

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Senator Dowd**

A Bill

ACT 609 OF 1995
SENATE BILL 563

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 5-2-314 PERTAINING TO
9 ACQUITTALS ON THE GROUND OF MENTAL DISEASE; TO ADD
10 ARKANSAS CODE 5-2-317 PERTAINING TO THE JURISDICTION OF
11 PROBATE COURTS OVER PERSONS ACQUITTED BY REASON OF MENTAL
12 DISEASE; AND FOR OTHER PURPOSES."

Subtitle

14 "TO AMEND VARIOUS ARKANSAS CODES
15 PERTAINING TO ACQUITTALS ON THE GROUND
16 OF MENTAL DISEASE."

18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code 5-2-314 is amended to read as follows:

22 "§ 5-2-314. Acquittal - Examination of defendant - Hearing.

23 (a) When a defendant is acquitted on the ground of mental disease or
24 defect, the circuit court shall be required to determine, and to include such
25 determination in the order of acquittal, one of the following:

26 (1) The offense involved bodily injury to another person or
27 serious damage to the property of another or involved a substantial risk of
28 such injury or damage, and that the defendant remains affected by mental
29 disease or defect; or

30 (2) The offense involved bodily injury to another person or
31 serious damage to the property of another or involved a substantial risk of
32 such injury or damage, and that the defendant is no longer affected by mental
33 disease or defect; or

34 (3) The offense did not involve bodily injury to another person
35 or serious damage to the property of another nor did it involve substantial
36 risk of such injury or damage, and that the defendant remains affected by

1 mental disease or defect; or

2 (4) The offense did not involve bodily injury to another person
3 or serious damage to the property of another nor did it involve a substantial
4 risk of such injury or damage, and that the defendant is no longer affected by
5 mental disease or defect.

6 (b) If the court enters a determination based on subsection (a)(1) or
7 (a)(3) above, the circuit court shall order the defendant committed to the
8 custody of the Director of the Department of Human Services for an examination
9 by a psychiatrist or a licensed psychologist.

10 (c) If the court enters a determination based on subsection (a)(2) or
11 (a)(4) above, the court shall immediately discharge the defendant.

12 (d) The Director of the Department of Human Services shall file the
13 psychiatric or psychological report with a probate court having venue within
14 thirty (30) days following entry of order of acquittal. A hearing shall be
15 conducted by the probate court and shall take place not later than ten (10)
16 days following the filing of the report with the probate court.

17 (e) A person found not guilty, on the ground of mental disease or
18 defect, of an offense involving bodily injury to another person, or serious
19 damage to the property of another, or involving a substantial risk of such
20 injury or damage, has the burden of proving by clear and convincing evidence
21 that his release would not create a substantial risk of bodily injury to
22 another person or serious damage of property of another due to a present
23 mental disease or defect. With respect to any other offense, the person has
24 the burden of proof by a preponderance of the evidence.

25 (f) The acquittee whose mental condition is the subject of a hearing
26 has a right to counsel. If it appears to the court that the acquittee is in
27 need of counsel, counsel shall be appointed immediately upon filing of the
28 original petition. Whenever legal counsel is appointed by the court, such
29 court shall determine the amount of the fee to be paid the attorney so
30 appointed and issue an order of payment. The amount allowed shall be based
31 upon the time and effort of the attorney in the investigation, preparation,
32 and representation of the client at the court hearings.

33 (g) The quorum courts of each county shall appropriate funds for the
34 purpose of payment of the attorney's fees provided for by subsection (f) and
35 upon presentment of a claim accompanied by an order of the probate court

1 fixing the fee, the same shall be approved by the county court and paid in the
2 same manner as other claims against the county are paid.

3 (h) The hearings conducted pursuant to subsection (d) of this section
4 may be held at the Arkansas State Hospital or a receiving facility or program
5 where the acquittee is detained.

6 (i) The probate judge, when conducting any hearing set out in this
7 section, may conduct said hearing within any county of his judicial district.

8 (j) It shall be the duty of the prosecuting attorney's office in the
9 county where the petition is filed to represent the State of Arkansas at all
10 hearings held in the probate court pursuant to this section, except those
11 hearings pending before the probate judge at the Arkansas State Hospital in
12 Pulaski County, Arkansas. A prosecuting attorney may contract with other
13 attorneys to provide these services. The Office of the Prosecutor Coordinator
14 shall appear for and on behalf of the State of Arkansas before the mental
15 health probate judge at the Arkansas State Hospital in Little Rock, Arkansas.
16 Such representation shall be a part of the official duties of the prosecuting
17 attorney or the Prosecutor Coordinator, and the prosecuting attorney or the
18 Prosecutor Coordinator shall be immune from civil liability in the performance
19 of this official duty."

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21 SECTION 2. Arkansas Code 5-2-315(a)(1)(C) is amended to read as
22 follows:

23 "(C) If, after the hearing, the court finds by the standard specified
24 in § 5-2-314(e) that the person has recovered from his mental disease or
25 defect to such an extent that:

26 (i) His release would no longer create a substantial
27 risk of bodily injury to another person or serious damage to property of
28 another, the court shall order that he be immediately discharged; or

29 (ii) His conditional release under a prescribed
30 regimen of medical, psychiatric, or psychological care or treatment would no
31 longer create a substantial risk of bodily injury to another person or serious
32 damage to property of another, then:

33 (iii) The court shall order:

34 (a) That he be conditionally discharged under a
35 prescribed regimen of medical, psychiatric, or psychological care or treatment

1 that has been prepared for him, that has been certified to the court as
2 appropriate by the director of the facility in which he is committed, and that
3 has been found by the court to be appropriate; and

4 (b) As an explicit condition of release, that
5 he comply with the prescribed regimen of medical, psychiatric, or
6 psychological care or treatment, and that such compliance be documented with
7 the court at ninety-day intervals. The court, at any time, may, after a
8 hearing employing the same criteria, modify or eliminate the regimen of
9 medical, psychiatric, or psychological care or treatment."

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11 SECTION 3. Subchapter 3 of chapter 2 of title 5 of the Arkansas Code is
12 amended by adding the following sections:

13 "§ 5-2-317. (a) The probate courts of this state shall have exclusive
14 jurisdiction over persons acquitted by reason of mental disease or defect and
15 committed to the custody of the Director of the Department of Human Services
16 pursuant to A.C.A. §5-2-314(b).

17 (b) Venue shall be determined as follows:

18 (1) For persons committed to the custody of the Department of
19 Human Services pursuant to §5-2-314(b) and who have been committed to the
20 Arkansas State Hospital for examination, venue may be in the Pulaski County
21 Probate Court, Ninth Division, for the initial hearing pursuant to §5-2-314,
22 for conditional release hearings pursuant to §5-2-315.

23 (2) For persons who have been conditionally released pursuant to
24 §5-2-315 venue for any hearing seeking the modifications, revocation, or
25 dismissal of a conditional release order shall be in the probate court of the
26 county where the person currently resides.

27 (3) The witness and travel fees, as provided for in the Arkansas
28 Rules of Civil Procedure, for employees of a designated receiving facility
29 whose presence in the probate court is compelled pursuant to a subpoena shall
30 be paid by the designated receiving facility to which the acquittee is, or
31 will be, conditionally released."

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33 SECTION 4. All provisions of this act of a general and permanent nature
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
35 Revision Commission shall incorporate the same in the Code.

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SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 6. All laws and parts of laws in conflict with this act are hereby repealed.

APPROVED: 3-13-95

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