

By: Representative Felsher

To: Judiciary A

HOUSE BILL NO. 1095

1 AN ACT TO AMEND SECTION 41-21-67, MISSISSIPPI CODE OF 1972,
 2 TO LIMIT THE FINANCIAL RESPONSIBILITY OF THE BOARD OF SUPERVISORS
 3 FOR PAYMENT OF COSTS OF TREATMENT NEEDED BY CERTAIN MENTALLY ILL
 4 COUNTY RESIDENTS UNDER ORDER OF COMMITMENT WHO ARE INDIGENT TO AN
 5 AGREED UPON FEE SCHEDULE WITH THE TREATMENT FACILITY OR, IN THE
 6 ABSENCE OF SUCH A FEE SCHEDULE, TO THE MEDICAID REIMBURSEMENT
 7 RATE; TO PROVIDE THAT THE STATUS OF THE RESPONDENT IN A COMMITMENT
 8 PROCEEDING AS AN INDIGENT SHALL NOT BE SUFFICIENT GROUNDS TO BE
 9 HELD IN JAIL; TO AMEND SECTION 41-21-73, MISSISSIPPI CODE OF 1972,
 10 TO CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 41-21-67, Mississippi Code of 1972, is
 13 amended as follows:

14 41-21-67. (1) Whenever the affidavit provided for in
 15 Section 41-21-65 is filed with the chancery clerk, the clerk, upon
 16 direction of the chancellor of the court, shall issue a writ
 17 directed to the sheriff of the proper county to take into custody
 18 the person alleged to be in need of treatment and to take the
 19 person for pre-evaluation screening and treatment by the
 20 appropriate community mental health center established under
 21 Section 41-19-31. The community mental health center will be
 22 designated as the first point of entry for pre-evaluation



23 screening and treatment. If the community mental health center is
24 unavailable, any reputable licensed physician, psychologist, nurse
25 practitioner or physician assistant, as allowed in the discretion
26 of the court, may conduct the pre-evaluation screening and
27 examination as set forth in Section 41-21-69. The * * * writ may
28 provide where the person shall be held * * *for
29 pre-evaluation * * * and examination. However, when the affidavit
30 fails to set forth factual allegations and witnesses sufficient to
31 support the need for treatment, the chancellor shall refuse to
32 direct issuance of the writ. Reapplication may be made to the
33 chancellor. If a pauper's affidavit is filed by an affiant who is
34 a guardian or conservator of a person in need of treatment, the
35 court shall determine if either the affiant or the person in need
36 of treatment is a pauper and if * * * the affiant or the person in
37 need of treatment is determined to be a pauper, the county of the
38 residence of the respondent shall bear the costs of the commitment
39 proceedings in court, unless funds for those purposes are made
40 available by the state.

41 In any county in which a Crisis Intervention Team has been
42 established under the provisions of Sections 41-21-131 through
43 41-21-143, the clerk, upon the direction of the chancellor, may
44 require that the person be referred to the Crisis Intervention
45 Team for appropriate psychiatric or other medical services before
46 the issuance of the writ.



47 (2) Upon issuance of the writ, the chancellor shall
48 immediately appoint and summon two (2) reputable, licensed
49 physicians or one (1) reputable, licensed physician and either one
50 (1) psychologist, nurse practitioner or physician assistant to
51 conduct a physical and mental examination of the person at a place
52 to be designated by the clerk or chancellor and to report their
53 findings to the clerk or chancellor. However, any nurse
54 practitioner or physician assistant conducting the examination
55 shall be independent from, and not under the supervision of, the
56 other physician conducting the examination. A nurse practitioner
57 or psychiatric nurse practitioner conducting an examination under
58 this chapter must be functioning within a collaborative or
59 consultative relationship with a physician as required under
60 Section 73-15-20(3). In all counties in which there is a county
61 health officer, the county health officer, if available, may be
62 one (1) of the physicians so appointed. If a licensed physician
63 is not available to conduct the physical and mental examination
64 within forty-eight (48) hours of the issuance of the writ, the
65 court, in its discretion and upon good cause shown, may permit the
66 examination to be conducted by the following: (a) two (2) nurse
67 practitioners, one (1) of whom must be a psychiatric nurse
68 practitioner; or (b) one (1) psychiatric nurse practitioner and
69 one (1) psychologist or physician assistant. Neither of the
70 physicians nor the psychologist, nurse practitioner or physician
71 assistant selected shall be related to that person in any way, nor



72 have any direct or indirect interest in the estate of that person
73 nor shall any full-time staff of residential treatment facilities
74 operated directly by the State Department of Mental Health serve
75 as examiner.

76 (3) The clerk shall ascertain whether the respondent is
77 represented by an attorney, and if it is determined that the
78 respondent does not have an attorney, the clerk shall immediately
79 notify the chancellor of that fact. If the chancellor determines
80 that the respondent for any reason does not have the services of
81 an attorney, the chancellor shall immediately appoint an attorney
82 for the respondent at the time the examiners are appointed.

83 (4) (a) If the chancellor determines that there is probable
84 cause to believe that the respondent is mentally ill and that
85 there is no reasonable alternative to detention, the chancellor
86 may order that the respondent be retained as an emergency patient
87 at any licensed medical facility for evaluation by a physician,
88 nurse practitioner or physician assistant and that a peace officer
89 transport the respondent to the specified facility. If the
90 community mental health center serving the county has partnered
91 with Crisis Intervention Teams under the provisions of Sections
92 41-21-131 through 41-21-143, the order may specify that the
93 licensed medical facility be a designated single point of entry
94 within the county or within an adjacent county served by the
95 community mental health center. If the person evaluating the
96 respondent finds that the respondent is mentally ill and in need



97 of treatment, the chancellor may order that the respondent be
98 retained at the licensed medical facility or any other available
99 suitable location as the court may so designate pending an
100 admission hearing. If necessary, the chancellor may order a peace
101 officer or other person to transport the respondent to that
102 facility or suitable location. Any respondent so retained may be
103 given such treatment as is indicated by standard medical practice.
104 However, the respondent shall not be held in a hospital operated
105 directly by the State Department of Mental Health, and shall not
106 be held in jail unless the court finds that there is no reasonable
107 alternative. The respondent's status as an indigent or pauper
108 shall not constitute sufficient grounds for the court to find that
109 there is no reasonable alternative for the respondent to be held
110 in jail.

111 (b) (i) For indigent patients with no payor source or
112 without payor coverage before a chancellor's determination
113 concerning psychiatric treatment, the respondent's county of
114 residence may bear the costs of prehearing placement or detention
115 provided by a licensed medical facility pursuant to an agreed upon
116 fee schedule with the licensed medical facility. In the absence
117 of an agreed upon fee schedule, the respondent's county of
118 residence may pay for the cost of placement or detention in an
119 amount no greater than the applicable reimbursement rate based on
120 the Mississippi Medicaid reimbursement rate or schedule, and the



121 county shall not be liable for any costs that exceed the
122 Mississippi Medicaid reimbursement rate or schedule.

123 (ii) For indigent respondents with no payor source
124 or without payor coverage where the chancellor has determined that
125 the respondent is in need of psychiatric treatment and no State
126 Department of Mental Health beds or community mental health center
127 crisis stabilization beds are available, the respondent's county
128 of residence shall bear the costs of treatment at an amount
129 negotiated with the treatment facilities, but the county shall not
130 be liable for any costs that exceed the Mississippi Medicaid
131 reimbursement rate or schedule.

132 (5) (a) Whenever a licensed psychologist, nurse
133 practitioner or physician assistant who is certified to complete
134 examinations for the purpose of commitment or a licensed physician
135 has reason to believe that a person poses an immediate substantial
136 likelihood of physical harm to himself or others or is gravely
137 disabled and unable to care for himself by virtue of mental
138 illness, as defined in Section 41-21-61(e), then the physician,
139 psychologist, nurse practitioner or physician assistant may hold
140 the person or may admit the person to and treat the person in a
141 licensed medical facility, without a civil order or warrant for a
142 period not to exceed seventy-two (72) hours. However, if the
143 seventy-two-hour period begins or ends when the chancery clerk's
144 office is closed, or within three (3) hours of closing, and the
145 chancery clerk's office will be continuously closed for a time



146 that exceeds seventy-two (72) hours, then the seventy-two-hour
147 period is extended until the end of the next business day that the
148 chancery clerk's office is open. The person may be held and
149 treated as an emergency patient at any licensed medical facility,
150 available regional mental health facility, or crisis intervention
151 center. The physician or psychologist, nurse practitioner or
152 physician assistant who holds the person shall certify in writing
153 the reasons for the need for holding.

154 If a person is being held and treated in a licensed medical
155 facility, and that person decides to continue treatment by
156 voluntarily signing consent for admission and treatment, the
157 seventy-two-hour hold may be discontinued without filing an
158 affidavit for commitment. Any respondent so held may be given
159 such treatment as indicated by standard medical practice. Persons
160 acting in good faith in connection with the detention and
161 reporting of a person believed to be mentally ill shall incur no
162 liability, civil or criminal, for those acts.

163 (b) Whenever an individual is held for purposes of
164 receiving treatment as prescribed under paragraph (a) of this
165 subsection, and it is communicated to the mental health
166 professional holding the individual that the individual resides or
167 has visitation rights with a minor child, and if the individual is
168 considered to be a danger to the minor child, the mental health
169 professional shall notify the Department of Child Protection



170 Services prior to discharge if the threat of harm continues to
171 exist, as is required under Section 43-21-353.

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

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

176 41-21-73. (1) The hearing shall be conducted before the
177 chancellor. However, the hearing may be held at the location
178 where the respondent is being held. Within a reasonable period of
179 time before the hearing, notice of same shall be provided the
180 respondent and his attorney, which shall include: (a) notice of
181 the date, time and place of the hearing; (b) a clear statement of
182 the purpose of the hearing; (c) the possible consequences or
183 outcome of the hearing; (d) the facts that have been alleged in
184 support of the need for commitment; (e) the names, addresses and
185 telephone numbers of the examiner(s); and (f) other witnesses
186 expected to testify.

187 (2) The respondent must be present at the hearing unless the
188 chancellor determines that the respondent is unable to attend and
189 makes that determination and the reasons therefor part of the
190 record. At the time of the hearing, the respondent shall not be
191 so under the influence or suffering from the effects of drugs,
192 medication or other treatment so as to be hampered in
193 participating in the proceedings. The court, at the time of the
194 hearing, shall be presented a record of all drugs, medication or



195 other treatment that the respondent has received pending the
196 hearing, unless the court determines that such a record would be
197 impractical and documents the reasons for that determination.

198 (3) The respondent shall have the right to offer evidence,
199 to be confronted with the witnesses against him and to
200 cross-examine them and shall have the privilege against
201 self-incrimination. The rules of evidence applicable in other
202 judicial proceedings in this state shall be followed.

203 (4) If the court finds by clear and convincing evidence that
204 the proposed patient is a person with mental illness or a person
205 with an intellectual disability and, if after careful
206 consideration of reasonable alternative dispositions, including,
207 but not limited to, dismissal of the proceedings, the court finds
208 that there is no suitable alternative to judicial commitment, the
209 court shall commit the patient for treatment in the least
210 restrictive treatment facility that can meet the patient's
211 treatment needs. Treatment before admission to a state-operated
212 facility shall be located as closely as possible to the patient's
213 county of residence and the county of residence shall be
214 responsible for that cost. Admissions to state-operated
215 facilities shall be in compliance with the catchment areas
216 established by the State Department of Mental Health. A
217 nonresident of the state may be committed for treatment or
218 confinement in the county where the person was found.



219 Alternatives to commitment to inpatient care may include, but
220 shall not be limited to: voluntary or court-ordered outpatient
221 commitment for treatment with specific reference to a treatment
222 regimen, day treatment in a hospital, night treatment in a
223 hospital, placement in the custody of a friend or relative, or the
224 provision of home health services.

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

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

231 (6) The court shall state the findings of fact and
232 conclusions of law that constitute the basis for the order of
233 commitment. The findings shall include a listing of less
234 restrictive alternatives considered by the court and the reasons
235 that each was found not suitable.

236 (7) A stenographic transcription shall be recorded by a
237 stenographer or electronic recording device and retained by the
238 court.

239 (8) Notwithstanding any other provision of law to the
240 contrary, neither the State Board of Mental Health or its members,
241 nor the State Department of Mental Health or its related
242 facilities, nor any employee of the State Department of Mental
243 Health or its related facilities, unless related to the respondent



244 by blood or marriage, shall be assigned or adjudicated custody,
245 guardianship, or conservatorship of the respondent.

246 (9) The county where a person in need of treatment is found
247 is authorized to charge the county of the person's residence for
248 the costs incurred while the person is confined in the county
249 where such person was found subject to the provisions of Section
250 41-21-67 for medical treatment.

251 **SECTION 3.** This act shall take effect and be in force from
252 and after July 1, 2023.

