

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2760

1 AN ACT TO AMEND SECTIONS 41-21-73 AND 41-21-77, MISSISSIPPI
2 CODE OF 1972, TO PROHIBIT ADJUDICATION OF CUSTODY OF THOSE NON
3 COMPOS MENTIS TO CERTAIN PERSONS; TO AMEND SECTIONS 41-21-81,
4 41-21-83 AND 41-21-87, MISSISSIPPI CODE OF 1972, TO REVISE VENUE;
5 AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 41-21-73, Mississippi Code of 1972, is
8 amended as follows:

9 41-21-73. (1) The hearing shall be conducted before the
10 chancellor. Within a reasonable period of time before the
11 hearing, notice of same shall be provided the respondent and his
12 attorney which shall include: (a) notice of the date, time and
13 place of the hearing; (b) a clear statement of the purpose of the
14 hearing; (c) the possible consequences or outcome of the hearing;
15 (d) the facts which have been alleged in support of the need for
16 commitment; (e) the names, addresses and telephone numbers of the
17 examiner(s); and (f) other witnesses expected to testify.

18 (2) The respondent must be present at said hearing unless
19 the chancellor determines that the respondent is unable to attend
20 and makes that determination and the reasons therefor part of the
21 record. At the time of the hearing the respondent shall not be so
22 under the influence or suffering from the effects of drugs,
23 medication or other treatment so as to be hampered in
24 participating in the proceedings. The court, at the time of the
25 hearing, shall be presented a record of all drugs, medication or
26 other treatment which the respondent has received pending the
27 hearing, unless the court determines that such a record would be
28 impractical and documents the reasons for that determination.

29 (3) The respondent shall have the right to offer evidence,
30 to be confronted with the witnesses against him and to
31 cross-examine them and shall have the privilege against
32 self-incrimination. The rules of evidence applicable in other
33 judicial proceedings in this state shall be followed.

34 (4) If the court finds by clear and convincing evidence that
35 the proposed patient is a mentally ill or mentally retarded person
36 and, if after careful consideration of reasonable alternative
37 dispositions, including, but not limited to, dismissal of the
38 proceedings, the court finds that there is no suitable alternative
39 to judicial commitment, the court shall commit the patient for
40 treatment in the least restrictive treatment facility which can
41 meet the patient's treatment needs.

42 Alternatives to commitment to inpatient care may include, but
43 shall not be limited to: voluntary or court-ordered outpatient
44 commitment for treatment with specific reference to a treatment
45 regimen, day treatment in a hospital, night treatment in a
46 hospital, placement in the custody of a friend or relative or the
47 provision of home health services.

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

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

53 (6) The court shall state the findings of fact and
54 conclusions of law which constitute the basis for the order of
55 commitment. The findings shall include a listing of less
56 restrictive alternatives considered by the court and the reasons
57 that each was found not suitable.

58 (7) A stenographic transcription shall be recorded by a
59 stenographer or electronic recording device and retained by the
60 court.

61 (8) Notwithstanding any other provision of law to the
62 contrary, neither the Board of Mental Health or its members, nor
63 the Department of Mental Health or its related facilities, nor any
64 employee of the Department of Mental Health or its related
65 facilities, unless related to the respondent by blood or marriage,
66 shall be assigned or adjudicated custody, guardianship, or
67 conservatorship of the respondent.

68 SECTION 2. Section 41-21-77, Mississippi Code of 1972, is
69 amended as follows:

70 41-21-77. If admission is ordered at a treatment facility,
71 the sheriff, his deputy or any other person appointed or
72 authorized by the court shall immediately deliver the respondent
73 to the director of the appropriate facility. Neither the Board of
74 Mental Health or its members, nor the Department of Mental Health
75 or its related facilities, nor any employee of the Department of
76 Mental Health or its related facilities, shall be appointed,
77 authorized or ordered to deliver the respondent for treatment, and
78 no person shall be so delivered or admitted until the director of
79 the admitting institution determines that facilities and services
80 are available. Persons who have been ordered committed and are
81 awaiting admission may be given any such treatment in the facility
82 by a licensed physician as is indicated by standard medical
83 practice. The clerk shall provide the director of the admitting
84 institution with a certified copy of the court order, a certified
85 copy of the physicians' and any psychologist's certificate, a
86 certified copy of the affidavit, and any other information
87 available concerning the physical and mental condition of the
88 respondent; provided, upon notification from the United States
89 Veterans Administration or other agency of the United States
90 government, that facilities are available and the respondent is
91 eligible for care and treatment therein, the court may enter an
92 order for delivery of the respondent to or retention by the
93 Veterans Administration or other agency of the United States

94 government, and, in such cases such chief officer to whom the
95 respondent is so delivered or by whom he is retained shall, with
96 respect to the respondent, be vested with the same powers as the
97 director of the Mississippi State Hospital at Whitfield, or the
98 East Mississippi State Hospital at Meridian, with respect to
99 retention and discharge of the respondent.

100 SECTION 3. Section 41-21-81, Mississippi Code of 1972, is
101 amended as follows:

102 41-21-81. If at any time within twenty (20) days after
103 admission of a patient to a treatment facility the director
104 determines that the patient is in need of continued
105 hospitalization, he shall give written notice of his findings,
106 together with his reasons for such findings, to the respondent,
107 the patient's attorney, the clerk of the admitting court and the
108 two (2) nearest relatives or guardian of the patient, if the
109 addresses of such relatives or guardian are known. The patient,
110 or any aggrieved relative or friend or guardian shall have sixty
111 (60) days from the date of such notice to request a hearing on the
112 question of the patient's commitment for further treatment. The
113 patient, or any aggrieved relative or guardian or friend, may
114 request a hearing by filing a written notice of request within
115 such sixty (60) days with the clerk of the county within which the
116 facility is located; provided, however, that the patient may
117 request such a hearing in writing to any member of the
118 professional staff, which shall be forwarded to the director and
119 promptly filed with the clerk of the county within which the
120 facility is located and provided further that if the patient is
121 confined at the Mississippi State Hospital, Whitfield,
122 Mississippi, said notice of request shall be filed with the
123 Chancery Clerk of the First Judicial District of Hinds County,
124 Mississippi. A copy of the notice of request must be filed by the
125 patient or on his behalf with the director and the chancery clerk
126 of the admitting court. The notice of the need for continued

127 hospitalization shall be explained to the patient by a member of
128 the professional staff and the explanation documented in the
129 clinical record. At the same time the patient shall be advised of
130 his right to request a hearing and of his right to consult a
131 lawyer prior to deciding whether to request the hearing, and the
132 fact that the patient has been so advised shall be documented in
133 the clinical record. Hearings held pursuant to this section shall
134 be held in the chancery court of the county where the facility is
135 located; provided, however, that if the patient is confined at the
136 Mississippi State Hospital at Whitfield, Mississippi, the hearing
137 shall be conducted by the Chancery Court of the First Judicial
138 District of Hinds County, Mississippi.

139 SECTION 4. Section 41-21-83, Mississippi Code of 1972, is
140 amended as follows:

141 41-21-83. If a hearing is requested as provided in Section
142 41-21-74, 41-21-81 or 41-21-99, the court shall not make a
143 determination of the need for continued commitment unless a
144 hearing is held and the court finds by clear and convincing
145 evidence that (a) the person continues to be mentally ill or
146 mentally retarded; and (b) involuntary commitment is necessary for
147 the protection of the patient or others; and (c) there is no
148 alternative to involuntary commitment. Hearings held pursuant to
149 this section shall be held in the chancery court of the county
150 where the facility is located; provided, however, that if the
151 patient is confined at the Mississippi State Hospital at
152 Whitfield, Mississippi, the hearing shall be conducted by the
153 Chancery Court of the First Judicial District of Hinds County,
154 Mississippi.

155 The hearing shall be held within fourteen (14) days after
156 receipt by the court of the request for a hearing. The court may
157 continue the hearing for good cause shown. The clerk shall
158 ascertain whether the patient is represented by counsel, and, if
159 the patient is not represented, shall notify the chancellor who

160 shall appoint counsel for him if the chancellor determines that
161 said patient for any reason does not have the services of an
162 attorney; provided, the patient may waive the appointment of
163 counsel subject to the approval of the court. Notice of the time
164 and place of the hearing shall be served at least seventy-two (72)
165 hours before the time of the hearing upon the patient, his
166 attorney, the director, and the person requesting the hearing, if
167 other than the patient, and any witnesses requested by the patient
168 or his attorney, or any witnesses the court may deem necessary or
169 desirable.

170 The patient must be present at the hearing unless the
171 chancellor determines that the patient is unable to attend and
172 makes that determination and the reasons therefor part of the
173 record.

174 The court shall put its findings and the reasons supporting
175 its findings in writing and shall have copies delivered to the
176 patient, his attorney, and the director of the treatment facility.
177 An appeal from the final commitment order by either party may be
178 had on the terms prescribed for appeals in civil cases; however,
179 such appeal shall be without supersedeas. The record on appeal
180 shall include the transcript of the commitment hearing.

181 SECTION 5. Section 41-21-87, Mississippi Code of 1972, is
182 amended as follows:

183 41-21-87. (1) The director of the treatment facility may
184 discharge any civilly committed patient upon filing his
185 certificate of discharge with the clerk of the committing court,
186 certifying that the patient, in his judgment, no longer poses a
187 substantial threat of physical harm to himself or others.

188 (2) The director of the treatment facility may return any
189 patient to the custody of the committing court upon providing
190 seven (7) days' notice and upon filing his certificate of same as
191 follows:

192 (a) When, in the judgment of the director, the patient
193 may be treated in a less restrictive environment; provided,
194 however, that treatment in such less restrictive environment shall
195 be implemented within seven (7) days after notification of the
196 court; or

197 (b) When, in the judgment of the director, adequate
198 facilities or treatment are not available at the treatment
199 facility.

200 (3) No committing court shall enjoin or restrain any
201 director from discharging a patient pursuant to this section whose
202 treating professionals have determined that the patient meets one
203 of the criteria for discharge as outlined in subsection (1) or (2)
204 of this section. The director may transfer any civilly committed
205 patient from one facility operated directly by the department of
206 mental health to another as necessary for the welfare of that or
207 other patients. Upon receiving the director's certificate of
208 transfer, the court shall enter an order accordingly.

209 (4) Within twenty-four (24) hours prior to the release or
210 discharge of any civilly committed patient, other than a temporary
211 pass due to sickness or death in the patient's family, the
212 director shall give or cause to be given notice of such release or
213 discharge to one (1) member of the patient's immediate family,
214 provided the member of the patient's immediate family has signed
215 the consent to release form provided under subsection (5) and has
216 furnished in writing a current address and telephone number, if
217 applicable, to the director for such purpose. The notice to the
218 family member shall include the psychiatric diagnosis of any
219 chronic mental disorder incurred by the civilly committed patient
220 and any medications provided or prescribed to the patient for such
221 conditions.

222 (5) All providers of service, whether in a community mental
223 health/retardation center, region or state psychiatric hospital,
224 are authorized and directed to request a consent to release

225 information from all patients which will allow that entity to
226 involve the family in the patient's treatment. Such release form
227 shall be developed by the Department of Mental Health and provided
228 to all community mental health/retardation centers and state
229 facilities. All such facilities shall request such a release of
230 information upon the date of admission of the patient to the
231 facility or at least by the time the patient is discharged.

232 SECTION 6. This act shall take effect and be in force from
233 and after July 1, 2001.