

ARKANSAS SENATE
91st General Assembly - Regular Session, 2017
Amendment Form

Subtitle of Senate Bill No. 42

CONCERNING THE CRIMINAL DEFENSES OF FITNESS TO PROCEED AND LACK OF CRIMINAL
RESPONSIBILITY.

Amendment No. 1 to Senate Bill No. 42

Amend Senate Bill No. 42 as originally introduced:

Delete the title in its entirety and substitute the following:
"AN ACT CONCERNING FITNESS TO PROCEED AND LACK OF CRIMINAL RESPONSIBILITY;
CONCERNING A MENTAL EVALUATION OF A CRIMINAL DEFENDANT; AND FOR OTHER
PURPOSES."

AND

Delete the subtitle in its entirety and substitute the following:
"CONCERNING FITNESS TO PROCEED AND LACK
OF CRIMINAL RESPONSIBILITY; AND
CONCERNING A MENTAL EVALUATION OF A
CRIMINAL DEFENDANT."

AND

Page 2, delete lines 6 through 21, and substitute the following:
"SECTION 3. Arkansas Code § 5-2-301, concerning definitions for the
issue of mental disease or defect in criminal cases, is amended to add
additional subdivisions to read as follows:

(13) "Expert" means a qualified psychiatrist or a qualified
psychologist; and

(14) "Lack of criminal responsibility" means that due to a
mental disease or defect a defendant lacked the capacity at the time of the
alleged offense to either:

(A) Appreciate the criminality of his or her conduct; or

(B) Conform his or her conduct to the requirements of the

law."

AND

Page 2, delete lines 35 and 36, and substitute the following:
"the defendant at a designated receiving facility or program by ~~a qualified~~



~~psychiatrist or a qualified psychologist an expert."~~

AND

Page 10, line 17, delete "the defense of"

AND

Page 12, line 34, delete "qualified psychiatrists" and substitute "experts"

AND

Page 13, line 3, delete "qualified psychiatrist" and substitute "expert"

AND

Page 14, delete lines 14 through 29, and substitute the following:

"(A) Contain an opinion as to whether or not the defendant is fit to proceed and the basis for the opinion;

(B) Contain an opinion as to whether the defendant has a mental disease or defect;

(C) Contain a substantiated diagnosis in the terminology of the American Psychiatric Association's most current edition of the Diagnostic and Statistical Manual of Mental Disorders;

(D) Document that the examiner explained to the defendant:
(i) The purpose of the examination;
(ii) The persons to whom the examination report is provided; and

(iii) The limits on rules of confidentiality applying to the relationship between the examiner and the defendant; and

(E) Describe, in specific terms:

(i) The procedures, techniques, and tests used in the examination;

(ii) The purpose of each procedure, technique, or test; and

(iii) The conclusions reached."

AND

Page 15, delete lines 17 through 26, and substitute the following:

"(b) An intellectual disability; and

(iii) The degree of impairment resulting from the mental disease or defect or intellectual disability, if existent, and the specific impact on the defendant's capacity to engage with the defendant's attorney in an effective manner."

AND

Page 16, delete lines 17 through 24, and substitute the following:

"5-2-328. Examination of defendant – Affirmative defense of lack of criminal responsibility.

(a)(1) Subject to § 5-2-311, if and only if a defendant files a notice

of intent to raise the affirmative defense of lack of criminal responsibility under § 5-2-304, the court shall immediately suspend any further proceedings.

(2) When the defendant files notice under subdivision (a)(1) of this section, then the court may on its own motion or on the motion of the prosecuting attorney or the defense attorney enter an order appointing one (1) or more disinterested experts to examine the defendant with regard to the defense of lack of criminal responsibility."

AND

Page 18, delete lines 6 through 9, and substitute the following:

"(B) An opinion as to whether as the result of a mental disease or defect the defendant at the time of the alleged offense lacked the capacity to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of the law, an explanation of the examiner's opinion, and the basis of that opinion;

(C) When directed by the court, an opinion as to whether at the time of the alleged offense the defendant lacked the capacity to form a culpable mental state that is required to establish an element of the alleged offense, an explanation of the examiner's opinion, and the basis of that opinion; and

(D) If an examination cannot be conducted because of the"

AND

Page 18, delete lines 13 through 23, and substitute the following:

"(d)(1) An examiner appointed under this section to examine a defendant"

AND

Page 18, line 30, delete "(f)" and substitute "(e)"

AND

Page 18, line 36, delete "(g)" and substitute "(f)"

AND

Page 19, line 12, delete "(h)(1)" and substitute "(g)(1)"

AND

Page 21, delete line 36, and substitute the following:

"performed in accordance with § 5-2-305(b) by a psychiatrist or a clinical psychologist who is specifically qualified by training and experience in the evaluation of juveniles § 5-2-327 or § 5-2-328, or both."

AND

Immediately following SECTION 16, add an additional section to read as follows:

"SECTION 17. Arkansas Code Title 5, Chapter 2, Subchapter 3, is amended to add an additional section to read as follows:

5-2-330. Examination by Department of Correction prohibited.

A defendant committed to and under the supervision of the Department of Correction who is charged in circuit court shall not undergo an examination or observation conducted under this subchapter by a psychiatrist or other mental health employee of the department to determine the mental condition of the defendant."

AND

Page 22, delete lines 1 and 2

AND

Appropriately renumber the sections of the bill.

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator J. Hutchinson

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Secretary