



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB2364

Introduced 2/26/2021, by Sen. John Connor

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/Art. 104A heading new  
725 ILCS 5/104A-1 new  
725 ILCS 5/104A-2 new  
725 ILCS 5/104A-3 new  
725 ILCS 5/104A-4 new

Amends the Code of Criminal Procedure of 1963. Provides that a defendant charged with one or more misdemeanors and for whom a court has determined under the Code that a bona fide doubt of the defendant's fitness has been raised may be admitted into an unfit misdemeanor diversion program only upon the approval of the court. Provides that the court shall require an eligibility screening and an assessment of the defendant to determine whether the defendant may be able to receive mental health services under the Mental Health and Developmental Disabilities Code which shall reasonably assure her or his safety and that of the public and her or his continued participation in treatment. Provides that if, following this screening, the court determines that the defendant is appropriate for diversion, the criminal charges may be dismissed with or without prejudice. Provides that the misdemeanor diversion program may maintain or collaborate with mental health and substance use treatment providers necessary to provide a continuum of treatment options commensurate with the needs of the defendant and available resources. Makes other changes.

LRB102 17146 RLC 22578 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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  
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 on-going mental  
22 health services when their involvement in the criminal justice  
23 system ends. The General Assembly finds that the interests of

1 public safety, the welfare of persons with mental illnesses  
2 charged with misdemeanors, and the efficient and effective use  
3 of public resources may be served by creating programs which  
4 remove these defendants from the criminal justice system and  
5 utilize mental health services provided under the Mental  
6 Health and Developmental Disabilities Code, including, but not  
7 limited to, treatment authorized under Articles IV, VII, and  
8 VII-A and Section 3-801.5 of Article VIII of the Mental Health  
9 and 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 court determines that the defendant is appropriate for  
13 diversion, the criminal charges may be dismissed with or  
14 without prejudice. If the court does not approve, the court  
15 shall order a fitness examination under Section 104-13 of this  
16 Code and the matter shall be governed by any other relevant  
17 provisions of Article 104.

18           (725 ILCS 5/104A-4 new)

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

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