

By: Representatives Horan, Owen

To: Judiciary B

HOUSE BILL NO. 1088

1 AN ACT TO AMEND SECTION 41-21-63, MISSISSIPPI CODE OF 1972,  
 2 TO AUTHORIZE A CIRCUIT COURT TO RETAIN JURISDICTION AND PROCEED  
 3 WITH CIVIL COMMITMENT IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION  
 4 99-13-9, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE CIRCUIT COURT  
 5 TO PROCEED WITH COMMITMENT PROCEDURES FOR ANY PERSONS WITH AN  
 6 INTELLECTUAL DISABILITY AND HAVE UNRESOLVED FELONY CHARGES; TO  
 7 AMEND SECTIONS 41-21-65, 41-21-67, 41-21-71, 41-21-73 AND  
 8 41-21-83, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE CIRCUIT COURT  
 9 TO PROCEED WITH COMMITMENT PROCEDURES; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 41-21-63, Mississippi Code of 1972, is  
 12 amended as follows:

13 41-21-63. (1) No person, other than persons charged with  
 14 crime, shall be committed to a public treatment facility except  
 15 under the provisions of Sections 41-21-61 through 41-21-107 or  
 16 43-21-611 or 43-21-315. However, nothing herein shall be  
 17 construed to repeal, alter or otherwise affect the provisions of  
 18 Section 35-5-31 or to affect or prevent the commitment of persons  
 19 to the Veterans Administration or other agency of the United  
 20 States under the provisions of and in the manner specified in  
 21 those sections.



22 (2) (a) The chancery court, or the chancellor in vacation,  
23 shall have jurisdiction under Sections 41-21-61 through 41-21-107  
24 except over persons \* \* \* that have been indicted on felony  
25 charges \* \* \*.

26 (b) If a circuit court with jurisdiction over  
27 unresolved felony charges enters an order concluding that \* \* \* a  
28 person is incompetent to stand trial and is not restorable to  
29 competency in the foreseeable future, the \* \* \* circuit court  
30 shall retain jurisdiction and shall proceed with civil commitment  
31 procedures in the same manner as described in Sections 41-21-61  
32 through 41-21-107. The order of the circuit court finding that  
33 the person is incompetent to stand trial and is not restorable to  
34 competency in the foreseeable future shall be in lieu of the  
35 affidavit for commitment provided for in Section 41-21-65. \* \* \*  
36 Additionally, if the finding of the circuit court is based on the  
37 report and/or testimony of a physician or psychologist that has  
38 examined the person, the provisions of Section 41-21-67 for  
39 psychiatric examinations shall not apply.

40 (3) The circuit court shall also have jurisdiction under  
41 Sections 99-13-7, 99-13-9 and 99-13-11.

42 (4) Before the release of a person referred for civil  
43 commitment under this section and committed under Sections  
44 41-21-61 through 41-21-107, the Department of Mental Health must  
45 notify the district attorney of the county where the offense was  
46 committed. The district attorney must notify the crime victim or



47 a family member who has requested notification under Section  
48 99-43-35 and the sheriffs of both the county where the offense was  
49 committed and the county of the committed person's destination.

50 **SECTION 2.** Section 99-13-9, Mississippi Code of 1972, is  
51 amended as follows:

52 99-13-9. When any person is indicted for an offense and  
53 acquitted on the ground of having an intellectual disability, the  
54 jury rendering the verdict shall state in the verdict that ground  
55 and whether the accused constitutes a danger to life or property  
56 and to the peace and safety of the community. If the jury  
57 certifies that the person with an intellectual disability is  
58 dangerous to the peace and safety of the community or to himself  
59 or herself, the circuit court shall \* \* \* proceed with the person  
60 according to the law provided in the case of persons with an  
61 intellectual disability, the person with an intellectual  
62 disability himself being remanded to custody to await the further  
63 action of the \* \* \* circuit court.

64 **SECTION 3.** Section 41-21-65, Mississippi Code of 1972, is  
65 amended as follows:

66 41-21-65. (1) It is the intention of the Legislature that  
67 the filing of an affidavit under this section be a simple,  
68 inexpensive, uniform, and streamlined process for the purpose of  
69 facilitating and expediting the care of individuals in need of  
70 treatment.



71           (2) The Uniform Civil Commitment Affidavit developed by the  
72 Department of Mental Health under this section must be provided by  
73 the clerk of the chancery court to any party or affiant seeking a  
74 civil commitment under this section, and must be utilized in all  
75 counties to commence civil commitment proceedings under this  
76 section. The affidavit must be made available to the public on  
77 the website of the Mississippi Department of Mental Health.

78           (3) The Department of Mental Health, in consultation with  
79 the Mississippi Chancery Clerks Association, the Mississippi  
80 Conference of Chancery Court Judges and the Mississippi  
81 Association of Community Mental Health Centers, must develop a  
82 written guide setting out the steps in the commitment process no  
83 later than January 1, 2020. The guide shall be designated as the  
84 "Uniform Civil Commitment Guide" and must include, but not be  
85 limited to, the following:

86                   (a) Steps in the civil commitment process from  
87 affidavit to commitment, written in easily understandable layman's  
88 terms;

89                   (b) A schedule of fees and assessments that will be  
90 charged to commence a commitment proceeding under this section;

91                   (c) Eligibility requirements and instructions for  
92 filing a pauper's affidavit; and

93                   (d) A statement on the front cover of the guide  
94 advising that persons wishing to pursue a civil commitment under



95 this section are not required to retain an attorney for any  
96 portion of the commitment process.

97 (4) Immediately upon availability, but no later than January  
98 1, 2020, the Uniform Civil Commitment Guide must be provided by  
99 the clerk of the chancery court to any party or affiant seeking a  
100 civil commitment under this section and also must be made  
101 available to the public on the website of the Mississippi  
102 Department of Mental Health.

103 (5) If any person is alleged to be in need of treatment, any  
104 relative of the person, or any interested person, may make  
105 affidavit of that fact and shall file the Uniform Civil Commitment  
106 Affidavit with the clerk of the chancery court of the county in  
107 which the person alleged to be in need of treatment resides, but  
108 the chancellor or duly appointed special master may, in his or her  
109 discretion, hear the matter in the county in which the person may  
110 be found or the circuit judge may hear such matter as provided in  
111 Section 41-21-63. The affidavit shall set forth the name and  
112 address of the proposed patient's nearest relatives and whether  
113 the proposed patient resides or has visitation rights with any  
114 minor children, if known, and the reasons for the affidavit. The  
115 affidavit must contain factual descriptions of the proposed  
116 patient's recent behavior, including a description of the  
117 behavior, where it occurred, and over what period of time it  
118 occurred, if known. Each factual allegation may be supported by  
119 observations of witnesses named in the affidavit. The Department



120 of Mental Health, in consultation with the Mississippi Chancery  
121 Clerks' Association, shall develop a simple, one-page affidavit  
122 form for the use of affiants as provided in this section. The  
123 affidavit also must state whether the affiant has consulted with a  
124 Community Mental Health Center or a physician to determine whether  
125 the alleged acts by the proposed respondent warrant civil  
126 commitment in lieu of other less-restrictive treatment options.  
127 No chancery clerk shall require an affiant to retain an attorney  
128 for the filing of an affidavit under this section.

129 (6) The chancery clerk may charge a total filing fee for all  
130 services equal to the amount set out in Section 25-7-9(o), and the  
131 appropriate state and county assessments as required by law which  
132 include, but are not limited to, assessments for the Judicial  
133 Operation Fund (Section 25-7-9(3)(b)); the Electronic Court System  
134 Fund (Section 25-7-9(3)(a)); the Civil Legal Assistance Fund  
135 (Section 25-7-9(1)(k)); the Court Education and Training Fund  
136 (Section 37-26-3); State Court Constituent's Fund (Section  
137 37-26-9(4)); and reasonable court reporter's fee. Costs  
138 incidental to the court proceedings as set forth in Section  
139 41-21-79 may not be included in the assessments permitted by this  
140 subsection. The total of the fees and assessments permitted by  
141 this subsection may not exceed One Hundred Fifty Dollars  
142 (\$150.00).

143 (7) The prohibition against charging the affiant other fees,  
144 expenses, or costs shall not preclude the imposition of monetary



145 criminal penalties under Section 41-21-107 or any other criminal  
146 statute, or the imposition by the chancellor of monetary penalties  
147 for contempt if the affiant is found to have filed an  
148 intentionally false affidavit or filed the affidavit in bad faith  
149 for a malicious purpose.

150 (8) Nothing in this section shall be construed so as to  
151 conflict with Section 41-21-63.

152 **SECTION 4.** Section 41-21-67, Mississippi Code of 1972, is  
153 amended as follows:

154 41-21-67. (1) Whenever the affidavit provided for in  
155 Section 41-21-65 is filed with the chancery clerk, the clerk, upon  
156 direction of the chancellor of the court, shall issue a writ  
157 directed to the sheriff of the proper county to take into custody  
158 the person alleged to be in need of treatment and to take the  
159 person for pre-evaluation screening and treatment by the  
160 appropriate community mental health center established under  
161 Section 41-19-31. Except as otherwise provided in Section  
162 41-21-63, the community mental health center will be designated as  
163 the first point of entry for pre-evaluation screening and  
164 treatment. If the community mental health center is unavailable,  
165 any reputable licensed physician, psychologist, nurse practitioner  
166 or physician assistant, as allowed in the discretion of the court,  
167 may conduct the pre-evaluation screening and examination as set  
168 forth in Section 41-21-69. The order may provide where the person  
169 shall be held before being taken for pre-evaluation screening and



170 treatment. However, when the affidavit fails to set forth factual  
171 allegations and witnesses sufficient to support the need for  
172 treatment, the chancellor shall refuse to direct issuance of the  
173 writ. Reapplication may be made to the chancellor. If a pauper's  
174 affidavit is filed by an affiant who is a guardian or conservator  
175 of a person in need of treatment, the court shall determine if  
176 either the affiant or the person in need of treatment is a pauper  
177 and if \* \* \* the affiant or the person in need of treatment is  
178 determined to be a pauper, the county of the residence of the  
179 respondent shall bear the costs of commitment, unless funds for  
180 those purposes are made available by the state.

181 In any county in which a Crisis Intervention Team has been  
182 established under the provisions of Sections 41-21-131 through  
183 41-21-143, the clerk, upon the direction of the chancellor, may  
184 require that the person be referred to the Crisis Intervention  
185 Team for appropriate psychiatric or other medical services before  
186 the issuance of the writ.

187 (2) Upon issuance of the writ, the chancellor shall  
188 immediately appoint and summon two (2) reputable, licensed  
189 physicians or one (1) reputable, licensed physician and either one  
190 (1) psychologist, nurse practitioner or physician assistant to  
191 conduct a physical and mental examination of the person at a place  
192 to be designated by the clerk or chancellor and to report their  
193 findings to the clerk or chancellor. However, any nurse  
194 practitioner or physician assistant conducting the examination





195 shall be independent from, and not under the supervision of, the  
196 other physician conducting the examination. A nurse practitioner  
197 or psychiatric nurse practitioner conducting an examination under  
198 this chapter must be functioning within a collaborative or  
199 consultative relationship with a physician as required under  
200 Section 73-15-20(3). In all counties in which there is a county  
201 health officer, the county health officer, if available, may be  
202 one (1) of the physicians so appointed. If a licensed physician  
203 is not available to conduct the physical and mental examination  
204 within forty-eight (48) hours of the issuance of the writ, the  
205 court, in its discretion and upon good cause shown, may permit the  
206 examination to be conducted by the following: (a) two (2) nurse  
207 practitioners, one (1) of whom must be a psychiatric nurse  
208 practitioner; or (b) one (1) psychiatric nurse practitioner and  
209 one (1) psychologist or physician assistant. Neither of the  
210 physicians nor the psychologist, nurse practitioner or physician  
211 assistant selected shall be related to that person in any way, nor  
212 have any direct or indirect interest in the estate of that person  
213 nor shall any full-time staff of residential treatment facilities  
214 operated directly by the State Department of Mental Health serve  
215 as examiner.

216 (3) The clerk shall ascertain whether the respondent is  
217 represented by an attorney, and if it is determined that the  
218 respondent does not have an attorney, the clerk shall immediately  
219 notify the chancellor of that fact. If the chancellor determines



220 that the respondent for any reason does not have the services of  
221 an attorney, the chancellor shall immediately appoint an attorney  
222 for the respondent at the time the examiners are appointed.

223 (4) If the chancellor determines that there is probable  
224 cause to believe that the respondent is mentally ill and that  
225 there is no reasonable alternative to detention, the chancellor  
226 may order that the respondent be retained as an emergency patient  
227 at any licensed medical facility for evaluation by a physician,  
228 nurse practitioner or physician assistant and that a peace officer  
229 transport the respondent to the specified facility. If the  
230 community mental health center serving the county has partnered  
231 with Crisis Intervention Teams under the provisions of Sections  
232 41-21-131 through 41-21-143, the order may specify that the  
233 licensed medical facility be a designated single point of entry  
234 within the county or within an adjacent county served by the  
235 community mental health center. If the person evaluating the  
236 respondent finds that the respondent is mentally ill and in need  
237 of treatment, the chancellor may order that the respondent be  
238 retained at the licensed medical facility or any other available  
239 suitable location as the court may so designate pending an  
240 admission hearing. If necessary, the chancellor may order a peace  
241 officer or other person to transport the respondent to that  
242 facility or suitable location. Any respondent so retained may be  
243 given such treatment as is indicated by standard medical practice.  
244 However, the respondent shall not be held in a hospital operated



245 directly by the State Department of Mental Health, and shall not  
246 be held in jail unless the court finds that there is no reasonable  
247 alternative.

248 (5) (a) Whenever a licensed psychologist, nurse  
249 practitioner or physician assistant who is certified to complete  
250 examinations for the purpose of commitment or a licensed physician  
251 has reason to believe that a person poses an immediate substantial  
252 likelihood of physical harm to himself or others or is gravely  
253 disabled and unable to care for himself by virtue of mental  
254 illness, as defined in Section 41-21-61(e), then the physician,  
255 psychologist, nurse practitioner or physician assistant may hold  
256 the person or may admit the person to and treat the person in a  
257 licensed medical facility, without a civil order or warrant for a  
258 period not to exceed seventy-two (72) hours. However, if the  
259 seventy-two-hour period begins or ends when the chancery clerk's  
260 office is closed, or within three (3) hours of closing, and the  
261 chancery clerk's office will be continuously closed for a time  
262 that exceeds seventy-two (72) hours, then the seventy-two-hour  
263 period is extended until the end of the next business day that the  
264 chancery clerk's office is open. The person may be held and  
265 treated as an emergency patient at any licensed medical facility,  
266 available regional mental health facility, or crisis intervention  
267 center. The physician or psychologist, nurse practitioner or  
268 physician assistant who holds the person shall certify in writing  
269 the reasons for the need for holding.



270 If a person is being held and treated in a licensed medical  
271 facility, and that person decides to continue treatment by  
272 voluntarily signing consent for admission and treatment, the  
273 seventy-two-hour hold may be discontinued without filing an  
274 affidavit for commitment. Any respondent so held may be given  
275 such treatment as indicated by standard medical practice. Persons  
276 acting in good faith in connection with the detention and  
277 reporting of a person believed to be mentally ill shall incur no  
278 liability, civil or criminal, for those acts.

279 (b) Whenever an individual is held for purposes of  
280 receiving treatment as prescribed under paragraph (a) of this  
281 subsection, and it is communicated to the mental health  
282 professional holding the individual that the individual resides or  
283 has visitation rights with a minor child, and if the individual is  
284 considered to be a danger to the minor child, the mental health  
285 professional shall notify the Department of Child Protection  
286 Services prior to discharge if the threat of harm continues to  
287 exist, as is required under Section 43-21-353.

288 This paragraph (b) shall be known and may be cited as the  
289 "Andrew Lloyd Law."

290 **SECTION 5.** Section 41-21-71, Mississippi Code of 1972, is  
291 amended as follows:

292 41-21-71. If, as a result of the examination, the appointed  
293 examiners certify that the person is not in need of treatment, the  
294 chancellor \* \* \*, clerk or circuit judge as applicable shall



295 dismiss the affidavit without the need for a further hearing.

296 \* \* \* Except as otherwise provided in Section 41-21-63, the  
297 chancellor or chancery clerk finds, based upon the appointed  
298 examiners' certificates and any other relevant evidence, that the  
299 respondent is in need of treatment and the certificates are filed  
300 with the chancery clerk within forty-eight (48) hours after the  
301 order for examination, or extension of that time as provided in  
302 Section 41-21-69, the clerk shall immediately set the matter for a  
303 hearing. The hearing shall be set within seven (7) days of the  
304 filing of the certificates unless an extension is requested by the  
305 respondent's attorney. In no event shall the hearing be more than  
306 ten (10) days after the filing of the certificates.

307 **SECTION 6.** Section 41-21-73, Mississippi Code of 1972, is  
308 amended as follows:

309 41-21-73. (1) Except as otherwise provided in Section  
310 41-21-63, the hearing shall be conducted before the chancellor.  
311 However, the hearing may be held at the location where the  
312 respondent is being held. Within a reasonable period of time  
313 before the hearing, notice of same shall be provided the  
314 respondent and his attorney, which shall include: (a) notice of  
315 the date, time and place of the hearing; (b) a clear statement of  
316 the purpose of the hearing; (c) the possible consequences or  
317 outcome of the hearing; (d) the facts that have been alleged in  
318 support of the need for commitment; (e) the names, addresses and



319 telephone numbers of the examiner(s); and (f) other witnesses  
320 expected to testify.

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

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

337 (4) If the court finds by clear and convincing evidence that  
338 the proposed patient is a person with mental illness or a person  
339 with an intellectual disability and, if after careful  
340 consideration of reasonable alternative dispositions, including,  
341 but not limited to, dismissal of the proceedings, the court finds  
342 that there is no suitable alternative to judicial commitment, the  
343 court shall commit the patient for treatment in the least



344 restrictive treatment facility that can meet the patient's  
345 treatment needs. Treatment before admission to a state-operated  
346 facility shall be located as closely as possible to the patient's  
347 county of residence and the county of residence shall be  
348 responsible for that cost. Admissions to state-operated  
349 facilities shall be in compliance with the catchment areas  
350 established by the State Department of Mental Health. A  
351 nonresident of the state may be committed for treatment or  
352 confinement in the county where the person was found.

353 Alternatives to commitment to inpatient care may include, but  
354 shall not be limited to: voluntary or court-ordered outpatient  
355 commitment for treatment with specific reference to a treatment  
356 regimen, day treatment in a hospital, night treatment in a  
357 hospital, placement in the custody of a friend or relative, or the  
358 provision of home health services.

359 For persons committed as having mental illness or having an  
360 intellectual disability, the initial commitment shall not exceed  
361 three (3) months.

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

365 (6) The court shall state the findings of fact and  
366 conclusions of law that constitute the basis for the order of  
367 commitment. The findings shall include a listing of less



368 restrictive alternatives considered by the court and the reasons  
369 that each was found not suitable.

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

373 (8) Notwithstanding any other provision of law to the  
374 contrary, neither the State Board of Mental Health or its members,  
375 nor the State Department of Mental Health or its related  
376 facilities, nor any employee of the State Department of Mental  
377 Health or its related facilities, unless related to the respondent  
378 by blood or marriage, shall be assigned or adjudicated custody,  
379 guardianship, or conservatorship of the respondent.

380 (9) The county where a person in need of treatment is found  
381 is authorized to charge the county of the person's residence for  
382 the costs incurred while the person is confined in the county  
383 where such person was found.

384 **SECTION 7.** Section 41-21-83, Mississippi Code of 1972, is  
385 amended as follows:

386 41-21-83. Except as otherwise provided in Section 41-21-63,  
387 if a hearing is requested as provided in Section 41-21-74,  
388 41-21-81 or 41-21-99, the court shall not make a determination of  
389 the need for continued commitment unless a hearing is held and the  
390 court finds by clear and convincing evidence that (a) the person  
391 continues to have mental illness or have an intellectual  
392 disability; and (b) involuntary commitment is necessary for the





393 protection of the patient or others; and (c) there is no  
394 alternative to involuntary commitment. Hearings held under this  
395 section shall be held in the chancery court of the county where  
396 the facility is located; however, if the patient is confined at  
397 the Mississippi State Hospital at Whitfield, Mississippi, the  
398 hearing shall be conducted by the Chancery Court of the First  
399 Judicial District of Hinds County, Mississippi.

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

415 The patient must be present at the hearing unless the  
416 chancellor determines that the patient is unable to attend and



417 makes that determination and the reasons therefor part of the  
418 record.

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

426         **SECTION 8.** This act shall take effect and be in force from  
427 and after July 1, 2024.

