

1 SB164
2 197503-1
3 By Senator Melson
4 RFD: Judiciary
5 First Read: 21-MAR-19

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8 SYNOPSIS: Existing law provides authority for
9 community mental health officers to temporarily
10 take into custody individuals who appear to have a
11 mental illness and pose an immediate danger to self
12 or to others. This law is applicable to individual
13 counties only upon a decision of the local judge of
14 probate with approval of the county commission.
15 This law currently applies only to persons who have
16 reached the age of majority because juvenile
17 courts, not probate courts, exercise jurisdiction
18 over juveniles who suffer from mental illness.

19 This bill would extend authority to a
20 presiding county juvenile court judge to extend the
21 jurisdiction of a community mental health officer
22 in his or her county to juveniles aged 14 years and
23 older.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to juveniles; to amend Sections 22-52-90,
3 22-52-91, 22-52-92, and 22-52-93, Code of Alabama 1975, to
4 extend authority to a presiding county juvenile court judge to
5 extend the jurisdiction of a community mental health officer
6 in his or her county to juveniles aged 14 years and older.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 22-52-90, 22-52-91, 22-52-92,
9 and 22-52-93, Code of Alabama 1975, are amended to read as
10 follows:

11 "§22-52-90.

12 "As used in this article, the following words and
13 phrases shall have the following meanings:

14 "(1) DESIGNATED MENTAL HEALTH FACILITY. A mental
15 health facility other than a state mental health facility
16 designated by the state Department of Mental Health to receive
17 persons for evaluation, examination, admission, detention, or
18 treatment pursuant to the commitment process. In cases of
19 juvenile patients aged 14 years and older only, this term
20 shall refer to any licensed hospital.

21 "(2) COMMUNITY MENTAL HEALTH OFFICER. A person who
22 acts as a liaison between law enforcement and the general
23 public, and who is regularly employed by a municipality within
24 the county or regularly employed by the county commission or
25 any public body or agency, including the state Department of
26 Mental Health. A community mental health officer may be
27 employed jointly or in combination by two or more governments,

1 entities, or agencies authorized by the immediately preceding
2 sentence. Notwithstanding the foregoing, a community mental
3 health officer shall not be an employee of the Department of
4 Human Resources. A community mental health officer shall
5 possess a minimum of a Bachelor's Degree from an accredited
6 college or university in social work or a related field or,
7 with the approval pursuant to findings of the judge of probate
8 or the presiding juvenile court judge, any equivalent
9 combination of education and experience; at least one year of
10 experience in social work; knowledge of the principles,
11 practices, and techniques of social work as they apply to
12 crisis intervention; knowledge of theory, principles, and
13 practices of psychiatric social work; knowledge of federal,
14 state, and municipal laws regarding the aiding of mental
15 patients; and knowledge of the functions and resources of
16 public and private social agencies in the community. The
17 compensation of the community mental health officer shall be
18 determined by the employing entity, entities, or agency. The
19 state Department of Mental Health may pay part or all of the
20 compensation, including fringe benefits, of the community
21 mental health officer employed hereunder.

22 "(3) COUNTY. A county in the State of Alabama.

23 "(4) LAW ENFORCEMENT OFFICER. A policeman regularly
24 employed by a municipality within the county or a sheriff or
25 deputy sheriff regularly employed by the county.

26 "(5) WITHIN THE COUNTY. A place within the
27 boundaries of the county.

1 "(6) STATE DEPARTMENT OF MENTAL HEALTH FACILITY. A
2 mental health facility operated by the state Department of
3 Mental Health and designated by the commissioner to have beds
4 available to receive persons for evaluation, examination,
5 admission, detention, or treatment for the purposes of
6 carrying out the provisions of this article.

7 "(7) COMMISSIONER. Commissioner of the state
8 Department of Mental Health.

9 "§22-52-91.

10 "(a) When a law enforcement officer is confronted by
11 circumstances and has reasonable cause for believing that a
12 person within the county is mentally ill and also believes
13 that the person is likely to be of immediate danger to self or
14 others, the law enforcement officer shall contact a community
15 mental health officer. The community mental health officer
16 shall join the law enforcement officer at the scene and
17 location of the person to assess conditions and determine if
18 the person needs the attention, specialized care, and services
19 of a designated mental health facility. If the community
20 mental health officer determines from the conditions,
21 symptoms, and behavior that the person appears to be mentally
22 ill and poses an immediate danger to self or others, the law
23 enforcement officer shall take the person into custody and,
24 together with the community mental health officer, deliver the
25 person directly to the designated mental health facility. At
26 the designated mental health facility, a responsible employee
27 of the facility who is on duty and in charge of admissions to

1 the facility shall be informed by the community mental health
2 officer that the person in custody appears to be mentally ill
3 and is in need of examination and observation.

4 "(b) The employee of the designated mental health
5 facility shall immediately notify an appropriate staff member
6 of the facility who conducts diagnoses and evaluations that an
7 alleged mentally ill person has been received at the facility.
8 The staff member shall immediately perform an initial
9 examination and observation which, coupled with whatever other
10 information concerning the person's behavior as may be
11 available, will allow the staff member to make a determination
12 as to whether to admit the person to the designated mental
13 health facility as a tentatively diagnosed mentally ill
14 patient for further observation and attention. Notwithstanding
15 anything in this article to the contrary, before any person is
16 admitted to a licensed hospital pursuant to this article, the
17 person shall be examined and evaluated by a psychiatrist or
18 other physician licensed to practice medicine and authorized
19 by the hospital medical staff bylaws of the licensed hospital
20 to admit patients for the treatment of mental or emotional
21 illnesses. All admissions to a licensed hospital authorized
22 under this article shall be made only in conformity with
23 established policies, procedures, and the medical staff bylaws
24 of the licensed hospital to which the person is admitted. No
25 provision of this article shall be construed to authorize or
26 permit any person not licensed to practice medicine to perform

1 any act or render any service which constitutes the practice
2 of medicine.

3 "(c) Upon a determination by the staff member that
4 the person does not require admission to the designated mental
5 health facility, the staff member shall so advise the
6 community mental health officer. The community mental health
7 officer shall promptly communicate this information to the law
8 enforcement officer who shall cause the person to be released
9 from the designated mental health facility. The law
10 enforcement officer shall then release the person unless the
11 law enforcement officer has some legal cause for detaining the
12 person other than the person's mental condition. After the
13 person is released, and, if so requested by the person, the
14 law enforcement officer shall deliver the person to the
15 person's residence or other place of abode if it is within the
16 county.

17 "(d) Upon a determination by the staff member that
18 the alleged mentally ill person should be admitted to the
19 designated mental health facility, the staff member shall
20 proceed with admission of the person to the facility. The
21 staff member shall also advise the community mental health
22 officer who shall promptly communicate this information to the
23 law enforcement officer. The community mental health officer
24 shall effectuate the filing of a petition for commitment with
25 the probate court on the person, if that person is over the
26 age of majority, or with the juvenile court, if that person
27 has not reached the age of majority and is at least 14 years

1 old, by parties in interest. If no one comes forward to timely
2 file the petition, the community mental health officer shall
3 file the petition in his or her official capacity no later
4 than the second business day following the date of admission.

5 (e) No later than the next business day following
6 the date of admission, the staff member shall notify either
7 the judge of probate, ~~or~~ the probate clerk of the county, or
8 the juvenile court, as appropriate, of the admission to the
9 designated mental health facility of the alleged mentally ill
10 person. The judge of probate ~~or~~, the probate clerk, or the
11 juvenile court shall arrange a probable cause hearing to
12 determine if the detention of the alleged mentally ill person
13 is based upon probable cause to believe that confinement is
14 necessary under constitutionally proper standards for
15 commitment or alternate modes of treatment and if the
16 detention should continue until a final hearing on the merits
17 can be held. In the case where a community mental health
18 officer has acted in helping gain the admission of the alleged
19 mentally ill person to a designated mental health facility for
20 initial examination and observation, the judge of probate or a
21 juvenile court judge, as appropriate, shall interview the
22 alleged mentally ill person pursuant to this section no later
23 than the fifth business day next after admission to the
24 designated mental health facility or hospital.

25 "(f) Prior to the probable cause hearing the ~~probate~~
26 appropriate court shall furnish adequate notice informing the
27 person, or his or her counsel, of the time and place of the

1 hearing and of the factual grounds upon which the proposed
2 commitment is predicated and the reasons for the necessity of
3 confinement. The ~~probate~~ court shall require that the alleged
4 mentally ill person be represented by counsel at the hearing,
5 which counsel shall be appointed by the court if necessary.
6 The ~~probate~~ court shall require the presence of the alleged
7 mentally ill person at the hearing unless his or her presence
8 is waived by counsel and approved by the court after an
9 adversary hearing at the conclusion of which the court
10 judicially finds and determines that the person is so mentally
11 or physically ill as to be incapable of attending the probable
12 cause hearing. In no event may detention in the absence of a
13 petition for commitment and a probable cause hearing exceed
14 seven days from the date of the initial confinement under this
15 article. If the court finds and determines that there is no
16 probable cause to detain the person, the court shall
17 immediately cause the person to be discharged and released
18 from the designated mental health facility. Notwithstanding
19 the foregoing, if criminal charges have been placed against
20 the individual and the health care facility has been so
21 notified by an appropriate law enforcement officer, the
22 designated mental health facility shall release the person
23 into the custody of the appropriate law enforcement officer.

24 "(g) If the court determines there is probable cause
25 to detain the person pending a full hearing on the need for
26 commitment or some alternate mode of treatment, the court
27 shall issue a mittimus or commitment of the person to the

1 designated mental health facility until the proceedings may be
2 held in accordance with law. Notwithstanding the foregoing,
3 the proceedings shall be held within a reasonable time
4 following initial detention, but in no event sooner than will
5 permit adequate preparation of the case by counsel, or later
6 than 30 days from the date of the initial detention.

7 "§22-52-92.

8 "(a) This article shall not be applicable to any
9 county unless and until either of the following events occurs:

10 "(1) The judge of probate with the approval of the
11 county commission of that particular county makes a finding
12 that there exists in the county provisions for implementation
13 of the community mental health officer program and the
14 necessary facilities to detain persons over the age of
15 majority pursuant to this article.

16 "(2) A presiding juvenile court judge with the
17 approval of the county commission of that particular county
18 makes a finding that there exists in the county provisions for
19 implementation of the community mental health officer program
20 and the necessary facilities to detain juveniles aged 14 years
21 or older pursuant to this article.

22 "In ~~that~~ either event, the judge ~~of probate~~ shall
23 open a case under a docket number and enter ~~therein~~ findings
24 upon the records of the court which shall also expressly state
25 ~~the~~ an intention ~~thereby~~ to invoke this article. Notification
26 and a copy of the court's findings and statement shall be
27 served on all designated mental health facilities located

1 within the county, all law enforcement agencies within the
2 county, the Commissioner of the state Department of Mental
3 Health, the state Attorney General, the Secretary of State,
4 the Governor of the State of Alabama, and any other persons
5 deemed appropriate by the judge ~~of probate~~. In the event of
6 changed circumstances, the judge ~~of probate~~ may terminate the
7 procedures set forth in Section 22-52-91, and shall make
8 findings accordingly and serve the parties named herein and
9 others previously notified.

10 "(b) Notwithstanding anything in this article to the
11 contrary, in the event there are no facilities available in
12 the county to serve as a designated mental health facility,
13 the county commission, upon recommendation of the appropriate
14 ~~judge of probate, of that county,~~ may enter into an agreement
15 with the state Department of Mental Health to use beds in a
16 state Department of Mental Health facility in lieu of a
17 designated mental health facility. The commissioner shall have
18 the final decision to determine the number of beds, if any, in
19 a state Department of Mental Health facility that may be made
20 available to the counties under this section. This subsection
21 may not be used by or be applicable to any county unless and
22 until the appropriate judge ~~of probate~~ makes a finding that
23 there are no facilities available in the county for
24 implementation of the community mental health officer program,
25 that there is an agreement between the ~~probate~~ court and the
26 state Department of Mental Health to make beds in a state
27 Department of Mental Health facility available, and that there

1 is an alternative procedure other than jail or prison, adopted
2 by the ~~probate~~ court that will be used when beds are not
3 available in a state Department of Mental Health facility. If
4 this subsection is used to implement the community mental
5 health officer program, then the law enforcement officer shall
6 deliver the person directly to the state Department of Mental
7 Health, or as directed by the community mental health officer
8 when a bed is not available in a state Department of Mental
9 Health facility. Thereafter, all other procedures set forth in
10 this article for operation of the community mental health
11 officer program shall apply the same as if the person was
12 delivered to a designated mental health facility.

13 "(c) Notwithstanding any provision in this article
14 to the contrary, a petition for commitment filed pursuant to
15 Section 22-52-91 and subsequent proceedings held to determine
16 probable cause and final hearings on the merits shall be in
17 ~~the probate~~ an appropriate court of, as provided in this
18 article, in the county where the respondent was initially
19 taken into custody by law enforcement.

20 "§22-52-93.

21 "(a) No county shall be required to pay costs
22 associated with the temporary confinement or commitment of a
23 person to a designated mental health facility, including, but
24 not limited to, the cost of housing and treatment.

25 "(b) All costs associated with a probable cause
26 hearing, including the cost of counsel, shall be paid by the

1 State General Fund upon order of the appropriate judge ~~of~~
2 ~~probate, except, that if~~ with the following exceptions:

3 "(1) If the petition is denied and the petitioner is
4 not indigent and is not a law enforcement officer or other
5 public official acting within the line and scope of his or her
6 duties, all costs may be taxed against the petitioner, ~~or if.~~

7 "(2) If the petition is granted and the person
8 sought to be committed has reached the age of majority and is
9 not indigent, the appropriate judge ~~of probate~~ may order all
10 costs paid from the estate of the person committed."

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