

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1833

4
5 By: Representative Ferrell

For An Act To Be Entitled

9 "AN ACT TO MAKE TECHNICAL AMENDMENTS TO VARIOUS SECTIONS
10 OF THE ARKANSAS CODE REGARDING THE COMMITMENT AND
11 TREATMENT OF THE MENTALLY ILL; TO REPEAL ARKANSAS CODE
12 ANNOTATED § 20-47-206 REGARDING THE APPOINTMENT OF
13 MAGISTRATES; AND FOR OTHER PURPOSES."

Subtitle

15 "TO MAKE TECHNICAL AMENDMENTS TO VARIOUS
16 SECTIONS OF THE ARKANSAS CODE REGARDING
17 THE COMMITMENT AND TREATMENT OF THE
18 MENTALLY ILL AND REPEAL A.C.A.
19 § 20-47-206"
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21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23
24 SECTION 1. Arkansas Code Annotated § 20-47-205 is amended to read as
25 follows:

26 "20-47-205. Jurisdiction of probate court.

27 (a) The probate courts of this state shall have exclusive jurisdiction
28 of the involuntary admission procedures initiated pursuant to this subchapter,
29 except that the juvenile division of the ~~probate~~ chancery court or such other
30 court or courts as may hereafter be vested with such jurisdiction shall have
31 concurrent jurisdiction to involuntarily commit persons under eighteen (18)
32 years of age to the extent provided by this section.

33 (b) The probate court, ~~or referee,~~ shall conduct, within seven (7) days
34 excluding weekends and holidays, of the person's detention, the hearing as
35 defined in § 20-47-214.

36 (1) Except as otherwise provided, the hearing, as defined by

1 § 20-47-214, shall be conducted by the same court, or a judge designated on
 2 exchange, who heard the original petition and issued the appropriate order,~~or~~
 3 ~~by a referee appointed as provided in subsection (c) of this section.~~

4 (2) The court ~~or referee~~ shall insure that the person sought to
 5 be involuntarily admitted is afforded all his or her rights as prescribed by
 6 this subchapter.

7 ~~_____ (c) The probate judge may designate and appoint a referee who, if so~~
 8 ~~designated, shall hear the original petition as defined in § 20-47-207, issue~~
 9 ~~an appropriate order pursuant to § 20-47-209, and shall conduct, within seven~~
 10 ~~(7) days, excluding weekends and holidays, of the person's detention, the~~
 11 ~~hearing as defined in § 20-47-214.~~

12 ~~_____ (1)(c) The hearings conducted pursuant to §§ 20-47-209 and 20-47-214~~
 13 ~~may be held at inpatient programs of the state mental health system or a~~
 14 ~~receiving facility or program where the person is detained.~~

15 ~~_____ (2) The referee shall insure that the person sought to be~~
 16 ~~involuntarily admitted is afforded all his rights as described in this~~
 17 ~~subchapter.~~

18 ~~_____ (d) The person designated and appointed to be a referee shall be a~~
 19 ~~licensed attorney in the State of Arkansas. No person designated and appointed~~
 20 ~~to be a referee under the provisions of this subchapter shall be disqualified~~
 21 ~~because he is a presiding municipal judge within the judicial district of the~~
 22 ~~probate judge making said designation and appointment.~~

23 ~~_____ (e) Appeals from the decision of the referee may be taken as a matter~~
 24 ~~of right to the probate court in the county in which the case was filed.~~

25 ~~_____ (1) Written notification of the appeal shall be made to the clerk~~
 26 ~~of the probate court in the county in which the case was decided within~~
 27 ~~seventy-two (72) hours, excluding weekends and holidays, following the~~
 28 ~~decision of the referee.~~

29 ~~_____ (2) Upon request, the clerk shall cause to be transmitted to the~~
 30 ~~probate judge all records pertaining to the case.~~

31 ~~_____ (3) A trial de novo shall be conducted by the probate judge of~~
 32 ~~the county in which the case was decided within seven (7) days of the filing~~
 33 ~~of the notice of appeal.~~

34 ~~_____ (4) The trial de novo shall comply with all procedures outlined~~
 35 ~~in this subchapter.~~

36 ~~_____ (f)(d) The probate judge, when conducting any hearing set out in this~~

1 subchapter, may conduct said hearing within any county of ~~his~~ the judge's
 2 judicial district.

3 ~~—(g)(e)~~ Each probate judge within the Sixth District may conduct
 4 involuntary commitment hearings prescribed by §§ 20-47-214 and 20-47-215
 5 provided that the person sought to be committed is detained within the
 6 boundaries of the Sixth District at the time of the hearing. Provided,
 7 however, if the person was transported to a location within the Sixth District
 8 by order of a court outside the Sixth District, the court of original
 9 jurisdiction may conduct the hearings prescribed by §§ 20-47-214 and
 10 20-47-215."

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12 SECTION 2. Arkansas Code Annotated § 20-47-208 is amended to read as
 13 follows:

14 "20-47-208. Role of prosecuting attorney.

15 (a)(1) It shall be the duty of the prosecuting attorney's office in the
 16 county where the petition is filed to represent the petitioner, regardless of
 17 the petitioner's financial status, at all hearings held in the probate court
 18 pursuant to this subchapter, except those hearings ~~pending held~~ before the
 19 ~~magistrate, probate referee, or~~ probate judge at the Arkansas State Hospital
 20 in Pulaski County, Arkansas.

21 (2) The Office of the Prosecutor Coordinator shall appear for and
 22 on behalf of the petitioner and State of Arkansas before the ~~mental health~~
 23 ~~magistrate, probate referee, or~~ probate judge at the Arkansas State Hospital.
 24 The prosecuting attorneys of applicable counties may contract with other
 25 attorneys to provide these services.

26 (b) Such representation shall be a part of the official duties of the
 27 prosecuting attorney or of the prosecutor coordinator, and the prosecuting
 28 attorney and the prosecutor coordinator shall be immune from civil liability
 29 in the performance of this official duty.

30 (c) Nothing in this section shall prevent the petitioner from retaining
 31 his or her own counsel in these proceedings, in which case the prosecuting
 32 attorney or the prosecutor coordinator shall be relieved of the duty to
 33 represent the petitioner."

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35 SECTION 3. Arkansas Code Annotated § 20-47-209 is amended to read as
 36 follows:

1 "20-47-209. Initial hearing - Failure to appear - Exceptions from
2 appearance requirement.

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

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

11 (2) Dismiss the petition.

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

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

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

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

20 (c)(1) The petitioner shall appear before the ~~referee or~~ probate judge
21 hearing such petition to substantiate the petition.

22 (2) The court shall make a determination based on clear and
23 convincing evidence that there is probable cause to believe that the person
24 has a mental illness, disease, or disorder and that one (1) of the criteria
25 for involuntary admission applies to the person.

26 (3) If such a determination is made, the person shall be admitted
27 for evaluation, and a hearing pursuant to § 20-47-214 shall be held within the
28 period specified in § 20-47-205."

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30 SECTION 4. Arkansas Code Annotated § 20-47-206 is repealed.

31 ~~20-47-206. Appointment of magistrates - Qualifications and duties.~~

32 ~~(a)(1)(A) The Chief Justice of the Arkansas Supreme Court is hereby~~
33 ~~authorized to appoint one (1) or more employees of the Administrative Office~~
34 ~~of the Courts as magistrates among whose duties shall be to conduct hearings~~
35 ~~at the request of the appropriate probate judge for the involuntary admission~~
36 ~~of persons to a receiving facility or program.~~

1 ~~_____ (B) The appropriate probate judge is the probate judge who~~
2 ~~ordered the person for psychiatric examination.~~

3 ~~_____ (2) Such magistrate shall be a person licensed to practice law in~~
4 ~~the State of Arkansas.~~

5 ~~_____ (b)(1) The magistrate shall be considered an officer of the several~~
6 ~~probate courts of this state, and, as assigned by the Chief Justice of the~~
7 ~~Arkansas Supreme Court, be available to act in behalf of such probate courts~~
8 ~~at the hearings.~~

9 ~~_____ (2) All rulings by the magistrate shall be subject to the review~~
10 ~~of the appropriate probate judge.~~

11 ~~_____ (3) All hearings conducted by the special magistrate provided for~~
12 ~~herein shall be conducted pursuant to this subchapter, and the patient shall~~
13 ~~have all rights and privileges granted by this subchapter.~~

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

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19 SECTION 6. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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25 SECTION 7. All laws and parts of laws in conflict with this act are
26 hereby repealed.

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