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4

As Engrossed: H2/27/13 S3/14/13

# A Bill

HOUSE BILL 1484

5 By: Representative J. Edwards  
6 By: Senator J. Hutchinson  
7

## For An Act To Be Entitled

9 AN ACT CONCERNING THE MENTAL EVALUATION OF A CRIMINAL  
10 DEFENDANT; AND FOR OTHER PURPOSES.  
11

### Subtitle

14 CONCERNING THE MENTAL EVALUATION OF A  
15 CRIMINAL 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 is amended to read as follows:

21 5-2-305. Mental health examination of defendant.

22 (a)(1) Subject to the provisions of §§ 5-2-304 and 5-2-311, the court  
23 shall immediately suspend any further proceedings in a prosecution *if*:

24 (A) (i) A defendant charged in circuit court files notice  
25 that he or she intends to rely upon the defense of mental disease or defect;

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

28 ~~(C) A defendant charged in circuit court files notice that  
29 he or she will put in issue his or her fitness to proceed; or~~

30 ~~(D) There is reason to doubt the defendant's fitness to  
31 proceed.~~

32 (ii) After the notice of intent to raise the defense  
33 of not guilty for reason of mental disease or defect is filed, any party may  
34 petition the court for a criminal responsibility examination and opinion.

35 (iii)(a) It is not necessary for the petitioner to  
36 request a fitness-to-proceed examination if fitness to proceed does not



1 appear to be an issue.

2 (b) An examiner shall not render an opinion or  
3 issue a report on criminal responsibility if the examiner believes that the  
4 defendant is not fit to proceed.

5 (c) In a case under subdivision (a)(1)(A)(ii)  
6 of this section, the criminal responsibility examination shall be suspended  
7 and the court notified immediately that there is a question as to the  
8 defendant's fitness to proceed; or

9 (B)(i) Any party or the court raises the issue of the  
10 defendant's fitness to proceed.

11 (ii) The court shall order a fitness-to-proceed  
12 examination if it finds there is a reasonable suspicion that a defendant is  
13 not fit to proceed.

14 (2)(A) The fitness-to-proceed examination and the criminal  
15 responsibility examination and request for an opinion on the defendant's  
16 criminal responsibility are two distinctly different examinations.

17 (B) The fitness-to-proceed examination and the criminal  
18 responsibility examination may be done at the same time only if the defendant  
19 simultaneously raises the issue of the defendant's fitness to proceed and  
20 files notice that he or she intends to rely upon the defense of mental  
21 disease or defect.

22 (C) In all other cases the process is bifurcated.

23 (3)(A) A defendant shall not be found not guilty by reason of  
24 mental disease or defect in the absence of proof of a mental disease or  
25 defect.

26 (B) A court shall not order the Division of Behavioral  
27 Health of the Department of Human Services to conduct a criminal  
28 responsibility examination if a fitness-to-proceed examination has previously  
29 determined that the defendant does not have a mental disease or defect unless  
30 the requesting party can show reasonable cause to believe:

31 (i) There is evidence of a mental disease or defect  
32 that was not fully considered in the previous criminal responsibility  
33 examination; or

34 (ii) That the prior opinion that the defendant does  
35 not have a mental disease or defect was based on information or facts later  
36 shown to be false or unreliable.

1           ~~(2)(A)(4)(A)~~ If a trial jury has been impaneled and the court  
2 suspends proceedings under subdivision (a)(1) of this section, the court may  
3 retain the jury or declare a mistrial and discharge the jury.

4           (B) A discharge of the trial jury is not a bar to further  
5 prosecution.

6           (b)(1) Upon suspension of further proceedings in the prosecution, the  
7 court shall enter an order:

8           (A) Directing that the defendant undergo examination and  
9 observation by one (1) or more qualified psychiatrists or qualified  
10 psychologists;

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

14           (C) Directing the Director of the Division of Behavioral  
15 Health of the Department of Human Services to determine who will examine and  
16 report upon the mental condition of the defendant.

17           (2) The Director of the Division of Behavioral Health of the  
18 Department of Human Services or his or her designee shall determine the  
19 location of the ~~forensic~~ examination.

20           (3) The ~~forensic~~ examination shall be for a period not exceeding  
21 ~~thirty (30)~~ sixty (60) days or such longer period as the Director of the  
22 Division of Behavioral Health of the Department of Human Services or his or  
23 her designee determines to be necessary for the purpose of the ~~forensic~~  
24 examination.

25           (4)(A)(i) ~~A uniform evaluation order shall be developed by the~~  
26 ~~Administrative Office of the Courts, the office of the Prosecutor~~  
27 ~~Coordinator, and the Department of Human Services. Two (2) distinctly~~  
28 different uniform evaluation orders shall be developed by the Administrative  
29 Office of the Courts, the office of the Prosecutor Coordinator, the  
30 Department of Human Services, and the Arkansas Public Defender Commission.  
31 One (1) uniform evaluation order shall be for a fitness-to-proceed  
32 examination and opinion and the other uniform evaluation order shall be for  
33 a criminal responsibility examination and opinion.

34           (ii) At a minimum the uniform ~~evaluation order~~  
35 examination orders shall contain the:

36           (a) Defendant's name, age, gender, and race;

1 (b) Charges pending against the defendant;  
2 (c) Defendant's attorney's name and address;  
3 (d) Defendant's custody status;  
4 (e) Case number; ~~and~~  
5 (f) ~~Case number and a~~ A unique identifying  
6 number on the incident reporting form as required by the Arkansas Crime  
7 Information Center; and

8 (g) The name of the requesting attorney.

9 (iii) The uniform evaluation order shall be utilized  
10 any time that a defendant is ordered to be examined by the court pursuant to  
11 this section, and a copy of the uniform evaluation order shall be forwarded  
12 to the Director of the Department of Human Services or his or her designee.

13 (iv) No forensic examination under this subchapter  
14 shall be conducted without using the a uniform evaluation order.

15 (v) Fitness-to-proceed and criminal responsibility  
16 examination orders may be ordered at the same time in accordance with  
17 subdivision (a)(1) of this section but they may not be combined into one (1)  
18 uniform evaluation order and shall be tracked separately by the Division of  
19 Behavioral Health of the Department of Human Services.

20 (B)(i) The Division of Behavioral Health of the Department  
21 of Human Services shall maintain a database of all examinations of defendants  
22 performed pursuant to this ~~chapter~~ subchapter.

23 (ii) The database shall be maintained in a manner to  
24 enable it to generate reports and data compilations either with or without  
25 personal identifying information.

26 ~~(ii)(a)(iii)~~ At a minimum the database shall contain  
27 ~~the information on the uniform evaluation order as provided in subdivision~~  
28 ~~(b)(4)(A)(ii) of this section;~~

29 (a) The information on the uniform evaluation  
30 order as provided in subdivision (b)(4)(A)(ii) of this section;

31 (b) The name of the judge that ordered the  
32 examination, if known;

33 (c) The name of the attorney that requested  
34 the examination, if known;

35 (d) The name of the examiner that conducted  
36 the examination;

1 (e) The result of the examination;  
2 (f) If the defendant is found not fit to  
3 proceed, whether the defendant was restored to fitness to proceed; and  
4 (g) If the defendant is found not guilty by  
5 reason of mental disease or defect, the defendant's progress through his or  
6 her commitment and conditional release.

7 (iv) The database should be designed in a manner  
8 that allows reports to be generated for the General Assembly, researchers,  
9 and the public to track the efficiency and effectiveness of the examination  
10 process and the restoration and treatment programs of the Division of  
11 Behavioral Health of the Department of Human Services without invading the  
12 privacy of individual defendants and patients.

13 ~~(b) Additionally, the database shall track~~  
14 ~~insanity acquittees and their conditional release.~~

15 (c)(1) Upon completion of a forensic an examination pursuant to  
16 subsection (b) of this section, the court may enter an order providing for  
17 further examination and may order the defendant committed to the Arkansas  
18 State Hospital or other appropriate facility for further examination and  
19 observation if the court determines that commitment and further examination  
20 and observation are warranted.

21 (2) When the defendant has previously been found fit to proceed,  
22 the court may order a second or subsequent examination to determine a  
23 defendant's fitness to proceed only if the court:

24 (A) Finds reasonable cause to believe that new or  
25 previously undiscovered evidence calls into question the factual, legal or  
26 scientific basis of the opinion upon which the previous finding of fitness  
27 relied;

28 (B) Finds reasonable cause to believe that the defendant's  
29 mental condition has changed; or

30 (C) Sets forth in the order a factual or legal basis upon  
31 which to order another examination.

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

33 ~~(A) A description of the nature of the forensic~~  
34 ~~examination;~~

35 ~~(B) A substantiated diagnosis in the terminology of the~~  
36 ~~American Psychiatric Association's current edition of the Diagnostic and~~

1 ~~Statistical Manual;~~

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

5 ~~(D)—A description of any evidence that the defendant is~~  
6 ~~feigning a sign or symptom of mental disease or defect;~~

7 ~~(E)(i)—An opinion as to whether the defendant has the~~  
8 ~~capacity to understand the proceedings against him or her and to assist~~  
9 ~~effectively in his or her own defense.~~

10 ~~(ii)—If the opinion under subdivision (d)(1)(E)(i)~~  
11 ~~of this section is that the defendant has the capacity to understand the~~  
12 ~~proceedings and to effectively assist in his or her own defense, then the~~  
13 ~~examiner shall further examine the defendant and include in the report of the~~  
14 ~~forensic examination an opinion as to the extent, if any, to which the~~  
15 ~~capacity of the defendant to appreciate the criminality of his or her conduct~~  
16 ~~or to conform his or her conduct to the requirements of law was impaired at~~  
17 ~~the time of the conduct alleged.~~

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

21 ~~(F)(i)—When directed by the court, an opinion as to the~~  
22 ~~capacity of the defendant to have the culpable mental state that is required~~  
23 ~~to establish an element of the offense charged.~~

24 ~~(ii)—An opinion under subdivision (d)(1)(F)(i) of~~  
25 ~~this section shall also include a description of the reasoning used by the~~  
26 ~~examiner to support the opinion.~~

27 ~~(2)—In addition to the information required in subdivision~~  
28 ~~(d)(1) of this section, the report of the forensic examination shall include~~  
29 ~~a separate explanation of:~~

30 ~~(A)—The sign or symptom of mental disease or defect that~~  
31 ~~led to the opinion on the presence of mental disease or defect; and~~

32 ~~(B)—The evidence that supports the opinion of the examiner~~  
33 ~~on the capacity of the defendant to understand the proceedings against him or~~  
34 ~~her and the defendant's capacity to assist in his or her own defense.~~

35 (d)(1) An examiner's report under this subchapter shall include:

36 (A) A description of the nature of the examination;

1                   (B) A description of any evidence that the defendant is  
2 feigning a sign or symptom of mental disease or defect;

3                   (C) A specific description of the signs or symptoms of  
4 mental disease or defect if in the opinion of the examiner the defendant has  
5 a mental disease or defect; and

6                   (D) A substantiated diagnosis in the terminology of the  
7 American Psychiatric Association's current edition of the Diagnostic and  
8 Statistical Manual of Mental Disorders.

9                   (2) In addition to the information in subdivision (d)(1) of this  
10 section, a report of a fitness-to-proceed examination shall specifically  
11 include an opinion on whether the defendant lacks the capacity to understand  
12 the proceedings against him or her and to assist effectively in his or her  
13 own defense as a consequence of mental disease or defect and an explanation  
14 of the examiner's opinion and the basis of the opinion.

15                   (3) In addition to the information in subdivision (d)(1) of this  
16 section, a report of a criminal responsibility examination shall include the  
17 following:

18                   (A) An opinion as to whether as the result of a mental  
19 disease or defect the defendant at the time of the alleged criminal conduct  
20 lacked the capacity to appreciate the criminality of his or her conduct or to  
21 conform his or her conduct to the requirements of law and an explanation of  
22 the examiner's opinion and the basis of the opinion; and

23                   (B) When directed by the court, an opinion as to the  
24 capacity of the defendant to have the culpable mental state that is required  
25 to establish an element of the offense charged with an explanation of the  
26 examiner's opinion and the basis of the opinion.

27                   (e) If a ~~forensic~~ an examination cannot be conducted because of the  
28 unwillingness of the defendant to participate in the ~~forensic~~ examination,  
29 the report of the ~~forensic~~ examination shall so state and shall include, if  
30 possible, an opinion as to whether the unwillingness of the defendant is the  
31 result of mental disease or defect.

32                   (f)(1) A person designated to perform a ~~forensic~~ an examination shall  
33 file the report of the ~~forensic~~ examination with the clerk of the court, and  
34 the clerk of the court shall mail a copy to the defense attorney and a copy  
35 to the prosecuting attorney.

36                   (2) Upon entry of an order by a circuit court, a copy of the

1 report of the ~~forensic~~ examination concerning a defendant shall be provided  
2 to the circuit court by the person designated to perform the ~~forensic~~  
3 examination.

4 (g)(1) Notwithstanding the provision of any statute enacted prior to  
5 January 1, 1976, any existing medical or pertinent record in the custody of a  
6 public agency shall be made available to the examiner and ~~counsel to the~~  
7 prosecuting attorney and the defendant's attorney for inspection and copying.

8 (2) The court shall require the prosecuting attorney to provide  
9 to the examiner any information relevant to the ~~forensic~~ examination,  
10 including, but not limited to:

11 (A) The name and address of any attorney involved in the  
12 matter;

13 (B) Information about the alleged offense; and

14 (C) Any information about the defendant's background that  
15 is deemed relevant to the ~~forensic~~ examination, including the criminal  
16 history of the defendant.

17 (3) The court may require the attorney for the defendant to  
18 provide any available information relevant to the ~~forensic~~ examination,  
19 including, but not limited to, a:

20 (A) Psychiatric record;

21 (B) Medical record; or

22 (C) Record pertaining to treatment of the defendant for  
23 substance or alcohol abuse.

24 (h)(1) When a ~~forensic~~ an examination of a defendant has been  
25 completed, the county from which the defendant had been sent for the ~~forensic~~  
26 examination shall procure the defendant within three (3) working days from  
27 the Arkansas State Hospital or from a designated receiving facility or  
28 program or other facility where the ~~forensic~~ examination was performed.

29 (2) If the county fails to procure the defendant within this  
30 three-day period, the county shall bear any room or board costs on the fourth  
31 and subsequent days.

32 (i) A person under commitment and supervision of the Department of  
33 Correction who is a defendant charged in circuit court shall not undergo an  
34 examination or observation conducted by a psychiatrist or other mental health  
35 employee of the Department of Correction to determine the mental condition of  
36 the defendant.

1 (j)(1) A person or entity that provides treatment under this  
2 subchapter may impose a charge for the cost of the treatment.

3 (2) A charge for costs under subdivision (j)(1) of this section  
4 may not exceed the actual cost of the treatment.

5 (3)(A) The Division of Behavioral Health of the Department of  
6 Human Services shall promulgate rules establishing reasonable charges for  
7 costs of treatment under this subchapter.

8 (B) Rules establishing reasonable charges for costs of  
9 treatment under this subchapter shall:

10 (i) Provide for postponing the collection of the  
11 charges based on clinical considerations or the patient's inability to pay,  
12 or both; and

13 (ii) Waive charges for treatment of defendants who  
14 plead guilty or nolo contendere or are found guilty at trial.

15 (k) An examination report required to be filed with the clerk of the  
16 court under this subchapter is a public record.

17 (l) This subchapter does not preclude the defendant from having a  
18 fitness-to-proceed examination or a criminal responsibility examination  
19 conducted by a defense expert or from maintaining the defense of not guilty  
20 by reason of mental disease or defect using testimony from a defense expert  
21 or other evidence.

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23 /s/J. Edwards  
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