

**Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.**

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: H3/9/01*

# A Bill

**Act 1554 of 2001**  
HOUSE BILL 2236

5 By: Representative Goss  
6  
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## **For An Act To Be Entitled**

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE CRIMINAL  
10 CODE PERTAINING TO MENTAL DISEASE OR DEFECT; AND  
11 FOR OTHER PURPOSES.  
12

## **Subtitle**

13 AN ACT TO AMEND VARIOUS SECTIONS OF THE  
14 CRIMINAL CODE PERTAINING TO MENTAL  
15 DISEASE OR DEFECT.  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code 5-2-301 is amended to read as follows:  
22 5-2-301. Definitions.

23 As used in this subchapter, unless the context otherwise requires:

24 (1) "State mental health system" refers to the Arkansas State  
25 Hospital, ~~the George W. Jackson Community Mental Health Center in Jonesboro,~~  
26 and any other facility or program certified by the Division of Mental Health  
27 Services of the Department of Human Services;

28 (2) "Designated receiving facility or program" refers to an inpatient  
29 or outpatient treatment facility or program which is designated within each  
30 geographic area of the state by the Deputy Director of the Division of Mental  
31 Health Services of the Department of Human Services to accept the  
32 responsibility for the care, custody, and treatment of persons involuntarily  
33 admitted to the state mental health system;

34 (3) "Appropriate facility" refers to any facility within or without  
35 this state to which a defendant is eligible for admission and treatment for  
36 mental disease or defect;

1 (4) "Qualified psychiatrist" refers to a licensed psychiatrist who has  
2 successfully completed either a post-residency fellowship in forensic  
3 psychiatry accredited by the American Board of Psychiatry and Neurology or a  
4 forensic certification course approved by the Department of Human Services,  
5 and is currently approved by the Department of Human Services to administer  
6 forensic examinations as defined in this subchapter;

7 (5) "Qualified psychologist" refers to a licensed psychologist who has  
8 received a post-doctoral diploma in forensic psychology accredited by the  
9 American Board of Professional Psychology or successfully completed a  
10 forensic certification course approved by the Department of Human Services,  
11 and is currently approved by the Department of Human Services to administer  
12 forensic examinations as defined in this subchapter; and

13 (6) "Compliance monitor" refers to either a social service  
14 representative or licensed social worker, or both, employed by the Department  
15 of Human Services for the purpose of, including, but not limited to,  
16 verifying that a person conditionally released pursuant to the provisions of  
17 this subchapter is in compliance with those conditions, providing social  
18 service assistance to such persons, and reporting such compliance or lack  
19 thereof to the appropriate probate court~~;~~

20 (7) "Prescribed regimen of medical, psychiatric, or psychological care  
21 or treatment" refers to care or treatment for a mental illness as defined in  
22 § 20-47-202(j)~~;~~

23 (8) "Mental disease or defect" refers to a substantial disorder of  
24 thought, mood, perception, orientation, or memory that grossly impairs  
25 judgment, behavior, capacity to recognize reality, or ability to meet the  
26 ordinary demands of life, or having a state of significantly subaverage  
27 general intellectual functioning existing concurrently with defects of  
28 adaptive behavior which developed during the developmental period, or a  
29 significant impairment in cognitive functioning acquired as a direct  
30 consequence of a brain injury;

31 (A) As used in this code, the term "mental disease or defect"  
32 does not include an abnormality manifested only by repeated criminal or  
33 otherwise anti social conduct;

34 (B) As used in this code, the term "mental disease or defect"  
35 does not include an abnormality manifested only by continuous or  
36 noncontinuous periods of intoxication as defined in § 5-2-207(b)(1) caused by

1 substances such as alcohol or drugs;

2 (C) As used in this code, the term "mental disease or defect"  
3 does not include an abnormality manifested only by dependence upon or  
4 addiction to any substance such as alcohol or drugs; and

5 (9) "Capacity of the defendant to have a culpable mental state" refers  
6 to a defendant's ability to have the mental state necessary to establish an  
7 element of the offense charged, as defined in § 5-2-202.

8  
9 SECTION 2. Arkansas Code 5-2-302 is amended to read as follows:  
10 5-2-302. Lack of fitness to proceed generally.

11 (a) No person who, as a result of mental disease or defect, lacks  
12 capacity to understand the proceedings against him or to assist effectively  
13 in his own defense shall be tried, convicted, or sentenced for the commission  
14 of an offense so long as such incapacity endures.

15 (b) A court shall not enter a judgment of acquittal on the ground of  
16 mental disease or defect against a defendant who, as a result of mental  
17 disease or defect, lacks the capacity to understand the proceedings against  
18 him or to assist effectively in his own defense.

19  
20 SECTION 3. Arkansas Code 5-2-305 is amended to read as follows:  
21 5-2-305. ~~Psychiatric~~ Mental health examination of defendant.

22 (a) Whenever:

23 (1) a ~~A~~ A defendant charged in circuit court: ~~(1) Files~~ files  
24 notice that he intends to rely upon the defense of mental disease or defect,  
25 or there;

26 (2) There is reason to believe that mental disease or defect of  
27 the defendant will or has become an issue in the cause; ~~or~~

28 ~~(2)(3)~~ (3) Files A defendant charged in circuit court files notice  
29 that he will put in issue his fitness to proceed, ~~or there~~

30 (4) There is reason to doubt his fitness to proceed,  
31 the court, subject to the provisions of §§ 5-2-304 and 5-2-311, shall  
32 immediately suspend all further proceedings in the prosecution. If a trial  
33 jury has been impaneled, the court may retain the jury or declare a mistrial  
34 and discharge the jury. A discharge of the trial jury shall not be a bar to  
35 further prosecution.

36 (b)(1) Upon suspension of further proceedings in the prosecution, the

1 court shall enter an order:

2 (A) Directing that the defendant undergo examination and  
3 observation by one (1) or more qualified psychiatrists or qualified  
4 psychologists ~~at a designated receiving facility or program;~~ or

5 (B) Appointing one (1) or more qualified psychiatrists not  
6 practicing within the Arkansas State Hospital to make an examination and  
7 report on the mental condition of the defendant; or

8 (C) Directing the Director of the Division of Mental  
9 Health Services of the Department of Human Services to determine who shall  
10 examine and report upon the mental condition of the defendant; ~~or~~

11 ~~(D) Committing the defendant to the Arkansas State  
12 Hospital or other appropriate facility for the purpose of the examination.~~

13 (2) ~~The person designated to perform the examination pursuant to~~  
14 ~~subsection (b) of this section shall determine whether the defendant shall be~~  
15 ~~admitted to the Arkansas State Hospital or other appropriate facility for the~~  
16 ~~purpose of the examination. The Director of the Division of Mental Health~~  
17 ~~Services or the director's designee shall determine the location of the~~  
18 ~~forensic evaluation.~~

19 (3) The examination shall be for a period not exceeding thirty  
20 (30) days, or such longer period as the ~~court~~ Director of the Division of  
21 Mental Health Services or the director's designee determines to be necessary  
22 for the purpose.

23 (4)(A) A uniform evaluation order shall be developed by the  
24 Administrative Office of the Courts, the Prosecutor Coordinator's Office, and  
25 the Department of Human Services. The uniform order shall at a minimum  
26 contain the defendant's name, age, sex, race, the charges pending against  
27 him, his attorney's name and address, his custody status, the case number,  
28 and the case number and a unique identifying number on the incident reporting  
29 form as required by the Arkansas Crime Information Center. The order shall  
30 be utilized any time that a defendant is ordered to be examined by the court  
31 pursuant to this section, and a copy shall be forwarded to the Director of  
32 the Department of Human Services or his designee. No evaluations shall be  
33 conducted without using the uniform order.

34 (B) The Division of Mental Health Services shall maintain  
35 a database of all examinations of defendants performed pursuant to this  
36 chapter. At a minimum it shall contain the information on the uniform

1 evaluation order as provided in subdivision (b)(4)(A) of this section.  
2 Additionally, it shall track insanity acquittees and their conditional  
3 release.

4 (c) Upon completion of an examination pursuant to subsection (b) of  
5 this section, the court may enter an order providing for further examination  
6 and may order the defendant committed to the Arkansas State Hospital or other  
7 appropriate facility for further examination and observation if the court  
8 determines that commitment and further examination and observation are  
9 warranted.

10 (d) The report of the examination shall include the following:

11 (1) A description of the nature of the examination;

12 (2) ~~A diagnosis of the mental condition of the defendant~~ A  
13 substantiated diagnosis in the terminology of the American Psychiatric  
14 Association's current edition of the Diagnostic and Statistical Manual;

15 (3) ~~An opinion as to his~~ on whether the defendant, as a  
16 consequence of mental disease or defect, lacks the capacity to understand the  
17 proceedings against him and to assist effectively in his own defense;

18 (4) A description of any evidence that the defendant is feigning  
19 signs and symptoms of mental disease or defect;

20 ~~(4)(5)~~ When directed by the court, an opinion as to the  
21 extent, if any, to which the capacity of the defendant to appreciate the  
22 criminality of his conduct or to conform his conduct to the requirements of  
23 law was impaired at the time of the conduct alleged; ~~and~~ This opinion shall  
24 also include a description of the reasoning used by the examiner to support  
25 the opinion;

26 ~~(5)(6)~~ When directed by the court, an opinion as to the capacity  
27 of the defendant to have the culpable mental state that is required to  
28 establish an element of the offense charged. This opinion shall also include  
29 a description of the reasoning used by the examiner to support the opinion;

30 (7) In addition to the above information, the report shall  
31 include a separate explanation of:

32 (A) The signs and symptoms of mental disease or defect  
33 that led to the opinion on the presence of mental disease or defect; and

34 (B) The evidence which supports the opinion of the  
35 examiner on the capacity of the defendant to understand the proceedings  
36 against him or her and the defendant's capacity to assist in his own defense.

1 (e) If the examination cannot be conducted because of the  
 2 unwillingness of the defendant to participate therein, the report shall so  
 3 state and shall include, if possible, an opinion as to whether such  
 4 unwillingness of the defendant is the result of mental disease or defect.

5 (f) The person designated to perform the evaluation shall file the  
 6 report of the examination with the clerk of the court and the clerk of the  
 7 court shall mail ~~a copy~~ copies to the defense attorney and prosecuting  
 8 attorney. Upon entry of an order by a circuit court, copies of the ~~record~~  
 9 report concerning a defendant shall be provided to the court by the person  
 10 designated to perform the evaluation.

11 ~~(g) Any examiner shall be permitted to make a separate explanation~~  
 12 ~~reasonably serving to clarify his diagnosis or opinion.~~

13 ~~(h)~~ (g) (1) There shall be made available to the examiners and counsel,  
 14 for inspection and copying, all existing medical and pertinent records in the  
 15 custody of public agencies, notwithstanding the provision of any statute  
 16 enacted prior to January 1, 1976.

17 (2) The court shall require the prosecuting attorney to provide  
 18 to the examiner any information relevant to the evaluation including, but not  
 19 limited to:

20 (A) The names and addresses of all attorneys involved in  
 21 the matter;

22 (B) Information about the alleged offense; and

23 (C) Any information about the defendant's background that  
 24 is deemed relevant to the examination, including the criminal history of the  
 25 defendant.

26 (3) The court may require the attorney for the defendant to  
 27 provide any available information relevant to the evaluation including, but  
 28 not limited to:

29 (A) Psychiatric records;

30 (B) Medical records; and

31 (C) Records pertaining to treatment of the defendant for  
 32 substance or alcohol abuse.

33 ~~(i)~~ (h) The cost of examination other than examiners retained by the  
 34 defendant shall be borne by the state. ~~Room~~ If the Director of the Division  
 35 of Mental Health Services admits the defendant to the Arkansas State Hospital  
 36 for examination, room and board costs shall also be borne by the state so

1 long as the Arkansas State Hospital has actual physical custody of the  
2 defendant for the evaluation, observation, or treatment of the defendant.

3 However, whenever an evaluation of the defendant has been completed, the  
4 county from which the defendant had been sent for evaluation shall, within  
5 three (3) working days, procure the defendant from the Arkansas State  
6 Hospital or from a designated receiving facility or program or other facility  
7 where the evaluation was performed. Should the county fail to procure the  
8 defendant within this three-day period, the county shall bear all room and  
9 board costs on the fourth and subsequent days.

10 ~~(f)(1)~~ Those persons under commitment and supervision of the  
11 Department of Correction who are defendants charged in circuit court shall  
12 not undergo examination or observation conducted by psychiatrists or other  
13 mental health personnel of the Department of Correction to determine the  
14 mental condition of the defendant.

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16 SECTION 4. Arkansas Code 5-2-313 is amended to read as follows:

17 5-2-313. Acquittal based on ~~psychiatric~~ mental health report.

18 (a) On the basis of the report filed pursuant to § 5-2-305, the court  
19 may, after a hearing if a hearing is requested, enter judgment of acquittal  
20 on the ground of mental disease or defect if it is satisfied that ~~the~~  
21 following criteria are met:

22 (1) The defendant currently has the capacity to understand the  
23 proceedings against him or her and to assist effectively in his or her own  
24 defense; and

25 (2) ~~at~~ At the time of the conduct charged, the defendant lacked  
26 capacity, as a result of mental disease or defect, to conform his or her  
27 conduct to the requirements of law or to appreciate the criminality of his or  
28 her conduct.

29 (b) If the defendant did not raise the issue of mental disease or  
30 defect as an affirmative defense pursuant to § 5-2-305(a)(1) or § 5-2-  
31 305(a)(3), then the court shall be required to make a factual determination  
32 that the defendant committed the offense and that he was suffering from a  
33 mental disease or defect at the time of the commission of the offense.

34  
35 /s/ Goss

36 APPROVED: 4/12/2001