

Stricken language would be deleted from and underlined language would be added to the law as it existed
prior to this session of the General Assembly.
Act 568 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 2685

5 By: Representative Woods
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For An Act To Be Entitled

9 AN ACT TO CLARIFY THE ROLE OF THE DEPARTMENT OF
10 HEALTH AND HUMAN SERVICES CONCERNING DEFENDANTS
11 ACQUITTED BY REASON OF MENTAL DISEASE OR DEFECT
12 AND JUVENILES JUDGED UNFIT TO PROCEED IN A
13 JUVENILE DELINQUENCY PROCEEDING; AND FOR OTHER
14 PURPOSES.
15

Subtitle

16 AN ACT TO CLARIFY CUSTODY OF DEFENDANTS
17 ACQUITTED BY REASON OF MENTAL DISEASE OR
18 DEFECT AND JUVENILES JUDGED UNFIT.
19
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 5-2-310 is amended to read as follows:

25 5-2-310. Lack of fitness to proceed - Procedures subsequent to finding.

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

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



1 (2) A copy of the report filed pursuant to § 5-2-305 shall be
 2 attached to the order of commitment or order of conditional release.

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

8 (A) The defendant's mental disease or defect is of a
 9 nature precluding restoration of fitness to proceed; and

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

12 (2)(A) The court shall make a determination within one (1) year
 13 of a commitment pursuant to subsection (a) of this section.

14 (B) Pursuant to the report of the ~~director or his or her~~
 15 ~~designee~~ department or as a result of a hearing on the report, if the court
 16 determines that the defendant is fit to proceed, prosecution in ordinary
 17 course may commence.

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

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

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

29 (2) However, if the court is of the view that so much time has
 30 elapsed since the alleged commission of the offense in question that it would
 31 be unjust to resume the criminal proceeding, the court may dismiss the
 32 charge.

33
 34 SECTION 2. Arkansas Code § 5-2-314(b), concerning custody of a
 35 criminal defendants by the Department of Health and Human Services, is
 36 amended to read as follows:

1 (b) If the circuit court enters a determination based on subdivision
 2 (a)(1) or (3) of this section, the circuit court shall order the defendant
 3 committed to the custody of the ~~Director of the~~ Department of Health and
 4 Human Services for an examination by a psychiatrist or a licensed
 5 psychologist.

6
 7 SECTION 3. Arkansas Code § 5-2-314(d), concerning the filing of
 8 reports regarding criminal defendants by the Department of Health and Human
 9 Services, is amended to read as follows:

10 (d)(1)(A) The ~~director~~ department shall file the psychiatric or
 11 psychological report with the probate clerk of the circuit court having venue
 12 within thirty (30) days following receipt of an order of acquittal.

13 (B) If before thirty (30) days the ~~director~~ department
 14 makes application to the circuit court for an extension of time to file the
 15 psychiatric or psychological report and the circuit court finds there is good
 16 cause for the delay, the circuit court may order that additional time be
 17 allowed for the ~~director~~ department to file the psychiatric or psychological
 18 report.

19 (C) A hearing shall be conducted by the circuit court and
 20 shall take place not later than ten (10) days following the filing of the
 21 psychiatric or psychological report with the circuit court.

22 (2) If the psychiatric or psychological report is not filed
 23 within thirty (30) days following the ~~director's~~ department's receipt of an
 24 order of acquittal or within such additional time as authorized by the
 25 circuit court, the circuit court may grant a petition for a writ of habeas
 26 corpus ordering the release of the defendant under terms and conditions that
 27 are reasonable and just for the defendant and societal concerns about the
 28 safety of persons and property of others.

29
 30 SECTION 4. Arkansas Code § 9-27-502(b)(9)(A), concerning the unfitness
 31 of a juvenile to proceed in a juvenile delinquency proceeding, is amended to
 32 read as follows:

33 (9)(A) If the juvenile is found
 34 unfit to proceed, the court shall commit the juvenile to the ~~Arkansas State~~
 35 Hospital custody of the Department of Health and Human Services or a
 36 residential treatment facility for a period not to exceed nine (9) months.

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APPROVED: 3/28/2007