

State of Arkansas

77th General Assembly

A Bill

SENATE BILL

Third Extraordinary Session, 1989

CALL ITEM 8 16

By: Senate Judiciary Committee

For An Act To Be Entitled

"AN ACT TO AMEND SECTIONS 2, 4, AND 13 OF ACT 861 OF 1989,
RELATING TO VOLUNTARY AND INVOLUNTARY ADMISSIONS OF PERSONS
WITH MENTAL ILLNESS; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 2 of Act 861 of 1989 is amended to read as follows:

"SECTION 2. Jurisdiction of Probate Court.

(a) The probate courts of this State shall have exclusive jurisdiction of the involuntary admission procedures initiated pursuant to this Act except that the juvenile division of the probate court or such other court or courts as may hereafter be vested with such jurisdiction shall have concurrent jurisdiction to involuntarily commit persons under eighteen (18) years of age to the extent provided by this section.

(b) The Probate Court, or referee shall conduct, within seven (7) days (excluding weekends and holidays) of the person's detention, the hearing as defined in Section 9 of this Act. Except as otherwise provided, the hearing, as defined by Section 9 of this Act, shall be conducted by the same Court, or a judge designated on exchange, who heard the original petition and issued the appropriate order or by a referee appointed as provided in subparagraph (c). The Court or referee shall insure that the person sought to be involuntarily admitted is afforded all his rights as prescribed by this Act.

(c) The Probate Judge may designate and appoint a referee, who if so designated, shall hear the original petition as defined in Section 4 of this Act, issue an appropriate order pursuant to Section 5 of this Act, and shall conduct, within seven (7) days (excluding weekends and holidays) of the person's detention, the hearing as defined in Section 9 of this Act. The hearings conducted pursuant to Sections 5 and 9 may be held at inpatient programs of the State Mental Health System or a receiving facility or program

where the person is detained. The referee shall insure that the person sought to be involuntarily admitted is afforded all his rights as described in this Act.

(d) 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.

(e) 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. Written notification of the appeal shall be made to the clerk of the probate court in the county in which the case was decided within seventy-two (72) hours, excluding weekends and 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 the notice of appeal. The trial de novo shall comply with all procedures outlined in this Act.

(f) The probate judge, when conducting any hearing set out in this Act, may conduct said hearing within any county of his judicial district.

(g) In all cases where the respondent is held at a hospital, receiving facility, or program, pending a Section 9 or 10 hearing, the hearing may be held in the county where the hospital, receiving facility, or program is located.

(h) The court of original jurisdiction shall enter an order transferring the case and directing the probate clerk of the court of original jurisdiction to transmit certified copies of all records pertaining to the case."

SECTION 2. Section 4 of Act 861 of 1989 is amended to read as follows:

"SECTION 4. Involuntary Admission - Original Petition.

(a) Written Petition - Venue. Any person having reason to believe that a person meets the criteria for involuntary admission as defined in Section 1 of this act may file a verified petition with the Clerk of the Probate Court of the county in which the person alleged to have mental illness resides or is detained.

(b) Contents of Petition. The petition for involuntary admission shall:

(1) State whether the person is believed to be of danger to himself or others as defined in Section 1 of this Act.

(2) Describe the conduct, clinical signs and symptoms, upon which the petition is based. Such description 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 involuntary admission of the person to a hospital or to a receiving facility or program for treatment pursuant to Section 15(c) of this Act."

SECTION 3. Section 13 of Act 861 of 1989 is 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 probate judge, probate referee, or magistrate 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 probate judge, probate referee, or mental health magistrate 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 or 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 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 5. All laws and parts of laws in conflict with this act are

hereby repealed.