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3 SUBSTITUTE FOR HB340
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8 SYNOPSIS: This bill would authorize a law enforcement
9 officer from a designated law enforcement agency to
10 take an individual whom the officer believes has a
11 mental illness into protective custody under
12 certain conditions.

13 This bill would provide for the
14 transportation of the individual to a hospital or
15 other facility for evaluation and treatment.

16 This bill would provide protection from
17 civil liability to law enforcement officers,
18 medical facilities, and medical personnel when
19 acting pursuant to the provisions of this bill.

20 This bill would also repeal any local law
21 that conflicts with the provisions of this bill or
22 that establishes a similar program for placing
23 individuals in protective custody for mental health
24 issues.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 Relating to emergency treatment of mental illness;
4 to authorize a law enforcement officer from a designated law
5 enforcement agency to take an individual whom the officer
6 believes has a mental illness into protective custody under
7 certain conditions; to provide for the transportation of the
8 individual to a hospital or other facility for evaluation and
9 treatment; to provide protection from civil liability to law
10 enforcement officers, medical facilities, and medical
11 personnel when acting pursuant to the provisions of this bill;
12 and to repeal any local law that conflicts with the provisions
13 of this bill or that establishes a similar program for placing
14 individuals in protective custody for mental health issues.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. (a) For the purposes of this section, the
17 following terms have the following meanings:

18 (1) DESIGNATED LAW ENFORCEMENT AGENCY. A law
19 enforcement agency within a particular county that is
20 authorized by a judge of probate to exercise the authority
21 described in this act.

22 (2) DESIGNATED TREATMENT FACILITY. A health care
23 facility that has a written agreement with the county to
24 provide evaluation, treatment, and care to individuals placed
25 in protective custody pursuant to this act and is designated
26 by the Department of Mental Health.

1 (3) LAW ENFORCEMENT OFFICER. Any state, county, or
2 municipal officer certified by the Alabama Peace Officers'
3 Standards and Training Commission.

4 (4) MENTAL ILLNESS. As defined in Section 22-52-1.1.

5 (b) (1) Concurrently with Article 1 of Chapter 52 of
6 Title 22, Code of Alabama 1975, a law enforcement officer from
7 a designated law enforcement agency may take an individual 14
8 years of age or older into protective custody when the officer
9 has reasonable cause to believe that the individual is
10 mentally ill and is an immediate danger to himself or herself
11 or others.

12 (2)a. Upon placement of an individual under
13 protective custody pursuant to subdivision (1), the law
14 enforcement officer shall transport the individual to a
15 designated treatment facility for an evaluation and treatment.
16 While in protective custody, the individual shall have the
17 opportunity to contact an adult of the individual's choice in
18 a timely manner.

19 b. If the individual does not consent to the
20 transport, the officer may use reasonable force necessary to
21 carry out the transport.

22 c. Two or more licensed physicians or one licensed
23 physician and one or more nurse practitioners or physician
24 assistants, after having consultation, shall sign a written
25 statement finding, in his or her judgment, that each
26 tentatively and independently has observed and found the
27 individual as appearing mentally ill and in need of further

1 observation and attention, as the individual is a danger to
2 self or others. The statement shall be signed and the judge of
3 probate shall be contacted within 24 hours of the finding in
4 this paragraph.

5 d. The individual shall be released from the
6 designated treatment facility within 72 hours, exclusive of
7 Saturday, Sunday, or any legal holiday, unless a judge of
8 probate orders further inpatient or outpatient treatment for
9 the individual as provided in Article 1 of Chapter 52 of Title
10 22, Code of Alabama 1975.

11 e. Upon a determination by an attending physician,
12 nurse practitioner, or physician assistant at a designated
13 treatment facility in this state that an individual
14 transported to the designated treatment facility pursuant to
15 this section is not mentally ill or a danger to self or
16 others, it shall promptly communicate this information to the
17 appropriate law enforcement officer. The law enforcement
18 officer shall coordinate the immediate release of the
19 individual from the designated treatment facility and shall
20 release the individual from protective custody unless the law
21 enforcement officer has some legal cause for detaining the
22 individual other than the individual's mental condition. After
23 the individual is released, and upon request of the
24 individual, the law enforcement officer shall transport the
25 individual to his or her residence or other place of abode if
26 it is within the county.

1 (c) Protective custody by a law enforcement officer
2 under this section shall not be considered an arrest for any
3 purpose, and no entry or other record may be made to indicate
4 that an individual subject to temporary protective custody by
5 a law enforcement officer under this section has been detained
6 or charged with any crime.

7 (d) (1) It is the policy of this state to encourage a
8 law enforcement officer, hospital, physician, medical
9 provider, regional mental health center, or other designated
10 treatment facility to act in the best interests of the
11 individual and the state by detaining individuals who are
12 mentally ill and a danger to themselves or others for
13 evaluation and treatment, and protecting the rights of those
14 individuals. The state finds that these actions are necessary
15 to protect the individuals and the public. These entities and
16 individuals are acting in the name of the state and are acting
17 as state agents, when acting pursuant to this act, in making
18 determinations, detaining, releasing, admitting, discharging,
19 or otherwise taking action under this act. When acting
20 pursuant to this act, a law enforcement officer, hospital,
21 physician, medical provider, regional mental health center, or
22 other designated treatment facility shall be afforded immunity
23 under Section 36-1-12, Code of Alabama 1975, as any other
24 state employee or agent of the state.

25 (2) Nothing in this act shall modify, amend, repeal,
26 or supersede any provision of Section 6-5-333, Code of Alabama
27 1975, the Alabama Medical Liability Act of 1987, commencing

1 with Section 6-5-540, Code of Alabama 1975, or the Alabama
2 Medical Liability Act of 1996, commencing with Section
3 6-5-548, Code of Alabama 1975, or any amendment to any of
4 these laws or any judicial interpretation of these laws.

5 Section 2. (a) This act shall not be applicable to
6 any county unless and until the judge of probate with the
7 approval of the county commission of that particular county
8 makes a finding that there exists in the county provisions for
9 implementation of this act and the necessary designated
10 treatment facilities to detain persons pursuant to this act.
11 In that event, the judge of probate shall open a case under a
12 docket number and enter findings upon the records of the court
13 that shall expressly state the intention to invoke this act.
14 Notification and a copy of the court's findings and statement
15 shall be served on all designated treatment facilities located
16 within the county, all law enforcement agencies within the
17 county, the Commissioner of the Department of Mental Health,
18 the Attorney General, the Secretary of State, the Governor,
19 and any other individuals deemed appropriate by the judge of
20 probate. In the event of changed circumstances, the judge of
21 probate may terminate the opened case with procedures set
22 forth in Article 1 of Chapter 52 of Title 22, Code of Alabama
23 1975, and shall make findings accordingly and serve the
24 parties named herein and others previously notified.

25 (b) Notwithstanding any provision in this act to the
26 contrary, a petition for commitment pursuant to Article 1 of
27 Chapter 52 of Title 22, Code of Alabama 1975, may be filed in

1 the probate court of the county where the respondent is
2 located, and any subsequent proceedings held to determine
3 probable cause and final hearings on the merits shall be held
4 by that probate court.

5 (c) All costs associated with a probable cause
6 hearing, including cost of counsel, shall be paid by the State
7 General Fund upon order of the judge of probate. However, if
8 the petition is denied and the petitioner is not indigent and
9 is not a law enforcement officer or other public official
10 acting within the line and scope of his or her duties, all
11 costs may be taxed against the petitioner, or if the petition
12 is granted and the person sought to be committed is not
13 indigent, the judge of probate may order all costs paid from
14 the estate of the person committed.

15 Section 3. Any local law that conflicts with this
16 act or that establishes a similar program for placing
17 individuals in protective custody for mental health issues,
18 including Act No. 17 of the 1975 Second Special Session, (Acts
19 1975, Vol. I, p. 127), as amended by Act No. 353 of the 1975
20 Regular Session, (Acts 1975, Vol. II, p. 891), is hereby
21 repealed.

22 Section 4. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.