

ARKANSAS SENATE
92nd General Assembly - Regular Session, 2019
Amendment Form

Subtitle of Senate Bill No. 191

TO CREATE THE COURT OR JURY FINDING OF GUILTY BUT WITH A MENTAL ILLNESS;
CONCERNING THE AFFIRMATIVE DEFENSE OF NOT GUILTY BY WAY OF MENTAL DISEASE OR
DEFECT; AND CONCERNING CLAIMS OF INSANITY BY A CRIMINAL DEFENDANT.

Amendment No. 1 to Senate Bill 191

Amend Senate Bill No. 191 as originally introduced:

Page 2, delete SECTION 2 in its entirety and substitute the following:

"SECTION 2. Arkansas Code § 5-2-312 is amended to read as follows:
5-2-312. Lack of criminal responsibility – Affirmative defense.

(a)(1) It is an affirmative defense to a prosecution that at the time the defendant engaged in the conduct charged he or she lacked criminal responsibility.

(2) When the affirmative defense of lack of criminal responsibility is presented to a jury, ~~prior to~~ before deliberations the jury shall be instructed regarding the disposition of a defendant:

(A) acquitted Acquitted due to the defendant's lack of criminal responsibility as described under § 5-2-314; or

(B) Found guilty but with a mental illness under § 5-2-318.

(b) If the defendant raises the affirmative defense of lack of criminal responsibility, the state may request and the court shall grant upon the request an alternative jury instruction and verdict form for the jury to consider that the person is guilty but with a mental illness under § 5-2-318.

(c) The defendant may simultaneously argue the affirmative defense of lack of criminal responsibility and for a finding of guilty but with a mental illness under § 5-2-318, and a jury instruction may be given to explain that fact.

(d) The state may simultaneously argue against the affirmative defense of lack of criminal responsibility and for a finding of guilty but with a mental illness under § 5-2-318, and a jury instruction may be given to explain that fact.

(e) ~~When~~ If a defendant is acquitted on a ground of lack of criminal responsibility, the verdict and judgment shall state that the defendant was acquitted on a ground of lack of criminal responsibility."



AND

Page 10, delete SECTION 7 in its entirety and substitute the following:

"SECTION 7. Arkansas Code Title 5, Chapter 2, Subchapter 3, is amended to add an additional section to read as follows:

5-2-318. Guilty but with a mental illness – Sentencing.

(a) If a person asserts the affirmative defense under this subchapter of mental disease or defect, the person may be found guilty but with a mental illness if, after trial, the finder of fact finds all of the following:

(1) The person is guilty beyond a reasonable doubt of an offense;

(2) The person has proven by a preponderance of the evidence that he or she had a mental illness at the time of the commission of that offense; and

(3) The person has not established by a preponderance of the evidence that he or she lacked the substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.

(b)(1) A person who asserts the affirmative defense under this subchapter of mental disease or defect may waive his or her right to a jury trial and enter a negotiated plea of guilty but with a mental illness.

(2)(A) A court shall not accept a plea of guilty but with a mental illness without an evidentiary hearing to determine the extent of the person's mental illness and a finding by the court that the person has proved by a preponderance of the evidence that the person had a mental illness at the time of the offense.

(B) Both parties may present evidence in an evidentiary hearing under this subsection.

(c) A verdict of guilty but with a mental illness is the same as a verdict of guilty with the same burden of proof except for the disposition of the defendant.

(d) A person who is found guilty but with a mental illness is subject to the full range of sentence for the offense originally charged but shall be remanded to the custody of the Arkansas State Hospital for treatment until the Medical Director of the Arkansas State Hospital determines that the person is no longer in need of hospitalization under the procedures described under § 5-2-320.

(e) The time a person is in the custody of the Arkansas State Hospital is credited toward the length of time to which the person is sentenced for the offense.

(f) If a defendant is found guilty but with a mental illness, the verdict and judgment shall state that the defendant was found guilty but with a mental illness."

AND

Page 11, delete lines 16 through 19, and substitute the following:

"(3)(A) If the defendant was sentenced to probation, the circuit court may impose any prohibition, restriction, or requirement on the defendant as the circuit court considers necessary for the safety of the

defendant and the community, including further mental health treatment and periodic reports by the mental health provider to the circuit court.

(B) A report described under this subdivision (b)(3) shall be filed with the probation officer and the sentencing court every three (3) months during the period of probation.

(C) Failure to continue mental health treatment, except by agreement with the mental health provider and the circuit court, is grounds for revocation of probation.

(D) Mental health treatment shall be provided by the Arkansas State Hospital or, with the approval of the circuit court and at the defendant's expense, by a private community mental health services provider, a private physician, or other mental health personnel.

(E) If a petition to discontinue probation is made by the defendant, the probation officer shall request a report from the Arkansas State Hospital for the performance of forensic psychiatric evaluation.

(4) If the defendant has been convicted of a misdemeanor for which there was no sentence of incarceration, the circuit court may impose any prohibition, restriction, or requirement on the defendant as the circuit court considers necessary for the safety of the defendant and the community, including further mental health treatment."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Rapert

BPG/BPG - 02-06-2019 12:14:05

BPG295

Secretary