

1 HB70
2 215432-4
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
2 ENROLLED, An Act,

3 Relating to mental health; to amend Sections
4 15-16-41, 15-16-43, 15-16-67, 22-52-1.1, 22-52-10.2,
5 22-52-10.4, and 22-52-91, Code of Alabama 1975, to provide
6 definitions; to further provide for the assessment of an
7 individual's threat of harm for purposes of an involuntary
8 commitment hearing; to allow a law enforcement officer under
9 certain conditions to deliver an individual to a designated
10 mental health facility for evaluation; to allow a court to
11 commit an individual to outpatient treatment for mental
12 illness under certain circumstances; and to add Section
13 22-52-10.11 to the Code of Alabama 1975, to require certain
14 mental health facilities to assess the appropriateness of
15 transferring a respondent committed for inpatient care to
16 outpatient treatment within a certain amount of time prior to
17 the expiration of the commitment order.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 15-16-41, 15-16-43, 15-16-67,
20 22-52-1.1, 22-52-10.2, 22-52-10.4, and 22-52-91, Code of
21 Alabama 1975, are amended to read as follows:

22 "§15-16-41.

23 "(a) If a defendant in a criminal case is found not
24 guilty by reason of insanity, the court shall ~~forthwith~~
25 determine whether the defendant should be held for a hearing

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

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

18 "§15-16-43.

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

1 his or her release subject to those conditions necessary to
2 prevent the defendant from posing a real and present threat of
3 substantial harm to himself or herself or to others.

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

10 "§22-52-1.1.

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

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

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

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

7 "~~(4)~~ (1) COMMISSIONER. The Commissioner of the
8 Alabama State Department of Mental Health.

9 "~~(5)~~ (7) OUTPATIENT TREATMENT. Treatment being
10 provided to ~~a person~~ an individual in a nonresidential setting
11 ~~and~~ who is not admitted for 24-hour-a-day care.

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

17 "~~(7)~~ (9) RESPONDENT. ~~A person~~ An individual for ~~which~~
18 whom a petition for commitment to mental health services has
19 been filed.

20 "~~(8)~~ (2) DEPARTMENT. The Alabama State Department of
21 Mental Health.

22 "~~(9)~~ (5) INVOLUNTARY COMMITMENT. Court-ordered mental
23 health services in either an outpatient or inpatient setting.

24 "(8) REAL AND PRESENT THREAT OF SUBSTANTIAL HARM TO
25 SELF OR OTHERS. A significant risk that an individual who is

1 exhibiting behavior consistent with a mental illness, as a
2 result of the mental illness, will do either of the following:

3 "a. By action or inaction, cause, allow, or inflict
4 serious bodily harm upon himself, herself, or another
5 individual.

6 "b. Be unable to satisfy his or her need for
7 nourishment, medical care, shelter, or self-protection so that
8 there is a substantial likelihood of death, serious bodily
9 harm, serious physical debilitation, serious mental
10 debilitation, or life-threatening disease.

11 "§22-52-10.2.

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

15 "(1) The respondent ~~is mentally ill~~ has a mental
16 illness.

17 "(2) As a result of the mental illness, the
18 respondent ~~will~~, if not treated, ~~continue to~~ will suffer
19 mental distress and ~~will continue to~~ experience deterioration
20 of the ability to function independently.

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

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

1 "b. Specific aspects of the respondent's clinical
2 condition that significantly impair the respondent's ability
3 to consistently make a rational and informed decision
4 decisions as to whether or not to participate in treatment for
5 mental illness would be desirable.

6 "(b) Upon a recommendation made by the designated
7 mental health facility currently providing outpatient
8 treatment that the respondent's outpatient commitment order
9 should be renewed, a probate court may enter an order to renew
10 the commitment order upon the expiration of time allotted for
11 treatment by the original outpatient treatment order if the
12 probate court finds, based upon clear and convincing evidence,
13 all of the following:

14 "(1) The respondent ~~is mentally ill~~ has a mental
15 illness.

16 "(2) As a result of the mental illness, the
17 respondent ~~will~~, if treatment is not continued, ~~continue to~~
18 will suffer mental distress and ~~will continue to~~ experience
19 deterioration of the ability to function independently.

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

25 "§22-52-10.4.

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

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

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

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

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

16 "(b) If the probate judge finds that no treatment is
17 presently available for the respondent's mental illness, but
18 that confinement is necessary to prevent the respondent from
19 causing substantial harm to himself or herself or to others,
20 the order committing the respondent shall provide that, should
21 treatment for the respondent's mental illness become available
22 at any time during the period of the respondent's confinement,
23 ~~such that~~ treatment shall be made available to him or her
24 immediately.

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

7 "§22-52-91.

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

21 "(2) If the community mental health officer
22 determines from the conditions, symptoms, and behavior that
23 the ~~person~~ individual appears to ~~be mentally ill~~ have a mental
24 illness and poses ~~an immediate danger~~ a real and present
25 threat of substantial harm to self or others, the law

1 enforcement officer shall take the ~~person~~ individual into
2 custody and, together with the community mental health
3 officer, deliver the ~~person~~ individual directly to the
4 designated mental health facility.

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

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

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

1 determination as to whether to admit the ~~person~~ individual to
2 the designated mental health facility as a ~~tentatively~~
3 ~~diagnosed mentally ill~~ patient tentatively diagnosed with a
4 mental illness for further observation and attention.

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

21 "(c) Upon a determination by the staff member that
22 the ~~person~~ individual does not require admission to the
23 designated mental health facility, the staff member shall so
24 advise the community mental health officer. The community
25 mental health officer shall promptly communicate this

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

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

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

21 "(f) (1) Prior to the probable cause hearing the
22 probate court shall furnish adequate notice informing the
23 ~~person~~ individual, or his or her counsel, of the time and
24 place of the hearing ~~and of~~ the factual grounds upon which
25 the proposed commitment is predicated, and the reasons for the

1 necessity of confinement. The probate court shall require that
2 the ~~alleged mentally ill person~~ individual be represented by
3 counsel at the hearing, which counsel shall be appointed by
4 the court if necessary. The probate court shall require the
5 presence of the ~~alleged mentally ill person~~ individual at the
6 hearing unless his or her presence is waived by counsel and
7 approved by the court after an adversary hearing at the
8 conclusion of which the court judicially finds and determines
9 that the ~~person~~ individual is so mentally or physically ill as
10 to be incapable of attending the probable cause hearing. In no
11 event may detention in the absence of a petition for
12 commitment and a probable cause hearing exceed seven days from
13 the date of the initial confinement under this article.

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

18 Notwithstanding the foregoing, if criminal charges have been
19 placed against the individual and the health care facility has
20 been so notified by an appropriate law enforcement officer,
21 the designated mental health facility shall release the ~~person~~
22 individual into the custody of the appropriate law enforcement
23 officer.

24 "(g) If the court determines there is probable cause
25 to detain the ~~person~~ individual pending a full hearing on the

1 need for commitment or some alternate mode of treatment, the
2 court shall issue a mittimus or commitment of the ~~person~~
3 individual to the designated mental health facility until the
4 proceedings may be held in accordance with law.

5 Notwithstanding the foregoing, the proceedings shall be held
6 within a reasonable time following initial detention, but in
7 no event sooner than will permit adequate preparation of the
8 case by counsel, or later than 30 days from the date of the
9 initial detention."

10 Section 2. Section 22-52-10.11 is added to Article 1
11 of Chapter 52 of Subtitle 2 of Title 22 of the Code of Alabama
12 1975, to read as follows:

13 §22-52-10.11.

14 (a) The director of a state mental health facility
15 or designated mental health facility to which a respondent is
16 currently committed for inpatient treatment, not later than 30
17 days prior to the expiration of the current commitment order,
18 shall assess the appropriateness of transferring the
19 respondent to outpatient treatment as the least restrictive
20 alternative necessary and available for the treatment of the
21 respondent's mental illness. The director may recommend to the
22 probate court in writing that the order be modified to commit
23 the respondent to outpatient treatment.

24 (b) A recommendation under subsection (a) shall do
25 both of the following:

1 (1) State the grounds for the director's
2 determination that outpatient treatment is the least
3 restrictive alternative necessary and available for the
4 treatment of the respondent's mental illness.

5 (2) Identify the designated mental health facility
6 to which the director recommends that the respondent be
7 committed for outpatient treatment.

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

10 (1) The respondent.

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

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

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

22 (1) The grounds stated in the recommendation.

23 (2) Consultation with the director of the designated
24 mental health facility, or his or her designee, concerning the

1 availability of resources to treat the respondent as an
2 outpatient.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 09-FEB-22, as amended.

Jeff Woodard
Clerk

Senate 17-MAR-22

Passed