



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4976

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

725 ILCS 5/104-15	from Ch. 38, par. 104-15
725 ILCS 5/104-20	from Ch. 38, par. 104-20
730 ILCS 5/5-2-4	from Ch. 38, par. 1005-2-4

Amends the Code of Criminal Procedure of 1963 concerning unfit defendants. Provides that if the report to the court, the State, and the defense indicates that the defendant is not fit to stand trial or to plead because of a disability, the report shall include an opinion as to the likelihood of the defendant attaining fitness within a period of time from the date of the finding of unfitness (rather than one year) if provided with a course of treatment. Provides that for a defendant charged with a felony, the period of time shall be one year. Provides that for a defendant charged with a misdemeanor, the period of time shall be no longer than the maximum term of imprisonment for the most serious offense. Provides that the facility director shall provide a report to the court on the defendant's status toward restoration of fitness every 60 days from the date of the initial court order and thereafter. Provides that not more than 30 days after admission and every 90 (rather than 60) days thereafter so long as the initial order remains in effect, the facility director shall file a treatment plan report in writing with the court and forward a copy of the treatment plan report to the clerk of the court, the State's Attorney, and the defendant's attorney, if the defendant is represented by counsel, or to a person authorized by the defendant under the Mental Health and Developmental Disabilities Confidentiality Act to be sent a copy of the report. Effective January 1, 2017.

LRB099 15921 RLC 40237 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 104-20 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 physical
16 disability, if any; its severity; and an opinion as to
17 whether and to what extent it impairs the defendant's
18 ability to understand the nature and purpose of the
19 proceedings against him or to assist in his defense, or
20 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 a period of time from the date of the
2 finding of unfitness ~~one year~~ if provided with a course of
3 treatment. For a defendant charged with a felony, the period of
4 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. If
7 the person or persons preparing the report are unable to form
8 such an opinion, the report shall state the reasons therefor.
9 The report may include a general description of the type of
10 treatment needed and of the least physically restrictive form
11 of treatment therapeutically appropriate.

12 (c) The report shall indicate what information, if any,
13 contained therein may be harmful to the mental condition of the
14 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 examination
17 shall, upon written request, make his or her notes, other
18 evaluations reviewed or relied upon by the testifying witness,
19 and any videotaped interviews available to another examiner of
20 the defendant. All forensic interviews conducted by a person
21 retained or appointed by the State or the defense shall be
22 videotaped unless doing so would be impractical. In the event
23 that the interview is not videotaped, the examiner may still
24 testify as to the person's fitness and the court may only
25 consider the lack of compliance in according the weight and not
26 the admissibility of the expert testimony. An examiner may use

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

5 (Source: P.A. 98-1025, eff. 1-1-15.)

6 (725 ILCS 5/104-20) (from Ch. 38, par. 104-20)

7 Sec. 104-20. Ninety-Day Hearings; Continuing Treatment.)

8 (a) Upon entry or continuation of any order to undergo
9 treatment, the court shall set a date for hearing to reexamine
10 the issue of the defendant's fitness not more than 90 days
11 thereafter. The facility director shall provide a report to the
12 court on the defendant's status toward restoration of fitness
13 every 60 days from the date of the initial court order and
14 thereafter. In addition, whenever the court receives a report
15 from the supervisor of the defendant's treatment pursuant to
16 subparagraph (2) or (3) of paragraph (a) of Section 104-18, the
17 court shall forthwith set the matter for a first hearing within
18 14 days unless good cause is demonstrated why the hearing
19 cannot be held. On the date set or upon conclusion of the
20 matter then pending before it, the court, sitting without a
21 jury, shall conduct a hearing, unless waived by the defense,
22 and shall determine:

23 (1) Whether the defendant is fit to stand trial or to
24 plead; and if not,

25 (2) Whether the defendant is making progress under

1 treatment toward attainment of fitness within the time
2 period set in subsection (e) of Section 104-17 of this Code
3 from the date of the original finding of unfitness.

4 (b) If the court finds the defendant to be fit pursuant to
5 this Section, the court shall set the matter for trial;
6 provided that if the defendant is in need of continued care or
7 treatment and the supervisor of the defendant's treatment
8 agrees to continue to provide it, the court may enter any order
9 it deems appropriate for the continued care or treatment of the
10 defendant by the facility or program pending the conclusion of
11 the criminal proceedings.

12 (c) If the court finds that the defendant is still unfit
13 but that he is making progress toward attaining fitness, the
14 court may continue or modify its original treatment order
15 entered pursuant to Section 104-17.

16 (d) If the court finds that the defendant is still unfit
17 and that he is not making progress toward attaining fitness
18 such that there is not a substantial probability that he will
19 attain fitness within the time period set in subsection (e) of
20 Section 104-17 of this Code from the date of the original
21 finding of unfitness, the court shall proceed pursuant to
22 Section 104-23. However, if the defendant is in need of
23 continued care and treatment and the supervisor of the
24 defendant's treatment agrees to continue to provide it, the
25 court may enter any order it deems appropriate for the
26 continued care or treatment by the facility or program pending

1 the conclusion of the criminal proceedings.

2 (e) If the court finds that the defendant is still unfit
3 after being recommended as fit by the supervisor of the
4 defendant's treatment, the court shall attach a copy of any
5 written report that identifies the factors in the finding that
6 the defendant continues to be unfit, prepared by a licensed
7 physician, clinical psychologist, or psychiatrist, to the
8 court order remanding the person for further treatment.

9 (Source: P.A. 98-1025, eff. 8-22-14; 99-140, eff. 1-1-16.)

10 Section 10. The Unified Code of Corrections is amended by
11 changing Section 5-2-4 as follows:

12 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

13 Sec. 5-2-4. Proceedings after Acquittal by Reason of
14 Insanity.

15 (a) After a finding or verdict of not guilty by reason of
16 insanity under Sections 104-25, 115-3 or 115-4 of the Code of
17 Criminal Procedure of 1963, the defendant shall be ordered to
18 the Department of Human Services for an evaluation as to
19 whether he is in need of mental health services. The order
20 shall specify whether the evaluation shall be conducted on an
21 inpatient or outpatient basis. If the evaluation is to be
22 conducted on an inpatient basis, the defendant shall be placed
23 in a secure setting. With the court order for evaluation shall
24 be sent a copy of the arrest report, criminal charges, arrest

1 record, jail record, any report prepared under Section 115-6 of
2 the Code of Criminal Procedure of 1963, and any victim impact
3 statement prepared under Section 6 of the Rights of Crime
4 Victims and Witnesses Act. After the evaluation and during the
5 period of time required to determine the appropriate placement,
6 the defendant shall remain in jail. Individualized placement
7 evaluations by the Department of Human Services determine the
8 most appropriate setting for forensic treatment based upon a
9 number of factors including mental health diagnosis, proximity
10 to surviving victims, security need, age, gender, and proximity
11 to family. Upon completion of the placement process the sheriff
12 shall be notified and shall transport the defendant to the
13 designated facility.

14 The Department shall provide the Court with a report of its
15 evaluation within 30 days of the date of this order. The Court
16 shall hold a hearing as provided under the Mental Health and
17 Developmental Disabilities Code to determine if the individual
18 is: (a) in need of mental health services on an inpatient
19 basis; (b) in need of mental health services on an outpatient
20 basis; (c) a person not in need of mental health services. The
21 Court shall enter its findings.

22 If the defendant is found to be in need of mental health
23 services on an inpatient care basis, the Court shall order the
24 defendant to the Department of Human Services. The defendant
25 shall be placed in a secure setting. Such defendants placed in
26 a secure setting shall not be permitted outside the facility's

1 housing unit unless escorted or accompanied by personnel of the
2 Department of Human Services or with the prior approval of the
3 Court for unsupervised on-grounds privileges as provided
4 herein. Any defendant placed in a secure setting pursuant to
5 this Section, transported to court hearings or other necessary
6 appointments off facility grounds by personnel of the
7 Department of Human Services, shall be placed in security
8 devices or otherwise secured during the period of
9 transportation to assure secure transport of the defendant and
10 the safety of Department of Human Services personnel and
11 others. These security measures shall not constitute restraint
12 as defined in the Mental Health and Developmental Disabilities
13 Code. If the defendant is found to be in need of mental health
14 services, but not on an inpatient care basis, the Court shall
15 conditionally release the defendant, under such conditions as
16 set forth in this Section as will reasonably assure the
17 defendant's satisfactory progress and participation in
18 treatment or rehabilitation and the safety of the defendant and
19 others. If the Court finds the person not in need of mental
20 health services, then the Court shall order the defendant
21 discharged from custody.

22 (a-1) Definitions. For the purposes of this Section:

23 (A) (Blank).

24 (B) "In need of mental health services on an inpatient
25 basis" means: a defendant who has been found not guilty by
26 reason of insanity but who due to mental illness is

1 reasonably expected to inflict serious physical harm upon
2 himself or another and who would benefit from inpatient
3 care or is in need of inpatient care.

4 (C) "In need of mental health services on an outpatient
5 basis" means: a defendant who has been found not guilty by
6 reason of insanity who is not in need of mental health
7 services on an inpatient basis, but is in need of
8 outpatient care, drug and/or alcohol rehabilitation
9 programs, community adjustment programs, individual,
10 group, or family therapy, or chemotherapy.

11 (D) "Conditional Release" means: the release from
12 either the custody of the Department of Human Services or
13 the custody of the Court of a person who has been found not
14 guilty by reason of insanity under such conditions as the
15 Court may impose which reasonably assure the defendant's
16 satisfactory progress in treatment or habilitation and the
17 safety of the defendant and others. The Court shall
18 consider such terms and conditions which may include, but
19 need not be limited to, outpatient care, alcoholic and drug
20 rehabilitation programs, community adjustment programs,
21 individual, group, family, and chemotherapy, random
22 testing to ensure the defendant's timely and continuous
23 taking of any medicines prescribed to control or manage his
24 or her conduct or mental state, and periodic checks with
25 the legal authorities and/or the Department of Human
26 Services. The Court may order as a condition of conditional

1 release that the defendant not contact the victim of the
2 offense that resulted in the finding or verdict of not
3 guilty by reason of insanity or any other person. The Court
4 may order the Department of Human Services to provide care
5 to any person conditionally released under this Section.
6 The Department may contract with any public or private
7 agency in order to discharge any responsibilities imposed
8 under this Section. The Department shall monitor the
9 provision of services to persons conditionally released
10 under this Section and provide periodic reports to the
11 Court concerning the services and the condition of the
12 defendant. Whenever a person is conditionally released
13 pursuant to this Section, the State's Attorney for the
14 county in which the hearing is held shall designate in
15 writing the name, telephone number, and address of a person
16 employed by him or her who shall be notified in the event
17 that either the reporting agency or the Department decides
18 that the conditional release of the defendant should be
19 revoked or modified pursuant to subsection (i) of this
20 Section. Such conditional release shall be for a period of
21 five years. However, the defendant, the person or facility
22 rendering the treatment, therapy, program or outpatient
23 care, the Department, or the State's Attorney may petition
24 the Court for an extension of the conditional release
25 period for an additional 5 years. Upon receipt of such a
26 petition, the Court shall hold a hearing consistent with

1 the provisions of paragraph (a), this paragraph (a-1), and
2 paragraph (f) of this Section, shall determine whether the
3 defendant should continue to be subject to the terms of
4 conditional release, and shall enter an order either
5 extending the defendant's period of conditional release
6 for an additional 5 year period or discharging the
7 defendant. Additional 5-year periods of conditional
8 release may be ordered following a hearing as provided in
9 this Section. However, in no event shall the defendant's
10 period of conditional release continue beyond the maximum
11 period of commitment ordered by the Court pursuant to
12 paragraph (b) of this Section. These provisions for
13 extension of conditional release shall only apply to
14 defendants conditionally released on or after August 8,
15 2003. However the extension provisions of Public Act
16 83-1449 apply only to defendants charged with a forcible
17 felony.

18 (E) "Facility director" means the chief officer of a
19 mental health or developmental disabilities facility or
20 his or her designee or the supervisor of a program of
21 treatment or habilitation or his or her designee.
22 "Designee" may include a physician, clinical psychologist,
23 social worker, nurse, or clinical professional counselor.

24 (b) If the Court finds the defendant in need of mental
25 health services on an inpatient basis, the admission,
26 detention, care, treatment or habilitation, treatment plans,

1 review proceedings, including review of treatment and
2 treatment plans, and discharge of the defendant after such
3 order shall be under the Mental Health and Developmental
4 Disabilities Code, except that the initial order for admission
5 of a defendant acquitted of a felony by reason of insanity
6 shall be for an indefinite period of time. Such period of
7 commitment shall not exceed the maximum length of time that the
8 defendant would have been required to serve, less credit for
9 good behavior as provided in Section 5-4-1 of the Unified Code
10 of Corrections, before becoming eligible for release had he
11 been convicted of and received the maximum sentence for the
12 most serious crime for which he has been acquitted by reason of
13 insanity. The Court shall determine the maximum period of
14 commitment by an appropriate order. During this period of time,
15 the defendant shall not be permitted to be in the community in
16 any manner, including but not limited to off-grounds
17 privileges, with or without escort by personnel of the
18 Department of Human Services, unsupervised on-grounds
19 privileges, discharge or conditional or temporary release,
20 except by a plan as provided in this Section. In no event shall
21 a defendant's continued unauthorized absence be a basis for
22 discharge. Not more than 30 days after admission and every 90
23 ~~60~~ days thereafter so long as the initial order remains in
24 effect, the facility director shall file a treatment plan
25 report in writing with the court and forward a copy of the
26 treatment plan report to the clerk of the court, the State's

1 Attorney, and the defendant's attorney, if the defendant is
2 represented by counsel, or to a person authorized by the
3 defendant under the Mental Health and Developmental
4 Disabilities Confidentiality Act to be sent a copy of the
5 report. The report shall include an opinion as to whether the
6 defendant is currently in need of mental health services on an
7 inpatient basis or in need of mental health services on an
8 outpatient basis. The report shall also summarize the basis for
9 those findings and provide a current summary of the following
10 items from the treatment plan: (1) an assessment of the
11 defendant's treatment needs, (2) a description of the services
12 recommended for treatment, (3) the goals of each type of
13 element of service, (4) an anticipated timetable for the
14 accomplishment of the goals, and (5) a designation of the
15 qualified professional responsible for the implementation of
16 the plan. The report may also include unsupervised on-grounds
17 privileges, off-grounds privileges (with or without escort by
18 personnel of the Department of Human Services), home visits and
19 participation in work programs, but only where such privileges
20 have been approved by specific court order, which order may
21 include such conditions on the defendant as the Court may deem
22 appropriate and necessary to reasonably assure the defendant's
23 satisfactory progress in treatment and the safety of the
24 defendant and others.

25 (c) Every defendant acquitted of a felony by reason of
26 insanity and subsequently found to be in need of mental health

1 services shall be represented by counsel in all proceedings
2 under this Section and under the Mental Health and
3 Developmental Disabilities Code.

4 (1) The Court shall appoint as counsel the public
5 defender or an attorney licensed by this State.

6 (2) Upon filing with the Court of a verified statement
7 of legal services rendered by the private attorney
8 appointed pursuant to paragraph (1) of this subsection, the
9 Court shall determine a reasonable fee for such services.

10 If the defendant is unable to pay the fee, the Court shall
11 enter an order upon the State to pay the entire fee or such
12 amount as the defendant is unable to pay from funds
13 appropriated by the General Assembly for that purpose.

14 (d) When the facility director determines that:

15 (1) the defendant is no longer in need of mental health
16 services on an inpatient basis; and

17 (2) the defendant may be conditionally released
18 because he or she is still in need of mental health
19 services or that the defendant may be discharged as not in
20 need of any mental health services; or

21 (3) (blank);

22 the facility director shall give written notice to the Court,
23 State's Attorney and defense attorney. Such notice shall set
24 forth in detail the basis for the recommendation of the
25 facility director, and specify clearly the recommendations, if
26 any, of the facility director, concerning conditional release.

1 Any recommendation for conditional release shall include an
2 evaluation of the defendant's need for psychotropic
3 medication, what provisions should be made, if any, to ensure
4 that the defendant will continue to receive psychotropic
5 medication following discharge, and what provisions should be
6 made to assure the safety of the defendant and others in the
7 event the defendant is no longer receiving psychotropic
8 medication. Within 30 days of the notification by the facility
9 director, the Court shall set a hearing and make a finding as
10 to whether the defendant is:

11 (i) (blank); or

12 (ii) in need of mental health services in the form of
13 inpatient care; or

14 (iii) in need of mental health services but not subject
15 to inpatient care; or

16 (iv) no longer in need of mental health services; or

17 (v) (blank).

18 Upon finding by the Court, the Court shall enter its
19 findings and such appropriate order as provided in subsections
20 (a) and (a-1) of this Section.

21 (e) A defendant admitted pursuant to this Section, or any
22 person on his behalf, may file a petition for treatment plan
23 review or discharge or conditional release under the standards
24 of this Section in the Court which rendered the verdict. Upon
25 receipt of a petition for treatment plan review or discharge or
26 conditional release, the Court shall set a hearing to be held

1 within 120 days. Thereafter, no new petition may be filed for
2 180 days without leave of the Court.

3 (f) The Court shall direct that notice of the time and
4 place of the hearing be served upon the defendant, the facility
5 director, the State's Attorney, and the defendant's attorney.
6 If requested by either the State or the defense or if the Court
7 feels it is appropriate, an impartial examination of the
8 defendant by a psychiatrist or clinical psychologist as defined
9 in Section 1-103 of the Mental Health and Developmental
10 Disabilities Code who is not in the employ of the Department of
11 Human Services shall be ordered, and the report considered at
12 the time of the hearing.

13 (g) The findings of the Court shall be established by clear
14 and convincing evidence. The burden of proof and the burden of
15 going forth with the evidence rest with the defendant or any
16 person on the defendant's behalf when a hearing is held to
17 review a petition filed by or on behalf of the defendant. The
18 evidence shall be presented in open Court with the right of
19 confrontation and cross-examination. Such evidence may
20 include, but is not limited to:

21 (1) whether the defendant appreciates the harm caused
22 by the defendant to others and the community by his or her
23 prior conduct that resulted in the finding of not guilty by
24 reason of insanity;

25 (2) Whether the person appreciates the criminality of
26 conduct similar to the conduct for which he or she was

1 originally charged in this matter;

2 (3) the current state of the defendant's illness;

3 (4) what, if any, medications the defendant is taking
4 to control his or her mental illness;

5 (5) what, if any, adverse physical side effects the
6 medication has on the defendant;

7 (6) the length of time it would take for the
8 defendant's mental health to deteriorate if the defendant
9 stopped taking prescribed medication;

10 (7) the defendant's history or potential for alcohol
11 and drug abuse;

12 (8) the defendant's past criminal history;

13 (9) any specialized physical or medical needs of the
14 defendant;

15 (10) any family participation or involvement expected
16 upon release and what is the willingness and ability of the
17 family to participate or be involved;

18 (11) the defendant's potential to be a danger to
19 himself, herself, or others; and

20 (12) any other factor or factors the Court deems
21 appropriate.

22 (h) Before the court orders that the defendant be
23 discharged or conditionally released, it shall order the
24 facility director to establish a discharge plan that includes a
25 plan for the defendant's shelter, support, and medication. If
26 appropriate, the court shall order that the facility director

1 establish a program to train the defendant in self-medication
2 under standards established by the Department of Human
3 Services. If the Court finds, consistent with the provisions of
4 this Section, that the defendant is no longer in need of mental
5 health services it shall order the facility director to
6 discharge the defendant. If the Court finds, consistent with
7 the provisions of this Section, that the defendant is in need
8 of mental health services, and no longer in need of inpatient
9 care, it shall order the facility director to release the
10 defendant under such conditions as the Court deems appropriate
11 and as provided by this Section. Such conditional release shall
12 be imposed for a period of 5 years as provided in paragraph (D)
13 of subsection (a-1) and shall be subject to later modification
14 by the Court as provided by this Section. If the Court finds
15 consistent with the provisions in this Section that the
16 defendant is in need of mental health services on an inpatient
17 basis, it shall order the facility director not to discharge or
18 release the defendant in accordance with paragraph (b) of this
19 Section.

20 (i) If within the period of the defendant's conditional
21 release the State's Attorney determines that the defendant has
22 not fulfilled the conditions of his or her release, the State's
23 Attorney may petition the Court to revoke or modify the
24 conditional release of the defendant. Upon the filing of such
25 petition the defendant may be remanded to the custody of the
26 Department, or to any other mental health facility designated

1 by the Department, pending the resolution of the petition.
2 Nothing in this Section shall prevent the emergency admission
3 of a defendant pursuant to Article VI of Chapter III of the
4 Mental Health and Developmental Disabilities Code or the
5 voluntary admission of the defendant pursuant to Article IV of
6 Chapter III of the Mental Health and Developmental Disabilities
7 Code. If the Court determines, after hearing evidence, that the
8 defendant has not fulfilled the conditions of release, the
9 Court shall order a hearing to be held consistent with the
10 provisions of paragraph (f) and (g) of this Section. At such
11 hearing, if the Court finds that the defendant is in need of
12 mental health services on an inpatient basis, it shall enter an
13 order remanding him or her to the Department of Human Services
14 or other facility. If the defendant is remanded to the
15 Department of Human Services, he or she shall be placed in a
16 secure setting unless the Court determines that there are
17 compelling reasons that such placement is not necessary. If the
18 Court finds that the defendant continues to be in need of
19 mental health services but not on an inpatient basis, it may
20 modify the conditions of the original release in order to
21 reasonably assure the defendant's satisfactory progress in
22 treatment and his or her safety and the safety of others in
23 accordance with the standards established in paragraph (D) of
24 subsection (a-1). Nothing in this Section shall limit a Court's
25 contempt powers or any other powers of a Court.

26 (j) An order of admission under this Section does not

1 affect the remedy of habeas corpus.

2 (k) In the event of a conflict between this Section and the
3 Mental Health and Developmental Disabilities Code or the Mental
4 Health and Developmental Disabilities Confidentiality Act, the
5 provisions of this Section shall govern.

6 (l) This amendatory Act shall apply to all persons who have
7 been found not guilty by reason of insanity and who are
8 presently committed to the Department of Mental Health and
9 Developmental Disabilities (now the Department of Human
10 Services).

11 (m) The Clerk of the Court shall transmit a certified copy
12 of the order of discharge or conditional release to the
13 Department of Human Services, to the sheriff of the county from
14 which the defendant was admitted, to the Illinois Department of
15 State Police, to the proper law enforcement agency for the
16 municipality where the offense took place, and to the sheriff
17 of the county into which the defendant is conditionally
18 discharged. The Illinois Department of State Police shall
19 maintain a centralized record of discharged or conditionally
20 released defendants while they are under court supervision for
21 access and use of appropriate law enforcement agencies.

22 (Source: P.A. 98-1025, eff. 8-22-14.)

23 Section 99. Effective date. This Act takes effect January
24 1, 2017.