

Act 72 of the Third Special Session of 1989.

Act 72

HB1025

By: Representative Dietz

For An Act To Be Entitled  
"AN ACT TO AMEND ACT 861 OF 1989 TO PROVIDE AUTHORITY FOR THE  
OFFICE OF THE PROSECUTOR COORDINATOR TO APPEAR BEFORE THE  
PROBATE JUDGES IN INVOLUNTARY ADMISSION HEARINGS AT THE  
ARKANSAS STATE HOSPITAL; TO CLARIFY PROCEDURES RELATING TO  
INVOLUNTARY ADMISSIONS; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 5 of Act 861 of 1989 is hereby amended to read as follows:

"Section 5. Initial Hearing - Failure to Appear - Exceptions from Appearance Requirement.

(a) If the person named in the original petition is not confined at the time that the petition is filed, the court may:

(1) Enter an ex parte order directing a law enforcement officer to serve the person with a copy of the petition together with a notice to appear for an initial hearing. Such hearing shall be set by the court within three (3) days, excluding weekends and holidays, of the filing of the original petition. If such person is duly served and fails to appear, the court shall issue an order of detention; or

(2) Dismiss the petition.

(b) The person named in the original petition is not required to appear and may be removed from the presence of the court upon a finding by the court that the person is:

(1) By reason of physical infirmity unable to appear; or

(2) That such person's appearance would be detrimental to his mental health, well-being or treatment; or

(3) That his conduct before the court is so disruptive that the proceedings cannot reasonably continue with him present.

(c) The petitioner shall appear before the referee or probate judge hearing such petition to substantiate the petition. The court shall make a determination based on clear and convincing evidence that there is probable cause to believe that the person has a mental illness, disease or disorder and that one of the criteria for involuntary admission applies to the person. If such a determination is made, the person shall be admitted for evaluation and a hearing pursuant to Section 9 of this Act shall be held within the period specified in Section 2 of this Act."

SECTION 2. Section 6 of Act 861 of 1989 is hereby amended to read as follows:

"Section 6. Immediate Confinement - Initial Evaluation and Treatment.

(a) Whenever it appears that a person is of danger to himself or others, as defined in Section 1 of this Act, and immediate confinement appears necessary to avoid harm to such person or others:

(1) an interested citizen may take said person to a hospital or to a receiving facility or program. If no other safe means of transporting such individual is available, it shall be the responsibility of the law enforcement agency that exercises jurisdiction at the site where the individual is physically located and requiring transportation, or unless otherwise ordered

by the judge. A petition, as provided in Section 4 of this Act shall be filed in the Probate Court of the county in which the person resides or is detained within seventy-two (72) hours, excluding weekends and holidays, and a hearing, as provided in Section 5(a)(1) of this Act shall be held; or

(2) any person filing a petition for involuntary admission may append to such petition a request for immediate confinement which shall state with particularity facts personally known to the affiant which establish reasonable cause to believe that the person sought to be involuntarily admitted is in imminent danger of death or serious bodily harm, or that the lives of others are in imminent danger of death or serious bodily harm due to the mental state of the person sought to be involuntarily admitted.

(b) When a petition for involuntary admission with a request for immediate confinement appended thereto is filed, the petitioner shall then appear before a probate judge of the county where the person sought to be immediately confined resides or is found.

(1) The probate judge shall then conduct an ex parte hearing for the purpose of determining whether there is reasonable cause to believe that the person meets the criteria for involuntary admission and, further, that the person is in imminent danger of death or serious bodily harm, or that others are in danger of death or serious bodily harm due to the mental condition of the person sought to be involuntarily admitted;

(2) If the probate judge determines that immediate confinement is necessary to prevent death or serious bodily harm to either the person sought to be involuntarily admitted or others, the judge shall order the law enforcement agency that exercises jurisdiction at the site where the individual is physically present to transport the individual to an appropriate receiving facility. A hearing, as provided for in Section 5(a)(1) of this Act shall be held within 72 hours of the person's detention and confinement.

(c) If the person is transported to a hospital or receiving facility or program, or to the office of a licensed physician of the State of Arkansas, or of the federal government, either salaried or self-employed, for purposes of initial evaluation and treatment, then the hospital or receiving facility or program, or physician may detain such person for initial evaluation and treatment provided:

(1) The person is immediately advised of his rights as provided in Section 8 of this Act, and

(2) The person is determined by the treatment staff of the hospital or receiving facility or program, or by the physician to be of danger to himself or others as defined in Section 1 of this act, and

(3) A hearing pursuant to Section 5(a)(1) of this Act is held within the specified time period.

(d) Nothing herein shall prevent the person so detained from being released sooner than the period specified in Section 2 if in the judgment of the treatment staff of the hospital or of the receiving facility or of the treating physician the person does not require further mental health treatment. The court shall be immediately advised in writing of such release and shall dismiss the action."

SECTION 3. Section 13 of Act 861 of 1989 is hereby amended to read as follows:

"Section 13. Role of Prosecuting Attorney. It shall be the duty of the prosecuting attorney's office in the county where the petition is filed to represent the petitioner, regardless of the petitioner's financial status, at all hearings held in the probate court pursuant to this Act, except those hearings pending before the magistrate, probate referee, or probate judge at the Arkansas State Hospital in Pulaski County, Arkansas. The Office of the Prosecutor Coordinator shall appear for and on behalf of the petitioner and

State of Arkansas before the mental health magistrate, probate referee, or probate judge at the Arkansas State Hospital. The prosecuting attorneys of applicable counties may contract with other attorneys to provide these services. Such representation shall be a part of the official duties of the Prosecuting Attorney or of the Prosecutor Coordinator and the Prosecuting Attorney and the Prosecutor Coordinator shall be immune from civil liability in the performance of this official duty. Nothing in this Section shall prevent the petitioner from retaining his own counsel in these proceedings, in which case the Prosecuting Attorney or the Prosecutor Coordinator shall be relieved of the duty to represent the petitioner."

SECTION 4. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 5. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 6. Emergency. It is hereby found and determined by the General Assembly of the State of Arkansas that the present mental health laws pertaining to involuntary admissions and other related issues are in urgent need of clarification and revision; that this Act is designed to clarify and revise such laws; and that for the effective administration of this Act, it should become effective upon its enactment. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: November 16, 1989

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