

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.  
**Act 636 of the Regular Session**

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

# A Bill

HOUSE BILL 2376

5 By: Representative E. Brown  
6  
7

## For An Act To Be Entitled

9 AN ACT TO ENSURE THE SAFETY OF PATIENTS AT THE  
10 ARKANSAS STATE HOSPITAL, HEALTH CARE PROVIDERS,  
11 LAW ENFORCEMENT OFFICERS, AND COURT PERSONNEL;  
12 AND FOR OTHER PURPOSES.  
13

## Subtitle

14 AN ACT TO ENSURE THE SAFETY OF PATIENTS  
15 AT THE ARKANSAS STATE HOSPITAL, HEALTH  
16 CARE PROVIDERS, LAW ENFORCEMENT  
17 OFFICERS, AND COURT PERSONNEL.  
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19  
20

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

23 SECTION 1. Arkansas Code § 5-2-301 is amended to add an additional  
24 subdivision is amended to read as follows:

25 5-2-301. Definitions.

26 As used in this subchapter:

27 (1) "Appropriate facility" means any facility within or without  
28 this state to which a defendant is eligible for admission and treatment for  
29 mental disease or defect;

30 (2) "Capacity of the defendant to have the culpable mental  
31 state" means a defendant's ability to have the culpable mental state  
32 necessary to establish an element of the offense charged, as defined in § 5-  
33 2-202;

34 (3) "Compliance monitor" means either a social service  
35 representative or licensed social worker, or both, employed by the Department



1 of Health and Human Services for the purpose of, including, but not limited  
2 to:

3 (A) Verifying that a person conditionally released  
4 pursuant to a provision of this subchapter is in compliance with the  
5 conditions for release;

6 (B) Providing social service assistance to a person  
7 conditionally released pursuant to a provision of this subchapter; and

8 (C) Reporting compliance with the conditions for release  
9 or lack of compliance with the conditions for release to the appropriate  
10 circuit court;

11 (4) "Designated receiving facility or program" means an  
12 inpatient or outpatient treatment facility or program that is designated  
13 within each geographic area of the state by the Director of the Division of  
14 Behavioral Health of the Department of Health and Human Services to accept  
15 the responsibility for the care, custody, and treatment of a person  
16 involuntarily admitted to the state mental health system;

17 (5)(A) "Mental disease or defect" means a:

18 (i) Substantial disorder of thought, mood,  
19 perception, orientation, or memory that grossly impairs judgment, behavior,  
20 capacity to recognize reality, or ability to meet the ordinary demands of  
21 life;

22 (ii) State of significantly subaverage general  
23 intellectual functioning existing concurrently with a defect of adaptive  
24 behavior that developed during the developmental period; or

25 (iii) Significant impairment in cognitive  
26 functioning acquired as a direct consequence of a brain injury.

27 (B) As used in the Arkansas Criminal Code, "mental disease  
28 or defect" does not include an abnormality manifested only by:

29 (i) Repeated criminal or otherwise antisocial  
30 conduct;

31 (ii) Continuous or noncontinuous periods of  
32 intoxication, as defined in § 5-2-207(b)(1), caused by a substance such as  
33 alcohol or a drug;

34 (iii) Dependence upon or addiction to any substance  
35 such as alcohol or a drug;

36 (6) "Prescribed regimen of medical, psychiatric, or

1 psychological care or treatment" means to care or treatment for a mental  
 2 illness, as defined in § 20-47-202;

3 (7) "Qualified psychiatrist" means a licensed psychiatrist who  
 4 has successfully completed either a post-residency fellowship in forensic  
 5 psychiatry accredited by the American Board of Psychiatry and Neurology or a  
 6 forensic certification course approved by the department, and who is  
 7 currently approved by the department to administer a forensic examination as  
 8 defined in this subchapter;

9 (8) "Qualified psychologist" means a licensed psychologist who  
 10 has received a post-doctoral diploma in forensic psychology accredited by the  
 11 American Board of Professional Psychology or successfully completed a  
 12 forensic certification course approved by the department, and who is  
 13 currently approved by the department to administer a forensic examination as  
 14 defined in this subchapter; ~~and~~

15 (9)(A) "Restraint" means any manual method, physical or  
 16 mechanical device, material, or equipment that immobilizes a person or  
 17 reduces the ability of a person to move his or her arms, legs, body, or head  
 18 freely.

19 (B) "Restraint" does not include devices such as  
 20 orthopedically prescribed devices, surgical dressings or bandages, protective  
 21 helmets, or other methods that involve the physical holding of a person for  
 22 the purpose of protecting the person from falling or to permit the person to  
 23 participate in activities without the risk of physical harm to himself or  
 24 herself; and

25 ~~(9)~~(10) "State mental health system" means the Arkansas State  
 26 Hospital and any other facility or program certified by the Division of  
 27 Behavioral Health of the Department of Health and Human Services.  
 28

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

31 5-2-326. Restraint of an Arkansas State Hospital patient.

32 (a) If necessary for security, an Arkansas State Hospital patient  
 33 shall be physically restrained with a restraint while being transported to  
 34 locations away from hospital grounds or to and from any court appearance.

35 (b) A patient shall not be physically restrained with a restraint if  
 36 the restraint is medically contraindicated.

1       (c) The restraint shall be implemented in accordance with safe and  
 2 appropriate restraint techniques as determined by hospital policy.

3       (d) The restraint used shall be the least restrictive type or  
 4 technique necessary to effectively protect the patient, staff members, or  
 5 others from harm.

6       (e) The restraint shall not be used as a means of coercion,  
 7 discipline, convenience, or retaliation by staff.

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 9       SECTION 3. Arkansas Code § 20-47-202, concerning definitions for the  
 10 treatment of the mentally ill, is amended to add an additional subdivision to  
 11 read as follows:

12               (18)(A) "Restraint" means any manual method, physical or  
 13 mechanical device, material, or equipment that immobilizes a person or  
 14 reduces the ability of a person to move his or her arms, legs, body, or head  
 15 freely.

16               (B) "Restraint" does not include devices such as  
 17 orthopedically prescribed devices, surgical dressings or bandages, protective  
 18 helmets, or other methods that involve the physical holding of a person for  
 19 the purpose of protecting the person from falling or to permit the person to  
 20 participate in activities without the risk of physical harm to himself or  
 21 herself.

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 23       SECTION 4. Arkansas Code Title 20, Chapter 47, Subchapter 2 is amended  
 24 to add an additional section to read as follows:

25       20-47-229. Restraint of an Arkansas State Hospital patient.

26       (a) If necessary for security, an Arkansas State Hospital patient  
 27 shall be physically restrained with a restraint while being transported to  
 28 locations away from hospital grounds or to and from any court appearance.

29       (b) A patient shall not be physically restrained with a restraint if  
 30 the restraint is medically contraindicated.

31       (c) The restraint shall be implemented in accordance with safe and  
 32 appropriate restraint and techniques as determined hospital policy.

33       (d) The restraint used shall be the least restrictive type or  
 34 technique necessary to effectively protect the patient, staff members, or  
 35 others from harm.

36       (e) The restraint shall not be used as a means of coercion, discipline,

1 convenience, or retaliation by staffAPPROVED: 3/28/2007