MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001

By: Representative Moody
To: Public Health and Welfare; Judiciary A

HOUSE BILL NO. 1333


H. B. No. 1333

*HR40/R1764*

G3/5

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WHITFIELD FOR ALCOHOLIC AND DRUG ADDICTS, PROVIDE FOR THE PLAN OF
ELLISVILLE STATE SCHOOL, REQUIRE ELLISVILLE'S DIRECTOR TO KEEP
CERTAIN RECORDS, AUTHORIZE ELLISVILLE'S DIRECTOR TO SELL CERTAIN
PRODUCTS OF THE SCHOOL, PROVIDE DISCHARGE PROCEDURES FOR
ELLISVILLE PATIENTS, PROVIDE FOR HABEAS CORPUS PROCEEDINGS FOR
ELLISVILLE PATIENTS, AUTHORIZE THE RECEIPT OF GIFTS FOR THE
SUPPORT OF ELLISVILLE, REQUIRE COUNTIES TO TEMPORARILY PROVIDE FOR
THE MAINTENANCE OF INDIGENT MENTALLY RETARDED PERSONS, PROHIBIT
COHABITATION WITH MENTALLY RETARDED PERSONS, AND AUTHORIZE THE
STERILIZATION OF MENTALLY ILL AND MENTALLY RETARDED PATIENTS; AND
FOR RELATED PURPOSES.

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

SECTION 1. Section 41-7-73, Mississippi Code of 1972, is
amended as follows:

41-7-73. The term "state institution" or "state
institutions" as used in Sections 41-7-71 through 41-7-95 shall
include the following: Mississippi State Hospital at Whitfield,
Ellisville State School, East Mississippi State Hospital at
Meridian, Mississippi Children's Rehabilitation Center, North
Mississippi Regional Center, Hudspeth Regional Center, South
Mississippi Regional Center, North Mississippi State Hospital at
Tupelo, South Mississippi State Hospital at Purvis, the University
of Mississippi Hospital, * * * Boswell Regional Center, the
Juvenile Rehabilitation Center at Brookhaven, the Specialized
Treatment Facility for the Emotionally Disturbed in Harrison
County, and the Central Mississippi Residential Center at Newton.

SECTION 2. Section 41-17-1, Mississippi Code of 1972, is
amended as follows:

41-17-1. Mississippi State * * * Hospital at
Whitfield, * * * East Mississippi State Hospital at Meridian,
North Mississippi State Hospital at Tupelo, South Mississippi
State Hospital at Purvis, the Specialized Treatment Facility for
the Emotionally Disturbed in Harrison County, and the Central
Mississippi Residential Center at Newton are established for the
care and treatment of * * * persons with mental illness, free of
charge, except as otherwise provided.

SECTION 3. Section 41-17-3, Mississippi Code of 1972, is
amended as follows:
41-17-3. The treatment facility for persons with mental illness established at Meridian by the Act of March 8, 1882, shall continue to exist as a body politic and corporate, under the name of the "East Mississippi State Hospital," with all the privileges conferred and the duties enjoined by law. It may hold and use, as required by law, all the property, real and personal, belonging or which may be given to it for the purposes of its establishment.

SECTION 4. Section 41-17-11, Mississippi Code of 1972, is amended as follows:

41-17-11. The directors of Mississippi State Hospital at Whitfield, East Mississippi State Hospital at Meridian, North Mississippi State Hospital at Tupelo, South Mississippi State Hospital at Purvis, the Specialized Treatment Facility for the Emotionally Disturbed in Harrison County, and the Central Mississippi Residential Center at Newton each are authorized to receive any moneys that the United States government may offer as federal aid in taking care of and giving special attention to those persons who served with the armed forces of the United States during time of war, and who are now in, or may hereafter be in any of those treatment facilities. Each of those directors is authorized to expend that part of the money paid to him or his treatment facility as aforesaid, according to his best judgment and the requirements of the United States government under which the money is received.

SECTION 5. Section 41-19-103, Mississippi Code of 1972, is amended as follows:

41-19-103. The Ellisville State School for persons with mental retardation, established by Chapter 210 Laws of Mississippi 1920, is recognized as now existing and shall hereafter be known under the name of Ellisville State School for the care and treatment of persons with mental retardation. The school shall have the power to receive and hold property, real, personal...
and mixed, as a body corporate. The school shall be under the
direction and control of the State Board of Mental Health.

SECTION 6. The following shall be codified as Section
41-19-108, Mississippi Code of 1972:

41-19-108. With funds provided by the Legislature, by direct
appropriation or authorized bond issue, with federal matching
funds, or with any other available funds, the Bureau of Building,
Grounds and Real Property Management may construct and equip the
necessary residential and service buildings and other facilities
to care for the residents of Ellisville State School. The general
design of the school and all construction plans shall be approved
and recommended by the State Department of Mental Health.

SECTION 7. The following shall be codified as Section
41-19-112, Mississippi Code of 1972:

41-19-112. Ellisville State School shall be administered by
the State Board of Mental Health. Provisions relating to the
admission and care of residents at the school shall be promulgated
by the board.

SECTION 8. The following shall be codified as Section
41-19-114, Mississippi Code of 1972:

41-19-114. Persons admitted to Ellisville State School shall
be assessed support and maintenance costs in accordance with the
provisions of the state reimbursement laws as they apply to other
state institutions.

SECTION 9. The following shall be codified as Section
41-19-116, Mississippi Code of 1972:

41-19-116. Any person who (a) knowingly and unlawfully or
improperly causes a person to be adjudged mentally retarded, (b)
procures the escape of a legally committed resident or knowingly
conceals an escaped legally committed resident of the school, or
(c) unlawfully brings any firearm, deadly weapon or explosive into
the school or its grounds, or passes any thereof to a resident,
employee or officer of the school, is guilty of a misdemeanor and,
upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00), nor more than Two Hundred Dollars ($200.00), imprisonment for not less than six (6) months, or both.

SECTION 10. The following shall be codified as Section 41-19-118, Mississippi Code of 1972:

41-19-118. The Ellisville State School is designated as a state agency for carrying out the purposes of any act of the Congress of the United States, now existing or at any time hereafter enacted, pertaining to mental retardation.

SECTION 11. Section 41-19-121, Mississippi Code of 1972, is amended as follows:

41-19-121. The director of the Ellisville State School may receive free lodging in his institution for himself and his family, but not free board, nor free supplies from the school.

SECTION 12. Section 41-21-35, Mississippi Code of 1972, is amended as follows:

41-21-35. The rule as to the legal settlement of paupers shall apply in cases of mentally ill and mentally retarded persons.

SECTION 13. Section 41-21-63, Mississippi Code of 1972, is amended as follows:

41-21-63. (1) No person, whether a child or adult, shall be committed to a public treatment facility except under the provisions of Sections 41-21-61 through 41-21-107 or 43-21-611 or 43-21-315. However, nothing herein shall be construed to repeal, alter or otherwise affect the provisions of Section 35-5-31 or to affect or prevent the commitment of persons to the Veterans Administration or other agency of the United States under the provisions of and in the manner specified in those sections.

(2) The chancery court, or the chancellor in vacation shall have jurisdiction under Sections 41-21-61 through 41-21-107.

(3) The circuit court shall have jurisdiction over persons ordered evaluated under Sections 99-13-7, 99-13-9 and 99-13-11.
No person with unresolved criminal charges pending shall be civilly committed under Section 41-21-61 through 41-21-107.

SECTION 14. Section 41-21-73, Mississippi Code of 1972, is amended as follows:

41-21-73. (1) The hearing shall be conducted before the chancellor. Within a reasonable period of time before the hearing, notice of same shall be provided the respondent and his attorney which shall include: (a) notice of the date, time and place of the hearing; (b) a clear statement of the purpose of the hearing; (c) the possible consequences or outcome of the hearing; (d) the facts which have been alleged in support of the need for commitment; (e) the names, addresses and telephone numbers of the examiner(s); and (f) other witnesses expected to testify.

(2) The respondent must be present at the hearing unless the chancellor determines that the respondent is unable to attend and makes that determination and the reasons therefor part of the record. At the time of the hearing the respondent shall not be so under the influence or suffering from the effects of drugs, medication or other treatment so as to be hampered in participating in the proceedings. The court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the respondent has received pending the hearing, unless the court determines that such a record would be impractical and documents the reasons for that determination.

(3) The respondent shall have the right to offer evidence, to be confronted with the witnesses against him and to cross-examine them and shall have the privilege against self-incrimination. The rules of evidence applicable in other judicial proceedings in this state shall be followed.

(4) If the court finds by clear and convincing evidence that the proposed patient is a mentally ill or mentally retarded person and, if after careful consideration of reasonable alternative dispositions, including, but not limited to, dismissal of the
proceedings, the court finds that there is no suitable alternative to judicial commitment, the court shall commit the patient for treatment in the least restrictive treatment facility which can meet the patient's treatment needs.

Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen, day treatment in a hospital, night treatment in a hospital or placement in the custody of a friend or relative

For persons committed as mentally ill or mentally retarded, the initial commitment shall not exceed three (3) months.

(5) No person shall be committed to a treatment facility whose primary problems are the physical disabilities associated with old age or birth defects of infancy.

(6) The court shall state the findings of fact and conclusions of law which constitute the basis for the order of commitment. The findings shall include a listing of less restrictive alternatives considered by the court and the reasons that each was found not suitable.

(7) A stenographic transcription shall be recorded by a stenographer or electronic recording device and retained by the court.

SECTION 15. Section 41-21-77, Mississippi Code of 1972, is amended as follows:

41-21-77. If admission is ordered at a treatment facility, the sheriff, his deputy or any other person appointed or authorized by the court shall immediately deliver the respondent to the director of the appropriate institution; however, no person shall be so delivered or admitted until the director of the admitting institution determines that facilities and services are available. Persons who have been ordered committed and are awaiting admission may be given any such...
treatment in the facility by a licensed physician as is indicated
by standard medical practice. The clerk shall provide the
director of the admitting institution with a certified copy of the
court order, a certified copy of the physicians' and any
psychologist's certificate, a certified copy of the pre-evaluation
screening form, a certified copy of the affidavit, and any other
information available concerning the physical and mental condition
of the respondent; however, upon notification from the United
States Veterans Administration or other agency of the United
States government, that facilities are available and the respondent is eligible for care and treatment therein, the court
may enter an order for delivery of the respondent to or retention
by the Veterans Administration or other agency of the United
States government, and, in such cases such chief officer to whom
the respondent is so delivered or by whom he is retained shall,
with respect to the respondent, be vested with the same powers as
the directors of * * * Mississippi State Hospital at
Whitfield, * * * East Mississippi State Hospital at Meridian,
North Mississippi State Hospital at Tupelo, South Mississippi
State Hospital at Purvis, and Central Mississippi Residential
Center at Newton, with respect to retention and discharge of the
respondent.

SECTION 16. Section 41-21-81, Mississippi Code of 1972, is
amended as follows:

41-21-81. If at any time within twenty (20) days after
admission of a patient to a treatment facility the director
determines that the patient is in need of continued
hospitalization, he shall give written notice of his findings,
together with his reasons for such findings, to the respondent,
the patient's attorney, the clerk of the admitting court and the
two (2) nearest relatives or guardian of the patient, if the
addresses of such relatives or guardian are known. The patient,
or any aggrieved relative or friend or guardian shall have sixty
(60) days from the date of such notice to request a hearing on the question of the patient's commitment for further treatment. The patient, or any aggrieved relative or guardian or friend, may request a hearing by filing a written notice of request within such sixty (60) days with the clerk of the county within which the facility is located; * * * however, * * * the patient may request such a hearing in writing to any member of the professional staff, which shall be forwarded to the director and promptly filed with the clerk of the county within which the facility is located, but if the patient is confined at * * * Mississippi State Hospital at Whitfield, the notice of request shall be filed with the Chancery Clerk of the First Judicial District of Hinds County, Mississippi. A copy of the notice of request must be filed by the patient or on his behalf with the director and the chancery clerk of the admitting court. The notice of the need for continued hospitalization shall be explained to the patient by a member of the professional staff and the explanation documented in the clinical record. At the same time the patient shall be advised of his right to request a hearing and of his right to consult a lawyer prior to deciding whether to request the hearing, and the fact that the patient has been so advised shall be documented in the clinical record.

Hearings held under this section shall be in the chancery court of the county where the facility is located; however, if the patient is confined at Mississippi State Hospital at Whitfield, the hearing shall be conducted by the chancery court of the First Judicial District of Hinds County, Mississippi.

SECTION 17. Section 41-21-82, Mississippi Code of 1972, is amended as follows:

41-21-82. Prior to the termination of the initial commitment order, the director of the facility shall cause an impartial evaluation of the patient to be made in order to assess the extent to which the grounds for initial commitment persist, the patient...
continues to be mentally ill, and alternatives to involuntary
commitment are available. If the results of this impartial
evaluation do not support the need for continued commitment, the
patient shall be discharged under Section 41-21-87 without further
hearing being required.

If the impartial evaluation determines that the patient
continues to be mentally ill and needs continued inpatient
treatment, the director shall file a written report with the
committing court setting forth in detail the results of this
evaluation and other facts indicating that the patient satisfies
the statutory requirement for continued commitment and the
findings of the examiner to support this conclusion. The court
shall order that the commitment be continued until the director
and treating professionals determine that the patient may be
discharged under Section 41-21-87. If, after reviewing the
director's report, the court finds that the patient continues to
be mentally ill and that there is no alternative to involuntary
commitment, the commitment may be continued.

Nothing in this section shall preclude the patient, his
counsel or another person acting in his behalf from requesting a
hearing under Sections 41-21-81 or 41-21-99.

SECTION 18. Section 41-21-83, Mississippi Code of 1972, is
amended as follows:

41-21-83. If a hearing is requested as provided in Section
41-21-74, 41-21-81 or 41-21-99, the court shall not make a
determination of the need for continued commitment unless a
hearing is held and the court finds by clear and convincing
evidence that (a) the person continues to be mentally ill or
mentally retarded; and (b) involuntary commitment is necessary for
the protection of the patient or others; and (c) there is no
alternative to involuntary commitment. Hearings held under this
section shall be in the chancery court of the county where the
facility is located; however, if the patient is confined at
Mississippi State Hospital at Whitfield, the hearing shall be conducted by the chancery court of the First Judicial District of Hinds County, Mississippi.

The hearing shall be held within fourteen (14) days after receipt by the court of the request for a hearing. The court may continue the hearing for good cause shown. The clerk shall ascertain whether the patient is represented by counsel, and, if the patient is not represented, shall notify the chancellor who shall appoint counsel for him if the chancellor determines that the patient for any reason does not have the services of an attorney; however, the patient may waive the appointment of counsel subject to the approval of the court. Notice of the time and place of the hearing shall be served at least seventy-two (72) hours before the time of the hearing upon the patient, his attorney, the director, and the person requesting the hearing, if other than the patient, and any witnesses requested by the patient or his attorney, or any witnesses the court may deem necessary or desirable.

The patient must be present at the hearing unless the chancellor determines that the patient is unable to attend and makes that determination and the reasons therefor part of the record.

The court shall put its findings and the reasons supporting its findings in writing and shall have copies delivered to the patient, his attorney, and the director of the treatment facility. An appeal from the final commitment order by either party may be had on the terms prescribed for appeals in civil cases; however, such appeal shall be without supersedeas. The record on appeal shall include the transcript of the commitment hearing.

SECTION 19. Section 41-21-87, Mississippi Code of 1972, is amended as follows:

41-21-87. (1) The director of the treatment facility may discharge any civilly committed patient upon filing his
certificate of discharge with the clerk of the committing court, certifying that the patient, in his judgment, no longer poses a substantial threat of physical harm to himself or others.

(2) The director of the treatment facility may return any patient to the custody of the committing court upon providing seven (7) days' notice and upon filing his certificate of same as follows:

(a) When, in the judgment of the director, the patient may be treated in a less restrictive environment; * * * however, * * * treatment in such less restrictive environment shall be implemented within seven (7) days after notification of the court; or

(b) When, in the judgment of the director, adequate facilities or treatment are not available at the treatment facility.

(3) The director may transfer any civilly committed patient from one (1) facility operated directly by the Department of Mental Health to another as necessary for the welfare of that or other patients. Upon receiving the director's certificate of transfer, the court shall enter an order accordingly.

(4) Within twenty-four (24) hours prior to the release or discharge of any civilly committed patient, other than a temporary pass due to sickness or death in the patient's family, the director shall give or cause to be given notice of such release or discharge to one (1) member of the patient's immediate family, provided the member of the patient's immediate family has signed the consent to release form provided under subsection (5) and has furnished in writing a current address and telephone number, if applicable, to the director for such purpose. The notice to the family member shall include the psychiatric diagnosis of any chronic mental disorder incurred by the civilly committed patient and any medications provided or prescribed to the patient for such conditions.
(5) All providers of service, whether in a community mental health/retardation center, region or state psychiatric hospital, are authorized and directed to request a consent to release information from all patients which will allow that entity to involve the family in the patient's treatment. Such release form shall be developed by the Department of Mental Health and provided to all community mental health/retardation centers and state facilities. All such facilities shall request such a release of information upon the date of admission of the patient to the facility or at least by the time the patient is discharged.

SECTION 20. Section 41-21-109, Mississippi Code of 1972, is amended as follows:

41-21-109. (1) The purpose of this section is to provide modern and efficient rehabilitation facilities for mentally ill or mentally retarded juvenile offenders in Mississippi, who meet commitment criteria under Section 41-21-61 et seq.

(2) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, using funds from bonds, monies appropriated by the Legislature for such purposes, federal matching or other federal funds, federal grants or other available funds from whatever source, shall provide for by construction, lease, lease-purchase or otherwise and equip the following juvenile rehabilitation facilities under the jurisdiction and responsibility of the Mississippi Department of Mental Health: Construction and equipping of two (2) separate facilities each of which could serve up to fifty (50) adolescents, and each of which will be located at sites approved by the Department of Mental Health that would be specifically designed to serve adolescents who have come into contact with the judicial system after committing a crime and who are mentally ill or mentally retarded to the extent that it is not acceptable to house them with non-handicapped inmates and who meet commitment criteria as defined by Section 41-21-61. One (1)
50-bed facility shall house mentally ill adolescent offenders. The other shall house mentally retarded adolescent offenders. These facilities shall be self-contained and offer a secure but therapeutic environment allowing persons to be habilitated apart from persons who are more vulnerable and who have disabilities that are more disabling. The number of persons admitted to these facilities shall not exceed the number of beds authorized under Section 41-21-109 or the number of beds licensed or authorized by the licensure and certification agency, whichever is less.

The handicapped juvenile offender rehabilitation facility location shall be on property owned by the Department of Mental Health, or its successor, at one or more sites selected by the Department of Mental Health on land that is either donated to the state or purchased by the state specifically for the location of such facilities.

SECTION 21. Sections 41-5-55, 41-5-81, 41-17-5, 41-17-7, 41-17-9, 41-17-13, 41-19-105, 41-19-107, 41-19-109, 41-19-115, 41-19-117, 41-19-119, 41-21-43, 41-21-45, 41-45-1, 41-45-3, 41-45-5, 41-45-7, 41-45-9, 41-45-11, 41-45-13, 41-45-15, 41-45-17 and 41-45-19, Mississippi Code of 1972, which prohibit the apprenticing of mental patients, provide certain criminal penalties, provide certain visitation duties for directors of mental hospitals, exempt resident mental hospital officers from jury service, require a drug store to be kept at each mental hospital, require separate accommodations at Whitfield for alcoholic and drug addicts, provide for the plan of Ellisville state school, require Ellisville's director to keep certain records, authorize Ellisville's director to sell certain products of the school, provide discharge procedures for Ellisville patients, provide for habeas corpus proceedings for Ellisville patients, authorize the receipt of gifts for the support of Ellisville, require counties to temporarily provide for the maintenance of indigent mentally retarded persons, prohibit
cohabitation with mentally retarded persons, and authorize the sterilization of mentally ill and mentally retarded patients, are repealed.

SECTION 22. This act shall take effect and be in force from and after July 1, 2001.