

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. Short title. This Act may be referred to as the
5 Diversion of Unfit Misdemeanants Act.

6 Section 3. Purpose. The General Assembly recognizes that
7 there are a substantial number of persons with mental illnesses
8 who are charged with misdemeanors and are found unfit to stand
9 trial under Article 104 of the Code of Criminal Procedure of
10 1963. Many of these defendants remain in the criminal justice
11 system for periods of time longer than they would have served
12 had they been convicted of the misdemeanor with which they have
13 been charged. These defendants impose a substantial financial
14 burden on county jails, the criminal court system, and
15 State-operated mental health facilities where they are
16 frequently committed under Section 104-17 of the Code of
17 Criminal Procedure of 1963. Additionally, despite extended
18 involvement in the criminal justice system, many of these
19 defendants do not receive the mental health treatment needed to
20 reduce the likelihood that they will commit future offenses and
21 are not successfully linked to on-going mental health services
22 when their involvement in the criminal justice system ends. The
23 General Assembly finds that the interests of public safety, the

1 welfare of persons with mental illnesses charged with
2 misdemeanors, and the efficient and effective use of public
3 resources may be served by creating programs which remove these
4 defendants from the criminal justice system and utilize mental
5 health services provided under the Mental Health and
6 Developmental Disabilities Code, including, but not limited
7 to, treatment authorized under Articles IV, VII, and VII-A and
8 Section 3-801.5 of Article VIII of the Mental Health and
9 Developmental Disabilities Code.

10 Section 5. The Code of Criminal Procedure of 1963 is
11 amended by adding the heading of Article 104A and Sections
12 104A-1, 104A-2, 104A-3, and 104A-4 as follows:

13 (725 ILCS 5/Art. 104A heading new)

14 ARTICLE 104A. DIVERSION OF UNFIT MISDEMEANANTS

15 (725 ILCS 5/104A-1 new)

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

22 (725 ILCS 5/104A-2 new)

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

4 (725 ILCS 5/104A-3 new)

5 Sec. 104A-3. Procedure. The court shall require an
6 eligibility screening and an assessment of the defendant to
7 determine whether the defendant may be able to receive mental
8 health services under the Mental Health and Developmental
9 Disabilities Code which shall reasonably assure her or his
10 safety and that of the public and her or his continued
11 participation in treatment. If, following this screening, the
12 State and the defendant agree to the diversion and the court
13 determines that the defendant is appropriate for diversion, the
14 criminal charges may be dismissed with or without prejudice. If
15 the court does not approve, the court shall order a fitness
16 examination under Section 104-13 of this Code and the matter
17 shall be governed by any other relevant provisions of Article
18 104.

19 (725 ILCS 5/104A-4 new)

20 Sec. 104A-4. Mental health and substance use treatment. The
21 misdemeanant diversion program may maintain or collaborate
22 with mental health and substance use treatment providers
23 necessary to provide a continuum of treatment options
24 commensurate with the needs of the defendant and available

1 resources. Treatment programs shall comply with all relevant
2 statutes and rules. The Department of Human Services shall
3 provide care to persons determined to be subject to involuntary
4 admission on an inpatient basis as defined in Section 1-119 of
5 the Mental Health and Developmental Disabilities Code or may
6 make arrangement with any other appropriate inpatient mental
7 health facility to provide those services.