



Frequently Asked Questions: Juvenile Fitness to Stand Trial Legislation

Advocate Guide for Lawmaker Questions

General Framework

What does this legislation do?

It creates a comprehensive framework for assessing and addressing whether minors are fit to stand trial, taking into account their developmental stage and any trauma they may have experienced.

Who is considered a "minor" under this Act?

A "minor" refers to individuals under 21 years old who were under the age of 18 at the time the offense occurred. This would cover transfer cases and excluded jurisdiction cases. Youth as young as 13 could be subject to a Discretionary Transfer.

What clinical concepts are defined in the Act?

The Act defines terms such as chronological/relative immaturity, child traumatic stress, developmental disability, and other relevant clinical concepts.

Fitness Determination Process

How is fitness to stand trial raised and determined?

Fitness can be raised by the defense, prosecutor, or court at any stage before plea or during proceedings. When a bona fide doubt arises, the court must order a fitness determination. The minor is presumed fit, but the State must prove fitness by a preponderance of evidence, or by clear-and-convincing evidence for minors under 14.

Who evaluates the minor's fitness?

Courts appoint qualified experts, such as licensed psychologists or psychiatrists with forensic, child development, and trauma expertise. Experts employed by the Illinois Department of Human Services (DHS) cannot perform the initial examination.

What is required in the expert report?

Reports must document methods, assess the minor's understanding of charges, participants, and proceedings, ability to disclose facts, courtroom behavior, compare to juvenile norms, treatment and placement.



Hearings, Timelines, and Restoration

What are the timelines for evaluation and hearings?

Evaluation reports are due within 30 days (with possible 30-day extension). Fitness hearings occur within 30 days after the report. If unfit, the court must consider whether assistance could render the minor fit and whether restoration is likely within statutory limits.

What restoration services may be ordered?

Courts may order inpatient or outpatient restoration services based on expert recommendations. Outpatient placement is emphasized so that youth are more likely to receive services closer to their communities rather than an institutional setting. Restoration periods are capped at one year for felonies, and for misdemeanors, the shorter of one year or the potential sentence. If restoration is unlikely, the court may dismiss charges, remand for civil commitment, or pursue other statutory options.

Protections and Confidentiality

How is confidentiality maintained?

Diagnosis, evaluation, progress, and service reports are kept separate and privileged, accessible only to specified parties. Evaluations are video recorded, with access restricted. A process is built to allow defense attorneys to request a fitness examination that would only be shown to the defense attorney. This provides an avenue for a youth to have an examination without the results having to be shared with everyone in the court. If the defense attorney raises the issue of fitness, then all the information would be made available.

Are statements made by the minor during evaluation admissible?

No, statements made during the evaluation are not admissible against the minor, and reports must not include statements about alleged offenses.



Special Supports and Other Provisions

What in-court assistance can be provided?

The court can order supports like a qualified translator or an expert to facilitate communication. Chronological immaturity cannot be cured by in-court assistance, and trauma or relative immaturity cannot be remedied solely through such supports.

Does time spent in custody count toward eventual sentencing?

Yes, time spent in custody, placements, or monitoring while restoration is pursued counts as credit against any eventual sentence.

Are there protections against inappropriate commitments?

Courts are discouraged from imposing Department of Juvenile Justice (DJJ) or Department of Corrections (DOC) commitments if inappropriate due to the minor's condition. Judges would still have the discretion to make the final decision. Additional services may be required as sentencing conditions.