

HB359 INTRODUCED



1 HB359
2 5NHJMM6-1
3 By Representatives Bedsole, Ledbetter, Reynolds, Simpson,
4 Almond, Treadaway, Pettus
5 RFD: Judiciary
6 First Read: 21-Mar-24



4 SYNOPSIS:

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

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

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

24 This bill would provide that when the petitioner
25 is seeking limitations on the respondent's liberty
26 pending a final hearing on the merits, and the judge of
27 probate determines limitations on the respondent's
28 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.

54
55
56 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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2023 Regular Session, 22-52-10.2, 22-52-10.4, 22-52-10.11 and 22-52-11, Code of Alabama 1975, are amended to read as follows:

"§22-52-1.1

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

"§22-52-1.2

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

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

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

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

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

(5) The names and addresses of other ~~persons~~ individuals with knowledge of the respondent's mental illness 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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of probate to prevent the respondent from ~~doing substantial~~
~~and immediate harm to himself or to others~~ posing a real and
present threat of substantial harm to self or others or to
prevent the respondent from leaving the jurisdiction of the
court. No respondent shall be placed in a jail or other
facility for ~~persons~~ individuals accused of or convicted of
committing crimes.

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

"§22-52-10.1

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



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

(1) Outpatient treatment.

(2) Inpatient treatment.

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

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

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

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

"§22-52-10.2

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



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

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

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

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

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

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

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



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

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

"§22-52-10.4

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

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

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

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

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

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



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

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

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

"§22-52-10.11

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



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

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

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

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

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

(1) The respondent.

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

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

(e) If a hearing is not requested, the judge of probate ~~court~~ may make a decision regarding the facility director's 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.

420