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1 AMENDMENT TO HOUSE BILL 3572

2 AMENDMENT NO. _____. Amend House Bill 3572 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Reference to Act. This Act may be referred to
5 as 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

1 the Code of Criminal Procedure of 1963. Additionally, despite
2 extended involvement in the criminal justice system, many of
3 these defendants do not receive the mental health treatment
4 needed to reduce the likelihood that they will commit future
5 offenses and are not successfully linked to ongoing mental
6 health services when their involvement in the criminal justice
7 system ends, including community-based treatment programs. The
8 General Assembly finds that the interests of public safety,
9 the welfare of persons with mental illnesses charged with
10 misdemeanors, and the efficient and effective use of public
11 resources may be served by creating programs which remove
12 these defendants from the criminal justice system and use
13 behavioral health services, case management, and substance use
14 disorder treatment, including, but not limited to, treatment
15 authorized under Articles IV, VII, and VII-A and Section
16 3-801.5 of Article VIII of the Mental Health and Developmental
17 Disabilities Code.

18 Section 10. The Code of Criminal Procedure of 1963 is
19 amended by changing Sections 104-11, 104-13, 104-15, and
20 104-17 and by adding Section 104-32 and Article 104A as
21 follows:

22 (725 ILCS 5/104-11) (from Ch. 38, par. 104-11)

23 Sec. 104-11. Raising Issue; Burden; Fitness Motions.)
24

1 (a) The issue of the defendant's fitness for trial, to
2 plead, or to be sentenced may be raised by the defense, the
3 State or the Court at any appropriate time before a plea is
4 entered or before, during, or after trial. When a bonafide
5 doubt of the defendant's fitness is raised, other than for
6 eligible defendants charged with one or more misdemeanors
7 subject to Section 104A-1, the court shall order a
8 determination of the issue before proceeding further.

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

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

25 (d) Following a finding of unfitness, the court may hear
26 and rule on any pretrial motion or motions if the defendant's

1 presence is not essential to a fair determination of the
2 issues. A motion may be reheard upon a showing that evidence is
3 available which was not available, due to the defendant's
4 unfitness, when the motion was first decided.

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

6 (725 ILCS 5/104-13) (from Ch. 38, par. 104-13)

7 Sec. 104-13. Fitness examination.

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

15 (a-1) The Administrative Office of the Illinois Courts is
16 encouraged to establish standards and a certification process
17 for court-appointed fitness evaluators designed to increase
18 the availability of qualified evaluators statewide and to
19 increase access, consistency, and fairness within
20 fitness-to-stand-trial proceedings and subsequent placement
21 recommendations.

22 (b) If the issue of fitness involves the defendant's
23 physical condition, the court shall appoint one or more
24 physicians and in addition, such other experts as it may deem
25 appropriate to examine the defendant and to report to the

1 court regarding the defendant's condition.

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

17 (d) Pretrial Release ~~on pretrial release or on~~
18 ~~recognizance~~ shall not be revoked and an application therefor
19 shall not be denied on the grounds that an examination has been
20 ordered.

21 (e) Upon request by the defense and if the defendant is
22 indigent, the court may appoint, in addition to the expert or
23 experts chosen pursuant to subsection (a) of this Section, a
24 qualified expert selected by the defendant to examine him and
25 to make a report as provided in Section 104-15. Upon the filing
26 with the court of a verified statement of services rendered,

1 the court shall enter an order on the county board to pay such
2 expert a reasonable fee stated in the order.

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

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

5 Sec. 104-15. Report.

6 (a) The person or persons conducting an examination of the
7 defendant, pursuant to paragraph (a) or (b) of Section 104-13
8 shall submit a written report to the court, the State, and the
9 defense within 30 days of the date of the order. The report
10 shall include:

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

13 (2) A description of the defendant's mental or
14 physical disability, if any; its severity; and an opinion
15 as to whether and to what extent it impairs the
16 defendant's ability to understand the nature and purpose
17 of the proceedings against him or to assist in his
18 defense, or both.

19 (b) If the report indicates that the defendant is not fit
20 to stand trial or to plead because of a disability, the report
21 shall include an opinion as to the likelihood of the defendant
22 attaining fitness within the statutory a period of time from
23 the date of the finding of unfitness if provided with a course
24 of treatment. For a defendant charged with a felony, the
25 period of time shall be one year. For a defendant charged with

1 a misdemeanor, the period of time shall be no longer than the
2 maximum term of imprisonment for the most serious offense. The
3 period of commitment shall not exceed the maximum length of
4 time that the defendant would have been required to serve,
5 less credit for good behavior as provided in Section 5-4-1 of
6 the Unified Code of Corrections. Defendants charged with petty
7 offenses or infraction of a municipal ordinance are not
8 eligible for fitness restoration services. If the person or
9 persons preparing the initial fitness report are unable to
10 form such an opinion, the report shall state the reasons
11 therefor. The report shall ~~may~~ include a general description
12 of the type of treatment needed and of the least physically
13 restrictive form of treatment therapeutically appropriate. If
14 inpatient treatment is recommended, the report must articulate
15 the evaluator's assessment of risk, protective factors, and
16 treatment needs as related to the defendant's mental disorder.
17 Risk shall not be determined solely by the nature of the
18 defendant's criminal charges.

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

22 (d) In addition to the report, a person retained or
23 appointed by the State or the defense to conduct an
24 examination shall, upon written request, make his or her
25 notes, other evaluations reviewed or relied upon by the
26 testifying witness, and any videotaped interviews available to

1 another examiner of the defendant. All forensic interviews
2 conducted by a person retained or appointed by the State or the
3 defense shall be videotaped unless doing so would be
4 impractical. In the event that the interview is not
5 videotaped, the examiner may still testify as to the person's
6 fitness and the court may only consider the lack of compliance
7 in according the weight and not the admissibility of the
8 expert testimony. An examiner may use these materials as part
9 of his or her diagnosis and explanation but shall not
10 otherwise disclose the contents, including at a hearing before
11 the court, except as otherwise provided in Section 104-14 of
12 this Code.

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

14 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

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

23 (1) treatment on an outpatient basis is reasonably
24 expected to inflict serious physical harm upon the
25 defendant or another. No defendant may be ordered to

1 inpatient restoration unless at least one licensed
2 physician, clinical psychologist, or psychiatrist who has
3 examined the defendant testifies in person at the hearing.
4 The defendant may waive the requirement of the testimony
5 subject to the approval of the court; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (725 ILCS 5/104-32 new)

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

23 (a) There is created the Fitness to Stand Trial Task Force
24 hereinafter referred to as the Task Force. The Task Force
25 shall conduct a thorough review of the statutory and

1 regulatory provisions governing the procedures by which
2 individuals facing criminal charges may be unfit to stand
3 trial. This review includes, but is not limited to, the
4 determination of fitness, the housing and custodial status of
5 persons undergoing fitness restoration, the rights of
6 individuals found unfit, and the obligations of the Department
7 of Human Services.

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

10 (1) a member of the House of Representatives,
11 appointed by the Speaker of the House, who shall serve as
12 co-chair of the Task Force;

13 (2) a member of the House of Representatives,
14 appointed by the Minority Leader of the House;

15 (3) a member of the Senate appointed by the President
16 of the Senate, who shall serve as co-chair of the Task
17 Force;

18 (4) a member of the Senate, appointed by the Minority
19 Leader of the Senate;

20 (5) 2 members appointed by the Illinois Supreme Court;

21 (6) the Secretary of Human Services or the Secretary's
22 designee;

23 (7) a member nominated by a statewide organization
24 that represents State's Attorneys and appointed by the
25 Governor;

26 (8) a member nominated by a statewide organization

1 that represents public defenders and appointed by the
2 Governor;

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

5 (10) a member representing the federally mandated
6 Protection and Advocacy System for people with mental
7 illness in the State of Illinois, appointed by the
8 Governor;

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

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

15 (13) a member who is a licensed clinical psychologist
16 with specialized forensic training and experience
17 conducting court-ordered fitness evaluations in Illinois,
18 appointed by the Governor; and

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

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

26 (d) The Task Force shall hold its first meeting no later

1 than October 1, 2025.

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

5 (f) The Task Force may at any time identify legislative
6 proposals in support of its mission prior to the issuance of
7 its final report.

8 (g) The Task Force shall be dissolved following the
9 submission of its report to the Supreme Court and the General
10 Assembly.

11 (725 ILCS 5/Art. 104A heading new)

12 ARTICLE 104A. DIVERSION OF UNFIT MISDEMEANANTS

13 (725 ILCS 5/104A-1 new)

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

20 (725 ILCS 5/104A-2 new)

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

1 (725 ILCS 5/104A-3 new)

2 Sec. 104A-3. Procedure. The court shall require an
3 eligibility screening and an assessment of the defendant to
4 determine whether the defendant may be able to receive mental
5 health services under the Mental Health and Developmental
6 Disabilities Code which shall reasonably assure his or her
7 safety and that of the public and his or her continued
8 participation in treatment. If, following this screening, the
9 State and the defendant agree to the diversion and the court
10 determines that the defendant is appropriate for diversion,
11 the criminal charges may be dismissed. If the parties do not
12 agree or the court does not approve, the court shall order a
13 fitness examination under Section 104-13 of this Code and the
14 matter shall be governed by any other relevant provisions of
15 Article 104.

16 (725 ILCS 5/104A-4 new)

17 Sec. 104A-4. Mental health and substance use treatment.
18 The misdemeanor diversion program may maintain or collaborate
19 with mental health and substance use treatment providers
20 necessary to provide a continuum of treatment options
21 commensurate with the needs of the defendant and available
22 resources. Treatment programs shall comply with all relevant
23 statutes and rules. The Department of Human Services shall
24 provide care to persons determined to be subject to

1 involuntary admission on an inpatient basis as defined in
2 Section 1-119 of the Mental Health and Developmental
3 Disabilities Code or may make arrangements with any other
4 appropriate inpatient mental health facility to provide those
5 services.

6 Section 99. Effective date. This Section and Section
7 104-32 of the Code of Criminal Procedure of 1963 take effect
8 upon becoming law.".