

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

*As Engrossed: S3/24/11*

# A Bill

SENATE BILL 390

5 By: Senator Laverty  
6 By: Representative Rice  
7

## For An Act To Be Entitled

8  
9 AN ACT REGARDING A MENTAL HEALTH EXAMINATION OF A  
10 DEFENDANT; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 REGARDING A MENTAL HEALTH EXAMINATION OF  
14 A DEFENDANT.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. Arkansas Code § 5-2-305(d), concerning the report of a  
21 forensic examination, is amended to read as follows:

22 (d)(1) A report of a forensic examination shall include the following:

23 (A) A description of the nature of the forensic  
24 examination;

25 (B) A substantiated diagnosis in the terminology of the  
26 American Psychiatric Association's current edition of the Diagnostic and  
27 Statistical Manual;

28 (C) An opinion on whether the defendant lacks the capacity  
29 to understand the proceedings against him or her and to assist effectively in  
30 his or her own defense as a consequence of mental disease or defect;

31 (D) A description of any evidence that the defendant is  
32 feigning a sign or symptom of mental disease or defect;

33 (E)(i) ~~When directed by the court, an opinion~~ An opinion  
34 as to whether the defendant has the capacity to understand the proceedings  
35 against him or her and to assist effectively in his or her own defense.

36 (ii) If the opinion under subdivision (d)(1)(E)(i)



1 of this section is that the defendant has the capacity to understand the  
 2 proceedings and to effectively assist in his or her own defense, then the  
 3 examiner shall further examine the defendant and include in the report of the  
 4 forensic examination an opinion as to the extent, if any, to which the  
 5 capacity of the defendant to appreciate the criminality of his or her conduct  
 6 or to conform his or her conduct to the requirements of law was impaired at  
 7 the time of the conduct alleged.

8 ~~(ii)~~(iii) An opinion under subdivision (d)(1)(E)(i)  
 9 or (d)(1)(E)(ii) of this section shall also include a description of the  
 10 reasoning used by the examiner to support the opinion; and

11 (F)(i) When directed by the court, an opinion as to the  
 12 capacity of the defendant to have the culpable mental state that is required  
 13 to establish an element of the offense charged.

14 (ii) An opinion under subdivision (d)(1)(F)(i) of  
 15 this section shall also include a description of the reasoning used by the  
 16 examiner to support the opinion.

17 (2) In addition to the information required in subdivision  
 18 (d)(1) of this section, the report of the forensic examination shall include  
 19 a separate explanation of:

20 (A) The sign or symptom of mental disease or defect that  
 21 led to the opinion on the presence of mental disease or defect; and

22 (B) The evidence that supports the opinion of the examiner  
 23 on the capacity of the defendant to understand the proceedings against him or  
 24 her and the defendant's capacity to assist in his or her own defense.

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 26 SECTION 2. Arkansas Code § 5-2-305(h), regarding the report of a  
 27 forensic examination, is amended to read as follows:

28 (h)(1) ~~The cost of a forensic examination other than an examiner~~  
 29 ~~retained by the defendant shall be borne by the state.~~

30 ~~(2)(A) If the Director of the Division of Behavioral Health of~~  
 31 ~~the Department of Human Services admits the defendant to the Arkansas State~~  
 32 ~~Hospital for a forensic examination, room and board costs shall also be borne~~  
 33 ~~by the state so long as the Arkansas State Hospital has actual physical~~  
 34 ~~eustody of the defendant for the evaluation, observation, or treatment of the~~  
 35 ~~defendant.~~

36 ~~(B)(i) However, when~~ When a forensic examination of the a

1 defendant has been completed, the county from which the defendant had been  
 2 sent for the forensic examination shall procure the defendant within three  
 3 (3) working days from the Arkansas State Hospital or from a designated  
 4 receiving facility or program or other facility where the forensic  
 5 examination was performed.

6 ~~(i)(2)~~ If the county fails to procure the defendant within this  
 7 three-day period, the county shall bear any room or board costs on the fourth  
 8 and subsequent days.

9 ~~(i)(3)~~ A person under commitment and supervision of the  
 10 Department of Correction who is a defendant charged in circuit court shall  
 11 not undergo an examination or observation conducted by a psychiatrist or  
 12 other mental health employee of the Department of Correction to determine the  
 13 mental condition of the defendant.

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 15 SECTION 3. Arkansas Code § 5-2-305 is amended to add a new subsection  
 16 read as follows:

17 *(i)(1) A person or entity that provides treatment under this*  
 18 *subchapter may impose a charge for the cost of the treatment.*

19 *(2) A charge for costs under subdivision (i)(1) of this section*  
 20 *may not exceed the actual cost of the treatment.*

21 *(3)(A) The Division of Behavioral Health of the Department of*  
 22 *Human Services shall promulgate rules establishing reasonable charges for*  
 23 *costs of treatment under this subchapter.*

24 *(B) Rules establishing reasonable charges for costs of treatment under*  
 25 *this subchapter shall:*

26 *(1) Provide for postponing the collection of the charges based*  
 27 *on clinical considerations or the patient's inability to pay, or both; and*

28 *(2) Waive charges for treatment of defendants who plead guilty*  
 29 *or nolo contendere or are found guilty at trial.*

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 31 SECTION 4. Arkansas Code § 20-47-225 is amended to read as follows:  
 32 20-47-225. Liability for charges.

33 ~~Every person who is legally liable for the support of a person admitted~~  
 34 ~~to a receiving facility or program or hospital pursuant to this subchapter~~  
 35 ~~shall be liable jointly and severally with the estate of the person for the~~  
 36 ~~charges made by the receiving facility or program or hospital for the~~

1 ~~treatment of the patient regardless of whether the person was a party to or~~  
2 ~~consented to the admission of the person to a receiving facility or program~~  
3 ~~or hospital and regardless of the extent of the estate of the person.~~

4 (a) Notwithstanding any statute enacted before January 1, 2011,  
5 receiving facilities and programs and the Arkansas State Hospital may make  
6 charges for patient treatment.

7 (b) Persons legally liable for the support for a patient are liable  
8 jointly and severally with the patient and the estate of the patient for  
9 treatment charges.

10 (c) Patient treatment charges may not exceed the actual cost of  
11 treatment.

12 (d)(1) The Division of Behavioral Health of the Department of Human  
13 Services shall promulgate rules establishing reasonable charges that may be  
14 made by receiving facilities, programs, and the Arkansas State Hospital.

15 (2) Rules establishing reasonable charges shall:

16 (A) Provide for postponing the collection of charges based on  
17 clinical considerations or the patient's inability to pay, or both; and

18 (B) Waive charges for treatment of defendants who plead guilty  
19 or nolo contendere or are found guilty at trial.

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21 /s/Laverty  
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24 **APPROVED: 04/01/2011**  
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