

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 767 OF 1995
SENATE BILL 647

4 **By: Senators Everett and Hardin**
5 **By: Representative Flanagin**

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE
10 REGARDING THE PSYCHIATRIC EXAMINATION PROCEDURE AND
11 TRACKING SYSTEM FOR INSANITY EVALUATIONS AND INSANITY
12 ACQUITTEES; AND FOR OTHER PURPOSES."

Subtitle

15 "REGARDING PSYCHIATRIC EXAMINATION
16 PROCEDURE AND TRACKING SYSTEM FOR
17 INSANITY EVALUATIONS AND INSANITY
18 ACQUITTEES"

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

21
22 SECTION 1. Arkansas Code Annotated § 5-2-301 is amended to read as
23 follows:

24 "5-2-301. Definitions.

25 As used in this subchapter, unless the context otherwise requires:

26 (1) State mental health system refers to the Arkansas State Hospital,
27 George W. Jackson Community Mental Health Center in Jonesboro, Arkansas, and
28 any other facility or program certified by the Division of Mental Health
29 Services of the Department of Human Services.

30 (2) Designated receiving facility or program refers to an inpatient
31 or outpatient treatment facility or program which is designated within each
32 geographic area of the state by the Deputy Director of the Division of Mental
33 Health Services of the Department of Human Services to accept the
34 responsibility for care, custody, and treatment of persons involuntarily
35 admitted to the state mental health system.

36 (3) Appropriate facility refers to any facility within or without

1 this state to which a defendant is eligible for admission and treatment for
2 mental disease or defect.

3 (4) Qualified psychiatrist refers to a licensed psychiatrist who has
4 successfully completed a forensic certification course approved by the
5 Department of Human Services.

6 (5) Qualified psychologist refers to a licensed psychologist who has
7 successfully completed a forensic certification course approved by the
8 Department of Human Services.

9 (6) Compliance monitor refers to either a social service
10 representative or licensed social worker, or both, employed by the Department
11 of Human Services for the purpose of, including but not limited to, verifying
12 that a person conditionally released pursuant to the provisions of this
13 subchapter is in compliance with those conditions, providing social service
14 assistance to such persons, and reporting such compliance or lack thereof to
15 the appropriate probate court."

16

17 SECTION 2. Arkansas Code Annotated § 5-2-304 is amended to read as
18 follows:

19 "5-2-304. Notice requirement.

20 (a) Whenever a defendant intends to raise mental disease or defect as a
21 defense in a prosecution or put in issue his fitness to proceed, he must
22 notify the prosecutor and the court at the earliest practicable time.

23 (b) Failure to notify the prosecutor within a reasonable time before
24 the trial date shall entitle the prosecutor to a continuance which, for
25 limitation purposes, shall be deemed an excluded period granted on application
26 of the defendant. Alternatively, in lieu of suspending all further
27 proceedings under § 5-2-305, the court may order the immediate examination of
28 the defendant at designated receiving facility or program by a qualified
29 psychiatrist or qualified psychologist."

30

31 SECTION 3. Arkansas Code Annotated § 5-2-305 is amended to read as
32 follows:

33 "5-2-305. Psychiatric examination of defendant.

34 (a) Whenever a defendant charged in circuit court:

35 (1) Files notice that he intends to rely upon the defense of

1 mental disease or defect, or there is reason to believe that mental disease or
2 defect of the defendant will or has become an issue in the cause; or

3 (2) Files notice that he will put in issue his fitness to
4 proceed, or there is reason to doubt his fitness to proceed, the court,
5 subject to the provisions of §§ 5-2-304 and 5-2-311, shall immediately suspend
6 all further proceedings in the prosecution. If a trial jury has been
7 impaneled, the court may retain the jury or declare a mistrial and discharge
8 the jury. A discharge of the trial jury shall not be a bar to further
9 prosecution.

10 (b)(1) Upon suspension of further proceedings in the prosecution, the
11 court shall enter an order:

12 (A) Directing that the defendant undergo examination and
13 observation by one (1) or more qualified psychiatrists or qualified
14 psychologists at a designated receiving facility or program.

15 (B) Appointing one (1) or more qualified psychiatrists not
16 practicing within the Arkansas State Hospital to make an examination and
17 report on the mental condition of the defendant; or

18 (C) Directing the Director of the Division of Mental Health
19 Services of the Department of Human Services to determine who shall examine
20 and report upon the mental condition of the defendant; or

21 (D) Committing the defendant to the Arkansas State Hospital
22 or other appropriate facility for the purpose of the examination.

23 (2) The person designated to perform the examination pursuant to
24 subsection (b) of this section shall determine whether the defendant shall be
25 admitted to the Arkansas State Hospital or other appropriate facility for the
26 purpose of the examination.

27 (3) The examination shall be for a period not exceeding thirty
28 days, or such longer period as the court determines to be necessary for the
29 purpose.

30 (4) (A) A uniform evaluation order shall be developed by the
31 Administrative Office of the Courts, the Prosecutor Coordinator's Office, and
32 the Department of Human Services. The uniform order shall at a minimum
33 contain the defendant's name, age, sex, race, the charges pending against him,
34 his attorney's name and address, his custody status, the case number, and the
35 case number and a unique identifying number on the incident reporting form as

1 required by the Arkansas Crime Information Center. The order shall be
2 utilized any time that a defendant is ordered to be examined by the court
3 pursuant to this section, and a copy shall be forwarded to the Director of the
4 Department of Human Services or his designee. After July 1, 1995, no
5 evaluations shall be conducted without using the uniform order.

6 (B) The Division of Mental Health shall maintain a database
7 of all examinations of defendants performed pursuant to this chapter. At a
8 minimum it shall contain the information on the uniform evaluation order as
9 provided in Arkansas Code § 5-2-305(b)(4)(A). Additionally, it shall track
10 insanity acquittees and their conditional release.

11 (c) Upon completion of an examination pursuant to subsection (b) of
12 this section, the court may enter an order providing for further examination
13 and may order the defendant committed to the Arkansas State Hospital or other
14 appropriate facility for further examination and observation if the court
15 determines that commitment and further examination and observation are
16 warranted.

17 (d) The report of the examination shall include the following:

18 (1) A description of the nature of the examination;

19 (2) A diagnosis of the mental condition of the defendant;

20 (3) An opinion as to his capacity to understand the proceedings
21 against him and to assist effectively in his own defense;

22 (4) An opinion as to the extent, if any, to which the capacity of
23 the defendant to appreciate the criminality of his conduct or to conform his
24 conduct to the requirements of law was impaired at the time of the conduct
25 alleged; and

26 (5) When directed by the court, an opinion as to the capacity of
27 the defendant to have the culpable mental state that is required to establish
28 an element of the offense charged.

29 (e) If the examination cannot be conducted because of the unwillingness
30 of the defendant to participate therein, the report shall so state and shall
31 include, if possible, an opinion as to whether such unwillingness of the
32 defendant is the result of mental disease or defect.

33 (f) The person designated to perform the evaluation shall file the
34 report of the examination with the clerk of the court and shall mail a copy to
35 the defense attorney and prosecuting attorney. Upon entry of an order by a

1 circuit court, copies of the record concerning a defendant shall be provided
2 by the person designated to perform the evaluation.

3 (g) Any examiner shall be permitted to make separate explanation
4 reasonably serving to clarify his diagnosis or opinion.

5 (h) There shall be made available to the examiners and counsel, for
6 inspection and copying, all existing medical and pertinent records in the
7 custody of public agencies notwithstanding the provision of any statute
8 enacted prior to January 1, 1976.

9 (i) The cost of examination other than examiners retained by the
10 defendant shall be borne by the state. Room and board costs shall also be
11 borne by the state. However, whenever an evaluation of the defendant has been
12 completed, the county from which the defendant had been sent for evaluation
13 shall, within three (3) working days, procure the defendant from the Arkansas
14 State Hospital or from a designated receiving facility or program or other
15 facility where the evaluation was performed. Should the county fail to
16 procure the defendant within this three-day period, the county shall bear all
17 room and board costs on the fourth and subsequent days.

18 (j) Those persons under commitment and supervision of the Arkansas
19 Department of Correction who are defendants charged in circuit court, shall
20 not undergo examination or observation conducted by psychiatrists or other
21 mental health personnel of the Department of Correction to determine the
22 mental condition of the defendant."

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24 SECTION 4. Arkansas Code Annotated § 5-2-315 is amended to read as
25 follows:

26 "5-2-315. Discharge or conditional release.

27 (a) (1) When the Director of the Department of Human Services or his
28 designee determines that the acquittee has recovered from his mental disease
29 or defect to such an extent that his release or his conditional release under
30 a prescribed regimen of medical, psychiatric, or psychological care or
31 treatment would no longer create a substantial risk of bodily injury to
32 another person or serious damage to the property of another, he shall promptly
33 file an application for discharge or conditional release of the acquittee with
34 the probate court that ordered the commitment. The director shall send a copy
35 of the application to the acquittee's counsel and to the attorney for the

1 state.

2 (2) (A) Within twenty (20) days after receiving the application
3 for discharge, the attorney for the state may petition the court for a hearing
4 to determine whether the acquittee should be released.

5 (B) If the attorney for the state does not request a
6 hearing, the court may conduct a hearing on its own motion or discharge the
7 acquittee.

8 (C) If, after the hearing, the court finds by the standard
9 specified in § 5-2-314(a) (3) that the person has recovered from his mental
10 disease or defect to such an extent that:

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

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

18 (iii) The court shall order that he be conditionally
19 discharged under a prescribed regimen of medical, psychiatric, or
20 psychological care or treatment that has been prepared for him, that has been
21 certified to the court as appropriate by the director of the facility in which
22 he is committed, and that has been found by the court to be appropriate, and
23 as explicit conditions of release:

24 (1) That he comply with the prescribed regimen
25 of medical, psychiatric, or psychological care or treatment;

26 (2) That he be subject to regularly scheduled
27 personal contact with the compliance monitor for the purpose of verifying
28 compliance with the conditions of release; and

29 (3) That such compliance be documented with the
30 court by the compliance monitor at ninety (90) day intervals, or at such
31 intervals as the court may order.

32 (D) If the court determines that the acquittee has not met
33 his burden of proof, the acquittee shall continue to be committed to the
34 custody of the Department of Human Services.

35 (b) The person ordered to be in charge of the prescribed regimen of

1 medical, psychiatric, or psychological care or treatment shall:

2 (1) provide the regimen of medical, psychiatric, or psychological
3 care or treatment;

4 (2) provide periodic written documentation of compliance with the
5 conditions of release, including but not limited to documentation of
6 compliance with prescribed medication, treatment and therapy, substance abuse
7 treatment, and drug testing, to the compliance monitor; and shall

8 (3) provide written notice of any failure of the acquittee to
9 comply with the regimen to the compliance monitor, the acquittee_s attorney,
10 the attorney for the state, and the probate court having jurisdiction. Such
11 notice shall be provided immediately upon the failure of the person to comply
12 with the conditions of release.

13 (c) Upon such notice, or upon other probable cause to believe that the
14 person has failed to comply with the prescribed regimen of medical,
15 psychiatric, or psychological care or treatment, the person may be detained
16 and shall be taken without unnecessary delay before the court having
17 jurisdiction over him. The court shall, after a hearing, determine whether
18 the person should be remanded to an appropriate facility on the ground that,
19 in light of his failure to comply with the prescribed regimen of medical,
20 psychiatric, or psychological care or treatment, his continued release would
21 create a substantial risk of bodily injury to another person or serious damage
22 to property of another.

23 (d) The court, at any time may, after a hearing employing the same
24 criteria, modify or eliminate the regimen of medical, psychiatric, or
25 psychological care or treatment.

26 (e) Regardless of whether the Director of the Department of Human
27 Services or his designee has filed an application pursuant to the provisions
28 of subsection (a) of this section, the acquittee, acquittee's counsel, or his
29 legal guardian may, at any time during such person's commitment, file with the
30 court that ordered the commitment a motion for a hearing to determine whether
31 the person should be discharged from such facility, but no such motion may be
32 filed more often than once every one hundred eighty (180) days. A copy of the
33 motion shall be sent to the director of the facility in which the person is
34 committed and to the attorney for the state."

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