

By: Representatives Horan, Owen

To: Judiciary B

HOUSE BILL NO. 1088
(As Passed the House)

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 (9) The Department of Mental Health shall provide annual
153 training to chancery and circuit court clerks to inform them about
154 statutory procedures for civil commitments.

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

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



170 may conduct the pre-evaluation screening and examination as set
171 forth in Section 41-21-69. The order may provide where the person
172 shall be held before being taken for pre-evaluation screening and
173 treatment. However, when the affidavit fails to set forth factual
174 allegations and witnesses sufficient to support the need for
175 treatment, the chancellor shall refuse to direct issuance of the
176 writ. Reapplication may be made to the chancellor. If a pauper's
177 affidavit is filed by an affiant who is a guardian or conservator
178 of a person in need of treatment, the court shall determine if
179 either the affiant or the person in need of treatment is a pauper
180 and if * * * the affiant or the person in need of treatment is
181 determined to be a pauper, the county of the residence of the
182 respondent shall bear the costs of commitment, unless funds for
183 those purposes are made available by the state.

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

190 (2) Upon issuance of the writ, the chancellor shall
191 immediately appoint and summon two (2) reputable, licensed
192 physicians or one (1) reputable, licensed physician and either one
193 (1) psychologist, nurse practitioner or physician assistant to
194 conduct a physical and mental examination of the person at a place



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



219 (3) The clerk shall ascertain whether the respondent is
220 represented by an attorney, and if it is determined that the
221 respondent does not have an attorney, the clerk shall immediately
222 notify the chancellor of that fact. If the chancellor determines
223 that the respondent for any reason does not have the services of
224 an attorney, the chancellor shall immediately appoint an attorney
225 for the respondent at the time the examiners are appointed.

226 (4) If the chancellor determines that there is probable
227 cause to believe that the respondent is mentally ill and that
228 there is no reasonable alternative to detention, the chancellor
229 may order that the respondent be retained as an emergency patient
230 at any licensed medical facility for evaluation by a physician,
231 nurse practitioner or physician assistant and that a peace officer
232 transport the respondent to the specified facility. If the
233 community mental health center serving the county has partnered
234 with Crisis Intervention Teams under the provisions of Sections
235 41-21-131 through 41-21-143, the order may specify that the
236 licensed medical facility be a designated single point of entry
237 within the county or within an adjacent county served by the
238 community mental health center. If the person evaluating the
239 respondent finds that the respondent is mentally ill and in need
240 of treatment, the chancellor may order that the respondent be
241 retained at the licensed medical facility or any other available
242 suitable location as the court may so designate pending an
243 admission hearing. If necessary, the chancellor may order a peace



244 officer or other person to transport the respondent to that
245 facility or suitable location. Any respondent so retained may be
246 given such treatment as is indicated by standard medical practice.
247 However, the respondent shall not be held in a hospital operated
248 directly by the State Department of Mental Health, and shall not
249 be held in jail unless the court finds that there is no reasonable
250 alternative.

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



269 available regional mental health facility, or crisis intervention
270 center. The physician or psychologist, nurse practitioner or
271 physician assistant who holds the person shall certify in writing
272 the reasons for the need for holding.

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

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

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



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

295 41-21-71. If, as a result of the examination, the appointed
296 examiners certify that the person is not in need of treatment, the
297 chancellor * * *, clerk or circuit judge as applicable shall
298 dismiss the affidavit without the need for a further hearing.

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

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

312 41-21-73. (1) Except as otherwise provided in Section
313 41-21-63, the hearing shall be conducted before the chancellor.
314 However, the hearing may be held at the location where the
315 respondent is being held. Within a reasonable period of time
316 before the hearing, notice of same shall be provided the
317 respondent and his attorney, which shall include: (a) notice of



318 the date, time and place of the hearing; (b) a clear statement of
319 the purpose of the hearing; (c) the possible consequences or
320 outcome of the hearing; (d) the facts that have been alleged in
321 support of the need for commitment; (e) the names, addresses and
322 telephone numbers of the examiner(s); and (f) other witnesses
323 expected to testify.

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

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

340 (4) If the court finds by clear and convincing evidence that
341 the proposed patient is a person with mental illness or a person
342 with an intellectual disability and, if after careful



343 consideration of reasonable alternative dispositions, including,
344 but not limited to, dismissal of the proceedings, the court finds
345 that there is no suitable alternative to judicial commitment, the
346 court shall commit the patient for treatment in the least
347 restrictive treatment facility that can meet the patient's
348 treatment needs. Treatment before admission to a state-operated
349 facility shall be located as closely as possible to the patient's
350 county of residence and the county of residence shall be
351 responsible for that cost. Admissions to state-operated
352 facilities shall be in compliance with the catchment areas
353 established by the State Department of Mental Health. A
354 nonresident of the state may be committed for treatment or
355 confinement in the county where the person was found.

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

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

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



368 (6) The court shall state the findings of fact and
369 conclusions of law that constitute the basis for the order of
370 commitment. The findings shall include a listing of less
371 restrictive alternatives considered by the court and the reasons
372 that each was found not suitable.

373 (7) A stenographic transcription shall be recorded by a
374 stenographer or electronic recording device and retained by the
375 court.

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

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

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

389 41-21-83. Except as otherwise provided in Section 41-21-63,
390 if a hearing is requested as provided in Section 41-21-74,
391 41-21-81 or 41-21-99, the court shall not make a determination of
392 the need for continued commitment unless a hearing is held and the



393 court finds by clear and convincing evidence that (a) the person
394 continues to have mental illness or have an intellectual
395 disability; and (b) involuntary commitment is necessary for the
396 protection of the patient or others; and (c) there is no
397 alternative to involuntary commitment. Hearings held under this
398 section shall be held in the chancery court of the county where
399 the facility is located; however, if the patient is confined at
400 the Mississippi State Hospital at Whitfield, Mississippi, the
401 hearing shall be conducted by the Chancery Court of the First
402 Judicial District of Hinds County, Mississippi.

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



418 The patient must be present at the hearing unless the
419 chancellor determines that the patient is unable to attend and
420 makes that determination and the reasons therefor part of the
421 record.

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

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

