

SB240 INTRODUCED



1 SB240
2 7LQ822E-1
3 By Senator Barfoot
4 RFD: Judiciary
5 First Read: 21-Mar-24



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SYNOPSIS:

Under existing law an individual may petition the probate court to seek the involuntarily commitment of another individual to the custody of the Alabama Department of Mental Health for inpatient or outpatient treatment of a mental illness upon a finding that clear and convincing evidence establishes commitment criteria.

This bill would provide for the commitment of respondents who meet the criteria for involuntary commitment to the custody of the Alabama Department of Mental Health to include individuals suffering from a substance use disorder that occurs secondarily to a primary diagnosis of one or more mental illnesses.

This bill would require the judge of probate, upon review of the petition, to order the sheriff, in the county where the respondent was previously located when the original petition was filed, to serve on the respondent a copy of the petition seeking involuntary commitment and give notice of the hearing.

This bill would provide that when the petitioner is seeking limitations on the respondent's liberty pending a final hearing on the merits, and the judge of probate determines limitations on the respondent's liberty is necessary to prevent respondent from posing



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29 a real and present threat to self or others, the judge
30 of probate is authorized to order the sheriff in the
31 county where the respondent was located at the time of
32 initial filing, within a reasonable time, if the judge
33 of probate determines it is likely the respondent will
34 not appear or if the respondent fails to voluntarily
35 appear, to bring the respondent before the court for an
36 interview to determine whether to place limits, or
37 which ones, on the respondent's liberty.

38 This bill would authorize the judge of probate,
39 when determining whether to place limitations on the
40 respondent's liberty pending a final hearing, to
41 interview respondent and any other available
42 individual, seek an evaluation by a licensed medical
43 physician or qualified mental health provider who has
44 willingly consented to treating the respondent.

45 This bill would further provide a procedure for
46 a probate court to petition the district court or
47 municipal court to suspend criminal proceedings
48 temporarily in order for a subsequently entered
49 commitment order to be fulfilled.

50 This bill would provide that a mental health
51 provider is not required to expand existing services
52 beyond current availability of funds for the provision
53 of mental health services.

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A BILL



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TO BE ENTITLED
AN ACT

Relating to the Alabama Department of Mental Health; to amend Sections 22-52-1.1, 22-52-1.2, 22-52-3, 22-52-7, 22-52-10.1, as last amended by Act 2023-472 of the 2023 Regular Session, 22-52-10.2, 22-52-10.4, 22-52-10.11, and 22-52-11 of the Code of Alabama 1975; to authorize a judge of probate to involuntarily commit an individual who suffers from a substance use disorder that occurs secondarily to a primary diagnosis of one or more mental illnesses; to provide for a change in jurisdiction of the sheriff who is required to serve the commitment petition on the respondent; to authorize the judge of probate to establish a procedure for placing limitations on the respondent's liberty, if any, pending a final hearing; to allow the judge of probate to determine the appropriate medical evaluation process, if any, for the respondent prior to final hearing; and to add Section 15-16-26 to the Code of Alabama 1975, to provide a process for the committing judge of probate to seek relief for the respondent from temporary criminal confinement, under certain circumstances, to fulfill a pending commitment order; and to provide that mental health providers are not required to expand existing services unless its currently available funds support the expansion.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 22-52-1.1, 22-52-1.2, 22-52-3, 22-52-7, 22-52-10.1, as last amended by Act 2023-472, of the



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85 2023 Regular Session, 22-52-10.2, 22-52-10.4, 22-52-10.11 and
86 22-52-11, Code of Alabama 1975, are amended to read as
87 follows:

88 "§22-52-1.1

89 (a) When used in this article, the following terms
90 ~~shall~~ have the following meanings, ~~respectively~~, unless the
91 context clearly indicates otherwise:

92 (1) COMMISSIONER. The Commissioner of the Alabama State
93 Department of Mental Health.

94 (2) CO-OCCURRING SUBSTANCE USE DISORDER. A substance
95 use disorder that occurs secondarily to a primary diagnosis of
96 one or more mental illnesses.

97 ~~(2)~~ (3) DEPARTMENT. The Alabama State Department of
98 Mental Health.

99 ~~(3)~~ (4) DESIGNATED MENTAL HEALTH FACILITY. A mental
100 health facility, other than a state mental health facility,
101 which is designated by the State Department of Mental Health
102 to receive individuals for evaluation, examination, admission,
103 detention, or treatment pursuant to this article.

104 ~~(4)~~ (5) INPATIENT TREATMENT. Treatment being provided to
105 an individual at a state mental health facility or a
106 designated mental health facility which has been specifically
107 designated by the department for inpatient treatment.

108 ~~(5)~~ (6) INVOLUNTARY COMMITMENT. Court-ordered mental
109 health services in either an outpatient or inpatient setting.

110 ~~(6)~~ (7) MENTAL ILLNESS. A psychiatric disorder of
111 thought or mood which significantly impairs judgment,
112 behavior, capacity to recognize reality, or ability to cope



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113 with the ordinary demands of life~~-,~~ or a diagnosis designated
114 as a Serious Mental Illness (SMI), as defined in the then
115 current edition of the Diagnostic and Statistical Manual of
116 Mental Disorders. The term specifically excludes the primary
117 diagnosis of epilepsy, a substance use disorder, an
118 intellectual disability, ~~substance abuse, including~~
119 alcoholism, or a developmental disability.

120 ~~(7)~~ (8) OUTPATIENT TREATMENT. Treatment being provided
121 to an individual in a nonresidential setting who is not
122 admitted for 24-hour-a-day care.

123 ~~(8)~~ (9) REAL AND PRESENT THREAT OF SUBSTANTIAL HARM TO
124 SELF OR OTHERS. A significant risk that an individual who is
125 exhibiting behavior consistent with a mental illness, as a
126 result of the mental illness, will do either of the following:

127 a. By action or inaction, cause, allow, or inflict
128 serious bodily harm upon himself, herself, or another
129 individual.

130 b. Be unable to satisfy his or her need for
131 nourishment, medical care, shelter, or self-protection so that
132 there is a substantial likelihood of death, serious bodily
133 harm, serious physical debilitation, serious mental
134 debilitation, or life-threatening disease.

135 ~~(9)~~ (10) RESPONDENT. An individual for whom a petition
136 for commitment to mental health services has been filed.

137 ~~(10)~~ (11) STATE MENTAL HEALTH FACILITY. A mental health
138 facility operated by the Alabama State Department of Mental
139 Health.

140 (12) SUBSTANCE USE DISORDER. A cluster of cognitive,



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141 behavioral, and physiological symptoms indicating that the
142 individual continues using a substance despite significant
143 substance-related problems, such as impaired control, social
144 impairment, risky behaviors, and pharmacological tolerance and
145 withdrawal.

146 (b) The Legislature finds for purposes of this article
147 substance use disorder is commonly associated with mental
148 illness and providers who provide these services serve a
149 public purpose."

150 "§22-52-1.2

151 (a) Any ~~person~~ individual may file a petition seeking
152 the involuntary commitment of another ~~person~~ individual. The
153 petition shall be filed in the probate court of the county in
154 which the respondent is located. The petition shall be in
155 writing, executed under oath, and shall include the following
156 information:

157 (1) The name and address, if known, of the respondent.

158 (2) The name and address, if known, of the respondent's
159 spouse, legal counsel, or next-of-kin.

160 (3) That the petitioner has reason to believe the
161 respondent is mentally ill or is mentally ill with a secondary
162 diagnosis of co-occurring substance use disorder.

163 (4) That the beliefs of the petitioner are based on
164 specific behavior, acts, attempts, or threats, which shall be
165 specified and described in detail.

166 (5) The names and addresses of other ~~persons~~
167 individuals with knowledge of the respondent's mental illness
168 or mental illness with a secondary diagnosis of co-occurring



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169 substance use disorder who may be called as witnesses.

170 The petition may be accompanied by any other relevant
171 information.

172 (b) The home address and the telephone number of the
173 petitioner shall be excluded from the copy of the petition
174 seeking the involuntary commitment provided to the respondent,
175 however, if there is no other available address to contact the
176 petitioner, then the home address of the petitioner shall be
177 provided."

178 "§22-52-3

179 When any petition has been filed seeking the
180 involuntary commitment of a respondent and ~~such~~ the petition
181 has been reviewed by the ~~probate judge~~ judge of probate, the
182 ~~probate judge~~ judge of probate shall order the sheriff of the
183 county in which the respondent ~~is~~ was located at the time of
184 the filing to serve a copy of the petition, together with a
185 copy of the order setting the petition for a hearing, upon the
186 respondent. ~~Said~~ The notice shall include the date, time and
187 place of the hearing; a clear statement of the purpose of the
188 proceeding and the possible consequences to the subject
189 thereof; the alleged factual basis for the proposed
190 commitment; a statement of the legal standards upon which
191 commitment is authorized; and a list of the names and
192 addresses of the witnesses who may be called to testify in
193 support of the petition. The hearing shall be preceded by
194 adequate notice to the respondent."

195 "§22-52-7

196 (a) (1) When a petition has been filed seeking to have



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197 limitations placed upon the liberty of a respondent pending
198 the outcome of a final hearing on the merits, the ~~probate~~
199 ~~judge~~ judge of probate shall order the sheriff of the county
200 in which the respondent ~~is~~ was located at the time of the
201 filing to serve a copy of the petition upon the respondent and
202 to either bring the respondent before the judge of probate
203 ~~probate judge instante~~ or be evaluated as provided in
204 subsection (2).

205 (2) When any respondent against whom a petition has
206 been filed seeking to have limitations placed upon the
207 respondent's liberty pending the outcome of a full and final
208 hearing on the merits is initially brought before the ~~probate~~
209 ~~judge~~ judge of probate, the ~~probate judge~~ judge of probate shall
210 determine from an interview with the respondent ~~and with other~~
211 ~~available persons~~ what limitations, if any, shall be imposed
212 upon the respondent's liberty and what temporary treatment, if
213 any, shall be imposed upon the respondent pending further
214 hearings. In making these determinations, the judge of probate
215 may also interview any other available individuals or officers
216 and may consult with or seek an evaluation by a licensed
217 medical physician or qualified mental health professional. If
218 limitations on the respondent's liberty are ordered, the
219 ~~probate judge~~ judge of probate may order the respondent
220 detained under the provisions of this section at a designated
221 mental health facility or a hospital.

222 (b) No limitations shall be placed upon the
223 respondent's liberty nor treatment imposed upon the respondent
224 unless such limitations are determined necessary by the judge



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225 of probate to prevent the respondent from ~~doing substantial~~
226 ~~and immediate harm to himself or to others~~ posing a real and
227 present threat of substantial harm to self or others or to
228 prevent the respondent from leaving the jurisdiction of the
229 court. No respondent shall be placed in a jail or other
230 facility for ~~persons~~ individuals accused of or convicted of
231 committing crimes.

232 (c) The ~~probate judge~~ judge of probate shall order the
233 respondent to appear at the times and places set for hearing
234 the petition and may order the respondent to appear at
235 designated times and places to be examined by licensed medical
236 doctors or qualified mental health professionals. If the
237 respondent does not appear as ordered by the ~~probate judge~~
238 judge of probate, or if the judge of probate determines it is
239 likely the respondent will not appear, the ~~probate judge~~ judge
240 of probate may order the sheriff of the county in which the
241 respondent ~~is~~ was located at the time of the filing to take the
242 respondent into custody and compel the respondent's attendance
243 as ordered by the ~~probate judge~~ judge of probate. If temporary
244 treatment or admittance to a hospital is ordered for the
245 respondent, ~~such~~ the treatment shall be supervised by a
246 licensed medical ~~doctor~~ physician or qualified mental health
247 professional who has willingly consented to treat the
248 respondent, and admission to a hospital shall be ordered by a
249 licensed medical doctor who has willingly consented to admit
250 and treat the respondent."

251 "§22-52-10.1

252 (a) If at the final hearing on a petition seeking to



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253 involuntarily commit a respondent, the judge of probate finds,
254 based on clear and convincing evidence, that the respondent
255 meets the criteria for involuntary commitment, an order shall
256 be entered for either of the following:

257 (1) Outpatient treatment.

258 (2) Inpatient treatment.

259 (b) The least restrictive alternative necessary and
260 available for the treatment of the respondent's mental illness
261 or mental illness with a secondary diagnosis of co-occurring
262 substance use disorder shall be ordered.

263 (c) The petition for involuntary commitment shall be
264 dismissed if the criteria for commitment is not proved.

265 (d) (1) The judge of probate shall immediately report an
266 order for involuntary commitment to the Alabama State Law
267 Enforcement Agency, in a manner prescribed by the Alabama
268 Justice Information Commission, for entry into the state
269 firearms prohibited person database and the National Instant
270 Criminal Background Check (NICS) system.

271 (2) The judge of probate shall report to the Alabama
272 State Law Enforcement Agency, in a method determined by the
273 commission, updates to any order for involuntary commitment
274 that was previously forwarded to the Alabama State Law
275 Enforcement Agency under this section, including notice of any
276 reversal of petition or appeal."

277 "§22-52-10.2

278 (a) A respondent may be committed to outpatient
279 treatment if the probate court, based upon clear and
280 convincing evidence, finds all of the following:



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281 (1) The respondent has a mental illness or a mental
282 illness with a secondary diagnosis of co-occurring substance
283 use disorder.

284 (2) As a result of the mental illness, or mental
285 illness with secondary diagnosis of co-occurring substance use
286 disorder, the respondent, if not treated, will suffer mental
287 distress and experience deterioration of the ability to
288 function independently.

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

292 a. The respondent's actions occurring within the
293 two-year period immediately preceding the hearing.

294 b. Specific aspects of the respondent's clinical
295 condition that significantly impair the respondent's ability
296 to consistently make rational and informed decisions as to
297 whether to participate in treatment for mental illness.

298 (b) Upon a recommendation made by the designated mental
299 health facility currently providing outpatient treatment that
300 the respondent's outpatient commitment order should be
301 renewed, a probate court may enter an order to renew the
302 commitment order upon the expiration of time allotted for
303 treatment by the original outpatient treatment order if the
304 judge of probate ~~court~~ finds, based upon clear and convincing
305 evidence, all of the following:

306 (1) The respondent has a mental illness or a mental
307 illness with a secondary diagnosis of co-occurring substance
308 use disorder.



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309 (2) As a result of the mental illness or mental illness
310 with a secondary diagnosis of co-occurring substance use
311 disorder, the respondent, if treatment is not continued, will
312 suffer mental distress and experience deterioration of the
313 ability to function independently.

314 (3) The respondent remains unable to maintain
315 consistent engagement with outpatient treatment on a voluntary
316 basis."

317 "§22-52-10.4

318 (a) A respondent may be committed to inpatient
319 treatment if the judge of probate~~court~~, based upon clear and
320 convincing evidence, finds that all of the following are true:

321 (1) The respondent has a mental illness or a mental
322 illness with a secondary diagnosis of co-occurring substance
323 use disorder.

324 (2) As a result of the mental illness~~,~~ or mental
325 illness with a secondary diagnosis of co-occurring substance
326 use disorder, the respondent poses a real and present threat
327 of substantial harm to self or others.

328 (3) The respondent, if not treated, will continue to
329 suffer mental distress and continue to experience
330 deterioration of the ability to function independently.

331 (4) The respondent is unable to make a rational and
332 informed decision as to whether or not treatment for mental
333 illness or mental illness with a secondary diagnosis of
334 co-occurring substance use disorder would be desirable.

335 (b) If the ~~probate judge~~ judge of probate finds that no
336 treatment is presently available for the respondent's mental



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337 illness or mental illness with a secondary diagnosis of
338 co-occurring substance use disorder, but that confinement is
339 necessary to prevent the respondent from causing substantial
340 harm to himself or herself or to others, the order committing
341 the respondent shall provide that, should treatment for the
342 respondent's mental illness or mental illness with a secondary
343 diagnosis of co-occurring substance use disorder become
344 available at any time during the period of the respondent's
345 confinement, the treatment shall be made available to him or
346 her immediately.

347 (c) In determining whether an individual poses a real
348 and present threat of substantial harm to self or others, all
349 available relevant information shall be considered, including
350 any known relevant aspects of the individual's psychosocial,
351 medical, and psychiatric history, in addition to the
352 individual's current behavior.

353 (d) Nothing in this section shall be construed as
354 requiring a mental health provider to expand their current
355 services if necessary funding is not provided."

356 "§22-52-10.11

357 (a) The director of a state mental health facility or
358 designated mental health facility to which a respondent is
359 currently committed for inpatient treatment, not later than 30
360 days prior to the expiration of the current commitment order,
361 shall assess the appropriateness of transferring the
362 respondent to outpatient treatment as the least restrictive
363 alternative necessary and available for the treatment of the
364 respondent's mental illness or mental illness with a secondary



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365 diagnosis of co-occurring substance use disorder. The director
366 may recommend to the probate court in writing that the order
367 be modified to commit the respondent to outpatient treatment.

368 (b) A recommendation under subsection (a) shall do both
369 of the following:

370 (1) State the grounds for the director's determination
371 that outpatient treatment is the least restrictive alternative
372 necessary and available for the treatment of the respondent's
373 mental illness or mental illness with a secondary diagnosis of
374 co-occurring substance use disorder.

375 (2) Identify the designated mental health facility to
376 which the director recommends that the respondent be committed
377 for outpatient treatment.

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

380 (1) The respondent.

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

384 (d) Upon request of the respondent or any other
385 interested party, the probate court shall hold a hearing on
386 the recommendation. The ~~probate court~~judge of probate shall
387 appoint an attorney to represent the respondent at the
388 hearing. The hearing shall be conducted in accordance with
389 Section 22-52-9.

390 (e) If a hearing is not requested, the judge of probate
391 ~~court~~ may make a decision regarding the facility director's
392 recommendation based upon both of the following:



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393 (1) The grounds stated in the recommendation.

394 (2) Consultation with the director of the designated
395 mental health facility, or his or her designee, concerning the
396 availability of resources to treat the respondent as an
397 outpatient.

398 (f) If the probate court modifies the order, the
399 modified order shall conform to all requirements of an
400 original commitment to outpatient treatment under Section
401 22-52-10.3, except that the modified order may not extend
402 beyond the term of the original order by more than 60 days."

403 Section 2. Section 15-16-26 is added to the Code of
404 Alabama 1975, to read as follows:

405 §15-16-26

406 Notwithstanding Section 15-16-20, Code of Alabama 1975,
407 if a commitment order has been issued pursuant to Title 22,
408 Chapter 52, Code of Alabama 1975, but cannot be fulfilled
409 because the respondent is subsequently confined solely for
410 misdemeanor charges or municipal ordinance violations, the
411 judge of probate who issued the commitment order may petition
412 the district court or the municipal court to discharge the
413 respondent from confinement and suspend the criminal
414 proceedings temporarily so that the commitment order may be
415 fulfilled. The district court or municipal court shall conduct
416 a hearing on the petition and issue an order granting or
417 denying the petition.

418 Section 3. This act shall become effective on January
419 1, 2025.

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