

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

574

By: Senators Kinard, Gordon, and Hardin

For An Act To Be Entitled

"AN ACT RELATING TO THE COMMITMENT OF INSANITY ACQUITTEES;
AND FOR OTHER PURPOSES."

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

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

"5-2-310. (a) Lack of fitness to proceed - Procedures subsequent to finding. If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, and the court may commit him to the custody of the Director of the Department of Human Services for detention, care, and treatment until restoration of fitness to proceed. If, however, the court is satisfied that the defendant may be released without danger to himself or to the person or property of others, the court may order his release, which shall continue at the discretion of the court on conditions the court determines necessary. A copy of the report filed pursuant to §5-2-305 shall be attached to the order of commitment or order of conditional release.

(b) (1) Within a reasonable period of time, but in any case within ten (10) months of a commitment pursuant to subsection (a) of this section, the Director of the Department of Human Services or his designee shall file with the committing court a written report indicating whether the defendant is fit to proceed, or, if not, whether:

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

(B) The defendant presents a danger to himself or to the person or property of others.

(2) (A) The court must make a determination within one year of a commitment pursuant to subsection (a).

(B) If the court, pursuant to report of the Director of the Department of Human Services or his designee or as a result of a hearing on

the report, determines that the defendant is fit to proceed, prosecution in ordinary course may commence.

(C) If the defendant is unfit to proceed but does not present a danger to himself or to the person or property of others, the court may release the defendant on conditions it determines proper.

(D) If the defendant is unfit to proceed and presents a danger to himself or the person or property of others the court shall order the Director of the Department of Human Services to petition for an involuntary admission.

(c) When the court, on its own motion or upon application of the Director of the Department of Human Services, the prosecuting attorney, or the defendant, determines, after a hearing if one is requested, that the defendant has regained fitness to proceed, the criminal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the alleged commission of the offense in question that it would be unjust to resume the proceeding, the court may dismiss the charge."

SECTION 2. Arkansas Code §5-2-313 is hereby amended to read as follows:

"5-2-313. Acquittal based on psychiatric report. On the basis of the report filed pursuant to §5-2-305, the court may, after a hearing if a hearing is requested, enter judgment of acquittal on the ground of mental disease or defect if it is satisfied that, at the time of the conduct charged, the defendant 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. If the defendant did not raise the issue of mental disease or defect pursuant to §5-2-305(a)(1), then the court shall be required to make a factual determination that the defendant committed the offense and that he was suffering from a mental disease or defect at the time of the commission of the offense."

SECTION 3. (a)(1) When a defendant is acquitted on the ground of mental disease or defect, the circuit court shall determine whether the offense involved bodily injury to another person or serious damage to the property of another or involved a substantial risk of such injury or damage. The circuit court shall then order the defendant committed to the custody of the Director of the Department of Human Services for an examination by a psychiatrist or a

licensed psychologist.

(2) The Director of the Department of Human Services shall file the psychiatric or psychological report with a probate court having jurisdiction within thirty (30) days following entry of order of acquittal. A hearing shall be conducted by the probate court or by a referee or the magistrate as provided in subsections (c) and (d) to Section 3, and shall take place not later than ten (10) days following the filing of the report with the probate court.

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

(b) (1) The acquittee whose mental condition is the subject of a hearing has a right to counsel. If it appears to the court that the acquittee is in need of counsel, counsel shall be appointed immediately upon filing of the original petition. Whenever legal counsel is appointed by the court, such court shall determine the amount of the fee, if any, to be paid the attorney so appointed and issue an order of payment. The amount allowed shall not exceed one hundred fifty dollars (\$150.00) based upon the time and effort of the attorney in the investigation, preparation, and representation of the client at the court hearings.

(2) The court shall have the authority to appoint counsel on a pro bono basis.

(3) The quorum courts of each county shall appropriate funds for the purpose of payment of the attorney's fees provided for by this act and upon presentment of a claim accompanied by an order of the probate court fixing the fee, the same shall be approved by the county court and paid in the same manner as other claims against the county are paid.

(c) (1) The probate judge may designate and appoint a referee who if so designated shall conduct the hearing(s) as provided in subsection (a). A referee appointed by the court may make all orders that a judge may make under this section.

(2) The hearings conducted pursuant to subsection (a) may be held at the Arkansas State Hospital or a receiving facility or program where the acquittee is detained.

(3) The person designated and appointed to be a referee shall be a licensed attorney in the State of Arkansas. No person designated and appointed to be a referee under the provisions of this Act shall be disqualified because he is a presiding municipal judge within the judicial district of the probate judge making said designation and appointment.

(4) Appeals from the decision of the referee may be taken as a matter of right to the probate court in the county in which the case was filed. Written notification of the appeal shall be made to the clerk of the probate court in the county in which the case was decided within seventy-two (72) hours, excluding weekends and holidays, following the decision of the referee. Upon request, the clerk shall cause to be transmitted to the probate judge all records pertaining to the case. A trial de novo shall be conducted by the probate judge of the county in which the case was decided within seven (7) days of the filing of the notice of appeal. The trial de novo shall comply with all procedures outlined in this act.

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

(d) Appointment of magistrates - Qualifications and duties. The Chief Justice of the Arkansas Supreme Court is hereby authorized to appoint one or more employees of the Judicial Department as magistrates among whose duties shall be to conduct hearings at the request of the appropriate probate judge for the involuntary admission of persons to a receiving facility or program. The appropriate probate judge is the probate judge who ordered the person for psychiatric or psychological examination. Such magistrate shall be a person licensed to practice law in the State of Arkansas. The magistrate shall be considered an officer of the several probate courts of this state, and, as assigned by the Chief Justice of the Arkansas Supreme Court, be available to act in behalf of such probate courts at the hearings. All rulings by the magistrate shall be subject to the review of the appropriate probate judge. All hearings conducted by the special magistrate provided for herein shall be conducted pursuant to this act, and the patient shall have all rights and privileges granted by this act.

(e) It shall be the duty of the prosecuting attorney's office in the county where the petition is filed to represent the State of Arkansas at all hearings held in the probate court pursuant to this act, except those hearings pending before the magistrate or probate referee at the Arkansas State Hospital in Pulaski County, Arkansas. A Prosecuting Attorney may contract with other attorneys to provide these services. The Office of the Prosecutor Coordinator shall appear for and on behalf of the State of Arkansas before the mental health magistrate or probate referee at the Arkansas State Hospital in Little Rock, Arkansas. Such representation shall be a part of the official duties of the Prosecuting Attorney or the Prosecutor Coordinator and the Prosecuting Attorney or the Prosecutor Coordinator shall be immune from civil liability in the performance of this official duty.

(f) The provisions of this section shall be in lieu of Arkansas Code §5-2-314 and shall apply to persons who are acquitted by reason of mental disease or defect after the effective date of this act.

SECTION 4 (a) (1) When the Director of the Department of Human Services or his designee determines that the acquittee has recovered from his mental disease or defect to such an extent that his release or his conditional release under a prescribed regimen of medical, psychiatric or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to the property of another, he shall promptly file an application for discharge or conditional release of the acquittee with the probate court that ordered the commitment. The Director shall send a copy of the application to the acquittee's counsel and to the attorney for the State.

(2) Within twenty (20) days after receiving the application for discharge, the attorney for the State may petition the court for a hearing to determine whether the acquittee should be released. If the attorney for the state does not request a hearing, the court may conduct a hearing on its own motion or discharge the acquittee. If after the hearing the court finds by the standard specified in Section 3 (a) (3) that the person has recovered from his mental disease or defect to such an extent that --

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

(B) his conditional release under a prescribed regimen of medical, psychiatric or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall:

(i) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(ii) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric or psychological care or treatment, and that such compliance be documented with the court at 90-day intervals. The court, at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric or psychological care or treatment.

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

(b) Revocation of conditional discharge. The person ordered to be in charge of the prescribed regimen of medical, psychiatric, or psychological care or treatment shall notify the attorney for the State and the probate court having jurisdiction over the acquittee of any failure of the acquittee to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric or psychological care or treatment, the person may be detained and shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric or psychological care or treatment, his continued release would create a substantial risk of bodily injury in another person or serious damage to property of another.

(c) Discharge. Regardless of whether the Director of the Department of Human Services or his designee has filed an application pursuant to the provisions of subsection (a), the acquittee, acquittee's counsel or his legal guardian may, at any time during such person's commitment file with the court

that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed more often than once every one hundred and eighty (180) days. A copy of the motion shall be sent to the director of the facility in which the person is committed and to the attorney for the State.

(d) The provisions of this section shall be in lieu of Arkansas Code §5-2-315 and shall apply to persons who are acquitted by reason of mental disease or defect after the effective date of this act.

SECTION 5. A uniform evaluation order shall be developed by the Arkansas Judicial Department, the Prosecutor Coordinators Office and the Department of Human Services. The uniform order shall at a minimum contain the defendant's name, age, sex, race, the charges pending against him, his attorney's name and address, his custody status, the case number, and the case number and a unique identifying number on the incident reporting form as required by the Arkansas Crime Information Center. The order shall be utilized any time that a defendant is ordered to be examined by the court pursuant to §5-2-305 and a copy shall be forwarded to the Director of Human Services or his designee.

SECTION 6. Arkansas Code §5-2-305 (b) is hereby amended to read as follows:

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

(1) Directing that the defendant undergo examination and observation by one or more psychiatrists at a local regional mental health center. A licensed psychologist at a mental health center who has successfully completed a forensic certification course approved by the Department of Human Services may also be directed to conduct an examination on mental condition; or

(2) Appointing at least one (1) qualified psychiatrist to make an examination and report on the mental condition of the defendant; or

(3) Directing the Director of the Arkansas State Hospital to examine and report upon the mental condition of the defendant; or

(4) Committing the defendant to the Arkansas State Hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty (30) days, or such longer period as the court determines to

be necessary for the purpose."

SECTION 7. Arkansas Code Annotated §5-2-325 is hereby repealed.

SECTION 8. It is the express intent of this act to adopt the standards for committing insanity acquittees and the automatic commitment procedures as authorized by *Jones v. United States*, 463 U. S. 354, 103 S Ct. 3043, 77 L.Ed2d 694 (1903) and *United States v. Wallace*, 845 F.2d 1471 (8th Cir. 1988)

SECTION 9. Emergency. It is hereby found and determined by the General Assembly that the present procedures for the commitment and discharge of insanity acquittees at the State Hospital are inadequate to protect the public and it is necessary to preserve the public peace, health and safety. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after June 1, 1989.