

1 HB249  
2 196346-2  
3 By Representative Shedd  
4 RFD: Judiciary  
5 First Read: 20-MAR-19

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Existing law provides for the involuntary  
9 commitment of mentally ill persons to outpatient  
10 treatment, but does not provide a mechanism for  
11 recommitment of patients who are in need of further  
12 care after the expiration of the initial outpatient  
13 commitment order.

14 This bill would provide that a probate  
15 court, after a hearing, may enter a renewal order  
16 for involuntary commitment of mentally ill persons  
17 to a mental health facility, if needed, for a  
18 period not to exceed one year.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT

23  
24 To amend Sections 22-52-10.2 and 22-52-10.3, Code of  
25 Alabama 1975, to provide that a probate court may issue a  
26 renewal of an involuntary commitment order for treatment for a  
27 mentally ill person if it finds, after a hearing, that the

1 person is in need of further care; to add a new Section  
2 22-52-10.10, Code of Alabama 1975, to provide procedural  
3 requirements for such a renewal.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 22-52-10.2 and 22-52-10.3, Code  
6 of Alabama 1975, are amended to read as follows:

7 "§22-52-10.2.

8 "(a) A respondent may be committed to outpatient  
9 treatment if the probate court finds, based upon clear and  
10 convincing evidence, ~~that~~ all of the following:

11 "~~(i)~~ (1) ~~the~~ The respondent is mentally ill~~;~~.

12 "~~(ii)~~ (2) ~~as~~ As a result of the mental illness, ~~the~~  
13 respondent will, if not treated, continue to suffer mental  
14 distress and will continue to experience deterioration of the  
15 ability to function independently~~;~~and.

16 "~~(iii)~~ (3) ~~the~~ The respondent is unable to make a  
17 rational and informed decision as to whether or not treatment  
18 for mental illness would be desirable.

19 "(b) Upon a recommendation, made by the designated  
20 mental health facility currently providing outpatient  
21 treatment, that the respondent's outpatient commitment order  
22 should be renewed, a probate court may enter an order to renew  
23 the commitment order upon the expiration of time allotted for  
24 treatment by the original outpatient treatment order if the  
25 probate court finds, based upon clear and convincing evidence,  
26 all of the following:

27 "(1) The respondent is mentally ill.

1           "(2) As a result of mental illness, the respondent  
2 will, if treatment is not continued, continue to suffer mental  
3 distress and will continue to experience deterioration of the  
4 ability to function independently.

5           "(3) The respondent is unable to independently make  
6 a rational and informed decision as to whether or not he or  
7 she needs treatment for mental illness.

8           "§22-52-10.3.

9           "(a) At the final hearing on a petition for  
10 commitment seeking the involuntary commitment of a respondent,  
11 the probate court may order that the respondent participate in  
12 outpatient treatment provided by a designated mental health  
13 facility.

14           "(b) The probate court shall not order outpatient  
15 treatment unless the designated mental health facility has  
16 consented to treat the respondent on an outpatient basis under  
17 the terms and conditions set forth by the probate court.

18           "(c) If outpatient treatment is ordered, the order  
19 of the probate court may state the specific conditions to be  
20 followed and shall include the general condition that the  
21 respondent follow the directives and treatment plan  
22 established by the designated mental health facility.

23           "(d) Pursuant to this section, an order for  
24 outpatient treatment shall not exceed 150 days unless the  
25 order pertains to a renewal of an outpatient commitment order  
26 up to one year as provided for by this article.

1           "(e) The designated mental health facility shall  
2 immediately report to the probate court any material  
3 noncompliance with the outpatient treatment order. The report  
4 shall set forth the need for revocation of the outpatient  
5 treatment order and shall be verified and filed with the  
6 probate court.

7           "(f) The probate court shall set a hearing to  
8 consider the motion for revocation of the outpatient treatment  
9 order. The hearing procedures and safeguards set forth in this  
10 article, applicable to a petition for involuntary commitment,  
11 shall be followed. If at the hearing, the probate court finds,  
12 based upon clear and convincing evidence, that the conditions  
13 of outpatient treatment have not been met, and that the  
14 respondent meets inpatient criteria, the probate court may  
15 enter an order for commitment to inpatient treatment.

16           "(g) No county shall be financially responsible for  
17 the cost of provision of outpatient mental health services  
18 ordered pursuant to this article. The cost for the provision  
19 of outpatient services are not allowable costs under Section  
20 22-52-14.

21           Section 22-52-10.10, is added to the Code of Alabama  
22 1975, to read as follows:

23           §22-52-10.10

24           (a) A petition for renewal of an outpatient  
25 commitment order may be filed by the director of a designated  
26 mental health facility or his or her designee at least 30 days  
27 prior to the expiration of the current commitment order. The

1 petition, together with a copy of the original commitment  
2 order and copies of any subsequent renewal commitment orders,  
3 shall be filed with the probate court of the county where the  
4 facility is located. The petition shall explain in detail why  
5 renewal of the order is being requested and shall include  
6 testimony affirming the facility's belief that the respondent  
7 meets the requirements for renewal pursuant to Section  
8 22-52-10.2.

9 (b) A probate court may consider, hear, and enter  
10 appropriate orders pursuant to this section or may request  
11 that the case be heard by a special judge of probate.

12 (c) If a special judge of probate is requested to  
13 hear and enter appropriate orders with regard to the renewal  
14 of commitment orders pursuant to this section, then it shall  
15 be the responsibility of the probate judge in the county so  
16 affected by location of the designated mental health facility  
17 to determine, select and appoint from time to time that  
18 probate judge. The special judge of probate shall be paid  
19 compensation as determined by the probate judge in that county  
20 not to exceed one hundred dollars (\$100) per case. The fee set  
21 to compensate the special judge of probate are allowable costs  
22 under Section 22-52-14. The county where the hearing for the  
23 renewal of a commitment order is held shall also be allowed to  
24 collect a fee of twenty dollars (\$20) per case to compensate  
25 the county for additional recordkeeping costs. This  
26 compensation is allowable costs under Section 22-52-14.

1 (d) Any special judge of probate appointed under  
2 subsection (c) shall be vested with all authority, duties,  
3 responsibilities, and judicial functions of the probate court  
4 having jurisdiction over any person involuntarily committed by  
5 the probate court of any county in this state.

6 (e) Any special judge of probate appointed under  
7 subsection (c) shall be a citizen of this state, shall have  
8 previously served for a minimum of six years as a judge of  
9 probate in this state, or shall be licensed to practice law in  
10 this state, and shall take the present oath of office upon  
11 entering his or her official duties and serve without bond.

12 (f) The judge of probate or special judge of probate  
13 hearing the case shall conduct a hearing, within 30 days after  
14 the date of petition, to consider the petition for renewal of  
15 the commitment order.

16 (g) The judge of probate of the county where the  
17 facility is located or the special judge of probate shall  
18 appoint an attorney to serve as guardian ad litem to represent  
19 and to protect the rights of the respondent. The appointment  
20 shall be in writing and acceptance of appointment shall be  
21 returned to the judge of probate at least five days prior to  
22 the hearing.

23 (h) Adequate written notice shall be provided to the  
24 respondent prior to the hearing.

25 (i) The hearing shall be conducted in accordance  
26 with Section 22-52-9. A copy of the order shall be forwarded  
27 to the probate court having original jurisdiction. The burden

1 of proof shall be to prove, based on clear and convincing  
2 evidence, the criteria as prescribed in Section 22-52-10.2.

3 (j) Any order renewing an order for commitment to  
4 outpatient treatment shall not exceed a period of one year.

5 Section 2. This act shall become effective on the  
6 first day of the third month following its passage and  
7 approval by the Governor, or its otherwise becoming law.