

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: H3/23/01

A Bill

HOUSE BILL 1973

5 By: Representative Goss
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
10 ARKANSAS CODE REGARDING THE INSANITY DEFENSE; AND
11 FOR OTHER PURPOSES.
12

Subtitle

13 AN ACT TO AMEND VARIOUS PROVISIONS OF
14 THE ARKANSAS CODE REGARDING THE INSANITY
15 DEFENSE.
16
17
18

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

21 SECTION 1. Arkansas Code 16-86-101 is amended to read as follows:

22 16-86-101. Plea of insanity not to prevent timely trial.

23 Nothing in this subchapter shall be construed to prevent a trial of a
24 defendant ~~at an adjourned day or special term of court prior to the next~~
25 ~~regular term of court~~ after an order for observation and examination ~~shall~~
26 ~~have~~ has been entered.
27

28 SECTION 2. Arkansas Code 16-86-102 is amended to read as follows:

29 16-86-102. Examination and observation generally.

30 (a) (1) Whenever a prosecution for any crime has been instituted in the
31 circuit court by indictment or information, the court, subject to the
32 provisions of §§ 5-2-304 and 5-2-311, shall immediately suspend all further
33 proceedings in the prosecution and if: ~~the defense of insanity at the time of~~
34 ~~the trial or at the time of the commission of the offense has been raised on~~
35 ~~behalf of the defendant and becomes an issue in the cause, or the circuit~~
36 ~~judge has reason to believe that the defense of insanity will be raised on~~

1 ~~behalf of the defendant and will become an issue in the cause or shall be of~~
 2 ~~the opinion that there are reasonable grounds to believe that the defendant~~
 3 ~~was insane at the time of the alleged commission of the offense, the judge~~
 4 ~~shall postpone all other proceedings in the cause and shall either enter an~~
 5 ~~order directing that the defendant undergo examination and observation by one~~
 6 ~~(1) or more qualified psychiatrists at a local regional mental health clinic~~
 7 ~~or center or shall commit the defendant to the Arkansas State Hospital for~~
 8 ~~examination and observation~~

9 (A) The defendant files notice that he intends to rely
 10 upon the defense of mental disease or defect; or

11 (B) There is reason to believe that mental disease or
 12 defect of the defendant will or has become an issue in the cause; or

13 (C) The defendant files notice that he will put in issue
 14 his fitness to proceed; or

15 (D) There is reason to doubt his fitness to proceed.

16 (2) If a trial jury has been impaneled, the court may retain the
 17 jury or declare a mistrial and discharge the jury.

18 (3) A discharge of the trial jury shall not be a bar to future
 19 prosecution.

20 (b)(1) Upon the issuance of an order ~~either~~ for the examination and
 21 observation of the defendant ~~at a local mental health clinic or for~~
 22 ~~commitment of the defendant to the state hospital for examination and~~
 23 ~~observation~~, the court shall direct the circuit clerk to notify the
 24 prosecuting attorney and the counsel for the defendant of the issuance of the
 25 order. ~~If the defendant is at large on bail, the court shall commit him to~~
 26 ~~custody during the period and for the purpose of the examination and~~
 27 ~~observation provided for in this subchapter.~~

28 (2) The action of the court in ~~committing~~ ordering that the
 29 defendant ~~for~~ undergo examination and observation shall not preclude the
 30 state or the defendant from calling expert witnesses to testify at the trial.
 31 The expert witness shall have free access to the defendant for the purpose of
 32 observation and examination when the defendant is in the custody of local,
 33 county, or state law enforcement or state mental health facilities during his
 34 ~~period of commitment to the state hospital or during the period of his~~
 35 ~~examination and observation at a local mental health clinic or center.~~

36

1 SECTION 3. Arkansas Code 16-86-103 is amended to read as follows:

2 16-86-103. Examination and observation ~~—Local mental health clinic or~~
3 ~~center.~~

4 (a) If the court orders the defendant to undergo examination and
5 observation ~~at a local mental health clinic or center~~, the examination and
6 observation of the defendant shall be made by: ~~one (1) or more qualified~~
7 ~~psychiatrists. Upon completion thereof the psychiatrist or psychiatrists who~~
8 ~~examined and observed the defendant shall make a written report to the court~~
9 ~~and shall indicate separately the defendant's mental condition during the~~
10 ~~period of the examination and his probable mental condition at the time of~~
11 ~~the alleged offense~~

12 (1) A licensed psychiatrist who has successfully completed
13 either a post-residency fellowship in forensic psychiatry accredited by the
14 American Board of Psychiatry and Neurology of a forensic certification course
15 approved by the Department of Human Services, and is currently approved by
16 the Department of Human Services to administer forensic examinations; or

17 (2) A licensed psychologist who has either received a post-
18 doctoral diploma in forensic psychology accredited by the American Board of
19 Professional Psychology or successfully completed a forensic certification
20 course approved by the Department of Human Services, and is currently
21 approved by the Department of Human Services to administer forensic
22 examinations.

23 (b) *Upon completion of the examination at a local mental health clinic*
24 *or center, the court may commit the defendant to the state hospital for*
25 *further examination and observation if the court determines in its sole*
26 *discretion that the further examination and observation is warranted. The*
27 *psychiatrist or the psychologist who examined and observed the defendant*
28 *shall make a written report to the court and shall indicate:*

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

30 (2) A substantiated diagnosis in the terminology of the American
31 Psychiatric Association's current edition of the Diagnostic and Statistical
32 Manual ;

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

36 (4) A description of any evidence that the defendant is feigning

1 signs and symptoms of mental disease or defect;

2 (5) When directed by the court, an opinion as to the extent, if
 3 any, to which the capacity of the defendant to appreciate the criminality of
 4 his conduct or to conform his conduct to the requirements of law was impaired
 5 at the time of the conduct alleged. This opinion shall also include a
 6 description of the reasoning used by the examiner to support his opinion;

7 (6) When directed by the court, an opinion as to the capacity of
 8 the defendant to have the culpable mental state that is required to establish
 9 an element of the offense charged;

10 (7) The signs and symptoms of mental disease or defect that led
 11 to the opinion on the presence of mental disease or defect; and

12 (8) The evidence that supports the opinion of the examiner on
 13 the capacity of the defendant to understand the proceedings against him and
 14 the defendant's capacity to assist in his own defense.

15
 16 SECTION 4. Arkansas Code 16-86-104 is amended to read as follows:

17 16-86-104. Examination and observation —~~State hospital.~~

18 (a) ~~If the court commits~~ Director of the Division of Mental Health
 19 Services of the Department of Human Services determines that a defendant
 20 should be admitted to the state hospital for examination and observation,
 21 ~~whether the commitment is subsequent to a preliminary examination at a local~~
 22 ~~mental health center or clinic or is a direct commitment to the state~~
 23 ~~hospital,~~ the defendant shall be committed to the state hospital for a period
 24 not exceeding one (1) month, or until a time as the Director of the Division
 25 of Mental Health Services believes is necessary for the examination and
 26 observation of the defendant.

27 (b) ~~The order committing the defendant to the state hospital shall~~
 28 ~~direct the director of the state hospital or his designee to direct some~~
 29 ~~competent physician or physicians employed by the hospital to conduct an~~
 30 ~~examination and observation of~~ qualified psychiatrist or qualified
 31 psychologist who is designated to examine and observe the mental condition of
 32 the defendant ~~and shall~~ prepare a written report indicating separately the
 33 defendant's mental condition during the period of the examination and his
 34 probable mental condition at the time of the commission of the alleged
 35 offense.

36 (c) The report shall be certified by the director of the state

1 hospital or ~~his~~ designee under his seal or by an affidavit duly subscribed
 2 and sworn to by him before a notary public who shall ~~add his~~ affix the notary
 3 public's certificate and ~~affix his~~ seal to it.

4
 5 SECTION 5. Arkansas Code 16-86-105 is amended to read as follows:

6 16-86-105. Examination and observation - Costs.

7 (a) The cost of examination other than by examiners retained by the
 8 defendant shall be borne by the state. Room and board costs shall also be
 9 borne by the state so long as the Arkansas State Hospital has actual physical
 10 custody of the defendant for the evaluation, observation, or treatment of the
 11 defendant.

12 (b) However, whenever an evaluation of the defendant has been
 13 completed, the county from which the defendant had been sent for evaluation
 14 shall, within ~~three (3)~~ two (2) working days, procure the defendant from the
 15 state hospital ~~or from a local mental health center or clinic.~~ Should the
 16 county fail to procure the defendant within this ~~three-day~~ two-day period,
 17 the county shall bear all room and board costs on the ~~fourth~~ third (3rd) and
 18 subsequent days.

19 ~~(c) The centers and clinics shall be reimbursed for the costs of~~
 20 ~~examinations at the same rates as established for other patients.~~

21
 22 SECTION 6. Arkansas Code 16-86-106 is amended to read as follows:

23 16-86-106. Testimony of ~~physicians~~ mental health examiners.

24 (a) When a defendant has been examined, ~~at the state hospital or at a~~
 25 ~~local mental health center or clinic,~~ the physician or physicians the
 26 qualified psychiatrist or psychologist who prepared the examination report
 27 shall be summoned as ~~witnesses~~ a witness at the trial at the order of the
 28 trial judge or at the request of either party.

29 (b) If summoned, the defendant shall be examined by the court and may
 30 be examined by either party, and a copy of the written report ~~hereby required~~
 31 ~~shall be given in evidence~~ may be made part of the record at trial in every
 32 case in which the fact of sanity is an issue at the trial.

33 (c) Witnesses employed by ~~either the state hospital or the centers or~~
 34 ~~clinics~~ the state shall be so summoned to appear as to require as little loss
 35 of time as possible from their other duties.

36 (d) The actual necessary expenses of the witnesses incurred in

1 attending the trial shall be borne by the state, and their claims for the
2 expenses shall be examined and approved by the trial judge before they may be
3 allowed by the state.

4 (1) Witnesses employed by the state hospital shall receive no
5 fees for their services as witnesses.

6 (2) If witnesses are employed by a clinic or center on a part-
7 time basis and are summoned to appear in court on a day they would normally
8 be on duty, the clinic or center shall be reimbursed by the state at the same
9 rate they pay for the employees' services. If the witnesses are summoned to
10 appear on a day they are not on duty at the clinic or center, they shall be
11 paid at the same rate they are paid by the clinic or center.

12

13 SECTION 7. Arkansas Code 16-86-107 is amended to read as follows:

14 16-86-107. Request for examination upon defense of insanity for felony
15 charge.

16 (a) Whenever a defendant has been held for trial ~~by a magistrate,~~
17 ~~informed against, or indicted on a felony charge~~ and the defense of insanity
18 is ~~made~~ an issue in ~~his behalf~~ the matter, the defendant or some person for
19 him shall file a motion or request for an order of examination in the office
20 of the clerk of the circuit court. The clerk shall immediately give notice
21 in writing of the filing of the order to the prosecuting attorney or his
22 deputy. The motion or request shall be immediately presented to the circuit
23 judge, ~~who is authorized to act upon the request during vacation of the court~~
24 ~~or during any session in another county.~~

25 (b) If the court has reason to believe that the defendant should be
26 examined and observed by reason of the suggestion of the prosecuting attorney
27 or other court official or those interested in the defendant, it may enter
28 the order on its own motion.

29 ~~(c) However, if the defendant is held for trial, informed against, or~~
30 ~~indicted at a time more than thirty (30) days prior to the opening of the~~
31 ~~first term of court, after his having been legally charged, or prior to any~~
32 ~~adjourned day of a court at which an adjournment was made prior to the~~
33 ~~defendant's having been held for trial, informed against, or indicted, and~~
34 ~~the issue is not raised more than thirty (30) days prior to the convening,~~
35 ~~the court shall exercise its discretion in the granting of an order for~~
36 ~~observation and examination of the defendant in the Arkansas State Hospital.~~

1 ~~The court shall not be required to enter an order committing the defendant~~
2 ~~for the observation and examination unless and until the defendant shall have~~
3 ~~been examined by two (2) reputable doctors of medicine appointed by the court~~
4 ~~and the court informed by them that there are reasonable grounds to believe~~
5 ~~the defendant insane. In such cases the examining fee for the doctors shall~~
6 ~~be as set by the court, to be paid by the defendant, unless he is a pauper~~
7 ~~and has made and filed a pauper's oath or unless the physicians shall report~~
8 ~~that there are reasonable grounds for believing the defendant insane, in~~
9 ~~which cases the fee shall be taxed as costs.~~

10
11 SECTION 8. Arkansas Code 16-86-108 is amended to read as follows:

12 16-86-108. Plea of insanity when period before trial short or insanity
13 alleged after charge.

14 (a) Whenever a ~~person~~ defendant shall be held for trial, ~~informed~~
15 ~~against, or indicted at a time less than thirty (30) days before the first~~
16 ~~session of the in circuit court next convening, or he and the defendant, or~~
17 ~~some person for him, shall allege~~ alleges that he has become insane after
18 being legally charged, ~~the issue of insanity shall be raised by proper plea~~
19 ~~upon arraignment~~ the defendant or some person for the defendant must notify
20 the prosecutor and the court at the earliest practicable time.

21 (b) ~~In such a case, the court shall direct the examination by two (2)~~
22 ~~reputable and disinterested physicians as prescribed in § 16-86-107. An order~~
23 ~~for observation and examination of the defendant in the Arkansas State~~
24 ~~Hospital shall only be made when the court has reason to believe that the~~
25 ~~defendant might be insane or upon the report of the examining physicians to~~
26 ~~the effect that there are reasonable grounds to believe the defendant to be~~
27 ~~insane. Failure to notify the prosecutor within a reasonable time before the~~
28 ~~trial date shall entitle the prosecutor to a continuance which, for~~
29 ~~limitation purposes, shall be deemed an excluded period granted on~~
30 ~~application of the defendant. Alternatively, in lieu of suspending all~~
31 ~~further proceedings in the cause, the court may order the immediate~~
32 ~~examination of the defendant by a qualified psychiatrist or a qualified~~
33 ~~psychologist.~~

34
35 SECTION 9. Arkansas Code 16-86-109 is repealed.

36 ~~16-86-109. Order for observation and examination of defendant in~~

1 ~~criminal case.~~

2 ~~(a) Any order made by any circuit judge for the observation and~~
3 ~~examination of a defendant in a criminal case shall direct the director of~~
4 ~~the state hospital or those in charge of that hospital to hold, examine, and~~
5 ~~observe the defendant for a period of not more than thirty (30) days, but the~~
6 ~~order shall not be construed as directing that the party be retained for that~~
7 ~~period of time if his condition is determined and proper report thereon can~~
8 ~~be made in a period of less than thirty (30) days.~~

9 ~~(b) No circuit court or the judge thereof shall commit any person to~~
10 ~~the state hospital under this subchapter, except after hearing by the court,~~
11 ~~and the production of evidence giving the court reason to believe that the~~
12 ~~person may be, or may have been at the time of the offense, insane.~~

13
14 SECTION 10. Arkansas Code 16-86-110 is amended to read as follows:

15 16-86-110. Insufficient time to submit report to court.

16 When proper and timely request is made to the court for an order of
17 examination and observation ~~as set out in §§ 16-86-107 and 16-86-108 and~~
18 ~~there is not sufficient time to complete the examination and submit the~~
19 ~~report by the first day of the first session of court therefor~~ before
20 scheduled proceedings in the case, the court may order examination and
21 immediately continue the case until the ~~next term of the court or to a day~~
22 ~~more than thirty (30) days thereafter~~ examination is complete and the report
23 of that examination is submitted to the court.

24
25 SECTION 11. Arkansas Code 16-86-111 is amended to read as follows:

26 16-86-111. Allegation of insanity of convicted defendant.

27 (a) The procedure ~~prescribed in §§ 16-86-102—16-86-106~~ provided in
28 this section shall also be followed, insofar as it is applicable, in any case
29 in which the insanity of the convicted defendant is alleged as a ground for
30 postponing or not carrying out execution of any sentence imposed as part of
31 the judgment of conviction of the defendant.

32 (b) In such cases, a hearing shall be held in the manner provided by
33 law, but the evidence provided for in ~~§§ 16-86-101—16-86-110 and 16-86-113~~
34 this section shall be given at the hearing.

35 /s/ Goss

36