

SB240 ENGROSSED



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



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A BILL
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



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29 expand existing services unless its currently available funds
30 support the expansion.

31 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

32 Section 1. Sections 22-52-1.1, 22-52-1.2, 22-52-3,
33 22-52-7, 22-52-10.1, as last amended by Act 2023-472, of the
34 2023 Regular Session, 22-52-10.2, 22-52-10.4, 22-52-10.11 and
35 22-52-11, Code of Alabama 1975, are amended to read as
36 follows:

37 "§22-52-1.1

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

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

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

46 ~~(2)~~ (3) DEPARTMENT. The Alabama State Department of
47 Mental Health.

48 ~~(3)~~ (4) DESIGNATED MENTAL HEALTH FACILITY. A mental
49 health facility, other than a state mental health facility,
50 which is designated by the State Department of Mental Health
51 to receive individuals for evaluation, examination, admission,
52 detention, or treatment pursuant to this article.

53 ~~(4)~~ (5) INPATIENT TREATMENT. Treatment being provided to
54 an individual at a state mental health facility or a
55 designated mental health facility which has been specifically
56 designated by the department for inpatient treatment.



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57 ~~(5)~~ (6) INVOLUNTARY COMMITMENT. Court-ordered mental
58 health services in either an outpatient or inpatient setting.

59 ~~(6)~~ (7) MENTAL ILLNESS. A psychiatric disorder of
60 thought or mood which significantly impairs judgment,
61 behavior, capacity to recognize reality, or ability to cope
62 with the ordinary demands of life~~-,~~ or a diagnosis designated
63 as a Serious Mental Illness (SMI), as defined in the then
64 current edition of the Diagnostic and Statistical Manual of
65 Mental Disorders. The term specifically excludes the primary
66 diagnosis of epilepsy, a substance use disorder, an
67 intellectual disability, ~~substance abuse, including~~
68 alcoholism, or a developmental disability.

69 ~~(7)~~ (8) OUTPATIENT TREATMENT. Treatment being provided
70 to an individual in a nonresidential setting who is not
71 admitted for 24-hour-a-day care.

72 ~~(8)~~ (9) REAL AND PRESENT THREAT OF SUBSTANTIAL HARM TO
73 SELF OR OTHERS. A significant risk that an individual who is
74 exhibiting behavior consistent with a mental illness, as a
75 result of the mental illness, will do either of the following:

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

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

84 ~~(9)~~ (10) RESPONDENT. An individual for whom a petition



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85 for commitment to mental health services has been filed.

86 ~~(10)~~(11) STATE MENTAL HEALTH FACILITY. A mental health
87 facility operated by the Alabama State Department of Mental
88 Health.

89 (12) SUBSTANCE USE DISORDER. A cluster of cognitive,
90 behavioral, and physiological symptoms indicating that the
91 individual continues using a substance despite significant
92 substance-related problems, such as impaired control, social
93 impairment, risky behaviors, and pharmacological tolerance and
94 withdrawal.

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

99 "§22-52-1.2

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

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

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

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

112 (4) That the beliefs of the petitioner are based on



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113 specific behavior, acts, attempts, or threats, which shall be
114 specified and described in detail.

115 (5) The names and addresses of other ~~persons~~
116 individuals with knowledge of the respondent's mental illness
117 or mental illness with a secondary diagnosis of co-occurring
118 substance use disorder who may be called as witnesses.

119 The petition may be accompanied by any other relevant
120 information.

121 (b) The home address and the telephone number of the
122 petitioner shall be excluded from the copy of the petition
123 seeking the involuntary commitment provided to the respondent,
124 however, if there is no other available address to contact the
125 petitioner, then the home address of the petitioner shall be
126 provided."

127 "§22-52-3

128 When any petition has been filed seeking the
129 involuntary commitment of a respondent and ~~such~~ the petition
130 has been reviewed by the ~~probate judge~~ judge of probate, the
131 ~~probate judge~~ judge of probate shall order the sheriff of the
132 county in which the respondent ~~is~~ was located at the time of
133 the filing to serve a copy of the petition, together with a
134 copy of the order setting the petition for a hearing, upon the
135 respondent. ~~Said~~ The notice shall include the date, time and
136 place of the hearing; a clear statement of the purpose of the
137 proceeding and the possible consequences to the subject
138 thereof; the alleged factual basis for the proposed
139 commitment; a statement of the legal standards upon which
140 commitment is authorized; and a list of the names and



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141 addresses of the witnesses who may be called to testify in
142 support of the petition. The hearing shall be preceded by
143 adequate notice to the respondent."

144 "§22-52-7

145 (a) (1) When a petition has been filed seeking to have
146 limitations placed upon the liberty of a respondent pending
147 the outcome of a final hearing on the merits, the ~~probate~~
148 ~~judge~~ judge of probate shall order the sheriff of the county
149 in which the respondent ~~is~~ was located at the time of the
150 filing to serve a copy of the petition upon the respondent and
151 to either bring the respondent before the judge of probate
152 ~~probate judge~~ instant ~~or~~ be evaluated as provided in
153 subsection (2).

154 (2) When any respondent against whom a petition has
155 been filed seeking to have limitations placed upon the
156 respondent's liberty pending the outcome of a full and final
157 hearing on the merits is initially brought before the ~~probate~~
158 ~~judge~~ judge of probate, the ~~probate judge~~ judge of probate shall
159 determine from an interview with the respondent ~~and with other~~
160 ~~available persons~~ what limitations, if any, shall be imposed
161 upon the respondent's liberty and what temporary treatment, if
162 any, shall be imposed upon the respondent pending further
163 hearings. In making these determinations, the judge of probate
164 may also interview any other available individuals or officers
165 and may consult with or seek an evaluation by a licensed
166 medical physician or qualified mental health professional. If
167 limitations on the respondent's liberty are ordered, the
168 ~~probate judge~~ judge of probate may order the respondent



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169 detained under the provisions of this section at a designated
170 mental health facility or a hospital.

171 (b) No limitations shall be placed upon the
172 respondent's liberty nor treatment imposed upon the respondent
173 unless such limitations are determined necessary by the judge
174 of probate to prevent the respondent from ~~doing substantial~~
175 ~~and immediate harm to himself or to others~~ posing a real and
176 present threat of substantial harm to self or others or to
177 prevent the respondent from leaving the jurisdiction of the
178 court. No respondent shall be placed in a jail or other
179 facility for ~~persons~~ individuals accused of or convicted of
180 committing crimes.

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



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197 respondent, and admission to a hospital shall be ordered by a
198 licensed medical doctor who has willingly consented to admit
199 and treat the respondent."

200 "§22-52-10.1

201 (a) If at the final hearing on a petition seeking to
202 involuntarily commit a respondent, the judge of probate finds,
203 based on clear and convincing evidence, that the respondent
204 meets the criteria for involuntary commitment, an order shall
205 be entered for either of the following:

206 (1) Outpatient treatment.

207 (2) Inpatient treatment.

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

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

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

220 (2) The judge of probate shall report to the Alabama
221 State Law Enforcement Agency, in a method determined by the
222 commission, updates to any order for involuntary commitment
223 that was previously forwarded to the Alabama State Law
224 Enforcement Agency under this section, including notice of any



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225 reversal of petition or appeal."

226 "§22-52-10.2

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

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

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

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

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

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

247 (b) Upon a recommendation made by the designated mental
248 health facility currently providing outpatient treatment that
249 the respondent's outpatient commitment order should be
250 renewed, a probate court may enter an order to renew the
251 commitment order upon the expiration of time allotted for
252 treatment by the original outpatient treatment order if the



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253 judge of probate—court finds, based upon clear and convincing
254 evidence, all of the following:

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

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

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

266 "§22-52-10.4

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

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

273 (2) As a result of the mental illness₇ or mental
274 illness with a secondary diagnosis of co-occurring substance
275 use disorder, the respondent poses a real and present threat
276 of substantial harm to self or others.

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

280 (4) The respondent is unable to make a rational and



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281 informed decision as to whether or not treatment for mental
282 illness or mental illness with a secondary diagnosis of
283 co-occurring substance use disorder would be desirable.

284 (b) If the ~~probate judge~~ judge of probate finds that no
285 treatment is presently available for the respondent's mental
286 illness or mental illness with a secondary diagnosis of
287 co-occurring substance use disorder, but that confinement is
288 necessary to prevent the respondent from causing substantial
289 harm to himself or herself or to others, the order committing
290 the respondent shall provide that, should treatment for the
291 respondent's mental illness or mental illness with a secondary
292 diagnosis of co-occurring substance use disorder become
293 available at any time during the period of the respondent's
294 confinement, the treatment shall be made available to him or
295 her immediately.

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

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

305 "§22-52-10.11

306 (a) The director of a state mental health facility or
307 designated mental health facility to which a respondent is
308 currently committed for inpatient treatment, not later than 30



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309 days prior to the expiration of the current commitment order,
310 shall assess the appropriateness of transferring the
311 respondent to outpatient treatment as the least restrictive
312 alternative necessary and available for the treatment of the
313 respondent's mental illness or mental illness with a secondary
314 diagnosis of co-occurring substance use disorder. The director
315 may recommend to the probate court in writing that the order
316 be modified to commit the respondent to outpatient treatment.

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

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

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

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

329 (1) The respondent.

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

333 (d) Upon request of the respondent or any other
334 interested party, the probate court shall hold a hearing on
335 the recommendation. The ~~probate court~~ judge of probate shall
336 appoint an attorney to represent the respondent at the



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337 hearing. The hearing shall be conducted in accordance with
338 Section 22-52-9.

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

342 (1) The grounds stated in the recommendation.

343 (2) Consultation with the director of the designated
344 mental health facility, or his or her designee, concerning the
345 availability of resources to treat the respondent as an
346 outpatient.

347 (f) If the probate court modifies the order, the
348 modified order shall conform to all requirements of an
349 original commitment to outpatient treatment under Section
350 22-52-10.3, except that the modified order may not extend
351 beyond the term of the original order by more than 60 days."

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

354 §15-16-26

355 Notwithstanding Section 15-16-20, Code of Alabama 1975,
356 if a commitment order has been issued pursuant to Title 22,
357 Chapter 52, Code of Alabama 1975, but cannot be fulfilled
358 because the respondent is subsequently confined solely for
359 misdemeanor charges or municipal ordinance violations, the
360 judge of probate who issued the commitment order may
361 communicate with the judge of the district, municipal or
362 circuit court who ordered the respondent to be confined to
363 discuss whether he or she will issue an order to discharge the
364 respondent from confinement and suspend the criminal



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365 proceedings temporarily so that the commitment order may be
366 fulfilled. The court shall give the prosecuting attorney an
367 opportunity to object to the discharge order.

368 Section 3. This act shall become effective on January
369 1, 2025.

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373 Senate

374 Read for the first time and referred21-Mar-24
375 to the Senate committee on Judiciary

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377 Read for the second time and placed03-Apr-24
378 on the calendar:

379 1 amendment

380
381 Read for the third time and passed09-Apr-24
382 as amended

383 Yeas 34

384 Nays 0

385 Abstains 0

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388 Patrick Harris,
389 Secretary.

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