

**HB359 ENGROSSED**



1 HB359

2 IQ8FWWW-2

3 By Representatives Bedsole, Ledbetter, Reynolds, Simpson,  
4 Almond, Treadaway, Pettus

5 RFD: Judiciary

6 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 illness<sub>7</sub> 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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House of Representatives

Read for the first time and referred .....21-Mar-24  
to the House of Representatives  
committee on Judiciary  
  
Read for the second time and placed .....04-Apr-24  
on the calendar:  
1 amendment  
  
Read for the third time and passed .....11-Apr-24  
as amended  
Yeas 100  
Nays 1  
Abstains 0

John Treadwell  
Clerk