

HOUSE BILL 1498

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 33;
Title 40 and Title 41, relative to mental health
commitments.

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

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 6, is amended by adding the following as a new part:

33-6-1101.

(a) No less than thirty (30) days before a person's scheduled release from a correctional facility, the commissioner of correction may certify that a person who is in the custody of the department of correction poses a substantial likelihood of serious harm to the public upon release from custody and transmit the certificate to the clerk of the court that has jurisdiction under § 33-3-603. The clerk shall send a copy of the certificate to the person and the district attorney general with jurisdiction in that district. The court shall order a hearing to determine whether the person poses a substantial likelihood of serious harm, as defined in § 33-6-501, to the public if released from custody. A certificate filed under this subsection (a) stays the release of the person pending completion of the procedures contained in this section.

(b) Prior to the date of the hearing, the court shall order the defendant be examined by two (2) licensed physicians, or one (1) licensed physician and one (1) licensed psychologist qualified as provided in § 33-6-427(a), to determine whether the person poses a substantial likelihood of serious harm to the public if released. Each physician or psychologist shall submit an examination report to the court and, if appropriate, a certificate of need for care and treatment pursuant to § 33-6-503.

(c) The hearing must follow the same procedure as a hearing under part 5 of this chapter; provided, however, that in order to commit the person to inpatient treatment, the court must find by clear and convincing evidence that the person poses a substantial likelihood of serious harm to the public if released from custody.

(d) If the court finds that the standard in subsection (c) is met, the court shall commit the person to the custody of the commissioner of mental health and substance abuse services upon the person's scheduled release by the department of correction. The commissioner shall place the person for treatment in a suitable facility, until a court determines that the person's condition is such that the person no longer poses a substantial likelihood of serious harm to the public if released from custody.

(e) If the court does not find that the standard in subsection (c) is met, the person must be released by the department of correction upon the person's regularly scheduled release date.

(f) When the director of the facility in which a person is placed pursuant to subsection (d) determines that the person's condition is such that the person no longer poses a substantial likelihood of serious harm if released from custody, or will not pose a substantial likelihood of serious harm upon release from custody if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the director shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's attorney and to the district attorney general with jurisdiction in that district. The court shall order the discharge of the person or, on motion of the district attorney general or on its own motion, shall hold a hearing, conducted pursuant this section, to determine whether the person should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person's condition is such that:

(1) The person no longer poses a substantial likelihood of serious harm if released from custody unconditionally, the court shall order that the person be immediately discharged; or

(2) The person will not pose a substantial likelihood of serious harm upon release from custody if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the court shall:

(A) Order that the person be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for the person, that has been certified to the court as appropriate by the director of the facility in which the person is committed, and that has been found by the court to be appropriate; and

(B) Order, as an explicit condition of release, that the person comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

(g) The court at any time may, after a hearing employing the same criteria in subsection (f), modify or eliminate a required regimen of medical, psychiatric, or psychological care or treatment.

(h) The director of a facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (f) shall notify the district attorney general and the court having jurisdiction over the person of any failure of the person to comply with a required regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction.

The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that the person poses a substantial likelihood of serious harm if released from custody in light of the person's failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it.