

1 HB70
2 215432-3
3 By Representatives Reynolds, Whitt, Moore (P), Stadthagen and
4 Simpson
5 RFD: Judiciary
6 First Read: 11-JAN-22
7 PFD: 01/06/2022

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to mental health; to amend Sections
9 15-16-41, 15-16-43, 15-16-67, 22-52-1.1, 22-52-10.2,
10 22-52-10.4, and 22-52-91, Code of Alabama 1975, to provide
11 definitions; to further provide for the assessment of an
12 individual's threat of harm for purposes of an involuntary
13 commitment hearing; to allow a law enforcement officer under
14 certain conditions to deliver an individual to a designated
15 mental health facility for evaluation; to allow a court to
16 commit an individual to outpatient treatment for mental
17 illness under certain circumstances; and to add Section
18 22-52-10.11 to the Code of Alabama 1975, to require certain
19 mental health facilities to assess the appropriateness of
20 transferring a respondent committed for inpatient care to
21 outpatient treatment within a certain amount of time prior to
22 the expiration of the commitment order.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 15-16-41, 15-16-43, 15-16-67,
25 22-52-1.1, 22-52-10.2, 22-52-10.4, and 22-52-91, Code of
26 Alabama 1975, are amended to read as follows:

27 "§15-16-41.

1 "(a) If a defendant in a criminal case is found not
2 guilty by reason of insanity, the court shall ~~forthwith~~
3 determine whether the defendant should be held for a hearing
4 on the issue of his or her involuntary commitment to the
5 Alabama State Department of Mental Health. If the court
6 determines that there is probable cause to believe that the
7 defendant ~~is mentally ill~~ has a mental illness and as a
8 consequence of ~~such~~ the mental illness poses a real and
9 present threat of substantial harm to himself or herself or to
10 others, the court shall order the defendant into the custody
11 of the sheriff until a hearing can be held to determine
12 whether the defendant shall be involuntarily committed. If the
13 court does not make such a determination, then the defendant
14 shall be ~~forthwith~~ released from custody.

15 "(b) In determining whether the defendant poses a
16 real and present threat of substantial harm to self or others,
17 the court shall consider all available relevant information,
18 including any known relevant aspects of the defendant's
19 psychosocial, medical, and psychiatric history, in addition to
20 the defendant's current behavior.

21 "§15-16-43.

22 "(a) (1) If, at the final hearing, the court finds
23 that the defendant ~~is mentally ill~~ has a mental illness and as
24 a consequence of ~~such~~ the mental illness poses a real and
25 present threat of substantial harm to himself or herself or to
26 others, the court shall order the defendant committed to the
27 custody of the Commissioner of the Alabama State Department of

1 Mental Health or to ~~such other~~ another public facility as the
2 court may order.

3 "(2) If the court does not make ~~such~~ a finding that
4 the defendant has a mental illness and as a consequence of the
5 mental illness poses a real and present threat of substantial
6 harm to himself or herself or to others, then the defendant
7 shall be released from custody ~~forthwith~~.

8 "(b) In determining whether the defendant poses a
9 real and present threat of substantial harm to self or others,
10 the court shall consider all available relevant information,
11 including any known relevant aspects of the defendant's
12 psychosocial, medical, and psychiatric history, in addition to
13 the defendant's current behavior.

14 "§15-16-67.

15 "(a) (1) If, after conducting the hearing, the court
16 determines that the defendant is ~~no longer mentally ill~~ no
17 longer has a mental illness or no longer poses a real and
18 present threat of substantial harm to himself or herself or to
19 others by being at large, the court shall order his or her
20 release.

21 (2) If the court determines that the defendant ~~is~~
22 still ~~mentally ill~~ has a mental illness but no longer poses a
23 real and present threat of substantial harm to himself or
24 herself or to others by being at large if his or her release
25 is accompanied by certain conditions, the court shall order
26 his or her release subject to those conditions necessary to

1 prevent the defendant from posing a real and present threat of
2 substantial harm to himself or herself or to others.

3 "(b) In determining whether the defendant poses a
4 real and present threat of substantial harm to self or others,
5 the court shall consider all available relevant information,
6 including any known relevant aspects of the defendant's
7 psychosocial, medical, and psychiatric history, in addition to
8 the defendant's current behavior.

9 "§22-52-1.1.

10 "When used in this article, the following terms
11 shall have the following meanings, respectively, unless the
12 context clearly indicates otherwise:

13 ~~"(1)(6)~~ (6) MENTAL ILLNESS. A psychiatric disorder of
14 thought ~~and/or~~ or mood which significantly impairs judgment,
15 behavior, capacity to recognize reality, or ability to cope
16 with the ordinary demands of life. ~~Mental illness, as used~~
17 ~~herein,~~ The term specifically excludes the primary diagnosis
18 of epilepsy, ~~mental retardation~~ an intellectual disability,
19 substance abuse, including alcoholism, or a developmental
20 disability.

21 ~~"(2)(10)~~ (10) STATE MENTAL HEALTH FACILITY. A mental
22 health facility operated by the Alabama State Department of
23 Mental Health.

24 "(3) DESIGNATED MENTAL HEALTH FACILITY. A mental
25 health facility, other than a state mental health facility,
26 which is designated by the State Department of Mental Health
27 to receive ~~persons~~ individuals for evaluation, examination,

1 admission, detention, or treatment pursuant to ~~the provisions~~
2 of this article.

3 ~~"(4)(1)~~ COMMISSIONER. The Commissioner of the
4 Alabama State Department of Mental Health.

5 ~~"(5)(7)~~ OUTPATIENT TREATMENT. Treatment being
6 provided to ~~a person~~ an individual in a nonresidential setting
7 and who is not admitted for 24-hour-a-day care.

8 ~~"(6)(4)~~ INPATIENT TREATMENT. Treatment being
9 provided to ~~a person~~ an individual at a state mental health
10 facility or a designated mental health facility which has been
11 specifically designated by the department for inpatient
12 treatment.

13 ~~"(7)(9)~~ RESPONDENT. ~~A person~~ An individual for ~~which~~
14 whom a petition for commitment to mental health services has
15 been filed.

16 ~~"(8)(2)~~ DEPARTMENT. The Alabama State Department of
17 Mental Health.

18 ~~"(9)(5)~~ INVOLUNTARY COMMITMENT. Court-ordered mental
19 health services in either an outpatient or inpatient setting.

20 "(8) REAL AND PRESENT THREAT OF SUBSTANTIAL HARM TO
21 SELF OR OTHERS. A significant risk that an individual who is
22 exhibiting behavior consistent with a mental illness, as a
23 result of the mental illness, will do either of the following:

24 "a. By action or inaction, cause, allow, or inflict
25 serious bodily harm upon himself, herself, or another
26 individual.

1 "b. Be unable to satisfy his or her need for
2 nourishment, medical care, shelter, or self-protection so that
3 there is a substantial likelihood of death, serious bodily
4 harm, serious physical debilitation, serious mental
5 debilitation, or life-threatening disease.

6 "§22-52-10.2.

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

10 "(1) The respondent ~~is mentally ill~~ has a mental
11 illness.

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

16 "(3) The respondent is unable to maintain consistent
17 engagement with outpatient treatment on a voluntary basis, as
18 demonstrated by either of the following:

19 "a. The respondent's actions occurring within the
20 two-year period immediately preceding the hearing.

21 "b. Specific aspects of the respondent's clinical
22 condition that significantly impair the respondent's ability
23 to consistently make a rational and informed decision
24 decisions as to whether or not to participate in treatment for
25 mental illness would be desirable.

26 "(b) Upon a recommendation made by the designated
27 mental health facility currently providing outpatient

1 treatment that the respondent's outpatient commitment order
2 should be renewed, a probate court may enter an order to renew
3 the commitment order upon the expiration of time allotted for
4 treatment by the original outpatient treatment order if the
5 probate court finds, based upon clear and convincing evidence,
6 all of the following:

7 "(1) The respondent ~~is mentally ill~~ has a mental
8 illness.

9 "(2) As a result of the mental illness, the
10 respondent ~~will~~, if treatment is not continued, ~~continue to~~
11 will suffer mental distress and ~~will continue to~~ experience
12 deterioration of the ability to function independently.

13 "(3) The respondent ~~is~~ remains unable to
14 ~~independently make a rational and informed decision as to~~
15 ~~whether or not he or she needs treatment for mental illness~~
16 maintain consistent engagement with outpatient treatment on a
17 voluntary basis.

18 "§22-52-10.4.

19 "(a) A respondent may be committed to inpatient
20 treatment if the probate court finds, based upon clear and
21 convincing evidence, that all of the following are true:

22 "~~(i) the~~ (1) The respondent is mentally ill, has a
23 mental illness.

24 "~~(ii) as~~ (2) As a result of the mental illness, the
25 respondent poses a real and present threat of substantial harm
26 to self ~~and/or~~ or others~~;~~.

1 "~~(iii) the~~ (3) The respondent ~~will~~, if not treated,
2 will continue to suffer mental distress and ~~will~~ continue to
3 experience deterioration of the ability to function
4 independently; ~~and.~~

5 "~~(iv) the~~ (4) The respondent is unable to make a
6 rational and informed decision as to whether or not treatment
7 for mental illness would be desirable.

8 "(b) If the probate judge finds that no treatment is
9 presently available for the respondent's mental illness, but
10 that confinement is necessary to prevent the respondent from
11 causing substantial harm to himself or herself or to others,
12 the order committing the respondent shall provide that, should
13 treatment for the respondent's mental illness become available
14 at any time during the period of the respondent's confinement,
15 ~~such that~~ treatment shall be made available to him or her
16 immediately.

17 "(c) In determining whether an individual poses a
18 real and present threat of substantial harm to self or others,
19 all available relevant information shall be considered,
20 including any known relevant aspects of the individual's
21 psychosocial, medical, and psychiatric history, in addition to
22 the individual's current behavior.

23 "§22-52-91.

24 "(a) (1) When a law enforcement officer is confronted
25 by circumstances ~~and has~~ that give the law enforcement officer
26 reasonable cause for believing that ~~a person~~ an individual
27 within the county ~~is mentally ill~~ has a mental illness and

1 ~~also believes~~ that the ~~person~~ individual is likely to ~~be of~~
2 ~~immediate danger~~ pose a real and present threat of substantial
3 harm to self or others, the law enforcement officer shall
4 contact a community mental health officer. The community
5 mental health officer shall join the law enforcement officer
6 at the scene and location of the ~~person~~ individual to assess
7 ~~conditions~~ the condition of the individual and determine ~~if~~
8 whether the ~~person~~ individual needs the attention, specialized
9 care, and services of a designated mental health facility.

10 "(2) If the community mental health officer
11 determines from the conditions, symptoms, and behavior that
12 the ~~person~~ individual appears to ~~be mentally ill~~ have a mental
13 illness and poses ~~an immediate danger~~ a real and present
14 threat of substantial harm to self or others, the law
15 enforcement officer shall take the ~~person~~ individual into
16 custody and, together with the community mental health
17 officer, deliver the ~~person~~ individual directly to the
18 designated mental health facility.

19 "(3) At the designated mental health facility, a
20 responsible employee of the facility who is on duty and in
21 charge of admissions to the facility shall be informed by the
22 community mental health officer that the ~~person~~ individual in
23 custody appears to ~~be mentally ill~~ have a mental illness and
24 is in need of examination and observation.

25 "(4) In determining whether an individual poses a
26 real and present threat of substantial harm to self or others,
27 all available relevant information shall be considered,

1 including any known relevant aspects of the individual's
2 psychosocial, medical, and psychiatric history, in addition to
3 the individual's current behavior.

4 "(b) (1) 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~~ individual alleged to have a
8 mental illness has been received at the facility. The staff
9 member shall immediately perform an initial examination and
10 observation ~~which, coupled with,~~ and using whatever other
11 information concerning the ~~person's~~ individual's behavior as
12 may be available, will allow the staff member to make a
13 determination as to whether to admit the ~~person~~ individual to
14 the designated mental health facility as a ~~tentatively~~
15 ~~diagnosed mentally ill patient~~ tentatively diagnosed with a
16 mental illness for further observation and attention.

17 "(2) Notwithstanding anything in this article to the
18 contrary, before any ~~person~~ individual is admitted to a
19 licensed hospital pursuant to this article, the ~~person~~
20 individual shall be examined and evaluated by a psychiatrist
21 or other physician licensed to practice medicine and
22 authorized by the hospital medical staff bylaws of the
23 licensed hospital to admit patients for the treatment of
24 mental or emotional illnesses. All admissions to a licensed
25 hospital authorized under this article shall be made only in
26 conformity with established policies, procedures, and the
27 medical staff bylaws of the licensed hospital to which the

1 ~~person~~ individual is admitted. ~~No provision of this~~ This
2 article shall not be construed to authorize or permit any
3 ~~person~~ individual not licensed to practice medicine to perform
4 any act or render any service ~~which~~ that constitutes the
5 practice of medicine.

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

22 "(d) Upon a determination by the staff member that
23 the ~~alleged mentally ill person~~ individual ~~alleged to have a~~
24 mental illness should be admitted to the designated mental
25 health facility, the staff member shall proceed with admission
26 of the ~~person~~ individual to the facility. The staff member
27 shall also advise the community mental health officer who

1 shall promptly communicate this information to the law
2 enforcement officer. The community mental health officer shall
3 effectuate the filing of a petition for commitment with the
4 probate court on the ~~person~~ individual by parties in interest.
5 If ~~no one comes forward to timely file~~ the petition is not
6 timely filed, the community mental health officer shall file
7 the petition in his or her official capacity no later than the
8 second business day following the date of admission.

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

1 fifth business day ~~next~~ after admission to the designated
2 mental health facility or hospital.

3 "(f) (1) Prior to the probable cause hearing the
4 probate court shall furnish adequate notice informing the
5 ~~person~~ individual, or his or her counsel, of the time and
6 place of the hearing ~~and of,~~ the factual grounds upon which
7 the proposed commitment is predicated, and the reasons for the
8 necessity of confinement. The probate court shall require that
9 the ~~alleged mentally ill person~~ individual be represented by
10 counsel at the hearing, which counsel shall be appointed by
11 the court if necessary. The probate court shall require the
12 presence of the ~~alleged mentally ill person~~ individual at the
13 hearing unless his or her presence is waived by counsel and
14 approved by the court after an adversary hearing at the
15 conclusion of which the court judicially finds and determines
16 that the ~~person~~ individual is so mentally or physically ill as
17 to be incapable of attending the probable cause hearing. In no
18 event may detention in the absence of a petition for
19 commitment and a probable cause hearing exceed seven days from
20 the date of the initial confinement under this article.

21 "(2) If the court finds and determines that there is
22 no probable cause to detain the ~~person~~ individual, the court
23 shall immediately cause the ~~person~~ individual to be discharged
24 and released from the designated mental health facility.
25 Notwithstanding the foregoing, if criminal charges have been
26 placed against the individual and the health care facility has
27 been so notified by an appropriate law enforcement officer,

1 the designated mental health facility shall release the ~~person~~
2 individual into the custody of the appropriate law enforcement
3 officer.

4 "(g) If the court determines there is probable cause
5 to detain the ~~person~~ individual pending a full hearing on the
6 need for commitment or some alternate mode of treatment, the
7 court shall issue a mittimus or commitment of the ~~person~~
8 individual to the designated mental health facility until the
9 proceedings may be held in accordance with law.

10 Notwithstanding the foregoing, the proceedings shall be held
11 within a reasonable time following initial detention, but in
12 no event sooner than will permit adequate preparation of the
13 case by counsel, or later than 30 days from the date of the
14 initial detention."

15 Section 2. Section 22-52-10.11 is added to Article 1
16 of Chapter 52 of Subtitle 2 of Title 22 of the Code of Alabama
17 1975, to read as follows:

18 §22-52-10.11.

19 (a) The director of a state mental health facility
20 or designated mental health facility to which a respondent is
21 currently committed for inpatient treatment, not later than 30
22 days prior to the expiration of the current commitment order,
23 shall assess the appropriateness of transferring the
24 respondent to outpatient treatment as the least restrictive
25 alternative necessary and available for the treatment of the
26 respondent's mental illness. The director may recommend to the

1 probate court in writing that the order be modified to commit
2 the respondent to outpatient treatment.

3 (b) A recommendation under subsection (a) shall do
4 both of the following:

5 (1) State the grounds for the director's
6 determination that outpatient treatment is the least
7 restrictive alternative necessary and available for the
8 treatment of the respondent's mental illness.

9 (2) Identify the designated mental health facility
10 to which the director recommends that the respondent be
11 committed for outpatient treatment.

12 (c) Notice of the recommendation under subsection
13 (a) shall be provided to both of the following:

14 (1) The respondent.

15 (2) The director of the designated mental health
16 facility identified under subsection (b), unless the director
17 is the individual making the recommendation.

18 (d) Upon request of the respondent or any other
19 interested party, the probate court shall hold a hearing on
20 the recommendation. The probate court shall appoint an
21 attorney to represent the respondent at the hearing. The
22 hearing shall be conducted in accordance with Section 22-52-9.

23 (e) If a hearing is not requested, the court may
24 make a decision regarding the facility director's
25 recommendation based upon both of the following:

26 (1) The grounds stated in the recommendation.

1 (2) Consultation with the director of the designated
2 mental health facility, or his or her designee, concerning the
3 availability of resources to treat the respondent as an
4 outpatient.

5 (f) If the court modifies the order, the modified
6 order shall conform to all requirements of an original
7 commitment to outpatient treatment under Section 22-52-10.3,
8 except that the modified order may not extend beyond the term
9 of the original order by more than 60 days.

10 Section 3. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 11-JAN-22

Read for the second time and placed
on the calendar..... 02-FEB-22

Read for the third time and passed
as amended..... 09-FEB-22

Yeas 101, Nays 0, Abstains 0

Jeff Woodard
Clerk