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2 92nd General Assembly
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A Bill

SENATE BILL 191

4
5 By: Senator Rapert
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE COURT OR JURY FINDING OF GUILTY
9 BUT WITH A MENTAL ILLNESS; CONCERNING THE AFFIRMATIVE
10 DEFENSE OF NOT GUILTY BY WAY OF MENTAL DISEASE OR
11 DEFECT; CONCERNING CLAIMS OF INSANITY BY A CRIMINAL
12 DEFENDANT; AND FOR OTHER PURPOSES.
13

Subtitle

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15
16 TO CREATE THE COURT OR JURY FINDING OF
17 GUILTY BUT WITH A MENTAL ILLNESS;
18 CONCERNING THE AFFIRMATIVE DEFENSE OF NOT
19 GUILTY BY WAY OF MENTAL DISEASE OR
20 DEFECT; AND CONCERNING CLAIMS OF INSANITY
21 BY A CRIMINAL DEFENDANT.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 5-2-301, concerning definitions used in the
27 context of the defense of mental disease or defect, is amended to add
28 additional subdivisions to read as follows:

29 (14) "No longer requires hospitalization" means that the person
30 may be safely discharged from the Arkansas State Hospital; and

31 (15) "Safely discharged to the Department of Correction" means:

32 (A) A person is of the physical and mental condition that
33 being incarcerated in the Department of Correction would not subject him,
34 her, or another person to substantial risk of bodily injury resulting from
35 the person's mental illness; and

36 (B) The Department of Correction has available medical or



1 mental health staff to enable the person to continue his or her ongoing
2 mental health treatment.

3
4 SECTION 2. Arkansas Code § 5-2-312 is amended to read as follows:

5 5-2-312. Lack of criminal responsibility – Affirmative defense –
6 Guilty but with a mental illness.

7 (a)(1) It is an affirmative defense to a prosecution that at the time
8 the defendant engaged in the conduct charged he or she lacked criminal
9 responsibility.

10 (2) When the affirmative defense of lack of criminal
11 responsibility is presented to a jury, ~~prior to~~ before deliberations the jury
12 shall be instructed regarding the disposition of a defendant:

13 (A) ~~acquitted~~ Acquitted due to the defendant’s lack of
14 criminal responsibility as described under § 5-2-314; or

15 (B) Found guilty but with a mental illness.

16 (b)(1) If the defendant raises the affirmative defense of lack of
17 criminal responsibility, the state may request and the court shall grant upon
18 the request an alternative jury instruction and verdict form for the jury to
19 consider that the person is guilty but with a mental illness.

20 (2) A defendant is guilty but with a mental illness if the jury
21 finds that:

22 (A) The defendant suffered from a lack of criminal
23 responsibility at the time the offense was committed;

24 (B) The defendant committed the offense; and

25 (C) The defendant is currently in need of psychiatric
26 treatment for the mental disease or defect that he or she has.

27 (c) The defendant may simultaneously argue the affirmative defense of
28 lack of criminal responsibility and for a finding of guilty but with a mental
29 illness and a jury instruction may be given to explain that fact.

30 (d) The state may simultaneously argue against the affirmative defense
31 of lack of criminal responsibility and for a finding of guilty but with a
32 mental illness and a jury instruction may be given to explain that fact.

33 (e) ~~When~~ If a defendant is acquitted on a ground of lack of criminal
34 responsibility, the verdict and judgment shall state that the defendant was
35 acquitted on a ground of lack of criminal responsibility.

36 (f) If a defendant is found guilty but with a mental illness, the

1 verdict and judgment shall state that the defendant was found guilty but with
2 a mental illness.

3
4 SECTION 3. Arkansas Code § 5-2-313 is repealed.

5 ~~5-2-313. Acquittal based on lack of criminal responsibility report.~~

6 ~~(a) On the basis of the report filed under § 5-2-328 and after a~~
7 ~~hearing, if a hearing is requested, the court may enter judgment of acquittal~~
8 ~~on the ground of lack of criminal responsibility if the court is satisfied~~
9 ~~that the following criteria are met:~~

10 ~~(1) The defendant currently has the capacity to understand the~~
11 ~~proceedings against him or her and to assist effectively in his or her own~~
12 ~~defense; and~~

13 ~~(2) At the time of the conduct charged, the defendant lacked~~
14 ~~criminal responsibility.~~

15 ~~(b) If the defendant did not raise the issue of lack of criminal~~
16 ~~responsibility as an affirmative defense under § 5-2-328, then the court is~~
17 ~~required to make a factual determination that the defendant committed the~~
18 ~~offense and that he or she lacked criminal responsibility at the time of the~~
19 ~~commission of the offense.~~

20
21 SECTION 4. Arkansas Code § 5-2-314 is amended to read as follows:

22 5-2-314. Acquittal – Examination of defendant – Hearing.

23 (a) ~~When~~ If a defendant is acquitted due to the defendant’s lack of
24 criminal responsibility, a circuit court is required to determine, and to
25 include the determination in the order of acquittal, one (1) of the
26 following:

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

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

1 (3) The offense did not involve bodily injury to another person
2 or serious damage to the property of another person nor did it involve
3 substantial risk of bodily injury to another person or serious damage to the
4 property of another person, and that the defendant remains affected by mental
5 disease or defect; or

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

11 (b)(1) If the circuit court enters a determination based on
12 subdivision (a)(1) or subdivision (a)(3) of this section, the circuit court
13 shall order the defendant committed to the custody of the Department of Human
14 Services for an examination by a psychiatrist or a licensed psychologist.

15 (2) Upon filing of an order of commitment under subdivision
16 (b)(1) of this section with a circuit clerk, the circuit clerk shall submit a
17 copy of the order to the Arkansas Crime Information Center.

18 (c) If the circuit court enters a determination based on subdivision
19 (a)(2) or subdivision (a)(4) of this section, the circuit court shall
20 immediately discharge the defendant.

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

24 (B) If before thirty (30) days the department makes
25 application to the circuit court for an extension of time to file the
26 psychiatric or psychological report and the circuit court finds there is good
27 cause for the delay, the circuit court may order that additional time be
28 allowed for the department to file the psychiatric or psychological report.

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

32 (2) If the psychiatric or psychological report is not filed
33 within thirty (30) days following the department's receipt of an order of
34 acquittal or within such additional time as authorized by the circuit court,
35 the circuit court may grant a petition for a writ of habeas corpus ordering
36 the release of the defendant under terms and conditions that are reasonable

1 and just for the defendant and societal concerns about the safety of persons
2 and property of others.

3 (e)(1) A person found not guilty of an offense involving bodily injury
4 to another person or serious damage to the property of another person or
5 involving a substantial risk of bodily injury to another person or serious
6 damage to the property of another person due to the person's lack of criminal
7 responsibility has the burden of proving by clear and convincing evidence
8 that his or her release would not create a substantial risk of bodily injury
9 to another person or serious damage to property of another person due to a
10 present mental disease or defect.

11 (2) With respect to any other offense, the person has the burden
12 of proof by a preponderance of the evidence.

13 (f)(1) A person acquitted whose mental condition is the subject of a
14 hearing has a right to counsel.

15 (2)(A) If it appears to the circuit court that the person
16 acquitted is in need of counsel, an attorney shall be appointed immediately
17 upon filing of the original petition.

18 (B)(i) When an attorney is appointed by the circuit court,
19 the circuit court shall determine the amount of the fee to be paid the
20 attorney appointed by the circuit court and issue an order of payment.

21 (ii) The amount of the fee allowed shall be based
22 upon the time and effort of the attorney in the investigation, preparation,
23 and representation of the client at the court hearings.

24 (g)(1) The quorum court of each county shall appropriate funds for the
25 purpose of payment of the attorney's fees provided for by subsection (f) of
26 this section.

27 (2) Upon presentment of a claim accompanied by an order of the
28 circuit court fixing the fee, the claim shall be approved by the county court
29 and paid in the same manner as other claims against the county are paid.

30 (h) A hearing conducted pursuant to subsection (d) of this section may
31 be held at the Arkansas State Hospital or a designated receiving facility or
32 program where the person acquitted is detained.

33 (i) When conducting any hearing set out in this section, the circuit
34 judge may conduct the hearing within any county of his or her judicial
35 district.

36 (j)(1)(A) It is the duty of the prosecuting attorney's office in the

1 county where the petition is filed to represent the State of Arkansas at any
 2 hearing held ~~pursuant to~~ under this section except a hearing pending at the
 3 Arkansas State Hospital ~~in Pulaski County~~.

4 (B) A prosecuting attorney may contract with another
 5 attorney to provide services under subdivision (j)(1)(A) of this section.

6 (2) The ~~office~~ Office of the Prosecutor Coordinator shall appear
 7 for and on behalf of the State of Arkansas at the Arkansas State Hospital ~~in~~
 8 ~~Little Rock~~.

9 (3) Representation under this subsection is a part of the
 10 official duties of a prosecuting attorney or the ~~office~~ Office of the
 11 Prosecutor Coordinator and the prosecuting attorney or the ~~office~~ Office of
 12 the Prosecutor Coordinator is immune from civil liability in the performance
 13 of this official duty.

14
 15 SECTION 5. Arkansas Code § 5-2-315 is amended to read as follows:

16 5-2-315. Discharge or conditional release for person who was
 17 acquitted.

18 (a)(1)(A) When the Director of the Department of Human Services or his
 19 or her designee determines that a person acquitted for lack of criminal
 20 responsibility has recovered from his or her mental disease or defect to such
 21 an extent that his or her release or his or her conditional release under a
 22 prescribed regimen of medical, psychiatric, or psychological care or
 23 treatment would no longer create a substantial risk of bodily injury to
 24 another person or serious damage to the property of another person, the
 25 director shall promptly file an application for discharge or conditional
 26 release of the person ~~acquitted~~ with the circuit court that ordered the
 27 commitment.

28 (B) In addition, if the person ~~acquitted~~ has an impairment
 29 due to alcohol or substance abuse, the director may petition the circuit
 30 court for involuntary commitment under § 20-64-815.

31 (2) The director shall send a copy of the application to the
 32 counsel for the person ~~acquitted~~ and to the attorney for the state.

33 (b)(1) Within twenty (20) days after receiving the application for
 34 discharge or conditional release of the person ~~acquitted~~, the attorney for
 35 the state may petition the circuit court for a hearing to determine whether
 36 the person ~~acquitted~~ should be released.

1 (2) If the attorney for the state does not request a hearing,
2 the circuit court may conduct a hearing on its own motion or discharge the
3 person ~~acquitted~~.

4 (c) If the circuit court finds after a hearing under subsection (b) of
5 this section by the standard specified in § 5-2-314(e) that the person
6 ~~acquitted~~ has recovered from his or her mental disease or defect to such an
7 extent that:

8 (1) The discharge of the person ~~acquitted~~ would no longer create
9 a substantial risk of bodily injury to another person or serious damage to
10 property of another person, then the circuit court shall order that the
11 person ~~acquitted~~ be immediately discharged; or

12 (2) The conditional release of the person ~~acquitted~~ under a
13 prescribed regimen of medical, psychiatric, or psychological care or
14 treatment would no longer create a substantial risk of bodily injury to
15 another person or serious damage to property of another person, then the
16 circuit court shall order:

17 (A) That the person ~~acquitted~~ be conditionally released
18 under a prescribed regimen of medical, psychiatric, or psychological care or
19 treatment that has been:

20 (i) Prepared for the person ~~acquitted~~;
21 (ii) Certified to the circuit court as appropriate
22 by the director of the facility in which the person ~~acquitted~~ is committed;
23 and

24 (iii) Found by the circuit court to be appropriate;
25 and

26 (B) Explicit conditions of release, including without
27 limitation requirements that:

28 (i) The person ~~acquitted~~ comply with the prescribed
29 regimen of medical, psychiatric, or psychological care or treatment;

30 (ii) The person ~~acquitted~~ be subject to regularly
31 scheduled personal contact with a compliance monitor for the purpose of
32 verifying compliance with the conditions of release;

33 (iii) Compliance with the conditions of release be
34 documented with the circuit court by the compliance monitor at ninety-day
35 intervals or at such intervals as the circuit court may order; and

36 (iv) Impose the conditions of release for a period

1 of up to five (5) years.

2 (d) If the circuit court determines that ~~the~~ a person who was
 3 acquitted has not met his or her burden of proof under subsection (c) of this
 4 section, the person ~~acquitted~~ shall continue to be committed to the custody
 5 of the Department of Human Services.

6 (e) A person ordered to be in charge of a prescribed regimen of
 7 medical, psychiatric, or psychological care or treatment of a person
 8 acquitted for lack of criminal responsibility shall provide:

9 (1) The prescribed regimen of medical, psychiatric, or
 10 psychological care or treatment;

11 (2) Periodic written documentation to a compliance monitor of
 12 compliance with the conditions of release, including, ~~but not limited to,~~
 13 without limitation documentation of compliance with the prescribed:

- 14 (A) Medication;
- 15 (B) Treatment and therapy;
- 16 (C) Substance abuse treatment; and
- 17 (D) Drug testing; and

18 (3)(A) Written notice of any failure of the person ~~acquitted~~ to
 19 comply with the prescribed regimen of medical, psychiatric, or psychological
 20 care or treatment to the:

- 21 (i) Compliance monitor;
- 22 (ii) Attorney for the person ~~acquitted~~;
- 23 (iii) Attorney for the state; and
- 24 (iv) Circuit court having jurisdiction.

25 (B) The written notice under subdivision (e)(3)(A) of this
 26 section shall be provided immediately upon the failure of the person
 27 ~~acquitted~~ to comply with a condition of release.

28 (C)(i) Upon the written notice under subdivision (e)(3)(A)
 29 of this section or upon other probable cause to believe that the person
 30 ~~acquitted~~ has failed to comply with the prescribed regimen of medical,
 31 psychiatric, or psychological care or treatment, the person ~~acquitted~~ may be
 32 detained and shall be taken without unnecessary delay before the circuit
 33 court having jurisdiction over him or her.

34 (ii) After a hearing, the circuit court shall
 35 determine whether the person ~~acquitted~~ should be remanded to an appropriate
 36 facility on the ground that, in light of his or her failure to comply with

1 the prescribed regimen of medical, psychiatric, or psychological care or
 2 treatment, his or her continued release would create a substantial risk of
 3 bodily injury to another person or serious damage to property of another
 4 person.

5 (D) At any time after a hearing employing the same
 6 criteria, the circuit court may modify or eliminate the prescribed regimen of
 7 medical, psychiatric, or psychological care or treatment.

8 (f)(1) Regardless of whether the director or his or her designee has
 9 filed an application ~~pursuant to a provision of~~ under subsection (a) of this
 10 section, and at any time during the commitment of the person ~~acquitted~~, a
 11 person acquitted for lack of criminal responsibility, his or her counsel, or
 12 his or her legal guardian may file with the circuit court that ordered the
 13 commitment a motion for a hearing to determine whether the person ~~acquitted~~
 14 should be discharged from the facility in which the person ~~acquitted~~ is
 15 committed.

16 (2) However, no motion under subdivision (f)(1) of this section
 17 may be filed more than one (1) time every one hundred eighty (180) days.

18 (3) A copy of the motion under subdivision (f)(1) of this
 19 section shall be sent to the:

20 (A) Director of the facility in which the person ~~acquitted~~
 21 is committed; and

22 (B) Attorney for the state.

23
 24 SECTION 6. Arkansas Code § 5-2-317 is amended to read as follows:

25 5-2-317. Jurisdiction and venue.

26 (a) A circuit court has exclusive jurisdiction over a person acquitted
 27 by reason of mental disease or defect and committed to the custody of the
 28 Director of the Department of Human Services ~~pursuant to~~ under § 5-2-314(b).

29 (b) Venue is determined as follows:

30 (1) For a person committed to the custody of the Department of
 31 Human Services ~~pursuant to~~ under § 5-2-314(b) and who has been committed to
 32 the Arkansas State Hospital for examination, ~~then~~ venue may be in Pulaski
 33 County for the initial hearing ~~pursuant to~~ under § 5-2-314 and for a
 34 conditional release hearing ~~pursuant to~~ under § 5-2-315; and

35 (2) For a person who has been conditionally released ~~pursuant to~~
 36 under § 5-2-315, ~~then~~ venue for any hearing seeking the modification,

1 revocation, or dismissal of a conditional release order is in the county
2 where the person currently resides.

3
4 SECTION 7. Arkansas Code Title 5, Chapter 2, Subchapter 3, is amended
5 to add an additional section to read as follows:

6 5-2-318. Guilty but with a mental illness – Sentence.

7 (a) A verdict of guilty but with a mental illness is the same as a
8 verdict of guilty with the same burden of proof except for the disposition of
9 the defendant.

10 (b) A person who is found guilty but with a mental illness is subject
11 to the full range of sentence for the offense originally charged but shall be
12 remanded to the custody of the Arkansas State Hospital for treatment until
13 the Medical Director of the Arkansas State Hospital determines that the
14 person is no longer in need of hospitalization under the procedures described
15 under § 5-2-320.

16 (c) The time a person is in the custody of the Arkansas State Hospital
17 is credited toward the length of time to which the person is sentenced for
18 the offense.

19
20 SECTION 8. Arkansas Code Title 5, Chapter 2, Subchapter 3, is amended
21 to add an additional section to read as follows:

22 5-2-319. Guilty but with a mental illness – Commitment to Arkansas
23 State Hospital – Discharge.

24 (a)(1) If a verdict in a trial for a felony is returned as guilty but
25 with a mental illness, the defendant shall be sentenced by the circuit court.

26 (2) The circuit court shall issue a sentence that is consistent
27 with the seriousness of the offense but also in light of the mitigating
28 factor that the defendant had a mental illness at the time of the offense and
29 remains with a mental illness and requires mental health treatment before
30 being discharged to the Department of Correction.

31 (3) The circuit court shall allow both mitigating and
32 aggravating evidence from the defendant and the state for the purposes of
33 sentencing.

34 (b)(1) If the circuit court sentences the defendant to a period of
35 incarceration, the defendant shall first be remanded to the custody of the
36 Arkansas State Hospital for further treatment.

1 (2) Subject to § 5-2-320, the defendant shall remain at the
 2 Arkansas State Hospital for the period of his or her incarceration until and
 3 if the Medical Director of the Arkansas State Hospital determines that the
 4 defendant no longer requires hospitalization and:

5 (A) If the defendant has been convicted of a felony
 6 offense requiring incarceration, may be safely moved to the general
 7 population in the Department of Correction for the remainder of his or her
 8 sentence;

9 (B) If the defendant has been convicted of a felony
 10 offense and the defendant was sentenced to a suspended sentence or to
 11 probation, may be safely released into society for further supervision and
 12 treatment; or

13 (C) If the defendant has been convicted of a misdemeanor
 14 offense, safely released into society and shall be subject to further
 15 monitoring by the court to the extent permitted by law.

16 (3) If the defendant was sentenced to probation, the circuit
 17 court may impose any prohibition, restriction, or requirement on the
 18 defendant as the circuit court considers necessary for the safety of the
 19 defendant and the community, including further mental health treatment.

20 (c) A person ordered to be in charge of a prescribed regimen of
 21 medical, psychiatric, or psychological care or treatment of a person found
 22 guilty but with a mental illness shall provide:

23 (1) The prescribed regimen of medical, psychiatric, or
 24 psychological care or treatment; and

25 (2) Periodic written documentation including without limitation
 26 documentation of compliance with the prescribed:

27 (A) Medication;

28 (B) Treatment and therapy;

29 (C) Substance abuse treatment; and

30 (D) Drug testing.

31
 32 SECTION 9. Arkansas Code Title 5, Chapter 2, Subchapter 3, is amended
 33 to add an additional section to read as follows:

34 5-2-320. Guilty but with a mental illness – Discharge to Department of
 35 Correction procedures.

36 (a) When the Medical Director of the Arkansas State Hospital

1 determines that a person found guilty but with a mental illness no longer
2 requires hospitalization, the Medical Director of the Arkansas State Hospital
3 shall promptly notify the circuit court, the attorney for the person, and the
4 attorney for the state.

5 (b) Within twenty (20) days after receiving the notice described under
6 subsection (a) of this section, the attorney for the person may petition the
7 circuit court for a hearing to determine whether the person should be
8 discharged to the Department of Correction.

9 (c) If the circuit court finds after a hearing under subsection (b) of
10 this section that the person no longer requires hospitalization, then the
11 circuit court shall order that the person be immediately discharged to the
12 Department of Correction.

13 (d) If the circuit court determines that the person still requires
14 hospitalization, the person shall continue to be committed to the custody of
15 the Arkansas State Hospital.

16
17 SECTION 10. Arkansas Code Title 5, Chapter 2, Subchapter 3, is amended
18 to add an additional section to read as follows:

19 5-2-321. Guilty but with a mental illness – Length of sentence.

20 A person found guilty but with a mental illness shall not be confined
21 in the Arkansas State Hospital, the Department of Correction, the Department
22 of Community Correction, or under supervision longer than the maximum
23 sentence for the offense with which he or she was convicted without full
24 civil or involuntary commitment proceedings.