

1 HB70
2 215432-2
3 By Representatives Reynolds, Whitt, Moore (P), Stadthagen and
4 Simpson
5 RFD: Judiciary
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8 SYNOPSIS: Under existing law, civil commitment to
9 inpatient care of an individual with a mental
10 illness requires findings that the individual poses
11 a real and present threat of substantial harm to
12 self or others.

13 Under existing law, commitment to inpatient
14 care of a criminal defendant with a mental illness
15 requires findings that the individual poses a real
16 and present threat of substantial harm to self or
17 others.

18 This bill would provide a statutory
19 definition for the phrase "real and present threat
20 of substantial harm to self or others," and would
21 provide that the threat of substantial harm should
22 be assessed in light of all relevant evidence and
23 not just the individual's behavior.

24 Under existing law, in order to initiate
25 emergency custody of an individual, a law
26 enforcement officer and a community mental health

1 officer must agree that the individual poses an
2 immediate danger to self or others.

3 This bill would authorize emergency custody
4 of an individual on the basis of a perceived real
5 and present threat, and would therefore make the
6 standards for emergency custody and civil
7 commitment uniform.

8 Under existing law, outpatient commitment
9 requires a court to find that an individual is
10 experiencing and will continue to experience mental
11 distress and deterioration if not committed to
12 outpatient care, and that the individual is
13 currently unable to make a rational and informed
14 decision as to whether treatment for mental illness
15 would be desirable.

16 This bill would amend the outpatient
17 commitment process to focus the court's inquiry on
18 the individual's demonstrated inability to maintain
19 voluntary engagement with necessary outpatient
20 treatment, rather than on the individual's present
21 level of mental suffering and incapacity, and would
22 provide that an individual would be able to
23 transition from hospital care to outpatient civil
24 commitment if the court were to find by clear and
25 convincing evidence that the individual is in need
26 of outpatient treatment to live safely in the
27 community and is unable to maintain consistent

1 engagement with outpatient treatment on a voluntary
2 basis.

3 This bill would establish a process for
4 modifying a current inpatient commitment order to
5 an outpatient commitment order when improvement in
6 the patient's condition allows for a less
7 restrictive commitment setting.

8 This bill would also provide that a court
9 must assess the appropriateness of modification no
10 later than 30 days prior to the expiration of a
11 current inpatient commitment order, and if
12 modification is recommended by the facility
13 retaining the individual and a hearing is not
14 requested by the respondent or any other interested
15 party, the court would be authorized to modify the
16 order without a hearing.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to mental health; to amend Sections
23 15-16-41, 15-16-43, 15-16-67, 22-52-1.1, 22-52-10.2,
24 22-52-10.4, and 22-52-91, Code of Alabama 1975, to provide
25 definitions; to further provide for the assessment of an
26 individual's threat of harm for purposes of an involuntary
27 commitment hearing; to allow a law enforcement officer under

1 certain conditions to deliver an individual to a designated
2 mental health facility for evaluation; to allow a court to
3 commit an individual to outpatient treatment for mental
4 illness under certain circumstances; and to add Section
5 22-52-10.11 to the Code of Alabama 1975, to require certain
6 mental health facilities to assess the appropriateness of
7 transferring a respondent committed for inpatient care to
8 outpatient treatment within a certain amount of time prior to
9 the expiration of the commitment order.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 15-16-41, 15-16-43, 15-16-67,
12 22-52-1.1, 22-52-10.2, 22-52-10.4, and 22-52-91, Code of
13 Alabama 1975, are amended to read as follows:

14 "§15-16-41.

15 "(a) If a defendant in a criminal case is found not
16 guilty by reason of insanity, the court shall ~~forthwith~~
17 determine whether the defendant should be held for a hearing
18 on the issue of his or her involuntary commitment to the
19 Alabama State Department of Mental Health. If the court
20 determines that there is probable cause to believe that the
21 defendant ~~is mentally ill~~ has a mental illness and as a
22 consequence of ~~such~~ the mental illness poses a real and
23 present threat of substantial harm to himself or herself or to
24 others, the court shall order the defendant into the custody
25 of the sheriff until a hearing can be held to determine
26 whether the defendant shall be involuntarily committed. If the

1 court does not make such a determination, then the defendant
2 shall be ~~forthwith~~ released from custody.

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 "§15-16-43.

10 "(a) (1) If, at the final hearing, the court finds
11 that the defendant ~~is mentally ill~~ has a mental illness and as
12 a consequence of ~~such~~ the mental illness poses a real and
13 present threat of substantial harm to himself or herself or to
14 others, the court shall order the defendant committed to the
15 custody of the Commissioner of the Alabama State Department of
16 Mental Health or to ~~such other~~ another public facility as the
17 court may order.

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

23 "(b) In determining whether the defendant poses a
24 real and present threat of substantial harm to self or others,
25 the court shall consider all available relevant information,
26 including any known relevant aspects of the defendant's

1 psychosocial, medical, and psychiatric history, in addition to
2 the defendant's current behavior.

3 "§15-16-67.

4 "(a) (1) If, after conducting the hearing, the court
5 determines that the defendant ~~is no longer mentally ill~~ no
6 longer has a mental illness or no longer poses a real and
7 present threat of substantial harm to himself or herself or to
8 others by being at large, the court shall order his or her
9 release.

10 (2) If the court determines that the defendant ~~is~~
11 still ~~mentally ill~~ has a mental illness but no longer poses a
12 real and present threat of substantial harm to himself or
13 herself or to others by being at large if his or her release
14 is accompanied by certain conditions, the court shall order
15 his or her release subject to those conditions necessary to
16 prevent the defendant from posing a real and present threat of
17 substantial harm to himself or herself or to others.

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

24 "§22-52-1.1.

25 "When used in this article, the following terms
26 shall have the following meanings, respectively, unless the
27 context clearly indicates otherwise:

1 "~~(1)~~(6) MENTAL ILLNESS. A psychiatric disorder of
2 thought ~~and/or~~ or mood which significantly impairs judgment,
3 behavior, capacity to recognize reality, or ability to cope
4 with the ordinary demands of life. ~~Mental illness, as used~~
5 ~~herein,~~ The term specifically excludes the primary diagnosis
6 of epilepsy, mental retardation, substance abuse, including
7 alcoholism, or a developmental disability.

8 "~~(2)~~(10) STATE MENTAL HEALTH FACILITY. A mental
9 health facility operated by the Alabama State Department of
10 Mental Health.

11 "(3) DESIGNATED MENTAL HEALTH FACILITY. A mental
12 health facility, other than a state mental health facility,
13 which is designated by the State Department of Mental Health
14 to receive ~~persons~~ individuals for evaluation, examination,
15 admission, detention, or treatment pursuant to ~~the provisions~~
16 of this article.

17 "~~(4)~~(1) COMMISSIONER. The Commissioner of the
18 Alabama State Department of Mental Health.

19 "~~(5)~~(7) OUTPATIENT TREATMENT. Treatment being
20 provided to ~~a person~~ an individual in a nonresidential setting
21 and who is not admitted for 24-hour-a-day care.

22 "~~(6)~~(4) INPATIENT TREATMENT. Treatment being
23 provided to ~~a person~~ an individual at a state mental health
24 facility or a designated mental health facility which has been
25 specifically designated by the department for inpatient
26 treatment.

1 "~~(7)~~(9) RESPONDENT. ~~A person~~ An individual for ~~which~~
2 whom a petition for commitment to mental health services has
3 been filed.

4 "~~(8)~~(2) DEPARTMENT. The Alabama State Department of
5 Mental Health.

6 "~~(9)~~(5) INVOLUNTARY COMMITMENT. Court-ordered mental
7 health services in either an outpatient or inpatient setting.

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

12 "a. By action or inaction, cause, allow, or inflict
13 serious bodily harm upon himself, herself, or another
14 individual.

15 "b. Be unable to satisfy his or her need for
16 nourishment, medical care, shelter, or self-protection so that
17 there is a substantial likelihood of death, serious bodily
18 harm, serious physical debilitation, serious mental
19 debilitation, or life-threatening disease.

20 "§22-52-10.2.

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

24 "(1) The respondent ~~is mentally ill~~ has a mental
25 illness.

26 "(2) As a result of the mental illness, the
27 respondent ~~will~~, if not treated, ~~continue to~~ will suffer

1 mental distress and ~~will continue to~~ experience deterioration
2 of the ability to function independently.

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

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

8 "b. Specific aspects of the respondent's clinical
9 condition that significantly impair the respondent's ability
10 to consistently make a rational and informed decision
11 decisions as to whether or not to participate in treatment for
12 mental illness would be desirable.

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

21 "(1) The respondent ~~is mentally ill~~ has a mental
22 illness.

23 "(2) As a result of the mental illness, the
24 respondent ~~will~~, if treatment is not continued, ~~continue to~~
25 will suffer mental distress and ~~will continue to~~ experience
26 deterioration of the ability to function independently.

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

6 "§22-52-10.4.

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

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

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

15 "~~(iii) the~~ (3) The respondent ~~will,~~ if not treated,
16 will continue to suffer mental distress and ~~will~~ continue to
17 experience deterioration of the ability to function
18 independently, ~~and.~~

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

22 "(b) If the probate judge finds that no treatment is
23 presently available for the respondent's mental illness, but
24 that confinement is necessary to prevent the respondent from
25 causing substantial harm to himself or herself or to others,
26 the order committing the respondent shall provide that, should
27 treatment for the respondent's mental illness become available

1 at any time during the period of the respondent's confinement,
2 ~~such that~~ treatment shall be made available to him or her
3 immediately.

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

10 "§22-52-91.

11 "(a) (1) When a law enforcement officer is confronted
12 by circumstances ~~and has~~ that give the law enforcement officer
13 reasonable cause for believing that ~~a person~~ an individual
14 within the county ~~is mentally ill~~ has a mental illness and
15 ~~also believes~~ that the ~~person~~ individual is likely to ~~be of~~
16 ~~immediate danger~~ pose a real and present threat of substantial
17 harm to self or others, the law enforcement officer shall
18 contact a community mental health officer. The community
19 mental health officer shall join the law enforcement officer
20 at the scene and location of the ~~person~~ individual to assess
21 ~~conditions~~ the condition of the individual and determine ~~if~~
22 whether the ~~person~~ individual needs the attention, specialized
23 care, and services of a designated mental health facility.

24 "(2) If the community mental health officer
25 determines from the conditions, symptoms, and behavior that
26 the ~~person~~ individual appears to ~~be mentally ill~~ have a mental
27 illness and poses ~~an immediate danger~~ a real and present

1 threat of substantial harm to self or others, the law
2 enforcement officer shall take the ~~person~~ individual into
3 custody and, together with the community mental health
4 officer, deliver the ~~person~~ individual directly to the
5 designated mental health facility.

6 "(3) At the designated mental health facility, a
7 responsible employee of the facility who is on duty and in
8 charge of admissions to the facility shall be informed by the
9 community mental health officer that the ~~person~~ individual in
10 custody appears to ~~be mentally ill~~ have a mental illness and
11 is in need of examination and observation.

12 "(4) In determining whether an individual poses a
13 real and present threat of substantial harm to self or others,
14 all available relevant information shall be considered,
15 including any known relevant aspects of the individual's
16 psychosocial, medical, and psychiatric history, in addition to
17 the individual's current behavior.

18 "(b) (1) The employee of the designated mental health
19 facility shall immediately notify an appropriate staff member
20 of the facility who conducts diagnoses and evaluations that an
21 ~~alleged mentally ill person~~ individual alleged to have a
22 mental illness has been received at the facility. The staff
23 member shall immediately perform an initial examination and
24 observation ~~which, coupled with,~~ and using whatever other
25 information concerning the ~~person's~~ individual's behavior as
26 may be available, will allow the staff member to make a
27 determination as to whether to admit the ~~person~~ individual to

1 the designated mental health facility as a ~~tentatively~~
2 ~~diagnosed mentally ill~~ patient tentatively diagnosed with a
3 mental illness for further observation and attention.

4 "(2) Notwithstanding anything in this article to the
5 contrary, before any ~~person~~ individual is admitted to a
6 licensed hospital pursuant to this article, the ~~person~~
7 individual shall be examined and evaluated by a psychiatrist
8 or other physician licensed to practice medicine and
9 authorized by the hospital medical staff bylaws of the
10 licensed hospital to admit patients for the treatment of
11 mental or emotional illnesses. All admissions to a licensed
12 hospital authorized under this article shall be made only in
13 conformity with established policies, procedures, and the
14 medical staff bylaws of the licensed hospital to which the
15 ~~person~~ individual is admitted. ~~No provision of this~~ This
16 article shall not be construed to authorize or permit any
17 ~~person~~ individual not licensed to practice medicine to perform
18 any act or render any service ~~which~~ that constitutes the
19 practice of medicine.

20 "(c) Upon a determination by the staff member that
21 the ~~person~~ individual does not require admission to the
22 designated mental health facility, the staff member shall so
23 advise the community mental health officer. The community
24 mental health officer shall promptly communicate this
25 information to the law enforcement officer who shall cause the
26 ~~person~~ individual to be released from the designated mental
27 health facility. The law enforcement officer shall then

1 release the ~~person~~ individual unless the law enforcement
2 officer has some legal cause for detaining the ~~person~~
3 individual other than the ~~person's~~ individual's mental
4 condition. After the ~~person~~ individual is released, and, if so
5 requested by the ~~person~~ individual, the law enforcement
6 officer shall deliver the ~~person~~ individual to ~~the person's~~
7 his or her residence or other place of abode if it is within
8 the county.

9 "(d) Upon a determination by the staff member that
10 the ~~alleged mentally ill person~~ individual ~~alleged to have a~~
11 mental illness should be admitted to the designated mental
12 health facility, the staff member shall proceed with admission
13 of the ~~person~~ individual to the facility. The staff member
14 shall also advise the community mental health officer who
15 shall promptly communicate this information to the law
16 enforcement officer. The community mental health officer shall
17 effectuate the filing of a petition for commitment with the
18 probate court on the ~~person~~ individual by parties in interest.
19 If ~~no one comes forward to timely file~~ the petition is not
20 timely filed, the community mental health officer shall file
21 the petition in his or her official capacity no later than the
22 second business day following the date of admission.

23 "(e) No later than the next business day following
24 the date of admission, the staff member shall notify the judge
25 of probate, or the probate clerk of the county, of the
26 admission to the designated mental health facility of the
27 ~~alleged mentally ill person~~ individual ~~alleged to have a~~

1 mental illness. The judge of probate ~~or the probate clerk~~
2 shall ~~arrange~~ hold a probable cause hearing to determine if
3 the detention of the ~~alleged mentally ill person~~ individual is
4 based upon probable cause to believe that confinement is
5 necessary under constitutionally proper standards for
6 commitment or alternate modes of treatment and ~~if~~ to determine
7 whether the detention should continue until a final hearing on
8 the merits can be held. In the case where a community mental
9 health officer has acted in helping gain the admission of the
10 ~~alleged mentally ill person~~ individual to a designated mental
11 health facility for initial examination and observation, the
12 judge of probate shall interview the ~~alleged mentally ill~~
13 ~~person~~ individual pursuant to this section no later than the
14 fifth business day ~~next~~ after admission to the designated
15 mental health facility or hospital.

16 "(f) (1) Prior to the probable cause hearing the
17 probate court shall furnish adequate notice informing the
18 ~~person~~ individual, or his or her counsel, of the time and
19 place of the hearing ~~and of,~~ the factual grounds upon which
20 the proposed commitment is predicated, and the reasons for the
21 necessity of confinement. The probate court shall require that
22 the ~~alleged mentally ill person~~ individual be represented by
23 counsel at the hearing, which counsel shall be appointed by
24 the court if necessary. The probate court shall require the
25 presence of the ~~alleged mentally ill person~~ individual at the
26 hearing unless his or her presence is waived by counsel and
27 approved by the court after an adversary hearing at the

1 conclusion of which the court judicially finds and determines
2 that the ~~person~~ individual is so mentally or physically ill as
3 to be incapable of attending the probable cause hearing. In no
4 event may detention in the absence of a petition for
5 commitment and a probable cause hearing exceed seven days from
6 the date of the initial confinement under this article.

7 "(2) If the court finds and determines that there is
8 no probable cause to detain the ~~person~~ individual, the court
9 shall immediately cause the ~~person~~ individual to be discharged
10 and released from the designated mental health facility.

11 Notwithstanding the foregoing, if criminal charges have been
12 placed against the individual and the health care facility has
13 been so notified by an appropriate law enforcement officer,
14 the designated mental health facility shall release the ~~person~~
15 individual into the custody of the appropriate law enforcement
16 officer.

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

23 Notwithstanding the foregoing, the proceedings shall be held
24 within a reasonable time following initial detention, but in
25 no event sooner than will permit adequate preparation of the
26 case by counsel, or later than 30 days from the date of the
27 initial detention."

1 Section 2. Section 22-52-10.11 is added to Article 1
2 of Chapter 52 of Subtitle 2 of Title 22 of the Code of Alabama
3 1975, to read as follows:

4 §22-52-10.11.

5 (a) The director of a state mental health facility
6 or designated mental health facility to which a respondent is
7 currently committed for inpatient treatment, not later than 30
8 days prior to the expiration of the current commitment order,
9 shall assess the appropriateness of transferring the
10 respondent to outpatient treatment as the least restrictive
11 alternative necessary and available for the treatment of the
12 respondent's mental illness. The director may recommend to the
13 probate court in writing that the order be modified to commit
14 the respondent to outpatient treatment.

15 (b) A recommendation under subsection (a) shall do
16 both of the following:

17 (1) State the grounds for the director's
18 determination that outpatient treatment is the least
19 restrictive alternative necessary and available for the
20 treatment of the respondent's mental illness.

21 (2) Identify the designated mental health facility
22 to which the director recommends that the respondent be
23 committed for outpatient treatment.

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

26 (1) The respondent.

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

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

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

12 (1) The grounds stated in the recommendation.

13 (2) Consultation with the director of the designated
14 mental health facility, or his or her designee, concerning the
15 availability of resources to treat the respondent as an
16 outpatient.

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

22 Section 3. 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.