

1 SB390
2 184968-2
3 By Senator Reed
4 RFD: Judiciary
5 First Read: 20-APR-17

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, any person may file a
9 petition for the involuntary commitment of a
10 mentally ill individual to receive inpatient or
11 outpatient treatment.

12 This bill would provide a supplemental
13 procedure for the involuntary assessment and
14 treatment of an individual who is substance abuse
15 impaired and who is a threat to himself or herself
16 or other individuals or is in need of substance
17 abuse services and, by reason of substance abuse
18 impairment, his or her judgment has been so
19 impaired that he or she is incapable of
20 appreciating his or her need for services.

21 This bill would authorize any person to file
22 a petition with the probate court to: (1) require
23 the involuntary assessment, treatment, and
24 stabilization of an individual who is substance
25 abuse impaired for a period of five days that may
26 be extended under certain conditions; and (2)
27 require the involuntary treatment of an individual

1 who is substance abuse impaired for a period of 60
2 days that may be extended under certain conditions.

3 This bill would provide for enforcement of
4 protective custody measures by law enforcement
5 officers for the involuntary assessment, treatment,
6 and stabilization of an individual who is substance
7 abuse impaired.

8 This bill would provide immunity for law
9 enforcement officers taking protective custody
10 measures to enforce the involuntary assessment,
11 treatment, and stabilization of an individual who
12 is substance abuse impaired.

13 This bill would provide criminal penalties
14 for knowingly providing false information for the
15 purpose of obtaining an involuntary admission of an
16 individual for assessment, treatment, and
17 stabilization of an adult or minor for substance
18 abuse impairment.

19
20 A BILL

21 TO BE ENTITLED

22 AN ACT

23
24 Relating to substance abuse treatment; to authorize
25 any person to file a petition in the probate court for the
26 involuntary assessment, treatment, and stabilization of a
27 substance abuse impaired individual for a limited period; to

1 provide for the payment of costs associated with the petition
2 and treatment; to provide for an ex parte order for an
3 involuntary assessment under certain conditions; to provide
4 for the release of the individual under certain conditions; to
5 authorize any person to file a petition in the probate court
6 for the involuntary treatment of a substance abuse impaired
7 individual for a limited period of time; to provide procedures
8 for a hearing within a specified time frame; to provide for
9 the appointment of an attorney or a guardian ad litem; to
10 provide for a burden of proof; to provide for the extension of
11 involuntary treatment; and to provide for release of the
12 individual; to provide for enforcement of protective custody
13 measures by law enforcement officers for the involuntary
14 assessment, treatment, and stabilization of an individual who
15 is substance abuse impaired; to provide immunity for law
16 enforcement officers taking protective custody measures to
17 enforce the involuntary assessment, treatment, and
18 stabilization of an individual who is substance abuse
19 impaired; to provide criminal penalties for knowingly
20 providing false information for the purpose of obtaining an
21 involuntary admission of an individual for assessment,
22 treatment, and stabilization of an adult or minor for
23 substance abuse impairment.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. For the purposes of this act, the
26 following terms shall have the following meanings:

1 (1) IMPAIRED or SUBSTANCE ABUSE IMPAIRED. A
2 condition involving the use of alcoholic beverages or any drug
3 in such a manner as to induce mental, emotional, or physical
4 problems and cause socially dysfunctional behavior and which
5 causes an individual to inflict, to threaten or attempt to
6 inflict, or, unless admitted, to be likely to inflict,
7 physical harm on himself or herself or an individual or to
8 have his or her judgment so impaired that he or she is
9 incapable of appreciating his or her need for services and
10 making a rational decision regarding services.

11 (2) LAW ENFORCEMENT OFFICER. Any officer certified
12 by the Alabama Peace Officers' Standards and Training
13 Commission.

14 (3) LICENSED SERVICE PROVIDER. A public agency, a
15 private for-profit or not-for-profit agency, a physician, or
16 any other private practitioner licensed under the laws of this
17 state, a hospital that offers substance abuse services through
18 one or more licensed service components, or a detoxification
19 or addictions receiving facility licensed in this state.

20 (4) QUALIFIED PROFESSIONAL. A physician, a physician
21 assistant, a registered nurse practitioner, a psychologist, or
22 other mental health provider licensed to practice in this
23 state, an individual who is certified through a certification
24 process recognized by the Department of Mental Health for
25 substance abuse treatment services and who holds, at a
26 minimum, a bachelor's degree or an individual who is certified
27 in substance abuse treatment services by a state-recognized

1 certification process in another state at the time of
2 employment with a licensed substance abuse provider in this
3 state.

4 (5) SUBSTANCE ABUSE. The misuse of, overindulgence
5 in, or dependence on alcohol or drugs.

6 Section 2. (a) (1) Any person may file a petition for
7 involuntary assessment, treatment, and stabilization of an
8 adult or minor for substance abuse impairment with the probate
9 court of the county in which the individual is located. The
10 petition shall be in writing, executed under oath, and shall
11 include all of the following information:

12 a. The name of the individual to be admitted
13 involuntarily.

14 b. The name of the petitioner or petitioners.

15 c. The relationship between the individual and the
16 petitioner.

17 d. The name of the individual's attorney, if known.

18 e. A statement of the petitioner's knowledge of the
19 individual's ability to afford an attorney.

20 f. The findings and recommendations of the
21 assessment performed by the qualified professional.

22 g. Facts supporting the need for involuntary
23 treatment, including the reason for the petitioner's belief
24 that the individual is substance abuse impaired and because of
25 the impairment the individual:

26 1. Has lost the power of self-control with respect
27 to substance use and has either:

1 (i) Inflicted or threatened to inflict, or unless
2 assessed and stabilized, is likely to inflict, physical harm
3 on himself or herself or another; or

4 (ii) Is in need of substance abuse services and, by
5 reason of substance abuse impairment, his or her judgment has
6 been so impaired that the person is incapable of appreciating
7 his or her need for such services and of making a rational
8 decision in regard thereto.

9 (2) Mere refusal to request or receive substance
10 abuse mitigating services on the part of the individual
11 requested to be admitted for involuntary assessment and
12 stabilization under this section shall not constitute evidence
13 of lack of judgment with respect to his or her need for
14 services.

15 (3) The petitioner shall be responsible for any
16 filing fee and associated court costs.

17 (b) Upon receipt and filing of the petition for the
18 involuntary assessment and stabilization of a substance abuse
19 impaired individual by the clerk of the probate court, the
20 court shall ascertain whether the individual is represented by
21 an attorney, and if not, whether, on the basis of the
22 petition, an attorney should be appointed; and shall do either
23 of the following:

24 (1) Provide a copy of the petition and notice of
25 hearing to the individual; the individual's parent, guardian,
26 or legal custodian, in the case of a minor; the individual's
27 attorney, if known; the petitioner; the individual's spouse or

1 guardian, if applicable; and any other persons as the court
2 may direct, and have the petition and notice personally
3 delivered to the individual if he or she is a minor. The court
4 shall also issue a summons to the individual whose admission
5 is sought and conduct a hearing within 10 days.

6 (2) Without the appointment of an attorney and,
7 relying solely on the contents of the petition, enter an ex
8 parte order authorizing the involuntary assessment and
9 stabilization of the individual. The court may order a law
10 enforcement officer or other designated agent of the court to
11 take the individual into custody and deliver him or her to the
12 nearest appropriate licensed service provider.

13 (c) (1) At a hearing initiated in accordance with
14 subdivision (1) of subsection (b), the probate court shall
15 hear all relevant testimony. The individual must be present
16 unless the court has reason to believe that his or her
17 presence is likely to be injurious to him or her, in which
18 event the court shall appoint a guardian ad litem to represent
19 the individual. The individual has the right to examination by
20 a court-appointed qualified professional. After hearing all
21 the evidence, the court shall determine whether there is a
22 reasonable basis to believe the individual is substance abuse
23 impaired.

24 (2) Based on its determination, the court shall
25 either dismiss the petition or immediately enter an order
26 authorizing the involuntary assessment and stabilization of
27 the individual; or, if in the course of the hearing the court

1 has reason to believe that the individual, due to mental
2 illness other than or in addition to substance abuse
3 impairment, is likely to injure himself or herself or another
4 if allowed to remain at liberty, the court may initiate
5 involuntary proceedings under Chapter 52, Title 22, Code of
6 Alabama 1975.

7 (3) If the court enters an order authorizing
8 involuntary assessment and stabilization, the order shall
9 include the court's findings with respect to the availability
10 and appropriateness of the least restrictive alternatives and
11 the need for the appointment of an attorney to represent the
12 individual, and may designate the specific licensed service
13 provider to perform the involuntary assessment and
14 stabilization of the individual. The individual may choose the
15 licensed service provider to deliver the involuntary
16 assessment where possible and appropriate. The involuntarily
17 admitted person may also provide his or her consent to be
18 referred to a service provider for voluntary admission when
19 the service provider determines that the individual no longer
20 meets the criteria for involuntary admission.

21 (4) If necessary, the probate court may order a law
22 enforcement officer or other agent of the court to take the
23 individual into custody and deliver him or her to the licensed
24 service provider specified in the court order or, if none is
25 specified, to the nearest appropriate licensed service
26 provider for involuntary assessment.

1 (d) A licensed service provider may admit an
2 individual for involuntary assessment and stabilization for a
3 period not to exceed five days. The individual must be
4 assessed without unnecessary delay by a qualified
5 professional. If an assessment is performed by a qualified
6 professional who is not a physician, the assessment must be
7 reviewed by a physician before the end of the assessment
8 period.

9 (e) (1) If a licensed service provider is unable to
10 complete the involuntary assessment and, if necessary,
11 stabilization of an individual within five days after the
12 court's order, it may file a written request for an extension
13 of time to complete its assessment within the original time
14 period, and, in accordance with confidentiality requirements,
15 shall furnish a copy to all parties.

16 (2) With or without a hearing, the court may grant
17 additional time, not to exceed seven days after the date of
18 the renewal order, for the completion of the involuntary
19 assessment and stabilization of the individual. The original
20 court order authorizing the involuntary assessment and
21 stabilization, or a request for an extension of time to
22 complete the assessment and stabilization that is timely filed
23 pursuant to this section, constitutes legal authority to
24 involuntarily hold the individual for a period not to exceed
25 10 days in the absence of a court order to the contrary.

26 (f) Based upon the involuntary assessment, a
27 qualified professional of a licensed service provider, or a

1 qualified professional when a less restrictive component has
2 been used, must do the following:

3 (1) Release the individual and, where appropriate,
4 refer the individual to another treatment facility or service
5 provider, or to community services.

6 (2) Allow the individual, upon his or her consent,
7 to remain voluntarily at the licensed provider.

8 (3) Retain the individual when a petition for
9 involuntary treatment has been initiated, the timely filing of
10 which authorizes the service provider to retain physical
11 custody of the individual pending further order of the court.

12 (g) The petitioner shall be responsible for all
13 costs associated with the involuntary assessment and
14 stabilization of the individual.

15 Section 3. (a) A substance abuse impaired individual
16 may be the subject of a petition for court-ordered involuntary
17 treatment pursuant to this section, if either of the following
18 circumstances are satisfied:

19 (1) The individual has been assessed by a qualified
20 professional within five days.

21 (2) The individual has been subject to involuntary
22 assessment and stabilization pursuant to Section 2 within the
23 previous 12 days.

24 (b) (1) Any person may file a petition for
25 involuntary treatment of an adult or minor for substance abuse
26 impairment with the probate court of the county in which the
27 individual is located. The petition shall be in writing,

1 executed under oath, and shall include all of the following
2 information:

3 a. The name of the individual to be admitted.

4 b. The name of the petitioner or petitioners.

5 c. The relationship between the individual and the
6 petitioner.

7 d. The name of the individual's attorney, if known.

8 e. A statement of the petitioner's knowledge of the
9 individual's ability to afford an attorney.

10 f. The findings and recommendations of the
11 assessment performed by the qualified professional.

12 g. Facts supporting the need for involuntary
13 treatment, including the reason for the petitioner's belief
14 that the individual is substance abuse impaired and because of
15 the impairment the individual:

16 1. Has lost the power of self-control with respect
17 to substance use and has either:

18 (i) Inflicted or threatened to inflict, or unless
19 assessed and stabilized, is likely to inflict, physical harm
20 on himself or herself or another; or

21 (ii) Is in need of substance abuse services and, by
22 reason of substance abuse impairment, his or her judgment has
23 been so impaired that the person is incapable of appreciating
24 his or her need for such services and of making a rational
25 decision in regard thereto.

26 (2) Mere refusal to request or receive substance
27 abuse mitigating services on the part of the individual

1 requested to be admitted for involuntary treatment under this
2 section shall not constitute evidence of lack of judgment with
3 respect to his or her need for services.

4 (3) The petitioner shall be responsible for any
5 filing fee and associated court costs.

6 (c) (1) Upon the filing of a petition for the
7 involuntary treatment of a substance abuse impaired individual
8 with the clerk of the probate court, the court shall
9 immediately determine whether the individual is represented by
10 an attorney or whether the appointment of counsel for the
11 individual is appropriate.

12 (2) The court shall schedule a hearing to be held on
13 the petition within 10 days.

14 (3) A copy of the petition and notice of the hearing
15 must be provided to the individual; the individual's parent,
16 guardian, or legal custodian, in the case of a minor; the
17 individual's attorney, if known; the petitioner; the
18 individual's spouse or guardian, if applicable; and such other
19 persons as the court may direct, and have such petition and
20 order personally delivered to the individual if he or she is a
21 minor. The court shall also issue a summons to the individual
22 whose admission is sought.

23 (4) If the individual is determined to be indigent
24 or does not have the mental ability to secure the services of
25 an attorney, the probate judge shall appoint an attorney, who
26 may be the same person as an appointed guardian ad litem, to

1 represent the individual. The probate judge shall immediately
2 inform the appointed attorney of his or her appointment.

3 (d) (1) At a hearing on a petition for involuntary
4 treatment, the court shall hear and review all relevant
5 evidence, including the review of results of the assessment
6 completed by the qualified professional in connection with the
7 individual's protective custody, emergency admission,
8 involuntary assessment, or alternative involuntary admission.
9 The individual must be present unless the court finds that his
10 or her presence is likely to be injurious to himself or
11 herself or others, in which event the court must appoint a
12 guardian ad litem to act on behalf of the individual
13 throughout the proceedings.

14 (2) The petitioner has the burden of proving by
15 clear and convincing evidence that the individual is substance
16 abuse impaired.

17 (3) At the conclusion of the hearing, the probate
18 court shall either dismiss the petition or order the
19 individual to undergo involuntary substance abuse treatment,
20 with the individual's chosen licensed service provider to
21 deliver the involuntary substance abuse treatment where
22 possible and appropriate.

23 (e) (1) When the court finds that the conditions for
24 involuntary substance abuse treatment have been proved by
25 clear and convincing evidence, it may order the individual to
26 undergo involuntary treatment by a licensed service provider
27 for a period not to exceed 60 days. If the court finds it

1 necessary, it may direct a law enforcement officer or other
2 agent of the court to take the individual into custody and
3 deliver him or her to the licensed service provider specified
4 in the court order, or to the nearest appropriate licensed
5 service provider, for involuntary treatment. When the
6 conditions justifying involuntary treatment no longer exist,
7 the individual must be released. When the conditions
8 justifying involuntary treatment are expected to exist after
9 60 days of treatment, a renewal of the involuntary treatment
10 order may be requested pursuant to subsection (g), prior to
11 the end of the 60-day period.

12 (2) In all cases resulting in an order for
13 involuntary substance abuse treatment, the court shall retain
14 jurisdiction over the case and the parties for the entry of
15 further orders as the circumstances may require. The court's
16 requirements for notification of proposed release must be
17 included in the original treatment order.

18 (3) An involuntary treatment order authorizes the
19 licensed service provider to require the individual to undergo
20 such treatment as will benefit him or her, including treatment
21 at any licensable service component of a licensed service
22 provider.

23 (f)(1) At any time prior to the end of the 60-day
24 involuntary treatment period, or prior to the end of any
25 extension granted pursuant to subsection (g), an individual
26 admitted for involuntary treatment shall be discharged when
27 the individual is no longer substance abuse impaired.

1 (2) If, at any time, the safety of an individual
2 cannot be maintained by the provider, the provider may request
3 an order from the court providing for the early release or
4 transfer of the individual to another licensed service
5 provider. A court shall grant or deny a request under this
6 subdivision within three calendar days of receipt of the
7 request.

8 (3) If a qualified professional determines that an
9 individual admitted for involuntary treatment is eligible for
10 release under subdivision (1) or if early release is requested
11 under subdivision (2), the service provider shall immediately
12 discharge the individual and notify all persons specified by
13 the court in the original treatment order.

14 (g) (1) Whenever a service provider believes that an
15 individual who is nearing the scheduled date of release from
16 involuntary treatment remains substance abuse impaired, a
17 petition for renewal of the involuntary treatment order may be
18 filed with the court at least 10 days before the expiration of
19 the court-ordered treatment period. The court shall
20 immediately schedule a hearing to be held not more than 15
21 days after filing of the petition. The court shall provide the
22 copy of the petition for renewal and the notice of the hearing
23 to all parties to the proceeding. The hearing is conducted
24 pursuant to subsection (d).

25 (2) If the court finds that the petition for renewal
26 of the involuntary treatment order should be granted, it may
27 order the individual to undergo involuntary treatment for a

1 period not to exceed an additional 90 days. When the
2 conditions justifying involuntary treatment no longer exist,
3 the individual must be released. When the conditions
4 justifying involuntary treatment continue to exist after 90
5 days of additional treatment, a new petition requesting
6 renewal of the involuntary treatment order may be filed
7 pursuant to this section.

8 (h) At the conclusion of the 60-day period of
9 court-ordered involuntary treatment, the individual is
10 automatically discharged unless a motion for renewal of the
11 involuntary treatment order has been filed with the court
12 pursuant to subsection (d).

13 (i) The petitioner shall be responsible for all
14 costs associated with the involuntary treatment of the
15 individual.

16 Section 4. (a) A law enforcement officer may conduct
17 protective custody measures under this section when an adult
18 or minor appears to meet involuntary admissions criteria for
19 substance abuse impairment and is either of the following:

20 (1) Brought to the attention of law enforcement.

21 (2) Present in a public place.

22 (b) An individual in a situation that justifies
23 protective custody under this section may be assisted by a law
24 enforcement officer to his or her home, a hospital, or to a
25 licensed detoxification or addictions receiving facility, or
26 whichever is most appropriate.

1 (c) If an individual in a situation that justifies
2 protective custody under this section fails or refuses to
3 consent to assistance and a law enforcement officer determines
4 that a hospital or a licensed detoxification or addictions
5 receiving facility is the most appropriate place for the
6 person to be taken, the officer, after giving consideration to
7 the expressed wishes of the individual may do either of the
8 following:

9 (1) Take the person to a hospital or to a licensed
10 detoxification or addictions receiving facility against the
11 person's will but without the use of unreasonable force.

12 (2) In the case of an adult, detain the person for
13 his or her own protection in any municipal or county jail or
14 other appropriate detention facility until a determination of
15 further disposition can be made by the court having
16 jurisdiction.

17 (d) Protective custody subject to detention by a law
18 enforcement officer under this section shall not be considered
19 an arrest for any purpose, and no entry or other record may be
20 made to indicate that a person subject to temporary detention
21 by a law enforcement officer under this section has been
22 detained or charged with any crime.

23 (e) A law enforcement officer acting in good faith
24 pursuant to this section may not be held civilly or criminally
25 liable for false imprisonment.

26 (f) The Department of Mental Health shall maintain a
27 current list of licensed hospitals, detoxification facilities,

1 and addictions receiving facilities to include the name,
2 address, contact information, and services provided and make
3 the information available to the public on its official web
4 page.

5 Section 5. (a) Knowingly providing false information
6 for the purpose of obtaining an involuntary admission of an
7 individual for assessment, treatment, and stabilization of an
8 adult or minor for substance abuse impairment under this act
9 shall be a Class A misdemeanor.

10 (b) Causing, otherwise securing, or conspiring with
11 or assisting another person in the obtaining, causing, or
12 securing, without reason for believing a person to be
13 impaired, any involuntary admission of an individual for
14 assessment, treatment, and stabilization of an adult or minor
15 for substance abuse impairment under this act shall be a Class
16 A misdemeanor.

17 Section 6. This act is supplemental to the
18 procedures provided for involuntary treatment of mentally ill
19 persons provided for in Chapter 52, Title 22, Code of Alabama
20 1975.

21 Section 7. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.