed in paragraphs (1) through (4);

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

12 (7) if the expert believes that the child is unfit,
13 whether the expert believes there is a substantial
14 probability that the child will attain fitness within the
15 statutory period to attain fitness;

16 (8) recommendations, if the expert believes the child
17 is unfit, including:

18 (A) services that would help the child attain
19 fitness;

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

21 (C) risk assessments needed prior to placement;

22 and

23 (9) opinions on:

24 (A) the likelihood of the success of the services
25 recommended; and

26 (B) the length of time anticipated to attain

1 fitness.

2 (705 ILCS 405/5-5A-165 new)

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

4 (a) When a bona fide doubt of fitness has been raised, the
5 court shall conduct a hearing to determine the issue of the
6 child's fitness within 30 days of receipt of the evaluation
7 report described in Section 5-5A-160, unless the timeline is
8 waived by the child's counsel.

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

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

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

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

21 (d) 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 statutory period as set forth in Section 5-5A-175,
24 the court shall proceed under Section 5-5A-210.

25 (e) If the court finds the child is unfit but that there is

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

13 (f) If the court finds that the child is unfit to stand
14 trial, it shall proceed under this Act. If the court finds that
15 the child could be rendered fit with in-court assistance, the
16 court shall order in-court assistance pursuant to Section
17 5-5A-190.

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

20 (705 ILCS 405/5-5A-170 new)

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

22 (a) When the court orders services to attain fitness under
23 Section 5-5A-165, the court shall determine if the child will
24 receive services on an inpatient or outpatient basis. If
25 inpatient, the child shall be placed at a facility approved by

1 the Department of Human Services to provide residential,
2 restoration care and treatment. If the court orders the child
3 to receive services on an outpatient basis, such services
4 shall be rendered in the community at a program approved by the
5 Department of Human Services. Court-ordered services and
6 placements shall be consistent with the recommendations in the
7 evaluation report. All services shall be trauma-informed,
8 developmentally appropriate, and provided in the least
9 restrictive environment considering the needs and best
10 interests of the child. A placement may be ordered on an
11 inpatient basis only when the child exhibits needs warranting
12 a hospital level of care.

13 (b) Within 5 days of a court order for services to attain
14 fitness entered under Section 5-5A-165, the clerk of the
15 circuit court shall transmit, to the Department of Human
16 Services, and any other agency or institution providing
17 services to attain fitness to the child, the following:

18 (1) a certified copy of the order to receive services
19 and the complete copy of any report on the child's fitness
20 prepared under this Part;

21 (2) the county and municipality in which the alleged
22 offense occurred;

23 (3) the county and municipality in which the arrest
24 took place;

25 (4) a copy of the arrest report, charges, and arrest
26 record; and

1 (5) all additional matters that the court directs the
2 clerk to transmit.

3 (705 ILCS 405/5-5A-175 new)

4 Sec. 5-5A-175. Period to attain fitness. For a child
5 charged with a felony, the maximum total time a court may order
6 a child to receive services to attain fitness shall be one
7 year. For a child charged with a misdemeanor, the maximum
8 total period shall be no longer than the length of the sentence
9 that could be imposed if the child were adjudicated delinquent
10 of the misdemeanor offense for which the child was charged, or
11 one year whichever is shorter. The period to attain fitness
12 shall begin with the court's first finding of unfitness during
13 a fitness hearing under Section 5-5A-165.

14 (705 ILCS 405/5-5A-180 new)

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

16 (a) Within 30 days of entry of an order to receive services
17 to attain fitness under Sections 5-5A-170 and 5-5A-175, the
18 person in charge of supervising the child's services shall
19 file with the court an initial report assessing the program's
20 capacity to provide appropriate services for the child and
21 indicating the person's opinion as to the probability of the
22 child attaining fitness within the period to attain fitness
23 provided in Section 5-5A-175. If the initial report indicates
24 that there is a substantial probability that the child will

1 attain fitness within the allowed statutory period, the
2 supervisor shall also file a services plan which shall
3 include:

4 (1) a description of the goals of services to attain
5 fitness with respect to rendering the child fit, a
6 specification of the proposed modalities of services, and
7 an estimated timetable for attainment of the goals; and

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

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

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

17 (1) if the supervisor believes that the child has
18 attained fitness;

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

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

25 (d) The initial and subsequent progress reports shall
26 contain:

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

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

7 (3) whether the current services to attain fitness and
8 placement continue to be in the least restrictive
9 environment necessary, whether a different level of care
10 is needed, and the basis for that recommendation; and

11 (4) any other changes in recommendations of services
12 to attain fitness.

13 (e) If the supervisor of the child's services determines,
14 under paragraph (3) of subsection (d) of this Section, that
15 the child is not in the least restrictive environment
16 necessary to attain fitness, upon receipt of the progress
17 report, the court shall ensure that the child is immediately
18 moved to the least restrictive environment necessary.

19 (705 ILCS 405/5-5A-185 new)

20 Sec. 5-5A-185. Periodic hearings. Upon entry or
21 continuation of any order to receive services to attain
22 fitness, the court shall set a date for hearing to reexamine
23 the issue of the child's fitness not more than 90 days
24 thereafter. In addition, whenever the court receives a report
25 from the supervisor of the child's services under subsection

1 (c) of Section 5-5A-180, the court shall set the matter for a
2 hearing within 14 days unless good cause is demonstrated why
3 the hearing cannot be held. On the date set, the court shall
4 conduct a hearing to redetermine the child's fitness under
5 Section 5-5A-165.

6 (705 ILCS 405/5-5A-190 new)

7 Sec. 5-5A-190. In-court assistance to render a child fit.

8 (a) If the court determines that the child could be
9 rendered fit with in-court assistance under Section 5-5A-165,
10 the court shall order in-court assistance under subsection
11 (b). A child found unfit because of chronological immaturity
12 cannot be rendered fit with in-court assistance. A child found
13 unfit because of relative immaturity or child traumatic stress
14 cannot be rendered fit solely with in-court assistance.

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

17 (1) appointment of a qualified translator who shall
18 simultaneously translate all court proceedings into a
19 language understood by the child; and

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

23 (c) If in-court assistance is provided, the case may
24 proceed to trial only if the court determines that in-court
25 assistance renders the child fit. In such cases, the court

1 shall state for the record the following:

2 (1) the qualifications and experience of the experts
3 or other persons appointed to provide in-court assistance
4 to the child;

5 (2) the court's reasons for selecting or appointing
6 the particular experts or other persons to provide the
7 in-court assistance to the child;

8 (3) how the appointment of the particular expert or
9 other persons will serve the goal of rendering the child
10 fit, based on the appointee's qualifications and
11 experience, and the lack of functional, social, adaptive,
12 or intellectual abilities of the child; and

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

15 (d) A child adjudicated delinquent following a trial
16 conducted with in-court assistance provided under this Section
17 shall not be sentenced before a written report of social
18 investigation is presented to and considered by the court. The
19 written report of social investigation shall be prepared under
20 Section 5-701 and shall include a physical and mental
21 examination unless the court finds that the reports of prior
22 physical and mental examinations conducted under this Part are
23 adequate and recent enough to render additional examinations
24 unnecessary.

1 Sec. 5-5A-195. Time credit. A sentence imposed on the
2 child in the pending case or in any other case arising out of
3 the same conduct shall be reduced by time spent:

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

7 (2) in any court-ordered out-of-home placement;
8 including, but not limited to, a detention facility,
9 rehabilitation center, or inpatient hospital; or

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

12 (705 ILCS 405/5-5A-200 new)

13 Sec. 5-5A-200. Court organization of records. Any report
14 filed with the court concerning diagnosis, evaluation,
15 progress, or services made under this Part shall not be placed
16 in the child's court record but shall be maintained separately
17 by the clerk of the court and shall be available only to the
18 court or an appellate court, the State, the child, the child's
19 attorney, the child's parent or guardian, or a facility or
20 program that provides services to the child under an order of
21 the court. These records of the child shall be privileged and
22 shall not be disclosed except under the conditions set forth
23 in Section 5-910. Nothing in this Section shall operate to
24 extinguish any rights of a child established by law,
25 including, but not limited to: attorney-client,

1 physician-patient, psychologist-client, or social
2 worker-client privileges, except as otherwise provided by law.

3 (705 ILCS 405/5-5A-205 new)

4 Sec. 5-5A-205. Sentencing guidelines for a child who
5 attains fitness. The court shall not impose a commitment to
6 the Department of Juvenile Justice upon the child if the court
7 believes that because of the child's condition, such a
8 sentence would not be in the interests of society and the
9 child, or would subject the child to excessive hardship. In
10 addition to any other conditions of a sentence of conditional
11 discharge or probation, the court may require that the child
12 receive additional services for the child's condition.

13 (705 ILCS 405/5-5A-210 new)

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

18 (1) cannot attain fitness within the period to attain
19 fitness defined in Section 5-5A-175 or that there is not a
20 substantial probability that the child will attain fitness
21 within the period to attain fitness defined under Section
22 5-5A-175; and

23 (2) cannot attain fitness with in-court assistance
24 under Section 5-5A-190.

1 (705 ILCS 405/5-5A-215 new)

2 Sec. 5-5A-215. Follow-up study and recommendations. The
3 Illinois Juvenile Justice Commission shall develop and
4 recommend mechanisms to collect and analyze data,
5 disaggregated by race, ethnicity, gender, geography, age, and
6 socioeconomic status, resulting from the implementation of
7 this Part. The report and recommendations shall be submitted
8 to the General Assembly by January 1, 2024.

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

11 Section 99. Effective date. This Act takes effect July 1,
12 2024.

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

6 705 ILCS 405/5-5A-105 new

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

13 705 ILCS 405/5-5A-140 new

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

15 705 ILCS 405/5-5A-150 new

16 705 ILCS 405/5-5A-155 new

17 705 ILCS 405/5-5A-160 new

18 705 ILCS 405/5-5A-165 new

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

20 705 ILCS 405/5-5A-175 new

21 705 ILCS 405/5-5A-180 new

22 705 ILCS 405/5-5A-185 new

23 705 ILCS 405/5-5A-190 new

24 705 ILCS 405/5-5A-195 new

25 705 ILCS 405/5-5A-200 new

SB3368

- 22 -

LRB103 38627 RLC 68764 b

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