



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

HB5308

Introduced 2/10/2026, by Rep. Maura Hirschauer

SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-15
725 ILCS 5/104-17

from Ch. 38, par. 104-15
from Ch. 38, par. 104-17

Amends the Code of Criminal Procedure of 1963. Provides that if the court orders an unfit defendant to be placed in the custody of the Department of Human Services, during the period of time required to determine bed and placement availability at the designated facility, the defendant may (rather than shall) remain in jail. Makes technical changes in a provision concerning credit for good behavior.

LRB104 18058 RLC 31497 b

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 Code of Criminal Procedure of 1963 is
5 amended by changing Sections 104-15 and 104-17 as follows:

6 (725 ILCS 5/104-15) (from Ch. 38, par. 104-15)
7 Sec. 104-15. Report.

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

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

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

21 (b) If the report indicates that the defendant is not fit
22 to stand trial or to plead because of a disability, the report
23 shall include an opinion as to the likelihood of the defendant

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

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

1 (d) In addition to the report, a person retained or
2 appointed by the State or the defense to conduct an
3 examination shall, upon written request, make his or her
4 notes, other evaluations reviewed or relied upon by the
5 testifying witness, and any videotaped interviews available to
6 another examiner of the defendant. All forensic interviews
7 conducted by a person retained or appointed by the State or the
8 defense shall be videotaped unless doing so would be
9 impractical. In the event that the interview is not
10 videotaped, the examiner may still testify as to the person's
11 fitness and the court may only consider the lack of compliance
12 in according the weight and not the admissibility of the
13 expert testimony. An examiner may use these materials as part
14 of his or her diagnosis and explanation but shall not
15 otherwise disclose the contents, including at a hearing before
16 the court, except as otherwise provided in Section 104-14 of
17 this Code.

18 (Source: P.A. 104-318, eff. 1-1-26.)

19 (725 ILCS 5/104-17) (from Ch. 38, par. 104-17)

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

21 (a) If the defendant is eligible to be or has been released
22 on pretrial release, the court shall select the least
23 physically restrictive form of treatment therapeutically
24 appropriate and consistent with the treatment plan. The
25 placement may be ordered either on an inpatient or an

1 outpatient basis. Placement shall be on an outpatient basis
2 unless the court determines that:

3 (1) treatment on an outpatient basis is reasonably
4 expected to inflict serious physical harm upon the
5 defendant or another. No defendant may be ordered to
6 inpatient restoration unless at least one licensed
7 physician, clinical psychologist, or psychiatrist who has
8 examined the defendant testifies in person at the hearing.
9 The defendant may waive the requirement of the testimony
10 subject to the approval of the court; or

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

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

1 testifies in person at the hearing. The defendant may waive
2 the requirement of the testimony subject to the approval of
3 the court. If the court orders the defendant to inpatient
4 treatment in the custody of the Department of Human Services,
5 the Department shall evaluate the defendant to determine the
6 most appropriate secure facility to receive the defendant and,
7 within 20 days of the transmittal by the clerk of the circuit
8 court of the court's placement order, notify the court of the
9 designated facility to receive the defendant. The Department
10 shall admit the defendant to a secure facility within 60 days
11 of the transmittal of the court's placement order, unless the
12 Department can demonstrate good faith efforts at placement and
13 a lack of bed and placement availability. If placement cannot
14 be made within 60 days of the transmittal of the court's
15 placement order and the Department has demonstrated good faith
16 efforts at placement and a lack of bed and placement
17 availability, the Department shall provide an update to the
18 ordering court every 30 days until the defendant is placed.
19 Once bed and placement availability is determined, the
20 Department shall notify the sheriff who shall promptly
21 transport the defendant to the designated facility. If the
22 defendant is placed in the custody of the Department of Human
23 Services, the defendant shall be placed in a secure setting.
24 During the period of time required to determine bed and
25 placement availability at the designated facility, the
26 defendant may ~~shall~~ remain in jail. If during the course of

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

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

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

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

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

24 (Source: P.A. 104-318, eff. 1-1-26.)