

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Shaver

HOUSE BILL 1617

"AN ACT TO REVISE THE LAWS RELATING TO VOLUNTARY ADMISSIONS AND INVOLUNTARY COMMITMENT OF ALCOHOLICS AND PERSONS ADDICTED TO DRUGS; TO REPEAL ACT 411 OF 1955, AS AMENDED, ACT 64 OF 1965, AS AMENDED, ACT 433 OF 1971, AS AMENDED, ACT 50 OF 1973, AS AMENDED, AND ACT 1001 OF 1975, AS AMENDED; AND FOR OTHER PURPOSES."

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

SECTION 1. For the purpose of this Act, the following definitions shall apply:

(A) "Homicidal" refers a person who is alcoholic or addicted to drugs and poses a significant risk of physical harm to others as manifested by recent overt behavior evidencing homicidal or other violent assaultive tendencies.

(B) "Suicidal" refers to a person who is alcoholic or addicted to drugs and by reason thereof poses a substantial risk to himself as manifested by evidence of, threats of, or attempts at suicide or serious self-inflicted bodily harm or by evidence of other behavior or thoughts that create a grave and imminent risk to his physical condition.

(C) "Gravely disabled" refers to a person who is likely to injure himself or others if allowed to remain at liberty or is unable to provide for his own food, clothes, or shelter by reason of alcoholism or addiction to drugs.

(D) "Office on Alcohol and Drug Abuse Prevention" refers to the Office on Alcohol and Drug Abuse Prevention of the Department of Human Services.

(E) "Administrator" refers to the Chief Administrative Officer or Executive Director of any private or public facility designated as a receiving facility or program by the Office on Alcohol and Drug Abuse Prevention.

(F) "Receiving facility or program" refers to a residential, inpatient, or outpatient treatment facility or program which is designated within each geographic area of the State by the Office on Alcohol and Drug Abuse

Prevention of the Department of Human Services to accept the responsibility for care, custody, and treatment of persons voluntarily admitted or involuntarily committed to such facility.

(G) "Detention" refers to any confinement of a person against his wishes and begins either:

(1) when a person is involuntarily brought to a receiving facility or program; or

(2) when pursuant to Section 5 hereof, the person appears for the initial hearing; or

(3) when a person on a voluntary admission is in a receiving facility or program pursuant to Section 3(C) of this Act.

SECTION 2. (A) The probate courts of this State shall have exclusive jurisdiction for the involuntary commitment procedures initiated pursuant to this Act. The probate judge may designate and appoint a referee, who if so designated, shall hear the original petition outlined in this Act, issue an appropriate order, and shall conduct, within three (3) days (excluding weekends and holidays) the subsequent hearing as set forth herein. The hearings conducted pursuant to this Act may be held in a receiving facility or program where the person is detained or residing.

(B) The person designated and appointed to be a referee shall be a licensed attorney in the State of Arkansas. No person designated and appointed to be a referee under the provisions of this Act shall be disqualified because he is a presiding municipal judge within the judicial district of the probate judge making said designation and appointment.

(C) Appeals from the decision of the referee may be taken as a matter of right to the probate court in the county in which the case was filed. A written notification of the appeal shall be made to the clerk of the probate court in county in which the case was decided within seventy-two (72) hours, excluding weekends or holidays, following the decision of the referee. Upon request, the clerk shall cause to be transmitted to the probate judge all records pertaining to the case. A trial de novo shall be conducted by the probate judge of the county in which the case was decided within seven (7) days of the filing of notice of appeal. The trial de novo shall comply with other procedures outlined in this Act.

(D) The probate judge, when conducting any hearing set out in this Act,

may conduct said hearing within any county of his judicial district.

SECTION 3. Voluntary Admissions. The following shall apply to voluntary admissions of persons of alcoholism or addiction to drugs:

(A) Any person who believes himself to be an alcoholic or drug addict may apply to the administrator or his designee of a receiving facility or program for admission. If the administrator or his designee of a receiving facility or program shall be satisfied after examination of the applicant that he is in need of treatment and will be benefited thereby, he may receive and care for the applicant in the receiving facility or program for such a period of time as he shall deem necessary for the recovery and improvement of said person, provided that said person agrees at all times to remain in the receiving facility or program.

(B) If at any time the person who has voluntarily admitted himself to the receiving facility or program makes a request to leave, and the administrator or his designee determines that the person is at the time homicidal or suicidal, then the person shall be considered to be held by detention by the commitment procedure set forth herein shall apply.

(C) Any person requesting to leave under the preceding subsections shall, within one (1) hour of his request to any receiving facility or program employee, in an administrative or treatment capacity, be provided with a written statement advising him of all rights delineated in Section 7 of this Act. The person shall further be provided with an acknowledgement, confirming that he has been advised of the afore said rights. If the person refuses to sign the acknowledgement, this refusal shall be noted on the person's chart and shall be attested to by two (2) eyewitnesses on a separate document. An original of said attestation shall be furnished to the court. For purposes hereof, detention begins upon the signing of the acknowledgement of the person or in the event that the person refuses to sign the acknowledgement, upon the attestation of said refusal by two (2) eyewitnesses.

(D) The treatment staff shall immediately inform the prosecuting attorney of the county where the treated facility is located if, in the opinion of the treatment staff, a person who voluntarily admitted himself is homicidal or suicidal as defined in Section 1 of this Act and such person has absented himself from the receiving facility or program. The prosecuting attorney shall

initiate an involuntary commitment proceeding under this Act against such person.

SECTION 4. Involuntary Commitment. (A) Any person having reason to believe that a person is homicidal, suicidal or gravely disabled as defined by this Act may file a verified petition with the clerk of the probate court of the county in which the person alleged to be alcoholic or addicted to drugs resides or is initially detained.

(B) The contents of the petition for involuntary commitment shall:

(1) State whether the person is believed to be homicidal, suicidal or gravely disabled.

(2) Describe the conduct, clinical signs and symptoms upon which the petition is based. Such descriptions shall be limited to facts within the petitioner's personal knowledge.

(3) Contain the names and addresses of any witnesses having knowledge relevant to the allegations contained in the petition.

(4) Contain a specific prayer for commitment of the person to an appropriate facility or program including inpatient or outpatient treatment for his or her addiction or alcoholism.

SECTION 5. Initial Hearing. (A). If the person named in the original petition is not confined at the time that said petition is filed or cannot be located, the court may:

(1) Enter an ex parte order directing the sheriff 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 the person is duly served and fails to appear, the court shall issue an order of detention remanding the person to the Office on Alcohol and Drug Abuse Prevention, or its designee; 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

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 probate judge or the referee hearing the petition to substantiate the petition before the notice to appear is issued. The court shall make a determination based on clear and convincing evidence that there is probable cause to believe that the person is alcoholic or addicted to drugs and that one of the standards for involuntary commitment applies to the person. If such a determination is made, the person shall be remanded to the Office on Alcohol and Drug Abuse Prevention or designated agent for evaluation and a hearing pursuant to Section 2 of this Act which shall be held within the time period specified in Section 2 of this Act.

SECTION 6. (A). If at the initial hearing the probate judge or referee determines that the person named in the petition should be evaluated to determine the need for treatment on an involuntary basis, then the judge shall enter an order finding that the person is addicted to alcohol or drugs and:

(1) If such addiction has resulted in said person being gravely disabled, issue an order of detention to refer and remand him to the Office on Alcohol and Drug Abuse Prevention, or its designated agent. Said person shall be transported by the sheriff of the county in which the hearing is held to the appropriate receiving facility or program designated by the Office on Alcohol and Drug Abuse Prevention; or

(2) If the person is homicidal or suicidal, issue an order of detention, to refer and remand him to the Office on Alcohol and Drug Abuse Prevention to be transported by the sheriff of the county in which the hearing is held to the Benton Detoxification Services Center there to remain until such time as the person's certified treatment counselor indicates by written statement filed with the court that the person is no longer homicidal or suicidal. At that time, the person shall be transferred to a treatment facility or program designated by the Office on Alcohol and Drug Abuse Prevention. Under no circumstances shall the period of detention under this subsection exceed forty-five (45) days without review by the probate court or a referee or magistrate appointed by the court.

(B) At any time during detention, a person may be converted to a

voluntary status if the person's certified treatment counselor files a written statement of consent with the court. The court or a referee shall dismiss the petition immediately upon the filing of said statement.

SECTION 7. (A) Along with a copy of the petition, and the order directing appearance for an initial evaluation, or an order of detention, the person sought to be committed shall be served be a copy of the following statement of rights:

(1) That he has the right to effective assistance of counsel, including the right to a court appointed attorney.

(2) That he and his attorney have the right to be present at all significant stages of the proceedings and at all hearings; excepting no attorney shall be entitled to be present upon examination of the person by the treatment staff pursuant to an evaluation.

(3) That he has the right to present evidence in his own behalf.

(4) That he has the right to cross examine witnesses who testify against him.

(5) That he has the right to remain silent.

(6) That he has the right to view and copy all petitions, reports and documents contained in the court file.

(B) If it appears to the court that person sought to be committed is in need of counsel, counsel shall be appointed immediately upon filing of the original petition. Whenever legal counsel is appointed by the court, such court shall determine the amount of the fee, if any, to be paid the attorney so appointed and issue an order directing such payment. The amount allowed shall not exceed one hundred fifty dollars (\$150.00) based upon the time and effort of the attorney and the investigation, preparation and representation of the client at the court hearings. The court shall have the authority to appoint counsel on a pro bono basis. The quorum courts of each county shall appropriate funds for the purpose of payment of the attorneys' fees provided for by this Act and upon presentment of a claim accompanied by an order of the probate court fixing the fee, the same shall be approved by county quorum court and paid in the same manner as other claims against the county are paid.

SECTION 8. (A) Additional sixty (60) day commitment order may be requested if, in opinion of the treatment staff, a person committed remains

suicidal, homicidal or gravely disabled.

(B) Any request for periods of additional commitment pursuant to this section shall be made by a petition verified by the treatment staff. Said petition shall set forth the facts and circumstances forming the basis for such request. Upon the filing of the petition for additional commitment all rights enumerated in Section 7 of this Act shall be applicable.

(C) A hearing on the petition for additional commitment pursuant to this section shall be held before the expiration of the initial period of confinement or within seven (7) days of the filing of the petition. The hearing conducted pursuant to this section may be held in the receiving facility or program where the person is detained or residing. A copy of the petition shall be served upon the person sought to be additionally committed along with a copy forwarded to any attorney who may have been appointed to represent the person at the initial hearing. All testimony shall be recorded under oath and preserved. The need for additional commitment shall be proven by clear and convincing evidence.

SECTION 9. 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. However, should the probate court designate a magistrate or probate referee in Pulaski County, Arkansas, to hear petitions filed for additional periods of commitment such cases, then the Office of the Prosecutor Coordinator shall appear for and on behalf of the petitioner and the State of Arkansas before said magistrate or probate referee. Such representation shall be a part of the official duties of the prosecuting attorney or the prosecutor coordinator and the prosecuting attorney or the prosecutor coordinator shall be immune from civil liability in the performance of this official duty. Nothing in this section, however, shall prevent the petitioner from retaining his or her 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 10. No person admitted voluntarily or committed involuntarily to a receiving facility or program under this Act shall be considered incompetent per se by virtue of such admission or commitment.

SECTION 11. All commitment orders authorized herein shall be considered final and appealable under Rule 2 of the Arkansas Rules of Appellate Procedure.

SECTION 12. Nothing in this Act shall in any way restrict the right of any person to attempt to secure his freedom by a habeas corpus proceeding as provided by current Arkansas law.

SECTION 13. The Chief Justice of the Arkansas Supreme Court is hereby authorized to appoint one or more employees of the Judicial Department as magistrates among whose duties shall be to conduct hearings at the request of the appropriate probate judge for the involuntary commitment of persons to a receiving facility or program under this Act. Such magistrates shall be a person licensed to practice law in the State of Arkansas. The magistrate shall be considered an officer of the several probate courts of this State, and, as assigned by the Chief Justice of the Arkansas Supreme Court, be available to act in behalf of such probate courts at commitment hearings conducted hereunder. All rulings by the magistrate shall be subject to the review of the appropriate probate judge. All hearings conducted by the special magistrate provided for herein shall be conducted pursuant to this Act, and the patient shall have all rights and privileges granted by this Act.

SECTION 14. (A). To assure compliance with this Act, the Office on Alcohol and Drug Abuse Prevention of the Department of Human Services, through its authorized agents may visit or investigate any program or facility to which persons are admitted or committed under this Act.

(B) The Office on Alcohol and Drug Abuse Prevention of the Department of Human Services shall promulgate written procedures by July 1, 1987, which:

(1) designate receiving facilities and programs within prescribed geographic areas of the State for purposes for voluntary admissions or involuntary commitments under this Act;

(2) establish ongoing mechanisms, guidelines and regulations for review and refinement of the treatment programs offered in the receiving facilities for alcoholism and drug abuse throughout this State.

SECTION 15. Act 411 of 1955, as amended, Act 64 of 1965, as amended, Act

433 of 1971, as amended, Act 50 of 1973, as amended, and Act 1000 of 1975, as amended, are hereby repealed. All other laws and parts of laws in conflict herewith are hereby repealed.

SECTION 16. The various provisions and parts of this Act are declared severable and if any section or part of a section, provision or part of a provision, herein is declared unconstitutional, inappropriate or invalid by any court of competent jurisdiction, such holding shall not invalidate or effect the remainder of this Act.

SECTION 17. It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws concerning commitment of alcoholics and drug addicts are in need of revision. It is further found that for the effective administration of this Act, this Act should become effective on July 1, 1987, and therefore an emergency is hereby declared and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 1987.

