

By: Representative Fillingane

To: Judiciary A

HOUSE BILL NO. 739  
(As Sent to Governor)

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, TREATMENT PRIOR TO ADMISSION TO A STATE-OPERATED  
9 FACILITY SHALL BE LOCATED IN OR AS CLOSE AS POSSIBLE TO THE  
10 PATIENT'S COUNTY OF RESIDENCE AND THE COUNTY SHALL BE RESPONSIBLE  
11 FOR THE COST; TO PROVIDE FOR CONFINEMENT OF NONRESIDENTS OF THE  
12 STATE; TO AUTHORIZE A COUNTY WHERE A PERSON IS FOUND TO CHARGE  
13 CONFINEMENT COSTS TO THE PERSON'S COUNTY OF RESIDENCE; AND FOR  
14 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. Treatment prior to admission  
72 to a state-operated facility shall be located as closely as  
73 possible to the patient's county of residence and the county of  
74 residence shall be responsible for that cost. Admissions to  
75 state-operated facilities shall be in compliance with the  
76 catchment areas established by the Department of Mental Health. A  
77 nonresident of the state may be committed for treatment or  
78 confinement in the county where such person was found.

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

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

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

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

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

98 (8) Notwithstanding any other provision of law to the  
99 contrary, neither the Board of Mental Health or its members, nor

100 the Department of Mental Health or its related facilities, nor any  
101 employee of the Department of Mental Health or its related  
102 facilities, unless related to the respondent by blood or marriage,  
103 shall be assigned or adjudicated custody, guardianship, or  
104 conservatorship of the respondent.

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

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