

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
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As Engrossed: H2/28/17 H3/3/17
A Bill

HOUSE BILL 1663

By: Representative Boyd
By: Senator Rice

For An Act To Be Entitled

AN ACT TO BE KNOWN AS THE MENTAL HEALTH SPECIALTY
COURT ACT OF 2017; CONCERNING MENTAL HEALTH SPECIALTY
COURTS; AND FOR OTHER PURPOSES.

Subtitle

TO BE KNOWN AS THE MENTAL HEALTH
SPECIALTY COURT ACT OF 2017; AND
CONCERNING MENTAL HEALTH SPECIALTY
COURTS.

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

SECTION 1. Arkansas Code Title 16 is amended to add an additional chapter to read as follows:

CHAPTER 100

MENTAL HEALTH AND THE CRIMINAL JUSTICE SYSTEM

Subchapter 1 – General Provisions

16-100-101. Definitions.

As used in this chapter:

(1) "Evidence-based practices" means supervision, policies, procedures, and practices proven through research to reduce recidivism;

(2) "Mental illness" means a condition of a person who has or has had in the past a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified by the



Diagnostic and Statistical Manual of Mental Disorders as it existed on January 1, 2017, that has resulted in functional impairment that substantially interferes with or limits one (1) or more major life activities; and

(3) "Validated risk-needs assessment" means a determination of a person's risk of reoffending and the needs that, when addressed, reduce the risk of reoffending through the use of an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior.

Subchapter 2 – Mental Health Specialty Courts

16-100-201. Authorization – Evaluation – Restriction on services and treatment.

(a) A judicial district may establish a mental health specialty court program, which shall consist of at least one (1) mental health specialty court, subject to approval by the Supreme Court in the administrative plan submitted under Supreme Court Administrative Order No. 14.

(b) A mental health specialty court program authorized under this subchapter is also subject to evaluation by the Specialty Court Program Advisory Committee under § 16-10-139.

(c)(1) A mental health specialty court may not order any services or mental health treatment under this subchapter unless:

(A) An administrative and programmatic appropriation has been made for services or mental health treatment under this subchapter;

(B) Administrative and programmatic funding is available for services or mental health treatment under this subchapter; and

(C) Administrative and programmatic positions have been authorized for services or mental health treatment under this subchapter.

(2) If the requirements of subdivision (c)(1) of this section are not met, a mental health specialty court may still order services or mental health treatment if the provider waives payment, or if the mental health specialty court program participant has private insurance that will pay for the services or mental health treatment.

16-100-202. Goals of mental health specialty court program.

(a) The goals of a mental health specialty court program established

under this subchapter include the following:

(1) Integration of mental health treatment with criminal justice system case processing;

(2) Use of a nonadversarial approach in which the prosecution and defense promote public safety while protecting the right of a mental health specialty court program participant to due process;

(3) Early identification of eligible mental health specialty court program participants, with the use of a validated risk-needs assessment, and prompt placement of eligible mental health specialty court program participants;

(4) Access to a continuum of treatment, rehabilitation, and related services for mental health specialty court program participants;

(5) Periodic testing for alcohol and controlled substances at the discretion of the mental health specialty court, if a mental health specialty court program participant has been identified as a user of alcohol or controlled substances;

(6) A coordinated strategy among the mental health specialty court judge, prosecution, defense, and mental health treatment providers to govern the compliance of a mental health specialty court program participant with the mental health specialty court program;

(7) Ongoing judicial interaction with each mental health specialty court program participant;

(8) Monitoring and evaluation of the achievement of mental health specialty court program goals and effectiveness;

(9) Continuing interdisciplinary education to promote effective planning, implementation, and operation of the mental health specialty court program; and

(10) Development of partnerships with public agencies and community-based organizations to generate local support and enhance mental health specialty court program effectiveness.

(b) Mental health specialty court program success is determined by the rate of recidivism of all mental health specialty court program participants, including mental health specialty court program participants who do not graduate from the mental health specialty court program.

16-100-203. Establishment of mental health specialty court.

(a) A mental health specialty court is a specialized court within the existing structure of the court system.

(b) A mental health specialty court program shall offer judicial monitoring of intensive mental health treatment and strict supervision of mental health specialty court program participants.

(c) The creation of a mental health specialty court and the appointment of a circuit judge to the mental health specialty court shall be approved by the administrative judge in each judicial circuit and made a part of the judicial circuit's administrative plan required by Supreme Court Administrative Order No. 14.

16-100-204. Administration of mental health specialty court program.

(a) A mental health specialty court program may require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems.

(b)(1) The administrative judge of the judicial district shall designate one (1) or more circuit judges to be mental health specialty court judges and to administer the mental health specialty court program.

(2) If a county is in a judicial district that does not have a circuit judge who is able to administer the mental health specialty court program on a consistent basis, the administrative plan for the judicial circuit required by Supreme Court Administrative Order No. 14 may designate a district court judge to be mental health specialty court judge and to administer the mental health specialty court program.

(c) A mental health specialty court team shall be designated by a mental health specialty court judge and may include:

(1) A circuit judge;

(2) A prosecuting attorney;

(3) A public defender or private defense attorney;

(4) One (1) or more healthcare providers with experience in the field of mental health treatment;

(5) One (1) or more probation officers;

(6) One (1) or more private mental health treatment provider representatives with experience in the field of mental health treatment; and

(7) Any other individual determined necessary by the mental health specialty court judge.

(d) Each judicial district may develop a training and implementation manual for the mental health specialty court program with the assistance of the:

- (1) Department of Human Services;
- (2) Department of Health;
- (3) Department of Community Correction;
- (4) Administrative Office of the Courts; and
- (5) Other federal, state, and local agencies, organizations, or entities with an established history of expertise in mental health conditions.

16-100-205. Eligible persons – Waiver of certain rights.

(a) A person is eligible for participation in a mental health specialty court program if:

- (1) The person has a mental illness;
- (2) The person is charged with a criminal offense other than a criminal offense listed in subsection (b) of this section;
- (3) The person waives his or her rights to a speedy trial and other rights as determined by the mental health specialty court and executes a consent for a limited release of confidential information regarding mental health treatment permitting the mental health specialty court, the prosecuting attorney, and the defense attorney access to information relating to attendance, attitude, participation, results of drug screens if ordered, and all pertinent medical records; and
- (4)(A) The person is eighteen (18) years of age or older.
 - (B) Subdivision (a)(4)(A) of this section may be waived with the consent of the prosecuting attorney.

(b) A person charged with one (1) or more of the following offenses is ineligible to participate in a mental health specialty court program:

- (1) A serious felony involving violence as defined in § 5-4-501(c)(2);
- (2) A felony offense that would require the person to register as a sex offender; or
- (3) An offense specifically excluded by the rules of a specific mental health specialty court program.

(c) This subchapter does not require a mental health specialty court

to consider or accept every person with a treatable mental health condition, regardless of the fact that the criminal offense for which the person is charged is eligible for consideration in the mental health specialty court program.

(d) A person who is denied entry into a mental health specialty court program is subject to prosecution for the criminal offense with which he or she was charged as provided by law.

(e) A mental health specialty court may require the circuit court clerk or probate clerk to submit to the Arkansas Crime Information Center a copy of an order transferring a person to the mental health specialty court.

16-100-206. Transfer of cases.

(a) A circuit court or district court that determines, on the circuit court's or district court's own motion or upon application by a person charged with but not yet convicted of a criminal offense in the court, that the person may be better served in a mental health specialty court program may transfer the case to the mental health specialty court if the person charged with the criminal offense would otherwise be eligible to enter into a mental health specialty court program.

(b)(1) The person charged with a criminal offense whose case the circuit court or district court is attempting to transfer to a mental health specialty court may oppose the transfer.

(2)(A) A person who opposes a transfer of his or her case to a mental health specialty court under this subsection shall be appointed counsel if he or she has not already retained counsel or had counsel retained for him or her by another person or entity.

(B) If after consulting his or her counsel the person still opposes the transfer of his or her case to a mental health specialty court, the case shall remain on the current docket and shall proceed under the normal course of that circuit court's or district court's docket.

16-100-207. Mental health treatment under program – Failure to comply with program.

(a)(1) A mental health specialty court shall order mental health treatment for a mental health specialty court program participant for at least six (6) months.

(2) Any mental health treatment ordered under subdivision (a)(1) of this section shall meet the minimum standards of mental health treatment promulgated by the Division of Behavioral Health Services of the Department of Human Services.

(b) A mental health specialty court program participant may be removed from a mental health specialty court program by the mental health specialty court following a hearing with notice and an opportunity for the mental health specialty court program participant to be heard, if:

(1) The mental health specialty court program participant:

(A) Knowingly fails to abide by the terms and conditions of the mental health specialty court program; or

(B) Is not suffering from a recognized mental illness in the opinion of a healthcare provider or mental health specialist assigned or ordered by the mental health specialty court to determine whether or not the mental health specialty court program participant suffers from a recognized mental illness; or

(2) The mental health specialty court finds that retaining the mental health specialty court program participant in a mental health specialty court program does not serve the best interests of justice, the public, the state, or the mental health specialty court program participant.

(c) If a mental health specialty court program participant is removed from a mental health specialty court program for any of the reasons set out under subsection (b) of this section, the mental health specialty court program participant's case shall be transferred to the appropriate court having jurisdiction.

16-100-208. Completion of program – Dismissal of case – Sealing of record.

(a) Upon the mental health specialty court's own motion or upon a request from a mental health specialty court program participant or his or her attorney, a mental health specialty court may order dismissal of the case against the mental health specialty court program participant and the sealing of the record if:

(1) The mental health specialty court program participant has successfully completed the mental health specialty court program, as determined by the mental health specialty court;

(2) The mental health specialty court program participant has received aftercare programming or a course of continuing mental health treatment if recommended by the mental health specialty court program participant's healthcare provider;

(3) The mental health specialty court has received a recommendation from the prosecuting attorney for dismissal of the case and the sealing of the record; and

(4) The mental health specialty court, after considering the mental health specialty court program participant's criminal history, determines that dismissal of the case and the sealing of the record are appropriate.

(b) Unless otherwise ordered by the mental health specialty court, sealing of the record under this section shall be as described in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

(c) If a mental health specialty court program participant has successfully completed the program and has his or her case dismissed under this section, he or she may petition the mental health specialty court for relief from disability to restore the mental health specialty court program participant's right to purchase a firearm and to otherwise be removed from the Federal Bureau of Investigation's National Instant Criminal Background Check System database.

16-100-209. Costs and fees.

(a) The mental health specialty court may order the mental health specialty court program participant to pay:

(1) Court costs as provided in § 16-10-305;

(2) Healthcare and treatment costs not otherwise covered by the health insurance of the mental health specialty court program participant;

(3) Drug testing costs;

(4) A mental health specialty court program user fee;

(5) Necessary supervision fees, including any applicable residential treatment fees;

(6) Any fees determined or authorized under § 12-27-125(b)(17)(B) or § 16-93-104(a)(1) that are to be paid to the Department of Community Correction;

(7) Global Positioning System monitoring; and

(8) Continual alcohol monitoring fees.

(b)(1) The mental health specialty court shall establish a schedule for the payment of costs and fees.

(2) The cost for healthcare, treatment, drug testing, continual alcohol monitoring if ordered, and supervision shall be set by the treatment and supervision providers respectively and made part of the order for payment of the mental health specialty court.

(3) Mental health specialty court user fees shall be set by the mental health specialty court.

(4) Healthcare, treatment, drug testing, continual alcohol monitoring if ordered, and supervision costs or fees shall be paid to the respective providers.

(5) Fees determined or authorized under § 12-27-125(b)(17)(B) or § 16-93-104(a)(1) shall be paid to the Department of Community Correction.

(6)(A) All court costs and mental health specialty court program user fees assessed by the mental health specialty court shall be paid to the circuit court clerk or district court clerk, as applicable, for remittance to the county treasury under § 14-14-1313.

(B) All installment payments shall initially be deemed to be collection of court costs under § 16-10-305 until the court costs have been collected in full with any remaining payments representing collections of other fees and costs as authorized in this section and shall be credited to the county administration of justice fund and distributed under § 16-10-307.

(C) Mental health specialty court program user fees shall be credited to a fund to be known as the "mental health specialty court program fund" and appropriated by the quorum court for the county in which the mental health specialty court program participant committed the offense for which he or she is charged for the benefit and administration of the mental health specialty court program.

(7) Court orders for costs and fees shall remain an obligation of the mental health specialty court program participant with mental health specialty court monitoring until fully paid.

(c) All costs and fees under this section may be fully or partially waived by the mental health specialty court upon a showing of indigency.

/s/Boyd