

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 ongoing 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 104-11, 104-13, 104-15, and
13 104-17 and by adding Section 104-32 and Article 104A as
14 follows:

15 (725 ILCS 5/104-11) (from Ch. 38, par. 104-11)

16 Sec. 104-11. Raising Issue; Burden; Fitness Motions.)
17

18 (a) The issue of the defendant's fitness for trial, to
19 plead, or to be sentenced may be raised by the defense, the
20 State or the Court at any appropriate time before a plea is
21 entered or before, during, or after trial. When a bonafide
22 doubt of the defendant's fitness is raised, other than for
23 eligible defendants charged with one or more misdemeanors
24 subject to Section 104A-1, the court shall order a

1 determination of the issue before proceeding further.

2 (b) Upon request of the defendant that a qualified expert
3 be appointed to examine him or her to determine prior to trial
4 if a bonafide doubt as to his or her fitness to stand trial may
5 be raised, the court, in its discretion, may order an
6 appropriate examination. However, no order entered pursuant to
7 this subsection shall prevent further proceedings in the case.
8 An expert so appointed shall examine the defendant and make a
9 report as provided in Section 104-15. Upon the filing with the
10 court of a verified statement of services rendered, the court
11 shall enter an order on the county board to pay such expert a
12 reasonable fee stated in the order.

13 (c) When a bonafide doubt of the defendant's fitness has
14 been raised, the burden of proving that the defendant is fit by
15 a preponderance of the evidence and the burden of going
16 forward with the evidence are on the State. However, the court
17 may call its own witnesses and conduct its own inquiry.

18 (d) Following a finding of unfitness, the court may hear
19 and rule on any pretrial motion or motions if the defendant's
20 presence is not essential to a fair determination of the
21 issues. A motion may be reheard upon a showing that evidence is
22 available which was not available, due to the defendant's
23 unfitness, when the motion was first decided.

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

25 (725 ILCS 5/104-13) (from Ch. 38, par. 104-13)

1 Sec. 104-13. Fitness examination.

2 (a) When the issue of fitness involves the defendant's
3 mental condition, the court shall order an examination of the
4 defendant by one or more licensed physicians, clinical
5 psychologists, or psychiatrists chosen by the court. No
6 physician, clinical psychologist or psychiatrist employed by
7 the Department of Human Services shall be ordered to perform,
8 in his official capacity, an examination under this Section.

9 (a-1) The Administrative Office of the Illinois Courts is
10 encouraged to establish standards and a certification process
11 for court-appointed fitness evaluators designed to increase
12 the availability of qualified evaluators statewide and to
13 increase access, consistency, and fairness within
14 fitness-to-stand-trial proceedings and subsequent placement
15 recommendations.

16 (b) If the issue of fitness involves the defendant's
17 physical condition, the court shall appoint one or more
18 physicians and in addition, such other experts as it may deem
19 appropriate to examine the defendant and to report to the
20 court regarding the defendant's condition.

21 (c) An examination ordered under this Section shall be
22 given at the place designated by the person who will conduct
23 the examination, except that if the defendant is being held in
24 custody, the examination shall take place at such location as
25 the court directs. No examinations under this Section shall be
26 ordered to take place at mental health or developmental

1 disabilities facilities operated by the Department of Human
2 Services. If the defendant fails to keep appointments without
3 reasonable cause or if the person conducting the examination
4 reports to the court that diagnosis requires hospitalization
5 or extended observation, the court may order the defendant
6 admitted to an appropriate facility for an examination, other
7 than a screening examination, for not more than 7 days. ~~The~~
8 ~~court may, upon a showing of good cause, grant an additional 7~~
9 ~~days to complete the examination.~~

10 (d) Pretrial ~~Release on pretrial release or on~~
11 ~~recognizance~~ shall not be revoked and an application therefor
12 shall not be denied on the grounds that an examination has been
13 ordered.

14 (e) Upon request by the defense and if the defendant is
15 indigent, the court may appoint, in addition to the expert or
16 experts chosen pursuant to subsection (a) of this Section, a
17 qualified expert selected by the defendant to examine him and
18 to make a report as provided in Section 104-15. Upon the filing
19 with the court of a verified statement of services rendered,
20 the court shall enter an order on the county board to pay such
21 expert a reasonable fee stated in the order.

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

23 (725 ILCS 5/104-15) (from Ch. 38, par. 104-15)

24 Sec. 104-15. Report.

25 (a) The person or persons conducting an examination of the

1 defendant, pursuant to paragraph (a) or (b) of Section 104-13
2 shall submit a written report to the court, the State, and the
3 defense within 30 days of the date of the order. The report
4 shall include:

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

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

13 (b) If the report indicates that the defendant is not fit
14 to stand trial or to plead because of a disability, the report
15 shall include an opinion as to the likelihood of the defendant
16 attaining fitness within the statutory ~~a~~ period of time from
17 the date of the finding of unfitness if provided with a course
18 of treatment. For a defendant charged with a felony, the
19 period of time shall be one year. For a defendant charged with
20 a misdemeanor, the period of time shall be no longer than the
21 maximum term of imprisonment for the most serious offense. The
22 period of commitment shall not exceed the maximum length of
23 time that the defendant would have been required to serve,
24 less credit for good behavior as provided in Section 5-4-1 of
25 the Unified Code of Corrections. Defendants charged with petty
26 offenses or infraction of a municipal ordinance are not

1 eligible for fitness restoration services. If the person or
2 persons preparing the initial fitness report are unable to
3 form such an opinion, the report shall state the reasons
4 therefore ~~therefor~~. The report shall ~~may~~ include a general
5 description of the type of treatment needed and of the least
6 physically restrictive form of treatment therapeutically
7 appropriate. If inpatient treatment is recommended, the report
8 must articulate the evaluator's assessment of risk, protective
9 factors, and treatment needs as related to the defendant's
10 mental disorder. Risk shall not be determined solely by the
11 nature of the defendant's criminal charges.

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

15 (d) In addition to the report, a person retained or
16 appointed by the State or the defense to conduct an
17 examination shall, upon written request, make his or her
18 notes, other evaluations reviewed or relied upon by the
19 testifying witness, and any videotaped interviews available to
20 another examiner of the defendant. All forensic interviews
21 conducted by a person retained or appointed by the State or the
22 defense shall be videotaped unless doing so would be
23 impractical. In the event that the interview is not
24 videotaped, the examiner may still testify as to the person's
25 fitness and the court may only consider the lack of compliance
26 in according the weight and not the admissibility of the

1 expert testimony. An examiner may use these materials as part
2 of his or her diagnosis and explanation but shall not
3 otherwise disclose the contents, including at a hearing before
4 the court, except as otherwise provided in Section 104-14 of
5 this Code.

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

7 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

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

16 (1) treatment on an outpatient basis is reasonably
17 expected to inflict serious physical harm upon the
18 defendant or another. No defendant may be ordered to
19 inpatient restoration unless at least one licensed
20 physician, clinical psychologist, or psychiatrist who has
21 examined the defendant testifies in person at the hearing.
22 The defendant may waive the requirement of the testimony
23 subject to the approval of the court; or

24 (2) treatment that will restore the defendant to
25 fitness within a reasonable period of time is not

1 available on an outpatient basis.

2 (b) If the defendant's disability is mental, the court may
3 order him placed for secure treatment in the custody of the
4 Department of Human Services, or the court may order him
5 placed in the custody of any other appropriate public or
6 private mental health facility or treatment program which has
7 agreed to provide treatment to the defendant. If the most
8 serious charge faced by the defendant is a misdemeanor, the
9 court shall order outpatient treatment, unless the court finds
10 ~~good cause~~ on the record that the defendant is reasonably
11 expected to inflict serious physical harm on the defendant or
12 another due to mental illness. No defendant may be ordered to
13 inpatient restoration unless at least one licensed physician,
14 clinical psychologist, or psychiatrist who has examined the
15 defendant testifies in person at the hearing. The defendant
16 may waive the requirement of the testimony subject to the
17 approval of the court ~~to order inpatient treatment.~~ If the
18 court orders the defendant to inpatient treatment in the
19 custody of the Department of Human Services, the Department
20 shall evaluate the defendant to determine the most appropriate
21 secure facility to receive the defendant and, within 20 days
22 of the transmittal by the clerk of the circuit court of the
23 court's placement order, notify the court of the designated
24 facility to receive the defendant. The Department shall admit
25 the defendant to a secure facility within 60 days of the
26 transmittal of the court's placement order, unless the

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

1 provide the sheriff with notice of bed and placement
2 availability at the designated facility, the sheriff shall
3 contact the Department to inquire about when a placement will
4 become available at the designated facility as well as bed and
5 placement availability at other secure facilities. The
6 Department shall respond to the sheriff within 2 business days
7 of the notice and inquiry by the sheriff seeking the transfer
8 and the Department shall provide the sheriff with the status
9 of the evaluation, information on bed and placement
10 availability, and an estimated date of admission for the
11 defendant and any changes to that estimated date of admission.
12 If the Department notifies the sheriff during the 2 business
13 day period of a facility operated by the Department with
14 placement availability, the sheriff shall promptly transport
15 the defendant to that facility. The placement may be ordered
16 either on an inpatient or an outpatient basis.

17 (c) If the defendant's disability is physical, the court
18 may order him placed under the supervision of the Department
19 of Human Services which shall place and maintain the defendant
20 in a suitable treatment facility or program, or the court may
21 order him placed in an appropriate public or private facility
22 or treatment program which has agreed to provide treatment to
23 the defendant. The placement may be ordered either on an
24 inpatient or an outpatient basis.

25 (d) The clerk of the circuit court shall within 5 days of
26 the entry of the order transmit to the Department, agency or

1 institution, if any, to which the defendant is remanded for
2 treatment, the following:

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

8 (2) the county and municipality in which the offense
9 was committed;

10 (3) the county and municipality in which the arrest
11 took place;

12 (4) a copy of the arrest report, criminal charges,
13 arrest record; and

14 (5) all additional matters which the Court directs the
15 clerk to transmit.

16 (e) Within 30 days of admission to the designated
17 facility, the person supervising the defendant's treatment
18 shall file with the court, the State, and the defense a report
19 assessing the facility's or program's capacity to provide
20 appropriate treatment for the defendant and indicating his
21 opinion as to the probability of the defendant's attaining
22 fitness within a period of time from the date of the finding of
23 unfitness. For a defendant charged with a felony, the period
24 of time shall be one year. For a defendant charged with a
25 misdemeanor, the period of time shall be no longer than the
26 sentence if convicted of the most serious offense, less credit

1 for good behavior as provided in Section 5-4-1 of the Unified
2 Code of Corrections. If the report indicates that there is a
3 substantial probability that the defendant will attain fitness
4 within the time period, the treatment supervisor shall also
5 file a treatment plan which shall include:

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

7 (2) A description of treatment goals with respect to
8 rendering the defendant fit, a specification of the
9 proposed treatment modalities, and an estimated timetable
10 for attainment of the goals;

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

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

14 (725 ILCS 5/104-32 new)

15 Sec. 104-32. Fitness to Stand Trial Task Force.

16 (a) There is created the Fitness to Stand Trial Task Force
17 hereinafter referred to as the Task Force. The Task Force
18 shall conduct a thorough review of the statutory and
19 regulatory provisions governing the procedures by which
20 individuals facing criminal charges may be unfit to stand
21 trial. This review includes, but is not limited to, the
22 determination of fitness, the housing and custodial status of
23 persons undergoing fitness restoration, the rights of
24 individuals found unfit, and the obligations of the Department
25 of Human Services.

1 (b) The Task Force shall consist of 15 members, appointed
2 as follows:

3 (1) a member of the House of Representatives,
4 appointed by the Speaker of the House, who shall serve as
5 co-chair of the Task Force;

6 (2) a member of the House of Representatives,
7 appointed by the Minority Leader of the House;

8 (3) a member of the Senate appointed by the President
9 of the Senate, who shall serve as co-chair of the Task
10 Force;

11 (4) a member of the Senate, appointed by the Minority
12 Leader of the Senate;

13 (5) 2 members appointed by the Illinois Supreme Court;

14 (6) the Secretary of Human Services or the Secretary's
15 designee;

16 (7) a member nominated by a statewide organization
17 that represents State's Attorneys and appointed by the
18 Governor;

19 (8) a member nominated by a statewide organization
20 that represents public defenders and appointed by the
21 Governor;

22 (9) a member nominated by a statewide organization
23 that represents sheriffs and appointed by the Governor;

24 (10) a member representing the federally mandated
25 Protection and Advocacy System for people with mental
26 illness in the State of Illinois, appointed by the

1 Governor;

2 (11) a member representing an organization or agency
3 providing community-based mental health services,
4 appointed by the Governor;

5 (12) a member representing a nonprofit organization
6 dedicated to the promotion of mental health, well-being,
7 and illness prevention, appointed by the Governor;

8 (13) a member who is a licensed clinical psychologist
9 with specialized forensic training and experience
10 conducting court-ordered fitness evaluations in Illinois,
11 appointed by the Governor; and

12 (14) a member who is a licensed clinical psychologist
13 with specialized forensic training and experience
14 providing fitness restoration services in Illinois,
15 appointed by the Governor.

16 (c) The Department shall provide administrative and
17 technical support for the Task Force and is responsible for
18 ensuring that the requirements of the Task Force are met.

19 (d) Appointments to the Task Force shall be made within 90
20 days after the effective date of this amendatory Act of the
21 104th General Assembly.

22 (e) The Task Force shall submit a report containing its
23 findings and any recommendations to the Supreme Court and the
24 General Assembly on or before November 1, 2026.

1 ARTICLE 104A. DIVERSION OF UNFIT MISDEMEANANTS

2 (725 ILCS 5/104A-1 new)

3 Sec. 104A-1. Eligibility. A defendant charged with one or
4 more misdemeanors and for whom a court has determined under
5 Section 104-11 of this Code that a bona fide doubt of the
6 defendant's fitness has been raised may be admitted into an
7 unfit misdemeanor diversion program only upon the approval of
8 the court.

9 (725 ILCS 5/104A-2 new)

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

13 (725 ILCS 5/104A-3 new)

14 Sec. 104A-3. Procedure. The court shall require an
15 eligibility screening and an assessment of the defendant to
16 determine whether the defendant may be able to receive mental
17 health services under the Mental Health and Developmental
18 Disabilities Code which shall reasonably assure his or her
19 safety and that of the public and his or her continued
20 participation in treatment. If, following this screening, the
21 State and the defendant agree to the diversion and the court
22 determines that the defendant is appropriate for diversion,
23 the criminal charges may be dismissed with prejudice. If the

1 court does not approve, the court shall order a fitness
2 examination under Section 104-13 of this Code and the matter
3 shall be governed by any other relevant provisions of Article
4 104.

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

6 Sec. 104A-4. Mental health and substance use treatment.
7 The misdemeanor diversion program may maintain or collaborate
8 with mental health and substance use treatment providers
9 necessary to provide a continuum of treatment options
10 commensurate with the needs of the defendant and available
11 resources. Treatment programs shall comply with all relevant
12 statutes and rules. The Department of Human Services shall
13 provide care to persons determined to be subject to
14 involuntary admission on an inpatient basis as defined in
15 Section 1-119 of the Mental Health and Developmental
16 Disabilities Code or may make arrangements with any other
17 appropriate inpatient mental health facility to provide those
18 services.

19 Section 99. Effective date. This Section and Section
20 104-32 of the Code of Criminal Procedure of 1963 take effect
21 upon becoming law.