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.

State of Arkansas
83rd General Assembly
Regular Session, 2001

A Bill

Act 248 of 2001
SENATE BILL 5

By: Senator Hoofman

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS CODE 5-2-312(a) TO REQUIRE JURORS BE INFORMED AS TO THE TREATMENT, CARE AND CUSTODY OF DEFENDANTS FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO AMEND ARKANSAS CODE 5-2-312 (a) TO REQUIRE JURORS BE INFORMED AS TO THE TREATMENT, CARE AND CUSTODY OF DEFENDANTS FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT.

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

SECTION 1. Arkansas Code 5-2-312(a) is amended to read as follows:

(a)(1) It is an affirmative defense to a prosecution that at the time the defendant engaged in the conduct charged, he lacked capacity, as a result of mental disease or defect, to conform his conduct to the requirements of law or to appreciate the criminality of his conduct.

(2) When the affirmative defense of mental disease or defect is presented to a jury, the jury, prior to deliberations, shall be instructed regarding the disposition of a defendant acquitted on the grounds of mental disease or defect pursuant to § 5-2-314.

SECTION 2. INTENT.

(a)(1) It is the intent of the General Assembly that Arkansas join the majority of jurisdictions to have considered the question that juries be fully

informed and understand that evidence admitted on the question of mental disease or defect may be considered by them on the question of the mental state of the accused to commit the offense charged or a lesser included offense.

(2) It is the intent of the General Assembly to specifically abrogate Robinson v. State, 269 Ark. 90, 598 S.W.2d 421 (1980); Westbook v. State, 274 Ark. 309, 624 S.W.2d 633 (1981); and Riggs v. State, 339 Ark. 111, 3 S.W. 3d 305 (1999).

(b) It is further the intent of the General Assembly that juries in Arkansas be fully informed and understand that a defendant acquitted by reason of his mental disease or defect will not automatically be released and whether he will ever be released depends upon what is found by the Arkansas State Hospital and the courts.

(c)(1) The General Assembly considers that most states require juries, in cases asserting the defense of mental disease or defect, to be informed of the disposition of the defendant, so that the juries will not erroneously believe that the defendant would immediately be released from custody should they find the defendant not guilty by reason of mental disease or defect, because it can divert juries from fairly determining that question.

(2) Arkansas previously expressed the judicial rationale, in cases in which the defendant asserts the defense of mental disease or defect, that informing juries on matters of the disposition of offenders would divert juries from their duty to decide the facts. See, e.g., Madison v. State, 287 Ark. 179, 697 S.W.2d 106 (1985). This rationale for denying such a jury instruction was abrogated in 1993 by the General Assembly by the adoption of bifurcated sentencing in Arkansas Code 16-97-103(1) which requires that juries be instructed as to "the law applicable to parole, meritorious good time, or transfer" in determining a sentence. Therefore, the rationale for not so instructing the jury having been changed by the General Assembly, juries should now be informed of the effect of their verdict in cases where this affirmative defense is raised.

APPROVED: 2/15/2001