

Act 10 of the Third Special Session of 1989.

Act 10

HB1028

By: Representative Dietz

For An Act To Be Entitled
"AN ACT TO REVISE THE LAWS RELATING TO VOLUNTARY ADMISSIONS
AND INVOLUNTARY COMMITMENT OF PERSONS ADDICTED TO ALCOHOL OR
DRUGS; TO REPEAL ARK. CODE ANN. 20-64-801 THROUGH ARK. CODE
ANN. 20-64-811; TO REPEAL ARK. CODE ANN. 20-64-708 THROUGH
ARK. CODE ANN. 20-64-716; AND FOR OTHER PURPOSES."

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

SECTION 1. Definitions. As used in this Act:

(1) "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 Division.

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

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

(B) when, the person appears for the initial hearing; or

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

(3) "Division" refers to the Division of Alcohol and Drug Abuse Prevention of the Department of Human Services.

(4) "Gravely disabled" refers to a person who, if allowed to remain at liberty, is substantially likely, by reason of addiction to alcohol or drugs, to physically harm himself or others as a result of inability to make a rational decision to receive medication or treatment, as evidenced by:

(A) inability to provide for his own food, clothes, medication, medical care, or shelter; or

(B) placement of others in a reasonable fear of violent behavior or serious physical harm, to them; or

(C) an inability to avoid or protect himself from severe impairment or injury without treatment.

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

(6) "Person" shall mean a citizen of the State of Arkansas who is eighteen years of age or older.

(7) "Receiving facility or program" refers to a residential, inpatient, or outpatient treatment facility or program which is designated within each geographical area of the State by the Division to accept the responsibility for care, custody, and treatment of persons voluntarily admitted or involuntarily committed to such facility.

(8) "Suicidal" refers to a person who is addicted to alcohol or 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.

SECTION 2. The probate courts of this State shall have exclusive

jurisdiction for the involuntary commitment procedures initiated pursuant to this Act. The probate judge may conduct hearings pursuant to this Act in a receiving facility or program where the person is detained or residing, at the Arkansas State Hospital, or within any county of his judicial district.

SECTION 3. Voluntary Admissions. Any person who believes himself to be addicted to alcohol or drugs may apply to the administrator or his designee of a receiving facility or program for admission. If the administrator or his designee shall be satisfied after examination of the applicant that he is in need of treatment and will be benefited thereby, the applicant may be received and cared for in the receiving facility or program for such a period of time as the administrator or his designee 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.

SECTION 4. Continued Detention. (a) If at any time the person who has voluntarily admitted himself to a receiving facility or program makes a request to leave, the administrator or his designee may file or cause to be filed a petition for involuntary commitment.

(b) If the administrator or his designee determines that the person meets the criteria set forth in this Act for involuntary commitment and that release would place the person in imminent danger of death or serious bodily harm, the administrator or his designee shall file or cause to be filed a petition for involuntary commitment and shall append thereto a request for continued detention.

(c) The request for continued detention shall be verified and shall:

(1) State with particularity the facts personally known to the affiant which establish reasonable cause to believe the person is in imminent danger of death or serious bodily harm.

(2) Identify the treatment facility or program in which the person is being detained.

(3) Contain a specific prayer that the person be involuntarily committed and that detention be continued.

(d)(1) The person shall be considered to be held by detention pending judicial determination of the petition for involuntary commitment and continued detention. Any person detained pending judicial determination shall, within two hours of his request to leave the receiving facility, be provided with a copy of the petition for involuntary commitment and request for continued detention.

(2) The person shall be presented with an acknowledgement of receipt of the petition for involuntary commitment and request for continued detention. If the person refuses to sign the acknowledgment, this refusal shall be noted on the person's chart and shall be attested by two eyewitness on a second document. An original of said attestation shall be furnished to the court. Either a signed acknowledgment or completed attestation shall be sufficient to prove personal service of the petition.

(e) The petition shall be filed and presented to a probate judge on or before 5:00 p.m. the next day, exclusive of weekends and holidays, after the person makes a request to leave the receiving facility or program. Thereupon the judge shall review the petition and request for continued detention and determine if there is reasonable cause to believe the person meets the criteria set forth in this Act for involuntary commitment and if release would place the person in immediate danger of death or serious bodily harm.

(f) If the judge determines that there is reasonable cause to believe the person meets the criteria set forth in this Act for involuntary commitment and that release would place the person in immediate danger of death or serious bodily harm, the judge shall order continued detention pending a

hearing to be scheduled and conducted pursuant to Section 10 of this Act.

SECTION 5. Absence from treatment facility or program. (a) Treatment staff shall immediately inform the prosecuting attorney of the county where the treatment facility is located if, in the opinion of the treatment staff, a person who voluntarily admitted himself meets the criteria for involuntary commitment set forth in this Act and such person has absented himself from the receiving facility or program. The prosecuting attorney shall initiate an involuntary commitment under this Act against such person. Statements made by the prosecuting attorney in furtherance of the petition shall not be deemed to be a disclosure. Statements made by treating staff to the prosecuting attorney shall be treated as confidential and the prosecuting attorney shall remain subject to the confidentiality requirements as set forth in state and federal law and regulation.

(b) If any person shall, during a period of involuntary commitment absent himself from the treating facility or program without leave, he may be returned by facility or program security personnel or law enforcement officers without further proceedings. The probate courts of this State are hereby authorized to enter such orders as may be necessary to effect the return.

SECTION 6. Involuntary Commitment. (a) Any person having any reason to believe that a person is homicidal, suicidal or gravely disabled may file a petition with the clerk of the probate court of the county in which the person alleged to be addicted to alcohol or drugs resides or is detained, and be represented by the prosecuting attorney or any other licensed attorney within the State of Arkansas.

(b) 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 to alcohol or drugs.

(c) Personal service of the petition shall be made in accordance with the Arkansas Rules of Civil Procedure and shall include:

(1) Notice of the date, time, and place of hearing.

(2) A notice that if the person shall fail to appear, the court shall issue an order directing a law enforcement officer to place the person in custody for the purpose of a hearing, unless the court finds that the person is unable to appear by reason of physical infirmity or the appearance would be detrimental to his health, well-being, or treatment.

SECTION 7. Involuntary Commitment and Immediate Detention. (a) Any person filing a petition for involuntary commitment may append thereto a petition for immediate detention.

(b) The request for immediate detention shall be verified and shall:

(1) State with particularity facts personally known to the affiant which establish reasonable cause to believe the person is in imminent danger of death or serious bodily harm.

(2) State whether the person is currently detained in a receiving facility or program.

(3) Contain a specific prayer that the person be immediately detained at the Benton Detoxification Services Center pending a hearing.

(c) If, based on the petition for involuntary commitment and request for immediate confinement, the judge finds a reasonable cause to believe the person meets the criteria set forth in this Act for involuntary commitment and that the person is in imminent danger of death or serious bodily harm the court may grant the request and order a law enforcement officer to place the person in immediate detention at the Benton Detoxification Services Center for treatment pending a hearing to be scheduled and conducted pursuant to Section 10 of this Act.

(d) Personal service of the petition and order of immediate detention must be made by a law enforcement officer who shall, at the time of service, take the person into custody and immediately deliver such person to the Benton Detoxification Services Center.

SECTION 8. Every petition for involuntary commitment, shall include, or contain as an attachment, the following statement of rights:

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

(2) That the person and his attorney have the right to be present at all significant stages of the proceedings and at all hearings; except that no attorney shall be entitled to be present upon examination of the person by the treatment staff for the purpose of evaluation or treatment.

(3) That the person has the right to present evidence in his own behalf and cross examine witnesses who testify against him.

(4) That the person has the right to remain silent.

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

SECTION 9. If it appears to the court that a person sought to be committed is in need of counsel, counsel shall be appointed immediately upon filing of the 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 shall 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 court of each county shall appropriate funds for the purpose of payment of the attorney's 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 the county quorum court and shall be paid in the same manner as other claims against the county are paid.

SECTION 10. Initial Hearing. (a) In each case a hearing shall be set by the court within five (5) days, excluding weekends and holidays, of the filing of a petition for involuntary commitment, with a request for continued detention or for involuntary commitment with a request for immediate detention.

(b) The person named in the original petition may be removed from the presence of the court upon finding that his conduct before the court is so disruptive that proceedings cannot be reasonably continued with him present.

(c) The petitioner shall appear before the probate judge to substantiate the petition. The court shall make a determination based upon clear and convincing evidence that the standards for involuntary commitment apply to the person. If such a determination is made, the person shall be remanded to a designated agent of the Division for treatment for a period of up to twenty-one (21) days.

SECTION 11. The pleadings in each case shall be deemed to conform to the proof. The court is hereby authorized to enter orders of involuntary commitment pursuant to Act 861 of 1989 conforming thereto.

SECTION 12. At any time during detention, the person may be converted to voluntary status if the person's certified treatment counselor files a written statement of consent with the court. The court shall dismiss the petition immediately upon the filing of said statement.

SECTION 13. (a) An additional forty-five (45) day commitment order may be requested if, in the opinion of the treatment staff, a person remains suicidal, homicidal or gravely disabled.

(b) Any request for periods of additional commitment pursuant to this section shall be made by petition verified by the treatment staff. Said petition shall set forth facts and circumstances forming the basis for such request. Upon the filing of the petition for additional commitment all rights enumerated in Section 8 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 period of confinement. The hearing may be held in a 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 represented, or been appointed to represent, the person at the initial hearing.

(d) All testimony shall be recorded under oath and preserved. The need for additional commitment shall be proven by clear and convincing evidence.

SECTION 14. If any person is released from detention prior to the expiration of the period of commitment, the court may, condition such release upon the person's compliance with outpatient treatment for such time, not to exceed the duration of the commitment order, and at such facility as may be specified by the court.

SECTION 15. The petition may be filed by the local prosecuting attorney, an attorney representing the petitioner or pro se. The county shall establish an indigency fund to permit the petitioner to request a court appointed attorney by filing an affidavit of indigency. The attorney may be allowed a fee of up to one hundred fifty dollar (\$150.00). Should the probate court designate a probate judge in Pulaski County, Arkansas, to hear petitions filed for additional periods of commitment pursuant to this Act, the office of Prosecutor Coordinator shall appear for and on behalf of the petitioner and the State of Arkansas before said judge, provided that such hearing is held on the grounds of the Arkansas State Hospital at Little Rock. Such representation shall be a part of the official duties of the Prosecutor Coordinator. However, nothing in this section shall prevent the petitioner from retaining his or her own counsel. Thereupon, the Prosecutor Coordinator shall be relieved of the duty to represent the petitioner.

SECTION 16. 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 17. All commitment orders authorized herein shall be considered final and appealable under Rule 2 of the Arkansas Rules of Appellate Procedure.

SECTION 18. Any person willfully making false statements on a petition

for involuntary commitment, petitions for involuntary commitment with request for continued detention, or petition for involuntary commitment with request for immediate detention, or who willfully makes false statements for the purpose of inducing another to bring such petition, knowing such statements to be false, or with reckless disregard as to the truthfulness of the statements shall be guilty of a Class A misdemeanor.

SECTION 19. The Prosecuting Attorney, Prosecutor Coordinator, law enforcement officers, and employees of the Division shall be immune from civil liability for performance of duties imposed by this Act.

SECTION 20. 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 21. (a) To assure compliance with this Act, the Division through its authorized agents, may visit or investigate any program or facility to which persons are admitted or committed under this Act.

(b) The Division shall promulgate written procedures to implement this Act on or before January 1, 1990. Such provisions shall:

(1) designate receiving facilities and programs within prescribed geographical areas of the State for purposes of 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 alcohol and drug abuse throughout this State.

SECTION 22. (a) Any person legally obligated to support a person receiving treatment from a facility or program funded wholly or in part by the Division of Alcohol and Drug Abuse Prevention of the Department of Human Services shall pay to such facility or program an amount to be fixed by such facility or program as cost for treatment. Such amounts shall be a debt of the obligor.

(b) The Division of Alcohol and Drug Abuse Prevention of the Department of Human Services shall promulgate rules specifying the amounts to be fixed as costs and establishing procedures for implementation of this section. Such rules shall set forth costs by reference to the income and assets of the obligor.

SECTION 23. Ark. Code Ann. 20-64-801 through 20-64-811, inclusive, is hereby repealed.

SECTION 24. Ark. Code Ann. 20-64-708 through 20-64-716, inclusive, is hereby repealed.

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

SECTION 27. 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 the Act.

SECTION 28. EMERGENCY. It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws concerning commitment of persons addicted to alcohol or drugs are in need of revision. It is further found that for the effective administration of this Act, this Act should become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being 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 6, 1989
