

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.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

# A Bill

HOUSE BILL 2685

5 By: Representative Woods  
6  
7

## For An Act To Be Entitled

9 AN ACT TO CLARIFY THE ROLE OF THE DEPARTMENT OF  
10 HEALTH AND HUMAN SERVICES CONCERNING DEFENDANTS  
11 ACQUITTED BY REASON OF MENTAL DISEASE OR DEFECT  
12 AND JUVENILES JUDGED UNFIT TO PROCEED IN A  
13 JUVENILE DELINQUENCY PROCEEDING; AND FOR OTHER  
14 PURPOSES.

## Subtitle

16 AN ACT TO CLARIFY CUSTODY OF DEFENDANTS  
17 ACQUITTED BY REASON OF MENTAL DISEASE OR  
18 DEFECT AND JUVENILES JUDGED UNFIT.  
19  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

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

25 5-2-310. Lack of fitness to proceed - Procedures subsequent to finding.

26 (a)(1)(A) If the court determines that a defendant lacks fitness to  
27 proceed, the proceeding against him or her shall be suspended and the court  
28 may commit the defendant to the custody of the ~~Director of the~~ Department of  
29 Health and Human Services for detention, care, and treatment until  
30 restoration of fitness to proceed.

31 (B) However, if the court is satisfied that the defendant may be  
32 released without danger to himself or herself or to the person or property of  
33 another, the court may order the defendant's release and the release shall  
34 continue at the discretion of the court on conditions the court determines  
35 necessary.

36 (2) A copy of the report filed pursuant to § 5-2-305 shall be



1 attached to the order of commitment or order of conditional release.

2 (b)(1) Within a reasonable period of time, but in any case within ten  
 3 (10) months of a commitment pursuant to subsection (a) of this section, the  
 4 ~~director or his or her designee~~ department shall file with the committing  
 5 court a written report indicating whether the defendant is fit to proceed,  
 6 or, if not, whether:

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

9 (B) The defendant presents a danger to himself or herself  
 10 or to the person or property of another.

11 (2)(A) The court shall make a determination within one (1) year  
 12 of a commitment pursuant to subsection (a) of this section.

13 (B) Pursuant to the report of the ~~director or his or her~~  
 14 ~~designee~~ department or as a result of a hearing on the report, if the court  
 15 determines that the defendant is fit to proceed, prosecution in ordinary  
 16 course may commence.

17 (C) If the defendant lacks fitness to proceed but does not  
 18 present a danger to himself or herself or to the person or property of  
 19 another, the court may release the defendant on conditions the court  
 20 determines to be proper.

21 (D) If the defendant lacks fitness to proceed and presents a  
 22 danger to himself or herself or the person or property of another, the court  
 23 shall order the ~~director~~ department to petition for an involuntary admission.

24 (c)(1) On the court's own motion or upon application of the ~~director~~  
 25 department, the prosecuting attorney, or the defendant, and after a hearing  
 26 if a hearing is requested, if the court determines that the defendant has  
 27 regained fitness to proceed the criminal proceeding shall be resumed.

28 (2) However, if the court is of the view that so much time has  
 29 elapsed since the alleged commission of the offense in question that it would  
 30 be unjust to resume the criminal proceeding, the court may dismiss the  
 31 charge.

32  
 33 SECTION 2. Arkansas Code § 5-2-314(b), concerning custody of a  
 34 criminal defendants by the Department of Health and Human Services, is  
 35 amended to read as follows:

36 (b) If the circuit court enters a determination based on subdivision

1 (a)(1) or (3) of this section, the circuit court shall order the defendant  
 2 committed to the custody of the ~~Director of the~~ Department of Health and  
 3 Human Services for an examination by a psychiatrist or a licensed  
 4 psychologist.

5  
 6 SECTION 3. Arkansas Code § 5-2-314(d), concerning the filing of  
 7 reports regarding criminal defendants by the Department of Health and Human  
 8 Services, is amended to read as follows:

9 (d)(1)(A) The ~~director~~ department shall file the psychiatric or  
 10 psychological report with the probate clerk of the circuit court having venue  
 11 within thirty (30) days following receipt of an order of acquittal.

12 (B) If before thirty (30) days the ~~director~~ department  
 13 makes application to the circuit court for an extension of time to file the  
 14 psychiatric or psychological report and the circuit court finds there is good  
 15 cause for the delay, the circuit court may order that additional time be  
 16 allowed for the ~~director~~ department to file the psychiatric or psychological  
 17 report.

18 (C) A hearing shall be conducted by the circuit court and  
 19 shall take place not later than ten (10) days following the filing of the  
 20 psychiatric or psychological report with the circuit court.

21 (2) If the psychiatric or psychological report is not filed  
 22 within thirty (30) days following the ~~director's~~ department's receipt of an  
 23 order of acquittal or within such additional time as authorized by the  
 24 circuit court, the circuit court may grant a petition for a writ of habeas  
 25 corpus ordering the release of the defendant under terms and conditions that  
 26 are reasonable and just for the defendant and societal concerns about the  
 27 safety of persons and property of others.

28  
 29 SECTION 4. Arkansas Code § 9-27-502(b)(9)(A), concerning the unfitness  
 30 of a juvenile to proceed in a juvenile delinquency proceeding, is amended to  
 31 read as follows:

32 (9)(A) If the juvenile is found unfit to proceed, the court  
 33 shall commit the juvenile to the ~~Arkansas State Hospital~~ custody of the  
 34 Department of Health and Human Services or a residential treatment facility  
 35 for a period not to exceed nine (9) months.