

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

SENATE BILL 123

By: Senator D. Johnson  
By: Representative Vines

## For An Act To Be Entitled

AN ACT MAKING TECHNICAL CORRECTIONS TO TITLE 5 OF THE  
ARKANSAS CODE; AND FOR OTHER PURPOSES.

### Subtitle

MAKING TECHNICAL CORRECTIONS TO TITLE 5  
OF THE ARKANSAS CODE.

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

SECTION 1. Arkansas Code § 5-2-305(a)(3)(B)(i), concerning the mental health examination of a criminal defendant, is amended to correct a reference to read as follows:

(i) There is evidence of a mental disease or defect that was not fully considered in the previous ~~criminal responsibility~~ fitness-to-proceed examination; or

SECTION 2. Arkansas Code § 5-2-305(b)(4), concerning uniform examination orders, is amended to read as follows to correct inconsistent usage:

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



(ii) At a minimum the uniform examination orders shall contain the:

- (a) Defendant's name, age, gender, and race;
- (b) Charges pending against the defendant;
- (c) Defendant's attorney's name and address;
- (d) Defendant's custody status;
- (e) Case number;
- (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.

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

(iv) ~~No~~ An examination under this subchapter shall not be conducted without using a uniform ~~evaluation~~ examination order.

(v) Fitness-to-proceed and criminal responsibility examination orders may be ordered at the same time in accordance with subdivision (a)(1) of this section, but they may not be combined into one (1) uniform ~~evaluation~~ examination order and shall be tracked separately by the division.

(B)(i) The division shall maintain a database of all examinations of defendants performed pursuant to this subchapter.

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

(iii) At a minimum the database shall contain:

- (a) The information on the uniform ~~evaluation~~ examination order as provided in subdivision (b)(4)(A)(ii) of this section;
- (b) The name of the judge who ordered the examination, if known;
- (c) The name of the attorney who requested the examination, if known;
- (d) The name of the examiner who conducted the

examination;

(e) The result of the examination;

(f) If the defendant is found not fit to proceed, whether the defendant was restored to fitness to proceed; and

(g) If the defendant is found not guilty by reason of mental disease or defect, the defendant's progress through his or her commitment and conditional release.

(iv) The database should be designed in a manner that allows reports to be generated for the General Assembly, researchers, and the public to track the efficiency and effectiveness of the examination process and the restoration and treatment programs of the division without invading the privacy of individual defendants and patients.

SECTION 3. Arkansas Code § 5-4-906 is amended to read as follows to correct obsolete references:

5-4-906. Record ~~expungement~~ sealing upon completion.

(a) A pre-adjudication probation program judge, on his or her own motion or upon a request from the participant in the pre-adjudication probation program, shall order ~~expungement~~ sealing and dismissal of a case if:

(1) The participant in the pre-adjudication probation program has successfully completed a pre-adjudication probation program, as determined by the pre-adjudication probation program judge;

(2) The pre-adjudication probation program judge has received a recommendation from the prosecuting attorney for ~~expungement~~ sealing and dismissal of the case; and

(3) The pre-adjudication probation program judge, after considering the past criminal history of the participant in the pre-adjudication probation program, determines that ~~expungement~~ sealing and dismissal of the case is appropriate.

(b) Unless otherwise ordered by the pre-adjudication probation program court, ~~expungement~~ sealing under this section shall be as described in ~~§ 16-90-901 et seq., [repealed]~~ the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

SECTION 4. Arkansas Code § 5-5-202(b)(2), concerning seizure of

conveyances, is amended to read as follows to conform to a defined term:

(2) Any law enforcement ~~agent~~ officer has probable cause to believe that the conveyance was used in the commission or attempt of:

SECTION 5. Arkansas Code § 5-26-305(b)(2)(C), concerning domestic battering in the third degree, is amended to read as follows to correct a reference:

(C) The person committed two (2) or more offenses of battery against a family or household member as defined by a law of this state or by an equivalent law of any other state or foreign jurisdiction within ten (10) years of the offense of domestic battering in the ~~second~~ third degree.

SECTION 6. Arkansas Code § 5-27-233(d), concerning distribution of e-cigarettes to minors, is amended to read as follows to provide consistency with the section prohibiting tobacco sales to minors:

(d) It is not an offense under subsection (c) of this section if the minor was acting as an agent of a business within the scope of employment or at the direction of a law enforcement officer to enforce or ensure compliance with this section.

SECTION 7. Arkansas Code § 5-27-609 is amended to read as follows to conform references to existing definitions and to correct references:

5-27-609. Possession of sexually explicit digital material.

(a) As used in this section:

~~(1) “Juvenile” means a person under eighteen (18) years of age;~~  
~~and~~

~~(2)~~ (1) “Nudity” means a:

(A) Showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering;

(B) Showing of the female breast with less than fully opaque covering of any portion of the female breast below the top of the nipple; or

(C) Depiction of covered male genitals in a discernibly turgid state; and

~~(3)-(A)-(2)(A)~~ (2)(A) “Sexually explicit digital material” means any

photograph, digitized impact, or visual depiction of a ~~juvenile~~ minor:

- (i) In any condition of nudity; or
- (ii) Involved in any prohibited sexual act.

(B) The distribution of sexually explicit digital material by a ~~juvenile~~ minor may commonly be referred to as “sexting”.

(b) A ~~juvenile~~ minor commits the offense of possession of sexually explicit digital material if the ~~juvenile~~ minor purposely creates, produces, distributes, presents, transmits, posts, exchanges, disseminates, or possesses through a computer, wireless communication device, or digital media, any sexually explicit digital material.

(c) It is an affirmative defense to the offense of possession of sexually explicit digital material that:

(1) A ~~juvenile~~ minor:

(A) Has not solicited the ~~visual depiction~~ sexually explicit digital material;

(B) Does not subsequently distribute, present, transmit, post, print, disseminate, or exchange the ~~visual depiction~~ sexually explicit digital material; and

(C) Deletes or destroys the ~~visual depiction~~ sexually explicit digital material upon receipt; or

(2) A ~~juvenile~~ minor:

(A) Creates a photograph, digitized impact, or visual depiction of himself or herself; and

(B) Does not subsequently distribute, present, transmit, post, print, disseminate, or exchange the photograph, digitized impact, or visual depiction of himself or herself.

(d)(1) Possession of sexually explicit digital material is a Class A misdemeanor.

(2) A ~~juvenile~~ minor who pleads guilty or nolo contendere to or is found guilty of violating this section for a first offense may be ordered to eight (8) hours of community service ~~if it is the first offense for the juvenile~~.

SECTION 8. Arkansas Code § 5-37-506 is amended to read as follows to clarify the name of a criminal offense:

5-37-506. Prohibited activity by a procurer or provider.

(a) A person commits the offense of prohibited activity by a procurer or provider if:

(1) The person is a procurer and he or she knowingly:

(A) Offers or gives anything of value to a person in order to cause the person to seek medical care from a specific healthcare provider; or

(B) Solicits a person currently under the care of a chiropractic physician to seek care from another chiropractic physician; or

(2) The person is a provider and he or she knowingly permits a procurer that he or she uses, directs, or employs to engage in conduct prohibited by subdivision (a)(1) of this section.

(b) Prohibited activity by a procurer or provider is a Class D felony.

SECTION 9. Arkansas Code § 5-54-120(b)(6), concerning failure to appear, is amended to repeal an obsolete reference.

~~(6) Class B misdemeanor if the required appearance was in regard to a pending charge or disposition of a Class D misdemeanor charge either before or after a determination of guilt of the charge;~~

SECTION 10. Arkansas Code § 5-62-127(a)(2), concerning removal of an animal's transmittal device, is amended to read as follows to clarify the elements of a criminal offense:

(2) ~~With~~ Removes the transmittal device with the purpose to prevent or hinder the owner from locating the dog used in hunting or raptor used in falconry.

SECTION 11. Arkansas Code § 5-65-202(a), concerning implied consent, is amended to read as follows to conform a reference to a defined term:

(a) Any person who operates a motor vehicle or is in actual physical control of a motor vehicle in this state is deemed to have given consent, subject to the provisions of § 5-65-203, to one (1) or more chemical tests of his or her blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of his or her breath or blood if:

SECTION 12. Arkansas Code § 5-65-205(b)(1)(A)(i), concerning refusal

to submit, is amended to read as follows to conform a reference to a defined term:

(1)(A)(i) Suspension for one hundred eighty (180) days for the first offense of refusing to submit to a chemical test of blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of the person's blood or breath.

SECTION 13. Arkansas Code § 5-71-217 is amended to read as follows to reorganize a section and clarify a reference:

5-71-217. Cyberbullying.

(a) As used in this section:

(1) "Communication" means the electronic communication of information of a person's choosing between or among points specified by the person without change in the form or content of the information as sent and received; ~~and~~

(2) "Electronic means" means any textual, visual, written, or oral communication of any kind made through the use of a computer online service, Internet service, telephone, or any other means of electronic communication, including without limitation to a local bulletin board service, an Internet chat room, electronic mail, a social networking site, or an online messaging service; and

(3) "School employee" means a person who is employed full time or part time at a school that serves students in any of the grades kindergarten through grade twelve (K-12), including without limitation a:

(A) Public school operated by a school district;

(B) Public school operated by a state agency or institution of higher education;

(C) Public charter school; or

(D) Private school.

(b) A person commits the offense of cyberbullying if:

(1) He or she transmits, sends, or posts a communication by electronic means with the purpose to frighten, coerce, intimidate, threaten, abuse, or harass, another person; and

(2) The transmission was in furtherance of severe, repeated, or hostile behavior toward the other person.

(c) The offense of cyberbullying may be prosecuted in the county where

the defendant was located when he or she transmitted, sent, or posted a communication by electronic means, in the county where the communication by electronic means was received by the person, or in the county where the person targeted by the electronic communications resides.

(d)(1) Cyberbullying is a Class B misdemeanor.

(2)~~(A)~~ Cyberbullying ~~of a school employee~~ is a Class A misdemeanor if the victim is a school employee.

~~(B) As used in this subdivision (d)(2), "school employee" means a person who is employed full time or part time at a school that serves students in any of kindergarten through grade twelve (K-12), including without limitation a:~~

- ~~(i) Public school operated by a school district;~~
- ~~(ii) Public school operated by a state agency or institution of higher education;~~
- ~~(iii) Public charter school; or~~
- ~~(iv) Private school.~~

SECTION 14. Arkansas Code § 5-73-120(c), concerning carrying a weapon, is amended to read as follows to correct a reference:

(c) It is permissible to carry a ~~handgun~~ weapon under this section if at the time of the act of carrying a ~~a~~ the weapon:

SECTION 15. Arkansas Code § 5-73-314(b) and (c), concerning a concealed handgun license, are amended to read as follows to clarify references:

(b) If a license to carry a concealed handgun is lost or destroyed, or a duplicate is requested, the person to whom the license to carry a concealed handgun was issued shall comply with the provisions of subsection (a) of this section and may obtain a duplicate license or replacement license upon:

(1) Paying the Department of Arkansas State Police a fee established by the director under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(2) Furnishing a notarized statement to the department that the license to carry a concealed handgun has been lost or destroyed or that a duplicate is requested.

(c) The fee described in subdivision (b)(1) of this section shall be

reduced by fifty percent (50%) if a person ~~described in § 5-73-311(a)(2)~~ sixty-five (65) years of age or older is requesting a replacement or duplicate license under this section.

SECTION 16. Arkansas Code § 5-73-322(b), concerning concealed handguns in a university, college, or community college building, is amended to read as follows to conform a reference to a defined term:

(b) A licensee may possess a concealed handgun in the buildings and on the grounds, whether owned or leased by the public university, public college, or ~~public~~ community college, of the public university, public college, or ~~public~~ community college where he or she is employed unless otherwise prohibited by § 5-73-306 if:

(1) He or she is a staff member; and

(2)(A) The governing board of the public university, public college, or ~~public~~ community college does not adopt a policy expressly disallowing the carrying of a concealed handgun by staff members in the buildings or on the grounds of the public university, public college, or ~~public~~ community college and posts notices as described in § 5-73-306(19).

(B) A governing board of the public university, public college, or ~~public~~ community college may adopt differing policies for the carrying of a concealed handgun by staff members for different campuses, areas of a campus, or individual buildings of the public university, public college, or ~~public~~ community college for which the governing board is responsible.

(C) A policy disallowing the carrying of a concealed handgun by staff members into the public university, public college, or ~~public~~ community college expires one (1) year after the date of adoption and must be readopted each year by the governing board of the public university, public college, or ~~public~~ community college to remain in effect.

SECTION 17. DO NOT CODIFY. The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the Ninetieth General Assembly. All such acts shall have full force and effect and, so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts

of the Arkansas Code of 1987.