

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 123

5 By: Senator D. Johnson
6 By: Representative Vines
7

For An Act To Be Entitled

9 AN ACT MAKING TECHNICAL CORRECTIONS TO TITLE 5 OF THE
10 ARKANSAS CODE; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 MAKING TECHNICAL CORRECTIONS TO TITLE 5
14 OF THE ARKANSAS CODE.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

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

23 (i) There is evidence of a mental disease or defect
24 that was not fully considered in the previous ~~criminal responsibility~~
25 fitness-to-proceed examination; or
26

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

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



1 (ii) At a minimum the uniform examination orders
2 shall contain the:
3 (a) Defendant's name, age, gender, and race;
4 (b) Charges pending against the defendant;
5 (c) Defendant's attorney's name and address;
6 (d) Defendant's custody status;
7 (e) Case number;
8 (f) A unique identifying number on the
9 incident reporting form as required by the Arkansas Crime Information Center;
10 and
11 (g) The name of the requesting attorney.

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

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

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

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

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

29 (iii) At a minimum the database shall contain:

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

1 examination;

2 (e) The result of the examination;

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

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

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

13
14 SECTION 3. Arkansas Code § 5-4-906 is amended to read as follows to
15 correct obsolete references:

16 5-4-906. Record ~~expungement~~ sealing upon completion.

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

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

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

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

31 (b) Unless otherwise ordered by the pre-adjudication probation program
32 court, ~~expungement~~ sealing under this section shall be as described in ~~§ 16-~~
33 ~~90-901 et seq. [repealed]~~ the Comprehensive Criminal Record Sealing Act of
34 2013, § 16-90-1401 et seq.

35
36 SECTION 4. Arkansas Code § 5-5-202(b)(2), concerning seizure of

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

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

4
5 SECTION 5. Arkansas Code § 5-26-305(b)(2)(C), concerning domestic
6 battering in the third degree, is amended to read as follows to correct a
7 reference:

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

13
14 SECTION 6. Arkansas Code § 5-27-233(d), concerning distribution of e-
15 cigarettes to minors, is amended to read as follows to provide consistency
16 with the section prohibiting tobacco sales to minors:

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

21
22 SECTION 7. Arkansas Code § 5-27-609 is amended to read as follows to
23 conform references to existing definitions and to correct references:

24 5-27-609. Possession of sexually explicit digital material.

25 (a) As used in this section:

26 ~~(1) "Juvenile" means a person under eighteen (18) years of age;~~
27 ~~and~~

28 ~~(2) (1) "Nudity" means a:~~

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

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

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

36 ~~(3)-(A)-(2)(A)~~ (2)(A) "Sexually explicit digital material" means any

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

2 (i) In any condition of nudity; or

3 (ii) Involved in any prohibited sexual act.

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

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

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

13 (1) A ~~juvenile~~ minor:

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

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

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

21 (2) A ~~juvenile~~ minor:

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

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

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

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

33
34 SECTION 8. Arkansas Code § 5-37-506 is amended to read as follows to
35 clarify the name of a criminal offense:

36 5-37-506. Prohibited activity by a procurer or provider.

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

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

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

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

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

12 (b) Prohibited activity by a procurer or provider is a Class D felony.
 13

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

16 ~~(6) Class B misdemeanor if the required appearance was in regard~~
 17 ~~to a pending charge or disposition of a Class D misdemeanor charge either~~
 18 ~~before or after a determination of guilt of the charge;~~
 19

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

23 (2) ~~With~~ Removes the transmittal device with the purpose to
 24 prevent or hinder the owner from locating the dog used in hunting or raptor
 25 used in falconry.
 26

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

29 (a) Any person who operates a motor vehicle or is in actual physical
 30 control of a motor vehicle in this state is deemed to have given consent,
 31 subject to the provisions of § 5-65-203, to one (1) or more chemical tests of
 32 his or her blood, breath, saliva, or urine for the purpose of determining the
 33 alcohol concentration or controlled substance content of his or her breath or
 34 blood if:
 35

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

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

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

7
8 SECTION 13. Arkansas Code § 5-71-217 is amended to read as follows to
9 reorganize a section and clarify a reference:

10 5-71-217. Cyberbullying.

11 (a) As used in this section:

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

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

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

25 (A) Public school operated by a school district;

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

28 (C) Public charter school; or

29 (D) Private school.

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

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

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

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

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

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

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

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

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

17
 18 SECTION 14. Arkansas Code § 5-73-120(c), concerning carrying a weapon,
 19 is amended to read as follows to correct a reference:

20 (c) It is permissible to carry a ~~handgun~~ weapon under this section if
 21 at the time of the act of carrying a ~~a~~ the weapon:
 22

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

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

30 (1) Paying the Department of Arkansas State Police a fee
 31 established by the director under the Arkansas Administrative Procedure Act,
 32 § 25-15-201 et seq.; and

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

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

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

4
 5 SECTION 16. Arkansas Code § 5-73-322(b), concerning concealed handguns
 6 in a university, college, or community college building, is amended to read
 7 as follows to conform a reference to a defined term:

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

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

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

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

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

30
 31 SECTION 17. DO NOT CODIFY. The enactment and adoption of this act
 32 shall not repeal, expressly or impliedly, the acts passed at the regular
 33 session of the Ninetieth General Assembly. All such acts shall have full
 34 force and effect and, so far as those acts intentionally vary from or
 35 conflict with any provision contained in this act, those acts shall have the
 36 effect of subsequent acts and as amending or repealing the appropriate parts

1 of the Arkansas Code of 1987.

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APPROVED: 04/06/2015