

By: Representative Watson

To: Public Health and
Welfare; Judiciary A

HOUSE BILL NO. 1425

1 AN ACT TO AMEND SECTION 41-21-73, MISSISSIPPI CODE OF 1972,
 2 TO PROHIBIT CERTAIN EMPLOYEES AND PERSONS FROM HAVING CUSTODY,
 3 GUARDIANSHIP OR CONSERVATORSHIP OF A RESPONDENT; TO AMEND SECTION
 4 41-21-77, MISSISSIPPI CODE OF 1972, TO PROHIBIT DELIVERY OF A
 5 RESPONDENT TO A TREATMENT FACILITY BY CERTAIN EMPLOYEES AND
 6 PERSONS; TO AMEND SECTIONS 41-21-81 AND 41-21-83, MISSISSIPPI CODE
 7 OF 1972, TO PROVIDE FOR THE LOCATION OF CERTAIN HEARINGS; TO AMEND
 8 SECTION 41-21-87, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 9 CERTAIN DISCHARGE CASES SHALL NOT BE ENJOINED OR RESTRAINED; AND
 10 FOR RELATED PURPOSES.

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

12 SECTION 1. Section 41-21-73, Mississippi Code of 1972, is
 13 amended as follows:

14 41-21-73. (1) The hearing shall be conducted before the
 15 chancellor. Within a reasonable period of time before the
 16 hearing, notice of same shall be provided the respondent and his
 17 attorney which shall include: (a) notice of the date, time and
 18 place of the hearing; (b) a clear statement of the purpose of the
 19 hearing; (c) the possible consequences or outcome of the hearing;
 20 (d) the facts which have been alleged in support of the need for
 21 commitment; (e) the names, addresses and telephone numbers of the
 22 examiner(s); and (f) other witnesses expected to testify.

23 (2) The respondent must be present at said hearing unless
 24 the chancellor determines that the respondent is unable to attend
 25 and makes that determination and the reasons therefor part of the
 26 record. At the time of the hearing the respondent shall not be so
 27 under the influence or suffering from the effects of drugs,
 28 medication or other treatment so as to be hampered in
 29 participating in the proceedings. The court, at the time of the
 30 hearing, shall be presented a record of all drugs, medication or

31 other treatment which the respondent has received pending the
32 hearing, unless the court determines that such a record would be
33 impractical and documents the reasons for that determination.

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

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

47 Alternatives to commitment to inpatient care may include, but
48 shall not be limited to: voluntary or court-ordered outpatient
49 commitment for treatment with specific reference to a treatment
50 regimen, day treatment in a hospital, night treatment in a
51 hospital, placement in the custody of a friend or relative or the
52 provision of home health services.

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

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

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

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

66 (8) Notwithstanding any other provision of law to the
67 contrary, neither the Board of Mental Health or its members, nor
68 the Department of Mental Health and/or its related facilities, nor
69 any employee of the Department of Mental Health, unless related by
70 blood or marriage, shall be assigned or adjudicated custody,
71 guardianship or conservatorship of the respondent.

72 SECTION 2. Section 41-21-77, Mississippi Code of 1972, is
73 amended as follows:

74 41-21-77. If admission is ordered at a treatment facility,
75 the sheriff, his deputy or any other person appointed or
76 authorized by the court shall immediately deliver the respondent
77 to the director of the appropriate facility. Neither the Board of
78 Health or its members, nor the Department of Mental Health and/or
79 its related facilities, nor any employee of the Department of
80 Mental Health shall be appointed, authorized or ordered to deliver
81 the respondent for treatment. Provided, however, that no person
82 shall be so delivered or admitted until the director of the
83 admitting institution determines that facilities and services are
84 available. Persons who have been ordered committed and are
85 awaiting admission may be given any such treatment in the facility
86 by a licensed physician as is indicated by standard medical
87 practice. The clerk shall provide the director of the admitting
88 institution with a certified copy of the court order, a certified
89 copy of the physicians' and any psychologist's certificate, a
90 certified copy of the affidavit, and any other information
91 available concerning the physical and mental condition of the
92 respondent; provided, upon notification from the United States
93 Veterans Administration or other agency of the United States
94 government, that facilities are available and the respondent is
95 eligible for care and treatment therein, the court may enter an

96 order for delivery of the respondent to or retention by the
97 Veterans Administration or other agency of the United States
98 government, and, in such cases such chief officer to whom the
99 respondent is so delivered or by whom he is retained shall, with
100 respect to the respondent, be vested with the same powers as the
101 director of the Mississippi State Hospital at Whitfield, or the
102 East Mississippi State Hospital at Meridian, with respect to
103 retention and discharge of the respondent.

104 SECTION 3. Section 41-21-81, Mississippi Code of 1972, is
105 amended as follows:

106 41-21-81. If at any time within twenty (20) days after
107 admission of a patient to a treatment facility the director
108 determines that the patient is in need of continued
109 hospitalization, he shall give written notice of his findings,
110 together with his reasons for such findings, to the respondent,
111 the patient's attorney, the clerk of the admitting court and the
112 two (2) nearest relatives or guardian of the patient, if the
113 addresses of such relatives or guardian are known. The patient,
114 or any aggrieved relative or friend or guardian shall have sixty
115 (60) days from the date of such notice to request a hearing on the
116 question of the patient's commitment for further treatment. The
117 patient, or any aggrieved relative or guardian or friend, may
118 request a hearing by filing a written notice of request within
119 such sixty (60) days with the clerk of the county within which the
120 facility is located; provided, however, that the patient may
121 request such a hearing in writing to any member of the
122 professional staff, which shall be forwarded to the director and
123 promptly filed with the clerk of the county within which the
124 facility is located and provided further that if the patient is
125 confined at the Mississippi State Hospital, Whitfield,
126 Mississippi, said notice of request shall be filed with the
127 Chancery Clerk of the First Judicial District of Hinds County,
128 Mississippi. A copy of the notice of request must be filed by the

129 patient or on his behalf with the director and the chancery clerk
130 of the admitting court. The notice of the need for continued
131 hospitalization shall be explained to the patient by a member of
132 the professional staff and the explanation documented in the
133 clinical record. At the same time the patient shall be advised of
134 his right to request a hearing and of his right to consult a
135 lawyer prior to deciding whether to request the hearing, and the
136 fact that the patient has been so advised shall be documented in
137 the clinical record.

138 Hearings held pursuant to this section shall be in the
139 chancery court of the county where the facility is located;
140 provided, however further, that if the patient is confined at the
141 Mississippi State Hospital, Whitfield, Mississippi, said hearing
142 shall be conducted by the Chancery Court of the First Judicial
143 District of Hinds County, Mississippi.

144 SECTION 4. Section 41-21-83, Mississippi Code of 1972, is
145 amended as follows:

146 41-21-83. If a hearing is requested as provided in Section
147 41-21-74, 41-21-81 or 41-21-99, the court shall not make a
148 determination of the need for continued commitment unless a
149 hearing is held and the court finds by clear and convincing
150 evidence that (a) the person continues to be mentally ill or
151 mentally retarded; and (b) involuntary commitment is necessary for
152 the protection of the patient or others; and (c) there is no
153 alternative to involuntary commitment. Hearings held under this
154 section shall be in the chancery court of the county where the
155 facility is located; however, if the patient is confined at
156 Mississippi State Hospital at Whitfield, the hearing shall be
157 conducted by the Chancery Court of the First Judicial District of
158 Hinds County, Mississippi.

159 The hearing shall be held within fourteen (14) days after
160 receipt by the court of the request for a hearing. The court may
161 continue the hearing for good cause shown. The clerk shall

162 ascertain whether the patient is represented by counsel, and, if
163 the patient is not represented, shall notify the chancellor who
164 shall appoint counsel for him if the chancellor determines that
165 said patient for any reason does not have the services of an
166 attorney; provided, the patient may waive the appointment of
167 counsel subject to the approval of the court. Notice of the time
168 and place of the hearing shall be served at least seventy-two (72)
169 hours before the time of the hearing upon the patient, his
170 attorney, the director, and the person requesting the hearing, if
171 other than the patient, and any witnesses requested by the patient
172 or his attorney, or any witnesses the court may deem necessary or
173 desirable.

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

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

185 SECTION 5. Section 41-21-87, Mississippi Code of 1972, is
186 amended as follows:

187 41-21-87. (1) The director of the treatment facility may
188 discharge any civilly committed patient upon filing his
189 certificate of discharge with the clerk of the committing court,
190 certifying that the patient, in his judgment, no longer poses a
191 substantial threat of physical harm to himself or others.

192 (2) The director of the treatment facility may return any
193 patient to the custody of the committing court upon providing

194 seven (7) days' notice and upon filing his certificate of same as
195 follows:

196 (a) When, in the judgment of the director, the patient
197 may be treated in a less restrictive environment; provided,
198 however, that treatment in such less restrictive environment shall
199 be implemented within seven (7) days after notification of the
200 court; or

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

204 (3) No committing court shall enjoin or restrain any
205 director from discharging a patient pursuant to this section whose
206 treating professionals have determined that the patient meets one
207 of the criteria for discharge as outlined in subsections (1) or
208 (2).

209 (4) The director may transfer any civilly committed patient
210 from one (1) facility operated directly by the department of
211 mental health to another as necessary for the welfare of that or
212 other patients. Upon receiving the director's certificate of
213 transfer, the court shall enter an order accordingly.

214 (5) Within twenty-four (24) hours prior to the release or
215 discharge of any civilly committed patient, other than a temporary
216 pass due to sickness or death in the patient's family, the
217 director shall give or cause to be given notice of such release or
218 discharge to one (1) member of the patient's immediate family,
219 provided the member of the patient's immediate family has signed
220 the consent to release form provided under subsection (5) and has
221 furnished in writing a current address and telephone number, if
222 applicable, to the director for such purpose. The notice to the
223 family member shall include the psychiatric diagnosis of any
224 chronic mental disorder incurred by the civilly committed patient
225 and any medications provided or prescribed to the patient for such
226 conditions.

227 (6) All providers of service, whether in a community mental
228 health/retardation center, region or state psychiatric hospital,
229 are authorized and directed to request a consent to release
230 information from all patients which will allow that entity to
231 involve the family in the patient's treatment. Such release form
232 shall be developed by the Department of Mental Health and provided
233 to all community mental health/retardation centers and state
234 facilities. All such facilities shall request such a release of
235 information upon the date of admission of the patient to the
236 facility or at least by the time the patient is discharged.

237 SECTION 6. This act shall take effect and be in force from
238 and after July 1, 2001.