

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

A Bill

SENATE BILL 647

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

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For An Act To Be Entitled

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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."

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Subtitle

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

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

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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
27 Hospital, George W. Jackson Community Mental Health Center in Jonesboro,
28 Arkansas, and any other facility or program certified by the Division of
29 Mental Health 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.

1 (3) Appropriate facility refers to any facility within or without
2 this state to which a defendant is eligible for admission and treatment for
3 mental disease or defect.

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

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

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

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

20 "5-2-304. Notice requirement.

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

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

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

34 "5-2-305. Psychiatric examination of defendant.

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

1 (1) Files notice that he intends to rely upon the defense of
2 mental disease or defect, or there is reason to believe that mental disease
3 or defect of the defendant will or has become an issue in the cause; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (f) The person designated to perform the evaluation shall file the

1 report of the examination with the clerk of the court and shall mail a copy
2 to the defense attorney and prosecuting attorney. Upon entry of an order by
3 a circuit court, copies of the record concerning a defendant shall be
4 provided by the person designated to perform the evaluation.

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

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

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

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

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

28 "5-2-315. Discharge or conditional release.

29 (a)(1) When the Director of the Department of Human Services or his
30 designee determines that the acquittee has recovered from his mental disease
31 or defect to such an extent that his release or his conditional release under
32 a prescribed regimen of medical, psychiatric, or psychological care or
33 treatment would no longer create a substantial risk of bodily injury to
34 another person or serious damage to the property of another, he shall
35 promptly file an application for discharge or conditional release of the

1 acquittee with the probate court that ordered the commitment. The director
2 shall send a copy of the application to the acquittee's counsel and to the
3 attorney for the state.

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

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

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

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

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

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

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

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

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

34 (D) If the court determines that the acquittee has not met
35 his burden of proof, the acquittee shall continue to be committed to the

1 custody of the Department of Human Services.

2 (b) The person ordered to be in charge of the prescribed regimen of
3 medical, psychiatric, or psychological care or treatment shall:

4 (1) provide the regimen of medical, psychiatric, or
5 psychological care or treatment;

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

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

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

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

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

1 the person is committed and to the attorney for the state."

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3 SECTION 5. All provisions of this act of a general and permanent
4 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
5 Code Revision Commission shall incorporate the same in the Code.

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

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13 SECTION 7. All laws and parts of laws in conflict with this act are
14 hereby repealed.

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16 SECTION . EMERGENCY. It is hereby found and determined by the General
17 Assembly of the State of Arkansas that recent serious random acts of violence
18 committed by insanity acquittees have heightened the awareness of the General
19 Assembly to provide a mechanism whereby those persons can be tracked and
20 nearby residence can be warned of their whereabouts so precautions may be
21 taken to protect lives and property. Therefore, an emergency is hereby
22 declared to exist and this act being necessary for the immediate preservation
23 of the public peace, health, and safety, shall be in full force and effect
24 from and after its passage and approval.

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