

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Dowd

A Bill

SENATE BILL 563

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 5-2-314 PERTAINING TO
9 ACQUITTALS ON THE GROUND OF MENTAL DISEASE; TO ADD
10 ARKANSAS CODE 5-2-317 PERTAINING TO THE JURISDICTION OF
11 PROBATE COURTS OVER PERSONS ACQUITTED BY REASON OF MENTAL
12 DISEASE; AND FOR OTHER PURPOSES."

Subtitle

14 "TO AMEND VARIOUS ARKANSAS CODES
15 PERTAINING TO ACQUITTALS ON THE GROUND
16 OF MENTAL DISEASE."

18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code 5-2-314 is amended to read as follows:

22 "§ 5-2-314. Acquittal - Examination of defendant - Hearing.

23 (a) When a defendant is acquitted on the ground of mental disease or
24 defect, the circuit court shall be required to determine, and to include such
25 determination in the order of acquittal, one of the following:

26 (1) The offense involved bodily injury to another person or
27 serious damage to the property of another or involved a substantial risk of
28 such injury or damage, and that the defendant remains affected by mental
29 disease or defect; or

30 (2) The offense involved bodily injury to another person or
31 serious damage to the property of another or involved a substantial risk of
32 such injury or damage, and that the defendant is no longer affected by mental
33 disease or defect; or

34 (3) The offense did not involve bodily injury to another person
35 or serious damage to the property of another nor did it involve substantial

1 risk of such injury or damage, and that the defendant remains affected by
2 mental disease or defect; or

3 (4) The offense did not involve bodily injury to another person
4 or serious damage to the property of another nor did it involve a substantial
5 risk of such injury or damage, and that the defendant is no longer affected
6 by mental disease or defect.

7 (b) If the court enters a determination based on subsection (a)(1) or
8 (a)(3) above, the circuit court shall order the defendant committed to the
9 custody of the Director of the Department of Human Services for an
10 examination by a psychiatrist or a licensed psychologist.

11 (c) If the court enters a determination based on subsection (a)(2) or
12 (a)(4) above, the court shall immediately discharge the defendant.

13 (d) The Director of the Department of Human Services shall file the
14 psychiatric or psychological report with a probate court having venue within
15 thirty (30) days following entry of order of acquittal. A hearing shall be
16 conducted by the probate court and shall take place not later than ten (10)
17 days following the filing of the report with the probate court.

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

26 (f) The acquittee whose mental condition is the subject of a hearing
27 has a right to counsel. If it appears to the court that the acquittee is in
28 need of counsel, counsel shall be appointed immediately upon filing of the
29 original petition. Whenever legal counsel is appointed by the court, such
30 court shall determine the amount of the fee to be paid the attorney so
31 appointed and issue an order of payment. The amount allowed shall be based
32 upon the time and effort of the attorney in the investigation, preparation,
33 and representation of the client at the court hearings.

34 (g) The quorum courts of each county shall appropriate funds for the
35 purpose of payment of the attorney's fees provided for by subsection (f) and

1 upon presentment of a claim accompanied by an order of the probate court
2 fixing the fee, the same shall be approved by the county court and paid in
3 the same manner as other claims against the county are paid.

4 (h) The hearings conducted pursuant to subsection (d) of this section
5 may be held at the Arkansas State Hospital or a receiving facility or program
6 where the acquittee is detained.

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

9 (j) It shall be the duty of the prosecuting attorney's office in the
10 county where the petition is filed to represent the State of Arkansas at all
11 hearings held in the probate court pursuant to this section, except those
12 hearings pending before the probate judge at the Arkansas State Hospital in
13 Pulaski County, Arkansas. A prosecuting attorney may contract with other
14 attorneys to provide these services. The Office of the Prosecutor
15 Coordinator shall appear for and on behalf of the State of Arkansas before
16 the mental health probate judge at the Arkansas State Hospital in Little
17 Rock, Arkansas. Such representation shall be a part of the official duties of
18 the prosecuting attorney or the Prosecutor Coordinator, and the prosecuting
19 attorney or the Prosecutor Coordinator shall be immune from civil liability
20 in the performance of this official duty."

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22 SECTION 2. Arkansas Code 5-2-315(a)(1)(C) is amended to read as
23 follows:

24 "(C) If, after the hearing, the court finds by the standard specified
25 in § 5-2-314(e) that the person has recovered from his mental disease or
26 defect to such an extent that:

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

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

34 (iii) The court shall order:

35 (a) That he be conditionally discharged under

1 a prescribed regimen of medical, psychiatric, or psychological care or
2 treatment that has been prepared for him, that has been certified to the
3 court as appropriate by the director of the facility in which he is
4 committed, and that has been found by the court to be appropriate; and

5 (b) As an explicit condition of release, that
6 he comply with the prescribed regimen of medical, psychiatric, or
7 psychological care or treatment, and that such compliance be documented with
8 the court at ninety-day intervals. The court, at any time, may, after a
9 hearing employing the same criteria, modify or eliminate the regimen of
10 medical, psychiatric, or psychological care or treatment."

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12 SECTION 3. Subchapter 3 of chapter 2 of title 5 of the Arkansas Code
13 is amended by adding the following sections:

14 "§ 5-2-317. (a) The probate courts of this state shall have exclusive
15 jurisdiction over persons acquitted by reason of mental disease or defect and
16 committed to the custody of the Director of the Department of Human Services
17 pursuant to A.C.A. §5-2-314(b).

18 (b) Venue shall be determined as follows:

19 (1) For persons committed to the custody of the Department of
20 Human Services pursuant to §5-2-314(b) and who have been committed to the
21 Arkansas State Hospital for examination, venue may be in the Pulaski County
22 Probate Court, Ninth Division, for the initial hearing pursuant to §5-2-314,
23 for conditional release hearings pursuant to §5-2-315.

24 (2) For persons who have been conditionally released pursuant to
25 §5-2-315 venue for any hearing seeking the modifications, revocation, or
26 dismissal of a conditional release order shall be in the probate court of the
27 county where the person currently resides.

28 (3) The witness and travel fees, as provided for in the Arkansas
29 Rules of Civil Procedure, for employees of a designated receiving facility
30 whose presence in the probate court is compelled pursuant to a subpoena shall
31 be paid by the designated receiving facility to which the acquittee is, or
32 will be, conditionally released."

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34 SECTION 4. All provisions of this act of a general and permanent
35 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

1 Code Revision Commission shall incorporate the same in the Code.

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3 SECTION 5. If any provision of this act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 act are declared to be severable.

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9 SECTION 6. All laws and parts of laws in conflict with this act are
10 hereby repealed.

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