

Stricken language would be deleted from and underlined language would be added to present law.
Act 733 of the Regular Session

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95th General Assembly
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As Engrossed: S3/6/25 H4/9/25

A Bill

SENATE BILL 313

By: Senators Irvin, B. Davis, J. English

By: Representatives K. Moore, Vaught, Barker, Bentley, A. Brown, K. Brown, R. Burkes, Cavanaugh,
Crawford, Dalby, Duke, Henley, Lundstrum, J. Mayberry, McAlindon

For An Act To Be Entitled

AN ACT CONCERNING FORENSIC MENTAL HEALTH EVALUATIONS
AND TREATMENT; TO PROMOTE AND IMPROVE EFFICIENCIES
AND QUALITY IN THE DEPARTMENT OF HUMAN SERVICES; AND
FOR OTHER PURPOSES.

Subtitle

CONCERNING FORENSIC MENTAL HEALTH
EVALUATIONS AND TREATMENT; AND TO
PROMOTE AND IMPROVE EFFICIENCIES AND
QUALITY IN THE DEPARTMENT OF HUMAN
SERVICES.

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

SECTION 1. Arkansas Code § 5-2-301(3), concerning the definition of "designated receiving facility or program" regarding mental disease or defect, is amended to read as follows:

(3) "Designated receiving facility or program" means an inpatient or outpatient treatment facility or program that is designated within each geographic area of the state by the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services to accept the responsibility for the care, custody, and treatment of a person involuntarily ~~admitted~~ committed to the state mental health system for mental health treatment;

SECTION 2. Arkansas Code § 5-2-301(5), concerning the definition of



"frivolous" regarding mental disease or defect, is amended to read as follows:

(5) "Frivolous" means clearly lacking ~~any~~ a reasonable basis in fact or law;

SECTION 3. Arkansas Code § 5-2-301, concerning the definitions used regarding mental disease or defect, is amended to add an additional subdivision to read as follows:

(14)(A) "Jail-based restoration services" means clinical and educational services provided in a county jail to a defendant to assist in the restoration of the defendant's fitness to proceed.

(B) "Jail-based restoration services" includes without limitation mental health treatment, medical treatment, and substance abuse treatment.

SECTION 4. Arkansas Code § 5-2-304 is amended to read as follows:

5-2-304. Notice requirement.

(a) When a defendant intends to raise lack of criminal responsibility as ~~a~~ an affirmative defense in a prosecution or put in issue his or her fitness to proceed, the defendant shall notify the prosecutor and the court at the earliest practicable time.

~~(b)(1)~~ Failure to notify the prosecutor within a reasonable time before the trial date entitles the prosecutor to a continuance that for limitation purposes is deemed an excluded period granted on application of the defendant.

~~(2) Alternatively, in lieu of suspending any further proceedings under § 5-2-328, the court may order the immediate examination of the defendant at a designated receiving facility or program by an expert.~~

(c) When the court or a party in a criminal proceeding has reason to believe that a defendant is not fit to proceed, the court or a party shall raise the question of the defendant's fitness in the following manner:

(1) On its own motion, the court shall suspend the proceedings and order an examination of the defendant pursuant to this subchapter; or

(2)(A) By written motion of the prosecutor or defense counsel stating that the request is made in good faith and not for the purpose of delay, and containing the facts and observations in support of the request.

(B) If the motion is denied, defense counsel may request an ex parte or in camera filing and hearing if an ex parte or in camera filing and hearing are necessary because the motion is based in whole or in part on information protected by the attorney-client privilege.

(d) For good cause shown, a request for an evaluation may be made by oral motion in court if the request:

(1) Is made in good faith and not for the purpose of delay; and

(2) Contains sufficient facts and observations in support of the request for the court to consider the request.

(e) When the defendant intends to raise the lack of criminal responsibility as an affirmative defense, the defendant shall file a notice of intent and the circuit court shall suspend all further proceedings.

(f) Upon filing of an order for an examination of criminal responsibility or fitness to proceed with a circuit clerk:

(1) The moving party shall immediately submit a copy of the order to the Department of Human Services;

(2) The prosecutor shall submit a copy of the defendant's case file to the department;

(3) The attorney for the defendant shall submit to the department either:

(A) A release of protected health information, signed by the defendant, with a list of all known previous healthcare providers; or

(B) If the defendant cannot provide consent, a court order for the production of records; and

(4) The attorney for the defendant shall make all reasonable efforts to provide any medical, psychiatric, or treatment records that may be relevant to the examination to the department.

SECTION 5. Arkansas Code § 5-2-310 is amended to read as follows:

5-2-310. Lack of fitness to proceed – Procedures subsequent to finding.

(a)(1)(A) If the court determines that a defendant lacks fitness to proceed, the proceeding against him or her shall be suspended and the court may commit the defendant to the custody of the Department of Human Services for ~~detention, care, and treatment until~~ restoration of fitness to proceed.

(B) If the court determines that a defendant lacks fitness to proceed because of a mental disease or defect that precludes the

possibility of restoration, the court shall direct the defendant to available services and supports as recommended by the department.

(C) ~~However, if~~ If the court is satisfied that the defendant may be released without danger to himself or herself or to the person or property of another, the court may order the defendant's release and the release shall continue at the discretion of the court on conditions the court determines necessary.

(D) If the court finds that the defendant lacks fitness to proceed or that the defendant is fit to proceed but that the defendant's fitness to proceed depends on the continuation of appropriate treatment for a mental disease or defect, the court shall consider issues relating to treatment necessary to restore or maintain the defendant's fitness to proceed.

(E) If the court finds that the defendant may be treated in the community, the court may make receipt of reasonable medical treatment a condition of his or her release.

(F) The court may order the administration of medication to maintain the fitness to proceed of an incarcerated defendant if the defendant is a danger to himself or herself or others and refuses to take the medication required to maintain his or her fitness to proceed.

(G) The court may order the administration of medication to maintain the fitness to proceed of an incarcerated defendant if the defendant is not a danger to himself or herself or others and refuses to take the medication required to maintain his or her fitness to proceed if the court finds that:

(i) The treatment is medically appropriate;

(ii) All less intrusive alternatives have been considered;

(iii) The treatment is substantially unlikely to produce a side effect that may undermine the fairness of the trial; and

(iv) There is a substantial government interest in the prosecution of the defendant.

(H) Days spent in the physical custody of the department under this subsection are considered days spent in custody for determining credit for time served.

(2) A copy of the report filed under § 5-2-327 shall be attached to the

order of commitment or order of conditional release.

(3)(A) At any time after the issue of a defendant's fitness to proceed has been raised, the court may, on a motion of the state, dismiss all charges pending against the defendant.

(B) If the court dismisses the charges pending against a defendant, the proceedings shall discontinue, and the defendant shall be discharged.

(b)(1) Within a reasonable period of time, ~~but in any case within ten~~ ~~(10)~~ not to exceed six (6) months of a commitment pursuant to subsection (a) of this section, the department shall file with the committing court a written report indicating whether the defendant is fit to proceed, or if not, whether:

(A) The defendant's mental disease or defect is of a nature precluding restoration of fitness to proceed or it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future; and

(B) The defendant presents a danger to himself or herself or to the person or property of another.

(2)(A) The court shall make a determination within ~~one (1) year~~ eight (8) months of a commitment pursuant to subsection (a) of this section.

(B) Pursuant to the report of the department or as a result of a hearing on the report, if the court determines that the defendant is fit to proceed, prosecution in ordinary course may commence.

(C) If the defendant lacks fitness to proceed but does not present a danger to himself or herself or to the person or property of another, the court may release the defendant on conditions the court determines to be proper.

(D) If the defendant lacks fitness to proceed and presents a danger to himself or herself or the person or property of another, the court shall order the department to petition for an involuntary ~~admission~~ commitment.

(E) Upon filing of an order finding that the defendant lacks fitness to proceed issued under subdivision (b)(2)(A) of this section with a circuit clerk ~~or a probate clerk~~, the circuit clerk ~~or the probate clerk~~ shall submit a copy of the order to the Arkansas Crime Information Center.

(c)(1) On the court's own motion or upon application of the department, the prosecuting attorney, or the defendant, and after a hearing if a hearing is requested, if the court determines that the defendant has regained fitness to proceed, the criminal proceeding shall be resumed.

(2) If the defendant has been receiving and responding well to treatment, including medication, the court may make appropriate orders for the continued treatment or administration of medication, or both to maintain the fitness of the defendant throughout the remainder of the proceedings.

(3) However, if the court is of the view that so much time has elapsed since the alleged commission of the offense in question that it would be unjust to resume the criminal proceeding, the court may dismiss the charge regardless of whether the defendant has regained fitness to proceed.

(4)(A) On either the motion of the court or the state, a hearing shall be held to determine whether the charges against a defendant who lacks fitness to proceed due to mental disease or defect may be dismissed if the defendant remains without fitness to proceed for five (5) continuous years from the date of determination of lack of fitness.

(B) If the charges are dismissed, the dismissal shall be without prejudice to the state.

(C) If the court moves for a hearing, the state shall have notice of at least sixty (60) days before the hearing date unless the state consents to another date.

(d)(1) Persons authorized by this section to administer treatment or medication shall not be criminally liable for administering treatment or medication pursuant to this subchapter if done in good faith.

(2) Persons authorized to administer treatment or medication shall not be civilly liable for such activities when the persons acted in a reasonable manner and according to generally accepted medical and other professional practices.

(e)(1) A law enforcement officer or a corrections officer may employ reasonable force in cases where an individual refuses administration of court-ordered treatment or medication.

(2) A law enforcement officer or a corrections officer shall not be criminally or civilly liable for the use of reasonable force under subdivision (e)(1) of this section.

SECTION 6. Arkansas Code Title 5, Chapter 2, Subchapter 3, is amended to add an additional section to read as follows:

5-2-318. Restoration in county jails.

(a) Jail-based restoration services shall be permitted through telehealth.

(b) Jail-based restoration services that involve procedures other than or in addition to telehealth services may be provided upon the consent of the county sheriff or the keeper, superintendent, or administrator of the county jail.

SECTION 7. Arkansas Code § 5-2-327 is amended to read as follows:

5-2-327. Examination of defendant – Fitness to proceed.

(a)(1)(A) Any party, by written motion, or the court, on the court's own motion, may raise the issue of the defendant's fitness to proceed.

(B) A written motion by the prosecuting attorney or defense counsel shall:

(i) State that the motion for examination of the defendant is made in good faith and not for the purpose of delay; and

(ii) Include facts and observations to support the motion for examination of the defendant.

(C) If the motion is denied, defense counsel may request an ex parte or in camera filing and hearing if an ex parte or in camera filing and hearing are necessary because the motion is based in whole or in part on information protected by the attorney-client privilege.

(D) For good cause shown, a request for an evaluation may be made by oral motion in court if the request:

(i) Is made in good faith and not for the purpose of delay; and

(ii) Contains sufficient facts and observations in support of the request for the court to consider the request.

(2) The court shall order an examination under this section if it finds there is a reasonable suspicion that a defendant is not fit to proceed.

(3) The court may dismiss a motion for examination under this section if the court determines that the motion:

(A) Is frivolous; or

(B) Has stated no facts to support the request for examination.

~~(3)~~(4)(A) Subject to §§ 5-2-304 and 5-2-311, the court shall immediately suspend further proceedings in a prosecution if it has ordered an examination under this section.

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

(ii) A discharge of the jury is not a bar to further prosecution.

~~(4)~~(5)(A) If a court suspends further proceedings in the prosecution under subdivision ~~(a)(3)(A)~~ (a)(4)(A) of this section, the court shall enter an order+

~~(A) Appointing one (1) or more experts who do not practice in the Arkansas State Hospital to examine the defendant and report on the defendant's mental condition; or~~

~~(B)(i) Directing~~ directing the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services to provide an expert who will examine and report upon the defendant's mental condition.

~~(ii)~~(B) The director or his or her designee shall determine the location of the examination required under subdivision ~~(a)(4)(B)(i)~~ (a)(5)(A) of this section.

(b) An examination ordered under this section shall be for a period not exceeding sixty (60) days unless the director or his or her designee determines a longer period of examination is necessary for the purpose of the examination.

(c) The department shall provide for or arrange the fitness to proceed examination of the defendant at a jail, prison, community setting, or psychiatric hospital.

(d)(1) A uniform order to be used by a court ordering an examination of a defendant's fitness to proceed under this section shall be developed by the Administrative Office of the Courts in conjunction with the following organizations:

(A) The Arkansas Prosecuting Attorneys Association;

- (B) The Department of Human Services; and
- (C) The Arkansas Public Defender Commission.

(2) The uniform order developed under this subsection shall contain the following information:

- (A) The defendant's name, age, gender, and race;
- (B) The criminal charges pending against the defendant;
- (C) The defendant's attorney's name and address;
- (D) The defendant's custody status;
- (E) The case number for which the examination was ordered;
- (F) A unique identifying number on the incident reporting form as required by the Arkansas Crime Information Center; ~~and~~
- (G) The name of the requesting attorney, if applicable;

and

(H) An authorization to release and receive protected health information.

(3) An examination under this section shall not be conducted without using the uniform order required under this subsection.

(4) The uniform order shall require the prosecuting attorney to provide to the examiner any information relevant to the examination, including without limitation:

- (A) The name and address of any attorney involved in the matter; and
- (B) Information about the alleged offense.

(5) The court ~~may~~ shall require the attorney for the defendant to make all reasonable efforts to provide to the examiner any available information relevant to the examination, including without limitation:

- (A) Psychiatric records;
- (B) Medical records; or
- (C) Records pertaining to treatment of the defendant for substance or alcohol abuse.

~~(d)~~(e)(1) An examination report ordered under this section shall be filed with the clerk of the court ordering the examination and is a public record.

(2) The court clerk shall provide copies of the examination report to the defendant's attorney and the prosecuting attorney.

~~(e)~~(f)(1) An examination report prepared by an examiner ordered under

this section shall:

(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

(F) An opinion as to whether the defendant:

(i) Presents a substantial danger to himself or herself, others, or property; and

(ii) Presents a substantial risk to public safety without a prescribed regimen of medical, psychiatric, or psychological care or treatment.

(2) An examiner's opinion on the defendant's fitness to proceed or lack of fitness to proceed may not be based solely on the defendant's refusal to communicate during the examination.

(3)(A) During an examination to determine a defendant's fitness to proceed and in any examination report based on that examination, an examiner shall consider:

(i) The capacity of the defendant during criminal proceedings to:

(a) Rationally understand the charges against him or her and the potential consequences of the pending criminal

proceedings;

(b) Disclose to the defendant's attorney pertinent facts, events, and states of mind;

(c) Engage in a reasoned choice of legal strategies and options;

(d) Understand the adversarial nature of criminal proceedings;

(e) Exhibit appropriate courtroom behavior; and

(f) Testify;

(ii) As supported by current indications and the defendant's personal history, whether the defendant is a person with:

(a) A mental disease or defect; or

(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.

(B) The information or lack of information contained in the examiner's report is not intended to limit the introduction of evidence regarding the defendant's fitness to proceed.

(4) If the examiner concludes that the defendant lacks fitness to proceed, the report shall contain:

(A) An opinion of the condition causing the lack of fitness to proceed;

(B) An opinion of the treatment necessary for the defendant to obtain fitness to proceed; and

(C) An opinion on the likelihood of the defendant attaining fitness to proceed under treatment.

~~(f)~~(g) This subchapter does not preclude the defendant from having an examination conducted by an expert of the defendant's own choosing to determine the defendant's fitness to proceed, and the court shall provide the defendant's expert with a reasonable opportunity to examine the defendant upon a timely request.

~~(g)~~(h) When the defendant has previously been found fit to proceed, the court may order a second or subsequent examination to determine a

defendant's fitness to proceed only if the court:

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

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

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

~~(h)~~(i) Upon completion of examination under this section, the court may enter an order providing for further examination of the defendant and may order the defendant into the custody of the director for further examination and observation if the court determines that ~~commitment and~~ further examination ~~are~~ is warranted.

SECTION 8. Arkansas Code § 5-2-328(a), concerning the procedure when a defendant intends to raise lack of criminal responsibility as an affirmative defense, is amended to add an additional subdivision to read as follows:

(4) An examination under this section shall be conducted only after the circuit court has found the defendant fit to proceed.

SECTION 9. Arkansas Code § 5-2-328(b)(2), concerning the uniform order for examination of a defendant's lack of criminal responsibility, is amended to read as follows:

(2) The uniform order developed under this subsection shall contain, without limitation, the following information:

(A) The defendant's name, age, gender, and race;

(B) The criminal charges pending against the defendant;

(C) The defendant's attorney's name and address;

(D) The defendant's custody status;

(E) The case number for which the examination was ordered;

(F) A unique identifying number on the incident reporting form as required by the Arkansas Crime Information Center; ~~and~~

(G) The name of the requesting attorney, if applicable;

and

(H) An authorization to release and receive protected health information.

SECTION 10. Arkansas Code § 5-2-328(b)(4), concerning an order for examination of a defendant's lack of criminal responsibility, is amended to read as follows:

(4) The circuit court ~~may~~ shall require the attorney for the defendant to provide to the examiner a signed release of information and any available information relevant to the examination, including without limitation:

- (A) Psychiatric records;
- (B) Medical records; or
- (C) Records pertaining to treatment of the defendant for substance or alcohol abuse.

SECTION 11. Arkansas Code § 5-2-328(c), concerning the report of an examination of a defendant's lack of criminal responsibility, is amended to read as follows:

(c) An examination report prepared by an examiner ordered under this section shall contain:

- (1) A description of the nature of the examination;
- (2) 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;
- (3) When directed by the circuit 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~~
- (4) An opinion as to whether the defendant presents a substantial danger to himself, herself, or others or presents a substantial risk to public safety or to property without a prescribed regimen of medical, psychiatric, or psychological care or treatment; and
- (5) If an examination cannot be conducted because of the unwillingness of the defendant to participate in the examination, an opinion as to whether the unwillingness of the defendant is the result of mental

disease or defect.

SECTION 12. Arkansas Code § 5-2-331 is amended to read as follows:

5-2-331. Cost of mental health services, examination, and treatment of defendant.

(a) A person or entity that provides treatment or other mental health services under this subchapter may impose a charge for the cost of the treatment or other mental health services rendered.

(b) A charge for the cost of treatment or other mental health services under this section may not exceed the actual cost of the treatment or other mental health services provided.

(c)(1) If the Department of Human Services cannot accept a defendant that has been ordered by a court to the custody of the department, the department shall be responsible for the cost of the psychotropic medication prescribed by the department's designated vendor as necessary to restore the defendant's fitness to proceed.

(2) Responsibility for reimbursement under subdivision (c)(1) of this section shall begin on the date that the defendant is ordered to the custody of the department.

(d)(1) No more than thirty (30) days after the end of each quarter, the county sheriff or his or her designee shall prepare a quarterly invoice to be sent to the department for reimbursement that lists:

(A) Each defendant ordered to the custody of the department that has been detained in the county jail during the previous month;

(B) The number of days each defendant ordered to the custody of the department was in the county jail in awaiting-bed-space status; and

(C) An itemized list of medications prescribed to each defendant ordered to the custody of the department and the cost of the medications.

(2) The county sheriff or his or her designee shall provide supporting documentation to certify the costs to be reimbursed by the department.

(3) Quarters shall end September 30, December 31, March 31, and June 30 of each year.

(4) The certified invoices shall then be returned to the county sheriff or his or her designee with the department keeping a duplicate copy.

(5) Payment shall be made within ten (10) business days upon return of the certified invoices returned to each county.

(e)(1) The county sheriff shall maintain a quarterly invoice for three (3) calendar years.

(2) The quarterly invoice maintained by the county sheriff is subject to review by Arkansas Legislative Audit.

(3) A quarterly invoice under subsection (d) of this section shall be sent electronically.

(4) The department shall not issue any reimbursements under this subsection until the department receives a certified quarterly invoice with supporting documentation requesting reimbursement.

(f)(1) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall promulgate rules establishing reasonable charges for the cost of treatment or other mental health services under this section.

(2) Rules establishing reasonable charges for the cost of treatment or other mental health services under this section shall provide for waiving or postponing the collection of the charges based on:

(A) Clinical considerations;

(B) The defendant's inability to pay; or

(C) A court determination that the defendant is wholly or partly indigent and qualifies for the appointment of an attorney under § 16-87-213.

SECTION 13. Arkansas Code § 5-4-102(c), concerning presentence investigations is amended to read as follows:

(c)(1) Before imposing sentence, the court may order the defendant to submit to psychiatric examination and evaluation ~~for a period not to exceed thirty (30) days.~~

~~(2) The defendant may be remanded for psychiatric examination and evaluation to the Arkansas State Hospital, or the court may appoint a qualified psychiatrist to make the psychiatric examination and evaluation~~
court may direct the Department of Human Services to provide a qualified psychiatrist or qualified psychologist to make the examination and

evaluation.

/s/Irvin

APPROVED: 4/17/25