

1 SB117  
2 196322-3  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 19-MAR-19

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8 SYNOPSIS: Existing law provides for the involuntary  
9 commitment of persons adjudicated not guilty by  
10 reason of insanity or by reason of mental disease  
11 or defect.

12 This bill would provide a right of appeal  
13 for the Department of Mental Health in cases where  
14 a court denies its petition to release a defendant  
15 adjudicated not guilty by reason of insanity or by  
16 reason of mental disease or defect, and would  
17 provide jurisdiction to hear the appeals to the  
18 Court of Criminal Appeals.

19 This bill would also amend related sections  
20 to delete outdated and obsolete terms.

21  
22 A BILL  
23 TO BE ENTITLED  
24 AN ACT

25  
26 To amend Sections 15-16-41, 15-16-43, 15-16-60,  
27 15-16-61, 15-16-62, 15-16-63, 15-16-64, 15-16-65, 15-16-66,

1 15-16-67, 15-16-68, 15-16-69, 15-16-70, and 15-16-71, Code of  
2 Alabama 1975, relating to mental health; to provide a right of  
3 appeal for the Department of Mental Health in cases where a  
4 court denies its petition to release a defendant adjudicated  
5 not guilty by reason of insanity or by reason of mental  
6 disease or defect, and would provide jurisdiction to hear the  
7 appeals to the Court of Criminal Appeals.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 15-16-41, 15-16-43, 15-16-60,  
10 15-16-61, 15-16-62, 15-16-63, 15-16-64, 15-16-65, 15-16-66,  
11 15-16-67, 15-16-68, 15-16-69, 15-16-70, and 15-16-71, Code of  
12 Alabama 1975, are amended to read as follows:

13 "§15-16-41.

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

1           "§15-16-43.

2           "(a) If, at the final hearing, the court finds that  
3 the defendant is mentally ill and as a consequence of such  
4 mental illness poses a real and present threat of substantial  
5 harm to himself or herself or to others, the court shall order  
6 the defendant committed to the custody of the Commissioner of  
7 the Alabama State Department of Mental Health or to such other  
8 public facility as the court may order.

9           "(b) If the court does not make such a finding, then  
10 the defendant shall be released from custody ~~forthwith~~.

11           "(c) The Court of Criminal Appeals may hear appeals  
12 from an order entered by a court under subsection (a) or from  
13 a denial by a court of a petition for release concerning that  
14 defendant.

15           "§15-16-60.

16           "This article ~~shall be~~ is entitled "The Criminal  
17 Psychopath Release Restriction Act."

18           "§15-16-61.

19           "~~The following definitions shall apply to this~~  
20 ~~article~~ For the purposes of this article, the following words  
21 shall have the following meanings:

22           "(1) COURT. The court ~~which~~ that committed the  
23 defendant pursuant to Section 15-16-43.

24           "(2) DEFENDANT. A defendant in a criminal case who  
25 has been found not guilty by reason of insanity, or not guilty  
26 by reason of mental disease or defect, and has been committed  
27 to the custody of the Alabama State Department of Mental

1 Health ~~and Mental Retardation~~ or another facility as provided  
2 by Section 15-16-43.

3 "(3) DEPARTMENT. The State Department of Mental  
4 Health ~~and Mental Retardation~~.

5 "(4) DISTRICT ATTORNEY. The district attorney for  
6 the judicial circuit of the court ~~which~~ that committed the  
7 defendant pursuant to Section 15-16-43.

8 "(5) REGIONAL OR COMMUNITY MENTAL HEALTH FACILITY.  
9 Any mental health facility providing mental health services  
10 pursuant to Sections 22-51-1 through 22-51-14.

11 "§15-16-62.

12 "When a defendant in a criminal case has been  
13 committed to the custody of the commissioner of the department  
14 or another facility as provided by Section 15-16-43, ~~such~~ the  
15 department or facility may not release ~~such~~ the defendant from  
16 custody unless authorized to do so by court order as provided  
17 in this article.

18 "§15-16-63.

19 "Whenever the department or other facility with  
20 custody of a defendant is of the opinion that the defendant is  
21 no longer mentally ill, or that the defendant no longer poses  
22 a real and present threat of substantial harm to himself or  
23 herself or to others by being at large, or no longer poses a  
24 real and present threat of substantial harm to himself or  
25 herself or to others by being at large if certain conditions  
26 are imposed upon ~~his~~ the defendant's release, the department  
27 or other facility shall give notice in writing to the court of

1 that opinion. The department or other facility shall  
2 contemporaneously send copies of that notice to: the district  
3 attorney; the regional or community mental health facility  
4 which is or may be involved if the defendant is released; and  
5 the defendant, or ~~his~~ the defendant's guardian, or ~~his~~ the  
6 defendant's attorney. The department may include ~~in such~~  
7 ~~notice~~ a conditional release plan ~~if the department deems such~~  
8 ~~a plan appropriate~~ with the notice.

9 "§15-16-64.

10 "The court shall set a hearing to be held within 30  
11 days of its receipt of the notice described in Section  
12 15-16-63, unless an order of release ~~either with or without~~  
13 ~~conditions~~ is stipulated by the department and all the parties  
14 to whom notice is required ~~in~~ by Section 15-16-63. The court  
15 shall give notice of the date of that hearing to the  
16 department and to all the parties to whom notice is required  
17 ~~in~~ by Section 15-16-63.

18 "§15-16-65.

19 "Where the defendant does not have an attorney, the  
20 court shall appoint ~~him~~ one for purposes of the hearing.  
21 Payment ~~of~~ for appointed counsel for indigent defendants shall  
22 be ~~at the same rates and with the same limitations as would~~  
23 ~~apply if the hearing were a criminal prosecution~~ subject to  
24 the same rates and limitations applying to payment for  
25 appointed counsel in criminal prosecutions.

26 "§15-16-66.

1            "If a hearing is not held within 60 days of receipt  
2 by the court of the notice described in Section 15-16-63, the  
3 defendant shall be released ~~forthwith~~ unless ~~for good cause~~  
4 ~~shown~~ the hearing is continued for a reasonable time for good  
5 cause.

6            "§15-16-67.

7            "If, after conducting the hearing, the court  
8 determines that the defendant is no longer mentally ill or no  
9 longer poses a real and present threat of substantial harm to  
10 himself or herself or to others by being at large, the court  
11 shall order ~~his~~ the defendant's release. If the court  
12 determines that the defendant is still mentally ill, but would  
13 no longer ~~poses~~ pose a real and present threat of substantial  
14 harm to himself or herself or to others by being at large ~~if~~  
15 ~~his~~ as long as the defendant's release is accompanied by  
16 certain conditions, the court shall order ~~his~~ the defendant's  
17 release subject to those conditions necessary to prevent the  
18 defendant from posing a real and present threat of substantial  
19 harm to himself or herself or to others.

20            "§15-16-68.

21            "The conditions that the court may impose upon  
22 release, ~~if necessary and appropriate,~~ include, the following:

23            "(1) That the defendant take medication as  
24 prescribed by doctors in the department or in a regional or  
25 community mental health facility, or by some other doctor  
26 whose care the defendant is in7.

1           "(2) That the defendant submit to treatment and  
2 accept care from a duly authorized outpatient facility such as  
3 a regional or community mental health facility~~7.~~

4           "(3) That the defendant submit to mental or medical  
5 evaluation or testing as prescribed by the department, by a  
6 regional or community mental health facility, or by other  
7 appropriate person or facility~~7.~~

8           "(4) That the defendant submit to periodic or random  
9 drug testing designed to ensure that ~~he~~ the defendant is  
10 taking any prescribed drugs and avoiding any prescribed drugs  
11 including alcohol~~7.~~

12           "(5) That the defendant avoid specified activities,  
13 persons, or places that may be detrimental to ~~his~~ the  
14 defendant's condition~~7.~~

15           "(6) Any other appropriate condition that is  
16 necessary to prevent the defendant from posing a real and  
17 present threat of substantial harm to himself or herself or to  
18 others while ~~he is~~ at large.

19           "§15-16-69.

20           "If conditional release is ordered, the court shall  
21 state the specific conditions to be followed by the defendant.  
22 The order shall also direct the appropriate agencies or  
23 persons to submit periodic reports to the court regarding the  
24 defendant's compliance with the conditions of release and  
25 progress in treatment, with copies to the district attorney,  
26 to the defendant or ~~his~~ the defendant's guardian or counsel,  
27 and to the individual or institution from which the defendant



1 is released. ~~Such~~ The reports shall not be deemed to be a  
2 violation of any doctor-patient, psychiatrist-patient, or  
3 psychologist-patient privilege.

4 "§15-16-70.

5 "(a) If at any time it appears that the defendant  
6 has failed to comply with the conditions of release, that the  
7 defendant's condition has deteriorated to the point that  
8 inpatient care is required, or that the release conditions  
9 should be modified, the court may, after a hearing, modify the  
10 release conditions or order the defendant returned to the  
11 Department of Mental Health ~~and Mental Retardation~~ for further  
12 treatment. All ~~such~~ hearings shall be preceded by notice to  
13 the department and to the parties required to be notified in  
14 Section 15-16-63. All ~~such~~ modifications and orders shall be  
15 guided by the standard of whether ~~such~~ the modifications and  
16 orders are necessary to ensure that the defendant does not  
17 pose a real and present threat of substantial harm to himself  
18 or herself or to others.

19 "(b) The Department of Mental Health or the  
20 defendant may appeal to the Court of Criminal Appeals orders  
21 entered pursuant to subsection (a), or orders otherwise  
22 denying the release of defendants adjudicated not guilty by  
23 reason of insanity or by reason of mental disease or defect  
24 pursuant to this chapter.

25 "§15-16-71.

26 "If at any time after a defendant has been  
27 conditionally released, it appears that removal of some of the

1 conditions or release of the defendant without conditions will  
2 not cause the defendant to pose a real and present threat of  
3 substantial harm to himself or herself or to others by being  
4 at large, the court, after a hearing, shall remove the  
5 unnecessary conditions, or it shall order the defendant  
6 released unconditionally and terminate its jurisdiction over  
7 the case, ~~as the case may be~~. All such hearings pursuant to  
8 this section shall be preceded by notice to the department and  
9 to the parties required to be notified in Section 15-16-63."

10 Section 2. This act shall become effective on the  
11 first day of the third month following its passage and  
12 approval by the Governor, or its otherwise becoming law.