

By: Representative Fillingane

To: Judiciary A

HOUSE BILL NO. 739

1 AN ACT TO AMEND SECTION 41-21-65, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE AUTHORITY FOR COMMITMENT PROCEEDINGS TO BE FILED IN
3 THE CHANCERY COURT OF THE COUNTY IN WHICH THE PERSON ALLEGED TO BE
4 IN NEED OF TREATMENT IS FOUND; TO AMEND SECTION 41-21-73,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT WHEN THE COURT ORDERS
6 THE COMMITMENT OF A PATIENT, THE COURT SHALL COMMIT THE PATIENT
7 FOR TREATMENT IN THE LEAST RESTRICTIVE TREATMENT FACILITY THAT CAN
8 MEET THE PATIENT'S TREATMENT NEEDS AND THAT IS LOCATED IN OR AS
9 CLOSE AS POSSIBLE TO THE PATIENT'S COUNTY OF RESIDENCE; AND FOR
10 RELATED PURPOSES.

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

12 **SECTION 1.** Section 41-21-65, Mississippi Code of 1972, is
13 amended as follows:

14 41-21-65. If any person shall be alleged to be in need of
15 treatment, any relative of the person, or any interested person,
16 may make affidavit of that fact and shall file the affidavit with
17 the clerk of the chancery court of the county in which the person
18 alleged to be in need of treatment resides * * *, posting with the
19 clerk a reasonable sum for court costs in the premises if
20 financially able. The affidavit shall be filed in duplicate. The
21 affidavit shall set forth the name and address of the proposed
22 patient's nearest relatives, if known, and the reasons for the
23 affidavit. The affidavit must contain factual descriptions of the
24 proposed patient's recent behavior, including a description of the
25 behavior, where it occurred, and over what period of time it
26 occurred. Each factual allegation must be supported by
27 observations of witnesses named in the affidavit. Affidavits
28 shall be stated in behavioral terms and shall not contain
29 judgmental or conclusory statements.

30 **SECTION 2.** Section 41-21-73, Mississippi Code of 1972, is
31 amended as follows:

32 41-21-73. (1) The hearing shall be conducted before the
33 chancellor. Within a reasonable period of time before the
34 hearing, notice of same shall be provided the respondent and his
35 attorney, which shall include: (a) notice of the date, time and
36 place of the hearing; (b) a clear statement of the purpose of the
37 hearing; (c) the possible consequences or outcome of the hearing;
38 (d) the facts that have been alleged in support of the need for
39 commitment; (e) the names, addresses and telephone numbers of the
40 examiner(s); and (f) other witnesses expected to testify.

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

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

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

64 meet the patient's treatment needs and that is located in or as
65 close as possible to the patient's county of residence.

66 Alternatives to commitment to inpatient care may include, but
67 shall not be limited to: voluntary or court-ordered outpatient
68 commitment for treatment with specific reference to a treatment
69 regimen, day treatment in a hospital, night treatment in a
70 hospital, placement in the custody of a friend or relative or the
71 provision of home health services.

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

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

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

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

85 (8) Notwithstanding any other provision of law to the
86 contrary, neither the Board of Mental Health or its members, nor
87 the Department of Mental Health or its related facilities, nor any
88 employee of the Department of Mental Health or its related
89 facilities, unless related to the respondent by blood or marriage,
90 shall be assigned or adjudicated custody, guardianship, or
91 conservatorship of the respondent.

92 **SECTION 3.** This act shall take effect and be in force from
93 and after July 1, 2004.