

29.00

FITNESS TO STAND TRIAL

INTRODUCTION

The instructions in this chapter are designed for use in proceedings determining whether criminal defendants are fit to stand trial.

A fitness hearing is not considered part of a trial on criminal charges against a defendant. Instead, a fitness hearing is a preliminary civil proceeding, separately conducted to determine an accused's competency to stand trial. *People v. McCullum*, 66 Ill. 2d 306, 312 (1977). Even though the case law indicates that a fitness hearing is a civil proceeding and not criminal one (*People v. Rosochacki*, 41 Ill. 2d 483, 489-90 (1969); *People v. Williams*, 205 Ill. App. 3d 715, 721 (1990)), the issue of fitness only arises in a criminal case. As a result, the practice in the state is to draw upon the criminal Illinois Pattern Jury Instructions for fitness jury trials.

The issue of the defendant's fitness may be determined in the first instance by the court or by a jury. 725 ILCS 5/104-12. If it finds that the defendant is unfit, the court or the jury shall determine whether there is substantial probability that the defendant, if provided with a course of treatment, will attain fitness within a given time period. 725 ILCS 5/104-16(d). When the issue of the defendant's fitness is raised after trial has begun or after conviction but before sentencing, or when the issue is to be redetermined, the issue shall be determined by the court. 725 ILCS 5/104-12.

The right to a jury trial on the issue of fitness is a statutory one and not a constitutional right. *People v. Brown*, 43 Ill. 2d 79, 82 (1969); 725 ILCS 5/104-12. 725 ILCS 5/104-12 instructs "[t]he defense or the State may demand a jury or the court on its own motion may order a jury." 725 ILCS 5/104-12.

Use the instructions from this chapter for fitness jury trials. Other than as noted below, it should not ordinarily be necessary to use other instructions from other chapters.

29.01

The Functions Of The Court And The Jury

[1] Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

[2] The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others. [When I use the word “he” in these instructions, I mean a male or a female.]

[3] It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

[4] These proceedings are about the defendant’s fitness to stand trial. You are not to concern yourself with the defendant’s guilt or innocence or possible punishment or sentence for any offense charged during your deliberation.

[5] Neither sympathy nor prejudice should influence you. You should not be biased in favor or against any person because of that person’s race, ethnicity, national ancestry, religion, gender, sexual orientation, age, disability, or socioeconomic status.

[6] From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions [and exhibits] which were withdrawn or to which objections were sustained.

[7] [Any evidence that was received for a limited purpose should not be considered by you for any other purpose.]

[8] You should disregard testimony [and exhibits] which the court has refused or stricken.

[9] The evidence which you should consider consists only of the testimony of the witnesses [and (the exhibits) (and) (stipulations) (and) (judicially noticed facts)] which the court has received. [You may, but are not required to, accept as conclusive any fact judicially noticed.]

[10] You should consider all the evidence in the light of your own observations and experience in life.

[11] We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit biases” or “unconscious biases.”

[12] Our biases often affect how we act, favorably or unfavorably, toward someone. Biases also can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

[13] As jurors you are being asked to make important decisions in this case. You must resist jumping to conclusions based on personal likes or dislikes. You must not let bias, prejudice, or public opinion influence your decision.

[14] Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

[15] Faithful performance by you of your duties as jurors is vital to the administration of justice.

Committee Note

The Committee has added the bracketed material in paragraph [2], and paragraph [9] to be used when applicable.

The Committee has substituted the word “ethnicity” for the word “color” and added “age”, “disability” and “socioeconomic status” to the second sentence of paragraph [5].

The Committee has added brackets to paragraph [7] because limiting instructions are not given in every case. Use paragraph [7] only when a limiting instruction has been given.

The Committee had added “stipulations” and “judicially notice facts” in paragraph [9] as types of evidence a jury should consider during the course of its deliberations. In Illinois Rule of Evidence 201(g), the Illinois Supreme Court stated, “In a criminal case, the court shall inform the jury that it may, but is not required to, accept as conclusive any fact judicially noticed”. The second sentence in Paragraph [9] has been added so that this Instruction complies with Rule 201(g).

The Committee has made amendments and added new language to incorporate Instruction 1.01B on implicit bias in paragraphs [5], [11], [12] and [13], and renumbered previous paragraphs [11] and [12] as [14] and [15]. The Committee recommends that the language in paragraphs [5], [11], [12] and [13] be given in all cases.

Use applicable paragraphs and bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

29.01A

Preliminary Cautionary Instructions Before Opening Statements

[1] Members of the jury, the trial is about to commence, and I now will instruct you as to the law regarding some of your duties during trial and deliberations.

[2] You should not do any independent investigation or research on any subject or person relating to the case. What you may have seen or heard outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[3] For example, you must not use the Internet, including [(Google) (Wikipedia) (insert current examples)], or any other sources that you might otherwise use, to search for any information about the case, or the law which applies to the case, or the people involved in the case, including the defendant, witnesses, lawyers, and judge.

[4] During the course of the trial, do not communicate with, provide information personally, in writing, or electronically to anyone about this case — not even your own families or friends, courtroom personnel, and also not even among yourselves until instructed otherwise.

[5] You must not provide any information about the case to anyone by any means at all, and this includes posting information about the case, or your thoughts about it, on any device or Internet site, including [(blogs) (chat rooms) or (insert current examples)], or any social networking websites, such as [(Twitter) (Facebook) or (insert current examples)], or any other means.

[6] You cannot use any electronic devices or services to communicate about this case, including [(cellphones) (smartphones) (laptops) (the Internet) (insert current examples)] and any other tools of technology. The use of any such devices or services in connection with your duties is prohibited.

[7] Lawyers, parties, and witnesses are not permitted to speak with you about any subject, even if unrelated to this case, until after the case is over and you are discharged from your duties as jurors.

Committee Note

Read this Instruction prior to opening statements. Submit this Instruction in writing along with the other instructions at the end of the trial.

The Committee strongly encourages judges to remind the jurors before breaks and at the beginning and end of each day of trial that they are prohibited from researching the case on the Internet (including, but not limited to, an admonition that the jurors are not to view any location relevant to the trial by electronic means or visiting the site in person) and prohibited from communicating about the case by any means, including, but not limited to, social media. A judge should mention various types of social media if the judge concludes that it is warranted.

The Committee has added new language and bracketed material to paragraph [3], added paragraphs [5] and [6], and renumbered former paragraph [5] as paragraph [7], to emphasize the types of Internet activity and electronic communications that are prohibited.

A jury or juror may not conduct experiments or view extraneous information not offered into evidence that will have the effect of putting them in possession of evidence not offered at trial. *People v. Holmes*, 69 Ill.3d 507 (1978); *People v. White*, 365 Ill. 499, 514, 6 N.E.2d 1015 (1937).

“[P]rivate communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear.” *People v. Holey*, 182 Ill.2d 404, 459 (1998) quoting *Mattox v. United States*, 146 U.S. 140, 150 (1898).

Use appropriate bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

29.01B

Implicit Bias

[1] We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit biases” or “unconscious biases.”

[2] Our biases often affect how we act, favorably or unfavorably, toward someone. Biases can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

[3] As jurors you are being asked to make important decisions in this case. You must resist jumping to conclusions based on personal likes or dislikes. You must not let bias, prejudice, or public opinion influence your decision.

[4] You must not be biased in favor of or against any person because of his or her race, ethnicity, national ancestry, religion, gender, sexual orientation, age, disability, or socioeconomic status.

[5] Your verdict must be based solely on the evidence presented.

Committee Note

This Instruction should be read prior to jury selection and prior to opening statements.

Implicit bias has been the subject of much scholarly attention. See, e.g., Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1 (2007); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012); Justin D. Levinson, Mark W. Bennett & Koichi Hioki, *Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes*, 69 FLA. L. REV. 63 (2017); Judge Andrew J. Wistrich & Jeffrey J. Rachlinski, *Implicit Bias in Judicial Decision Making: How It Affects Judgment and What Judges Can Do About It*, in *ENHANCING JUSTICE: REDUCING BIAS* (2017). It has also been the focus of attention by organizations dedicated to improving the courts and legal profession, such as the National Center for State Courts and the American Bar Association. See, e.g., Jerry Kang, *Nat’l Ctr. for State Cts., Implicit Bias: A Primer for Courts* (Aug. 2009); Jennifer K. Elek & Paula Hannaford-Agor, *Implicit Bias and the American Juror*, 51 CT. REV. 116 (2015); Jennifer K. Elek & Paula Hannaford-Agor, *First, Do No Harm: On Addressing the Problem of Implicit Bias in Juror Decision Making*, 49 CT. REV. 190 (2013); Am. Bar. Ass’n, *Achieving an Impartial Jury (Au) Toolbox*, available at, https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.pdf

29.02

Jury Is Sole Judge Of The Believability Of Witnesses

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, [his age,] his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

[You should judge the testimony of [(a) (the)] defendant[s] in the same manner as you judge the testimony of any other witness.]

Committee Note

Give the bracketed material relating to age only when a very elderly or very young witness has testified.

Give the bracketed material relating to defendant's testimony only when a defendant has testified.

While this instruction contains most of the usual elements of believability, the Committee recognizes that the evidence of a particular case could call for the insertion of additional elements. For example, see *People v. Franz*, 54 Ill.App.3d 550, 368 N.E.2d 1091 (2d Dist.1977), where the court held: "An instruction informing the jury that it could consider the evidence that a witness was addicted to drugs at the time of the crime in judging that witness' credibility would have been proper." *Cf. People v. Phillips*, 126 Ill.App.2d 179, 261 N.E.2d 469 (1st Dist.1970); *but cf. People v. Collins*, 51 Ill.App.3d 993, 367 N.E.2d 504 (3d Dist.1977).

In addition, the Committee has decided that the weighing of an eyewitness's testimony is deserving of a separate instruction. See Instruction 3.15. For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

29.03

Arguments Of Counsel

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[While the State in a fitness jury trial has the burden of proving the fitness of the defendant to stand trial by a preponderance of the evidence, the law allows the State to take the position in closing argument that the State has not carried its burden of proof by preponderance of the evidence and the defendant is unfit.]

[The attorney for the defendant in a fitness trial is allowed by law to take the position over the objection of the defendant in closing argument that the State by the preponderance of the evidence has carried its burden of proof and the defendant is unfit to stand trial.]

Committee Note

This is an appropriate reinforcement of the court's earlier admonition that the jury should decide the case only “from the evidence in this case.” See Instruction 29.01[3].

Give the bracketed material in second paragraph if the State argues the State has not carried its burden of proof. See *People v. Corbett*, 2022 IL App (2d) 200025, ¶ 59, 219 N.E.3d 1127 (despite its burden of proof, State should not seek to convict an unfit defendant; doing so would deprive the defendant of due process of law).

Give the bracketed material in third paragraph if the defense attorney argues over the objection of the defendant that the State has not carried its burden of proving the defendant is fit. See *People v. Holt*, 2014 IL 116989, ¶ 56, 21 N.E.3d 695 (where the evidence clearly indicates that a defendant is unfit to stand trial, but a defendant contends that he is fit, defense counsel is not obligated to adopt the defendant's position and argue for a finding of fitness; doing so would violate the attorney's duty to client and suborn violation of due process of law).

29.04

Jury Notetaking

Those of you who took notes during trial may use your notes to refresh your memory during jury deliberations.

Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes.

When you are discharged from further service in this case, your notes will be collected by the deputy and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

Committee Note

725 ILCS 5/115-4(n) (West 2026).

The Committee takes no position on whether this instruction should be given. However, it has been held that under the statute a trial judge must allow the jurors the right to take notes. *People v. Strong*, 274 Ill.App.3d 130, 653 N.E.2d 938 (1st Dist.1995). Therefore, should a judge decide to instruct the jury on this subject, it may be helpful to provide the jury with this instruction both before opening statements as well as at the conclusion of the case.

For an example of the use of this instruction, see Sample Set 27.07.

29.05

Burden Of Proof For Determining Fitness To Stand Trial

The State has the burden of proving the fitness of the defendant to stand trial by a preponderance of the evidence. This burden remains with the State throughout the case. The defendant is not required to prove that he is fit to stand trial.

Committee Note

725 ILCS 5/104-11(c) (West 2026).

While the fitness statutory scheme refers to a presumption of fitness (725 ILCS 5/104-10), that presumption ends prior to trial upon the finding of a “bona fide” doubt as to fitness. *People v. Baldwin*, 185 Ill. App. 3d 1079, 1086, 541 N.E. 2d 1315 (1989).

29.06

Definition Of Preponderance Of The Evidence

The phrase “preponderance of the evidence” means whether, considering all the evidence in the case, the proposition on which the State has the burden of proof is more probably true than not true.

29.07

Definition Of Fitness

A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense.

Committee Note

725 ILCS 5/104-10 (West 2026).

While the same statute defining fitness (725 ILCS 5/104-10) also refers to a presumption of fitness, that presumption ends prior to trial upon the finding of a “bona fide” doubt as to fitness. *People v. Baldwin*, 185 Ill. App. 3d 1079, 1086, 541 N.E. 2d 1315 (1989). No reference should be made to the statutory presumption that terminates prior to a fitness trial.

Matters admissible on the issue of a defendant’s fitness include but are not limited to: (1) the defendant's knowledge and understanding of the charge, the proceedings, the consequences of a plea, judgment or sentence, and the functions of the participants in the trial process; (2) the defendant's ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged, and to communicate with counsel; (3) the defendant's social behavior and abilities; orientation as to time and place; recognition of persons, places and things; and performance of motor processes. 725 ILCS 5/104-16(b).

29.08

Issues In Fitness Case

To prove that the defendant is fit to stand trial, the State must prove the following propositions:

First Proposition: That the defendant is able to understand the nature and purpose of the proceedings against him; and

Second Proposition: That the defendant is able to assist in his defense.

If you find from your consideration of all the evidence that each one of these propositions has been proved by a preponderance of the evidence, you should find the defendant fit to stand trial.

If you find from your consideration of all the evidence that any one of these propositions has not been proved by a preponderance of the evidence, you should find the defendant unfit to stand trial.

If you find the defendant unfit to stand trial, you should then continue with your deliberations and decide whether there is substantial probability that the defendant, if provided with a course of treatment, will attain fitness within [one year] [364 days] [6 months] [30 days].

Committee Note

725 ILCS 5/104-10 (West 2026).

Use the applicable bracketed term in the last paragraph based on the class of offense charged. 725 ILCS 5/104-16(d), 725 ILCS 5/104-17(e).

For a defendant charged with a misdemeanor, the period of time in which there is a reasonable probability that the defendant will attain fitness “shall be no longer than the sentence if convicted of the most serious offense, less credit for good behavior as provided in Section 5-4-1 of the Unified Code of Corrections.” 725 ILCS 5/104-17.

29.09

Concluding Instruction For Proceeding To Determine Defendant's Fitness To Stand Trial

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

You are being provided with a verdict form listing the four possible verdicts in this proceeding. Your verdict must be unanimous and signed by all of you, including your foreperson.

You must first decide if the defendant is fit to stand trial. If you determine that the defendant is fit to stand trial, you should indicate that verdict by marking the applicable option on the verdict form and sign it as I have stated. Do not mark any of the other verdict options. Mark only one option.

If however you determine that the defendant is unfit to stand trial, you must then determine whether (1) there is a substantial probability that he will, if provided with a course of treatment, attain fitness within [one year] [364 days] [6 months] [30 days]; or (2) there is not a substantial probability that he will, if provided with a course of treatment, attain fitness within [one year] [364 days] [6 months] [30 days]; or (3) you are unable to determine if there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within [one year] [364 days] [6 months] [30 days]. In this circumstance, you should mark the applicable option on the jury verdict form and sign it as I have stated. Do not mark any of the other verdict options. Mark only one option.

Committee Note

725 ILCS 5/104-12 and 104-16(d) (West 2026).

Pursuant to 725 ILCS 5/104-16(d) for felonies and 725 ILCS 5/104-17(e) for misdemeanors, select the bracketed time-period for the most serious offense (one year for a felony, 364 days for a Class A misdemeanor, 6 months for a Class B misdemeanor, and 30 days for a Class C misdemeanor).

29.10

Verdict

We, the jury, find the defendant, _____,

_____ fit to stand trial.

_____ unfit to stand trial and that there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within [one year] [364 days] [6 months] [30 days].

_____ unfit to stand trial and that there is not a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within [one year] [364 days] [6 months] [30 days].

_____ unfit to stand trial and we are unable to determine if there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within [one year] [364 days] [6 months] [30 days].

Foreperson

Committee Note

725 ILCS 5/104-12 and 104-16(d) (West 2026).

Pursuant to 725 ILCS 5/104-16(d) for felonies and 725 ILCS 5/104-17(e) for misdemeanors, select the bracketed time-period for the most serious offense (one year for a felony, 364 days for a Class A misdemeanor, 6 months for a Class B misdemeanor, and 30 days for a Class C misdemeanor).