

# 2022

## Spring Municipal Law Conference

The Wynfrey Hotel, Birmingham, Alabama  
April 1, 2022

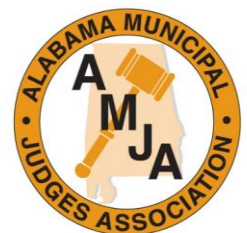
### ***Defendants with Mental Health Issues***

Panelist:

Dr Dale Wisely, Ph.D., Clinical Psychologist, Hoover,  
Jacque L. Austin, LPC, MA, NCC, Birmingham,  
Russell March, Attorney, Johnstone Adams, LLC, Mobile,

Moderator

Mark Erwin, Judge, Saraland



[www.alalm.org/AAMA.html](http://www.alalm.org/AAMA.html)  
[www.alalm.org/AMJA.html](http://www.alalm.org/AMJA.html)

# **INVOLUNTARY COMMITMENT OF THE MENTALLY ILL**

Prepared by E. Russell March, III  
Johnstone Adams, LLC  
1 St. Louis Street, Suite 4000  
Mobile, Alabama 36602  
(251) 441-9244  
erm@johnstoneadams.com

## **WHAT IS AN INVOLUNTARY COMMITMENT?**

An involuntary commitment is a procedure whereby a mentally ill person is involuntarily placed in the custody of the Alabama Department of Mental Health and Mental Retardation (“the Department”) for treatment. Statutory authorization and procedures for involuntary commitments are found at *Alabama Code* (1975) §§ 22-52-1, *et seq.* See *Webster v. Bartlett*, 709 So.2d 1226 (Ala.Civ.App.1997) (holding that both original commitment proceedings and recommitment proceedings are governed solely by Alabama statutory law).

## **WHAT IS A MENTAL ILLNESS?**

- A “mental illness” is **defined** as “a psychiatric disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.” *Ala. Code* § 22-52-1.1(1) (as amended).
- A “mental illness” **does not include** a primary diagnosis of epilepsy, mental retardation, *substance abuse (including alcoholism)* or a developmental disability. *Ala. Code* § 22-52-1.1(1) (as amended).

## **GROUND'S FOR PLACEMENT**

Person must be **MENTALLY ILL** and **AS A CONSEQUENCE** poses a **REAL AND PRESENT THREAT OF SUBSTANTIAL HARM TO SELF OR OTHERS**.

*Lynch v. Baxley*, 386 F. Supp. 378 (M.D. Ala. 1974) (“Lynch I”)

- Began as 1974 class action on behalf of all persons involuntarily civilly committed in Alabama, challenging constitutionality of Alabama commitment statute. The original case determined that the statute violated due process in large part because:
- Allowed detention without a probable cause hearing within a reasonable time;
- Failed to require the presence of the person being committed;
- Failed to require the presence of appointed counsel at the hearing;
- Contained ill-defined standards for commitment.

In 1975, the Alabama legislature enacted a new civil commitment statute which provided for:

- Probable cause hearing within 7 days of detention (§22-52-8);
- Final hearing within 30 days of receipt of petition (§22-52-8);
- Appointment of counsel for Respondent (§22-52-4);
- Presence of Respondent and counsel at all hearings (§22-52-9); and
- Clear standards for determining whether commitment is appropriate (§22-52-10).

*Lynch v. Baxley*, 744 F.2d 1452 (11<sup>th</sup> Cir. Ala. 1984) (“Lynch II”)

- The new statute still allowed for emergency detention in jails until hearing held.
- At the time of Lynch II, the only facilities routinely available to safely detain a person not privately placed in a mental hospital were jails; Probate judges ordered the possibly mentally ill to be detained in three-fourths of the county jails in the state. Sometimes for more than 30 days. Sometimes not held separately from accused criminals.
- 11<sup>th</sup> Circuit held that emergency detention should not be inconsistent with treating the mentally ill individual or protecting society.
- State has a compelling interest in the emergency detention of those who threaten “immediate and serious violence to themselves or others.”
- BUT, detention in jail is not the *least restrictive means* for achieving that goal.
- Probate Judge may detain Respondent in a mental health facility in another county and retains jurisdiction over that individual while the commitment case is pending. (§22-52-11)
- 11<sup>th</sup> Circuit held that, while a Respondent is awaiting a probable cause hearing, he must be detained in the nearest state, regional, community, county or private hospital or mental health facility which provides quarters for mentally ill patients.
- **NOTE: CANNOT HOLD RESPONDENT AT PRIVATE INSTITUTION WITHOUT EXPRESS CONSENT OF INSTITUTION.**

## **RECENT AMENDMENTS TO THE COMMITMENT STATUTES** **(See attachment)**

HB70 was passed by the Alabama House of Representatives on February 9, 2022, and passed by the Alabama Senate on March 17, 2022, and has been enrolled.

The legislation is designed to provide consistent definitions and criteria for the involuntary commitment process in both criminal and probate proceedings.

Biggest changes:

- (1) The criteria for determining whether an individual poses a real and present threat of substantial harm to self or others now specifies that “the court shall consider all available relevant information, *including any known relevant aspects of the defendant’s psychosocial, medical, and psychiatric history*, in addition to the defendant’s current behavior.” (emphasis added)
- (2) The concept of a “real and present threat of substantial harm to self or others” is now defined as “[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.”

- (3) The criteria for outpatient commitment have been refined to specify that the respondent must be “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.

## **PROCESS**

### **■ STANDING – WHO MAY FILE?**

- Any person may file a petition seeking the involuntary commitment of another person. *Ala. Code* § 22-52-1.2(a).

### **■ THE PETITION**

The petition should set forth the following information:

- (1) Name and address (if known) of the petitioner;
- (2) Name and address (if known) of respondent's spouse, attorney or next of kin;
- (3) That petitioner has reason to believe respondent is mentally ill;
- (4) That such belief is based on specific behavior, acts, attempts or threats which are described in detail; and

- (5) Names and addresses of other people with knowledge of the respondent's illness or who observed the person's overt acts and who may be called as his witnesses.

*Ala. Code § 22-52-1.2(a)*

## **VENUE**

A petition for involuntary commitment must be filed in the probate court of the county wherein the respondent is located. *Ala. Code § 22-52-1.2(a)*.

## **HEARINGS**

### **Emergency “Hearing”.**

If a petition seeks restrictions be placed on the liberties of the respondent pending the outcome of a final hearing, the Probate Judge will conduct an interview with the respondent and with “other available persons” what limitations, if any, shall be imposed pending further hearings. *Ala. Code § 22-52-7(a)*. This interview does not involve counsel for either the petitioner or the respondent.

Pre-hearing limitations may be place on a respondent only if necessary to prevent the respondent from doing substantial and immediate harm to himself or to others or to prevent the respondent from leaving the jurisdiction of the court. *Ala. Code § 22-52-7(b)*.

If the Probate Judge finds that limitations on the liberty of the respondent should be imposed, then the respondent may be detained at a designated mental health facility or a hospital. *Ala. Code § 22-52-7(a)*.

A probable cause hearing must be scheduled within seven (7) days from the date of the imposition of such limitations. *Ala. Code* § 22-52-8.

**NOTE:** No public facility other than the Department of Mental Health and Mental Retardation may be *required* (as distinguished from *authorized*) by the probate court to perform any mental evaluation of a person sought to be committed. *Ala. Code* § 22-52-17.

### **Probable Cause Hearing.**

Once the petition is filed, the Probate Court will schedule an initial hearing to determine whether probable cause exists that the respondent should be detained temporarily and that treatment would be in the best interests of the respondent. *Ala. Code* § 22-52-8(a).

If the Respondent is already being detained, the probable cause hearing must be convened within 7 days of detention. *Ala. Code* § 22-52-8(a).

A **guardian ad litem** is appointed to represent the respondent, although the respondent also is free to retain counsel of his or her choice. *Ala. Code* § 22-52-4(a).

**Counsel also is appointed to advocate for the petitioner,** although the petitioner instead may retain counsel of their own choosing. *Ala. Code* § 22-52-5.

The **fees** of the guardian ad litem and appointed counsel shall be paid, as approved by the Probate Judge, by the state general fund. However, if the petition is denied, and the petitioner is not indigent or a law-enforcement officer or other public official acting within the line and scope of his duties, all costs may be taxed against the petitioner.

The **respondent must be present** unless his or her presence is waived by counsel on the ground that the respondent's presence would



be dangerous to his or her physical or mental health, or that the respondent's conduct could reasonably be expected to prevent the hearing from being held in an orderly manner. The Probate Judge must judicially find and determine from evidence presented in an adversary hearing that the respondent is so mentally or physically ill as to be incapable of attending the proceedings. *Ala. Code* § 22-52-9(a).

Evidence at the probable cause hearing usually does not include expert testimony, but such may be offered.

### **Final Hearing on the Merits.**

The Court must schedule a final hearing on the merits **within thirty (30) days** of service of the petition on the respondent. *Ala. Code* § 22-52-8(b). Merit hearings in Mobile County typically are scheduled within 6 days, but may be continued if the evaluation team believes that further observation is needed.

Sometimes continued for additional observation to **differentiate the diagnoses.**

Also continued to allow the Respondent to **stabilize** so that he/she may be discharged for care in a less restrictive setting.

**“Combined Hearings”** While there is no specific statutory provision, the Mobile County Probate Court will sometimes combine the Probable Cause and Merit hearings, provided the petitioner can produce an expert witness in the field of mental health to testify for the merit portion. The “combination” is somewhat illusory, inasmuch as the Court first conducts a probable cause portion, and then, after finding probable cause, moves on to the merit portion. Even though much of the same evidence could be presented by the may be presented in both portions, the Court requires evidence of probable cause to be formally presented in that portion of the hearing.

Evidence at the merit hearing typically includes **expert testimony** presented by (i) the respondent's treating physician or (ii) a representative of the evaluation team.

### **CRITERIA FOR INPATIENT COMMITMENT (§22-52-10.4 as amended))**

The petitioner must prove the following elements by **clear and convincing evidence**:

- (1) The respondent has a mental illness;
- (2) As a result of the mental illness, 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; and
- (4) The respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable;

*Ala. Code § 22-52-10.4 (as amended).*

### **CRITERIA FOR OUTPATIENT TREATMENT (§22-52-10.2)**

- Same as for inpatient, except for danger to self or others

**“Real and present threat”** does not necessarily mean suicidality – it can manifest as neglect or refusal to care for oneself which poses a real and present threat of substantial harm. The definition is now expanded

to include considerations of the respondent’s psychological, medical, and psychiatric history.

***In re Wilson***, 431 So. 2d 552 (Ala.Civ.App. 1983). Mother petitioned to commit daughter, who was diagnosed with schizophrenia. Daughter would not respond to others attempting to communicate with her; became motionless for up to 24 hours; would go days without eating or sleeping. HELD that refusal to care for herself posed a real and present threat of substantial harm.

If the recommendation of the attending physician/evaluation team is for inpatient commitment, then it must be shown that such treatment is the **least restrictive form of treatment available**.

While evidence of an actual “**overt act**” is helpful, it is **not necessary**. See *Mason v. Wilson*, 20 So. 3d 151, 154 (Ala. Civ. App. 2009); *Garrett v. State*, 707 So. 2d 273, 275 (Ala. Civ. App. 1997).

Evidence of a **past diagnosis** of mental illness and a **history of failing to comply with treatment** also is relevant.

The **hearings are to be open** to the public unless requested otherwise by the respondent. *Ala. Code* § 22-52-9(4). A full transcript of the hearing must be kept for three years beyond period of commitment. *Ala. Code* § 22-52-9(3). The Alabama Rules of Evidence apply. *Ala. Code* § 22-52-9(5).

## **POSSIBLE RESULTS**

- If a commitment petition is granted, the Court may order **outpatient treatment or inpatient treatment**. *Ala. Code* § 22-52-10.1. The **least restrictive alternative** necessary and available for the treatment of the respondent's mental illness shall be ordered.

- **Inpatient treatment** may be ordered at a state mental health facility or a designated mental health facility.
- **Outpatient treatment** may be ordered at a designated mental health facility if said facility consents to treat the respondent on an outpatient basis. *Ala. Code* § 22-52-5(a).
- An order for involuntary treatment, either on an inpatient or outpatient basis, **may not exceed 150 days**. *Ala. Code* §§ 22-52-10.3(d), -10.5(b).
- **INPATIENT RENEWAL** -- If further inpatient treatment is required beyond the 150 days, the State must file a petition for renewal within 30 days of expiration of the current commitment order, stating in detail the reasons for renewal. *Ala. Code* § 22-52-10.6.
- **OUTPATIENT RENEWAL** – The designated mental health facility providing outpatient treatment may, at least 30 days prior to the expiration of the current commitment order, recommend that outpatient commitment should be renewed. The Probate Court may enter an order to renew the commitment order for up to one year. *Ala. Code* § 22-52-10.10.
- **REVOCATION OF OPC** -- If the respondent is ordered to outpatient treatment, the designated mental health facility must **report to the Court any material noncompliance** with the outpatient treatment order and may request revocation of the outpatient treatment order. *Ala. Code* § 22-52-10.3(e). The Court will then set a hearing to consider the motion for revocation, and, upon a finding by clear and convincing evidence that the conditions of outpatient treatment have not been met and

that the respondent meets the criteria for inpatient treatment, the Court may enter an order for commitment to inpatient treatment. *Ala. Code* § 22-52-10.3(f).

## **APPEAL**

An appeal from an order granting a petition for involuntary commitment lies to the circuit court for trial *de novo*, unless the Probate Judge who granted the petition was learned in the law, in which case the appeal lies to the Alabama Court of Civil Appeals. *Ala. Code* § 22-52-15.

## **JUVENILE PROCEEDINGS**

Proceedings for commitment of a minor or child are somewhat different, and are **governed by *Ala. Code* §§ 12-15-401, et seq.** Jurisdiction for involuntary commitment of a minor or child lies **exclusively with the Juvenile Court.** *Ala. Code* § 12-15-115(a)(3).

A child is defined as being one who is under the age of 18, while a minor is one who is under the age of 19 and not a child (i.e., 18 years of age). *Ala. Code* § 12-15-102.

A petition for involuntary commitment **may be brought by any person, or any county, municipality or governmental department or agency** (specifically including the Department of Human Resources) on the basis of mental illness or “intellectual disability.” *Ala. Code* § 12-15-402.

The petition must be verified and **filed in the county where the minor or child is located or resides.** *Ala. Code* § 12-15-402(b).

Upon filing of the petition, the Juvenile Court “shall” appoint a child’s attorney to represent the minor or child, and “may” appoint a guardian ad litem in addition to the child’s attorney.

**NOTE:** The Juvenile Code specifically defines a “child’s attorney” as “[a] licensed attorney who provides legal services for a child, or for a minor in a mental commitment proceeding, and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child or minor as is due an adult client.” *Ala. Code* § 12-15-102(5).

By contrast, a “guardian ad litem is defined as “[a] licensed attorney appointed by a juvenile court to protect the best interests of an individual without being bound by the expressed wishes of that individual.” *Ala. Code* § 12-15-102(10)

The Court **must give notice of the petition and hearing date to the Department of Mental Health not less than 14 days prior to the hearing.** Notice to the Department constitutes an application for the minor or child to be admitted to a facility operated by the Department or an entity under contract with the Department. **The Department is required to notify the Court at least 24 hours prior to the hearing whether adequate facilities are available. If adequate facilities for treatment of the minor or child are not available, or if admission would result in overcrowding, then the Department may not accept the minor or child.** *Ala. Code* § 12-15-405.

When the petition is filed, the Court may determine placement of the minor or child pending further hearings. **A child may not be placed in a juvenile detention facility unless he or she is charged with a delinquent act. The minor or child may be held in a public or private facility.** *Ala. Code* § 12-15-406.

If the minor or child is confined or restrained pending the final hearing, the Court must set a hearing within 7 days to determine if probable cause exists that the minor or child should be committed. A final hearing on the merits must be set within 30 days of the date the minor or child was served with a copy of the petition. *Ala. Code* § 12-15-407.

The Court may order commitment of a minor or child for treatment of a mental illness if it is shown **by clear and convincing evidence**:

- (1) That the minor or child is mentally ill;
- (2) That, as a consequence of the mental illness, the minor or child poses a real and present threat of substantial harm to self or others;
- (3) **That the threat of substantial harm has been evidenced by a recent overt act;**
- (4) That treatment is available for the mental illness, or that confinement is necessary to prevent the minor or child from causing substantial harm to self or others.; and
- (5) That commitment is the least restrictive alternative necessary and available for treatment.

*Ala. Code* § 12-15-409(b).

**\*\*\*NOTE:** Unlike adult commitments, juvenile commitments require the showing of a recent overt act.

The Court may order **commitment of a minor or child based upon intellectual disability** if it is shown by clear and convincing evidence:

- (1) That the minor or child has an intellectual disability;
- (2) That the minor or child is not mildly retarded, as defined by the Department; and

- (3) That the minor or child, if allowed to remain in the community, is likely to cause serious injury to self or others, or that adequate care, rehabilitation and training opportunities are available only at a facility provided by the Department.

*Ala. Code* § 12-15-410.

The Juvenile Court retains jurisdiction over the minor or child so long as the minor or child is in the custody of the Department regarding the original commitment.

If commitment is ordered, the minor or child **may be discharged** from the custody of the Department when (1) he or she has gained maximum benefit from institutional treatment; (2) is no longer in need of services; or (3) he or she has gained maximum benefit from programs of the Department. The Department must give written notice to the Court at least 10 days prior to discharge. At the time of discharge, the Court shall transfer custody to another person or another state department or agency deemed suitable by the Court. *Ala. Code* § 12-15-411.



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.

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Speaker of the House of Representatives

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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

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17-MAR-22

Passed