

By: Representative Fillingane

To: Judiciary A

HOUSE BILL NO. 739
(As Passed the House)

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 AUTHORIZE THE TRANSFER OF A
5 PERSON FROM THE COUNTY WHERE SUCH PERSON IS FOUND TO THE COUNTY OF
6 THE PERSON'S RESIDENCE; TO AMEND SECTION 41-21-73, MISSISSIPPI
7 CODE OF 1972, TO PROVIDE THAT WHEN THE COURT ORDERS THE COMMITMENT
8 OF A PATIENT, THE COURT SHALL COMMIT THE PATIENT FOR TREATMENT IN
9 THE LEAST RESTRICTIVE TREATMENT FACILITY THAT CAN MEET THE
10 PATIENT'S TREATMENT NEEDS AND THAT IS LOCATED IN OR AS CLOSE AS
11 POSSIBLE TO THE PATIENT'S COUNTY OF RESIDENCE; TO PROVIDE FOR
12 CONFINEMENT OF NONRESIDENTS OF THE STATE; TO AUTHORIZE A COUNTY
13 WHERE A PERSON IS FOUND TO CHARGE CONFINEMENT COSTS TO THE
14 PERSON'S COUNTY OF RESIDENCE; AND FOR RELATED PURPOSES.

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

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

18 41-21-65. If any person shall be alleged to be in need of
19 treatment, any relative of the person, or any interested person,
20 may make affidavit of that fact and shall file the affidavit with
21 the clerk of the chancery court of the county in which the person
22 alleged to be in need of treatment resides * * *, posting with the
23 clerk a reasonable sum for court costs in the premises if
24 financially able. The chancellor is authorized to immediately
25 transfer the cause of a person alleged to be in need of treatment
26 from the county where the person was found to the person's county
27 of residence. The affidavit shall be filed in duplicate. The
28 affidavit shall set forth the name and address of the proposed
29 patient's nearest relatives, if known, and the reasons for the
30 affidavit. The affidavit must contain factual descriptions of the
31 proposed patient's recent behavior, including a description of the
32 behavior, where it occurred, and over what period of time it
33 occurred. Each factual allegation must be supported by

34 observations of witnesses named in the affidavit. Affidavits
35 shall be stated in behavioral terms and shall not contain
36 judgmental or conclusory statements.

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

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

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

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

64 (4) If the court finds by clear and convincing evidence that
65 the proposed patient is a mentally ill or mentally retarded person
66 and, if after careful consideration of reasonable alternative

67 dispositions, including, but not limited to, dismissal of the
68 proceedings, the court finds that there is no suitable alternative
69 to judicial commitment, the court shall commit the patient for
70 treatment in the least restrictive treatment facility that can
71 meet the patient's treatment needs. The county of residence of
72 the person committed shall be charged any fees that the county
73 would be responsible for if that person committed is a resident
74 within the State of Mississippi. Treatment prior to admission to
75 a state operated facility shall be located as close as possible to
76 the patient's county of residence. Admissions to state operated
77 facilities shall be in compliance with the catchment areas
78 established by the Department of Mental Health. A nonresident of
79 the state may be committed for treatment or confinement in the
80 county where such person was found.

81 Alternatives to commitment to inpatient care may include, but
82 shall not be limited to: voluntary or court-ordered outpatient
83 commitment for treatment with specific reference to a treatment
84 regimen, day treatment in a hospital, night treatment in a
85 hospital, placement in the custody of a friend or relative or the
86 provision of home health services.

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

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

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

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

100 (8) Notwithstanding any other provision of law to the
101 contrary, neither the Board of Mental Health or its members, nor
102 the Department of Mental Health or its related facilities, nor any
103 employee of the Department of Mental Health or its related
104 facilities, unless related to the respondent by blood or marriage,
105 shall be assigned or adjudicated custody, guardianship, or
106 conservatorship of the respondent.

107 (9) The county where a person in need of treatment is found
108 is authorized to charge the county of such person's residence for
109 the costs incurred while such person is confined in the county
110 where such person was found.

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