

By: Holland

To: Public Health and
Welfare; Judiciary A

HOUSE BILL NO. 795
(As Passed the House)

1 AN ACT TO AMEND SECTION 41-21-67, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE A LICENSED PHYSICIAN OR PSYCHOLOGIST TO TAKE INTO
3 CUSTODY ANY INDIVIDUAL BELIEVED TO BE MENTALLY ILL AND POSING AN
4 IMMEDIATE SUBSTANTIAL LIKELIHOOD OF PHYSICAL HARM TO HIMSELF OR TO
5 OTHERS AS AN EMERGENCY PATIENT; TO PROVIDE CIVIL AND CRIMINAL
6 IMMUNITY FOR ANY SUCH PHYSICIAN OR PSYCHOLOGIST ACTING IN GOOD
7 FAITH; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. Section 41-21-67, Mississippi Code of 1972, is
10 amended as follows:[CRG1]

11 41-21-67. (1) Whenever such affidavit as is provided for in
12 Section 41-21-65 shall be filed with the chancery clerk, the
13 clerk, upon direction of the chancellor of the court, shall issue
14 a writ directed to the sheriff of the proper county to take into
15 his custody the person alleged to be in need of treatment and to
16 bring such person before the clerk or chancellor who shall order
17 pre-evaluation screening and treatment by the appropriate
18 community mental health center established pursuant to Section
19 41-19-31 and for examination as set forth in Section 41-21-69.

20 * * * However, * * * when such affidavit fails to set forth
21 factual allegations and witnesses sufficient to support the need
22 for treatment, the chancellor shall refuse to direct issuance of
23 the writ. Reapplication may be made to the chancellor. If a
24 pauper's affidavit is filed by a guardian for commitment of the
25 ward of the guardian, the court shall determine if the ward is a
26 pauper and if such ward is determined to be a pauper, the county
27 of the residence of the respondent shall bear the costs of
28 commitment, unless funds for such purposes are made available by

29 the state.

30 (2) Upon issuance of the writ the chancellor shall forthwith
31 appoint and summon two (2) reputable, licensed physicians or one
32 (1) such physician and a psychologist to conduct a physical and
33 mental examination of such person at a place to be designated by
34 the clerk or chancellor and to report their findings to the clerk
35 or chancellor. In all counties wherein there is a county health
36 officer, such county health officer, if available, may be one of
37 the physicians so appointed. Neither of the physicians or any
38 psychologist selected shall be related to such person in any way,
39 nor have any direct or indirect interest in the estate of such
40 person nor shall any full-time staff of residential treatment
41 facilities operated directly by the Department of Mental Health
42 serve as examiner.

43 (3) The clerk shall ascertain whether the respondent is
44 represented by an attorney, and if it is determined that
45 respondent does not have an attorney the clerk shall immediately
46 notify the chancellor of such fact, and if the chancellor
47 determines that respondent for any reason does not have the
48 services of an attorney, the chancellor shall forthwith appoint an
49 attorney for the respondent at the time the examiners are
50 appointed.

51 (4) If the chancellor determines that there is probable
52 cause to believe that the respondent is mentally ill and that
53 there is no reasonable alternative to detention, the chancellor
54 may order that the respondent be retained as an emergency patient
55 at any available regional mental health facility or any other
56 available suitable location as the court may so designate pending
57 an admission hearing and may, if necessary, order a peace officer
58 or other person to transport the respondent to such mental health
59 facility or suitable location. Any respondent so retained may be
60 given such treatment by a licensed physician as is indicated by
61 standard medical practice. * * * However, the respondent shall
62 not be held in a hospital operated directly by the Department of
63 Mental Health; and shall not be held in jail unless the court
64 finds that there is no reasonable alternative.

65 (5) Whenever a licensed physician or psychologist certified

66 to complete examinations for the purpose of commitment has reason
67 to believe that a person is subject to detention because he is
68 mentally ill and poses an immediate substantial likelihood of
69 physical harm to himself or others as defined in Section
70 41-21-61(e), then the physician or psychologist may take the
71 person into custody without a civil order or warrant for a period
72 not to exceed the end of the next business day of the chancery
73 clerk's office. Such person shall be retained as an emergency
74 patient at any available regional mental health facility or any
75 other available suitable locations the court may so designate, but
76 shall not be held in jail. The physician or psychologist who
77 takes the person into custody shall certify in writing the reasons
78 for the need for detention to the chancery clerk by the end of the
79 next business day of the chancery clerk's office. Any respondent
80 so detained may be given such treatment by a licensed physician as
81 indicated by standard medical practice. Persons acting in good
82 faith in connection with the detention of a person believed to be
83 mentally ill shall incur no liability, civil or criminal, for such
84 acts. No civil suit of any kind whatsoever shall be brought or
85 prosecuted against the physician or psychologist and/or the health
86 care entity which employs the physician or psychologist except for
87 willful or malicious acts or acts of gross negligence.

88 SECTION 2. This act shall take effect and be in force from
89 and after July 1, 2000.