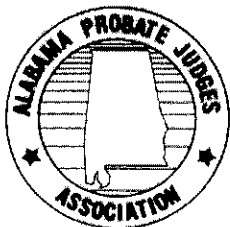


# **Commitment Proceedings**

## **Part II**

**Honorable Alice Martin**

*Probate Judge  
Calhoun County*



Probate Judge Conference  
March 3-6, 2019  
Prattville, Alabama



Section 22-52-1.1**Definitions.**

When used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) **MENTAL ILLNESS.** A psychiatric disorder of thought and/or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. Mental illness, as used herein, specifically excludes the primary diagnosis of epilepsy, mental retardation, substance abuse, including alcoholism, or a developmental disability.

(2) **STATE MENTAL HEALTH FACILITY.** A mental health facility operated by the Alabama State Department of Mental Health.

(3) **DESIGNATED MENTAL HEALTH FACILITY.** A mental health facility other than a state mental health facility designated by the State Department of Mental Health to receive persons for evaluation, examination, admission, detention or treatment pursuant to the provisions of this article.

(4) **COMMISSIONER.** The Commissioner of the Alabama State Department of Mental Health.

(5) **OUTPATIENT TREATMENT.** Treatment being provided to a person in a nonresidential setting and who is not admitted for 24-hour-a-day care.

(6) **INPATIENT TREATMENT.** Treatment being provided to a person at a state mental health facility or a designated mental health facility which has been specifically designated by the department for inpatient treatment.

(7) **RESPONDENT.** A person for which a petition for commitment to mental health services has been filed.

(8) **DEPARTMENT.** The Alabama State Department of Mental Health.

(9) **INVOLUNTARY COMMITMENT.** Court ordered mental health services in either an outpatient or inpatient setting.

*(Acts 1991, No. 91-440, p. 783, §2.)*

Section 22-52-2

**Review of petition by probate judge; examination of petitioner; dismissal of petition without further proceedings.**

(a) When any petition is filed seeking the involuntary commitment of a respondent, the probate judge shall immediately review the petition and shall require the petitioner to be sworn and answer under oath questions regarding the petition and the respondent.

(b) If it appears from the face of the petition or from the testimony of the petitioner that the petition is totally without merit, the probate judge shall order the petition dismissed without further proceedings.

*(Acts 1975, No. 1226, p. 2562, §2; Acts 1977, No. 670, p. 1143; Acts 1991, No. 91-440, p. 783, §4.)*

**Section 22-52-4**

**Appointment of attorney and guardian ad litem for person sought to be committed; statements, etc., of person in presence of judge, prior to obtaining services of attorney, not to be considered by judge.**

(a) At the time when any petition has been filed seeking the involuntary commitment of a respondent, the probate judge shall appoint a guardian ad litem to represent and to protect the rights of the respondent, and shall determine if the respondent has the funds with which to employ an attorney to represent the respondent and if the respondent has the mental ability to secure the services of an attorney. If the respondent does not have funds with which to employ an attorney or does not have the mental ability to secure the services of an attorney, the probate judge shall appoint an attorney, who may be the same person as the guardian ad litem, to represent the respondent. The probate judge shall immediately inform the attorney so appointed of his appointment.

(b) No statement made or act done by the respondent in the presence of the probate judge prior to the respondent obtaining the services of an attorney, by appointment or otherwise, shall be considered by the probate judge in determining whether the respondent should be committed.

*(Acts 1975, No. 1226, p. 2562, §4; Acts 1977, No. 670, p. 1143; Acts 1991, No. 91-440, p. 783, §6.)*

Section 22-52-6

**Notification of Department of Mental Health and Mental Retardation or other public facility of petition, date of final hearing, etc.**

(a) When a petition is filed seeking the involuntary commitment of a respondent, the probate judge with whom the petition is filed shall notify the department or designated mental health facility of the pendency of the petition in the manner and with such other information as designated by the department.

(b) The probate judge shall notify the department or a designated mental health facility of the date of the final hearing on the petition to commit.

*(Acts 1975, No. 1226, p. 2562, §7; Acts 1977, No. 670, p. 1143; Acts 1991, No. 91-440, p. 783, §7.)*

Section 22-52-8**Holding of probable cause and final hearings generally.**

(a) When any respondent sought to be committed has any limitation imposed upon his liberty or any temporary treatment imposed upon him by the probate judge pending final hearings on such petition, the probate judge, at the time such limitation or treatment is imposed, shall set a probable cause hearing within seven days of the date of such imposition. If, at such probable cause hearing, the probate judge finds that probable cause exists that the respondent should be detained temporarily and finds that temporary treatment would be in the best interest of the respondent, the probate judge shall enter an order so stating and setting the date, time and place of a final hearing on the merits of such petition.

(b) The final hearing shall be held within 30 days of the date that the respondent was served with a copy of the petition seeking to commit the respondent.

(c) If temporary treatment or admittance to a hospital is ordered for any respondent, such treatment shall be supervised by a licensed medical doctor or qualified mental health professional who has willingly consented to treat the respondent, and admission to a hospital shall be ordered by a licensed medical doctor who has willingly consented to admit and treat the respondent.

*(Acts 1975, No. 1226, p. 2562, §6; Acts 1977, No. 670, p. 1143; Acts 1991, No. 91-440, p. 783, §9.)*

**Section 22-52-10.1**

**Order entered where judge finds criteria met; dismissal of petition.**

(a) If at the final hearing on a petition seeking to involuntarily commit a respondent, the probate judge finds, based on clear and convincing evidence, that the respondent meets the criteria for involuntary commitment, an order shall be entered for:

- (1) Outpatient treatment; or
- (2) Inpatient treatment.

The least restrictive alternative necessary and available for the treatment of the respondent's mental illness shall be ordered.

(b) The petition for involuntary commitment shall be dismissed if the criteria for commitment is not proved.

*(Acts 1991, No. 91-440, p. 783, §11.)*

Section 22-52-10.3**Order for outpatient treatment.**

- (a) At the final hearing on a petition for commitment seeking the involuntary commitment of a respondent, the probate court may order that the respondent participate in outpatient treatment provided by a designated mental health facility.
- (b) The probate court shall not order outpatient treatment unless the designated mental health facility has consented to treat the respondent on an outpatient basis under the terms and conditions set forth by the probate court.
- (c) If outpatient treatment is ordered, the order of the probate court may state the specific conditions to be followed and shall include the general condition that the respondent follow the directives and treatment plan established by the designated mental health facility.
- (d) Pursuant to this section, an order for outpatient treatment shall not exceed 150 days.
- (e) The designated mental health facility shall immediately report to the probate court any material noncompliance with the outpatient treatment order. The report shall set forth the need for revocation of the outpatient treatment order and shall be verified and filed with the probate court.
- (f) The probate court shall set a hearing to consider the motion for revocation of the outpatient treatment order. The hearing procedures and safeguards set forth in this article, applicable to a petition for involuntary commitment, shall be followed. If at the hearing, the probate court finds, based upon clear and convincing evidence, that the conditions of outpatient treatment have not been met, and that the respondent meets inpatient criteria, the probate court may enter an order for commitment to inpatient treatment.
- (g) No county shall be financially responsible for the cost of provision of outpatient mental health services ordered pursuant to this article. The cost for the provision of outpatient services are not allowable costs under Section 22-52-14.

*(Acts 1991, No. 91-440, p. 783, §13.)*



Section 22-52-10.5

**Facilities for inpatient treatment; length of treatment; cost.**

(a) At the final hearing on a petition for involuntary commitment or a hearing for the revocation of a prior order for commitment to outpatient treatment, the probate court may order that the respondent be committed to: (i) the department for inpatient treatment at a state mental health facility, or (ii) the department for inpatient treatment at a designated mental health facility.

(b) Pursuant to this section, an order for inpatient treatment shall not exceed 150 days.

(c) No county shall be required to pay the cost of inpatient treatment provided at a state mental health facility or inpatient treatment authorized by the department at a designated mental health facility.

*(Acts 1991, No. 91-440, p. 783, §15.)*

(k) The hearing shall be conducted in accordance with Section 22-52-9. A copy of the order shall be forwarded to the probate court having original jurisdiction. The burden of proof shall be to prove, based on clear and convincing evidence, the criteria as prescribed in this article.

(l) The department shall provide the advocate in support of the petition and the expert witness at no cost to the State General Fund; and all other costs allowable by law shall be paid as prescribed in Section 22-52-14.

(m) Any order renewing an order for commitment to inpatient treatment shall not exceed a period of one year.

*(Acts 1991, No. 91-440, p. 783, §16.)*

Section 22-52-10.8**Order for involuntary commitment for inpatient treatment to be entered into Criminal Justice Information System and NICS; redaction of order upon removal of limitation to purchase firearm.**

(a) When the judge of probate of a county enters an order for the involuntary commitment of a person pursuant to Section 22-52-10.1, and the order is for a final commitment for inpatient treatment to the Department of Mental Health or a Veterans' Administration hospital, or as otherwise provided by law, the judge shall immediately forward the order to the Alabama Law Enforcement Agency and the order shall be entered in its information systems. The order shall be forwarded to the Alabama Law Enforcement Agency in the manner as the Alabama Justice Information Center Commission shall provide. The Alabama Law Enforcement Agency shall as soon as possible thereafter enter the order in the National Instant Criminal Background Check System (NICS) and the information shall be entered into the NICS Index Denied Persons File. The records maintained pursuant to this section shall only be used for purposes of determining eligibility to purchase or transfer a firearm. Information furnished shall not include confidential medical or treatment records, confidential tax or financial data, library records, or other personal information.

(b) Any person who has been adjudicated mentally deficient or committed to a mental institution and who is subject to the firearm disabilities of 18 U.S.C. Section 922 (d)(4) and (g)(4), and who is subject to the firearm disabilities of Sections 13A-11-72 and 13A-11-75, because he or she has been determined by law or legal process to be of unsound mind, may petition the district court for a civil review of the person's mental capacity to purchase a firearm. The petitioner may present evidence and witnesses at the hearing on the petition. The district court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The district court shall grant the relief requested in the petition if the judge finds, based on a preponderance of the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, certified criminal history record from the Alabama Law Enforcement Agency, the circumstances surrounding the petitioner's firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order grants relief, a copy of the order shall be forwarded to the Alabama Law Enforcement Agency directing that the prior order be removed from its information systems. Thereafter, the Alabama Law Enforcement Agency shall, as soon as possible, redact the prior order from the National Instant Criminal Background Check System (NICS) or shall request that the redaction be done and shall notify the United States Attorney General that the basis for the record being made available no longer applies. The petitioner may appeal a final order denying relief within 42 days of the order to the circuit court for the county in which the commitment or adjudication was entered. The circuit court's review shall be conducted de novo.

(c) To the extent allowed by the Alabama Justice Information Center Commission, AJIC may provide a judge of probate access to AJIC information systems for the purpose of involuntary commitment hearings, petitions to change names, and other official functions of the judge of probate.

*(Act 2004-641, p. 1468, §2; Act 2013-290, p. 998, §§1, 2; Act 2015-341, §1.)*

(5) The petitioner may appeal a final order denying relief within 42 days of the order to the circuit court for the county in which the commitment or adjudication was entered. The circuit court's review shall be conducted de novo.

*(Act 2015-341, §2.)*

Section 22-52-12

**Conveyance of person committed to facility; expenses of conveyance.**

The probate judge shall order one or more persons or law enforcement officers to convey any respondent involuntarily committed for inpatient treatment to the department or to a designated mental health facility as the court may order, and all necessary expenses incurred by the persons or officers conveying the respondent shall be taxed as costs of the proceeding.

*(Acts 1975, No. 1226, p. 2562, §15; Acts 1977, No. 670, p. 1143; Acts 1991, No. 91-440, p. 783, §19.)*

Section 22-52-12.2**Renewal petition time limit for certain patients.**

With regard to those patients who shall have been committed to state mental health facilities for 150 days or more as of January 1, 1992, the directors of such facilities or their designees shall petition for renewal of the commitment orders affecting such patients as appropriate. Said petitions shall be filed within a reasonable period of time not to exceed one year. All proceedings under this section shall be conducted in accordance with the provisions of Section 22-52-10.6.

*(Acts 1991, No. 91-440, p. 783, §23.)*

Section 22-52-14**Payment of costs.**

In any commitment proceeding, the fees of any attorney appointed by the probate judge to act as advocate for the petition and any attorney or guardian ad litem appointed by the probate judge for the person sought to be committed shall be set at the rates established by Section 15-12-21; and any expert employed to offer expert testimony, in such amounts as found to be reasonable by the probate judge; and all other costs allowable by law shall be paid by the state general fund upon order of the probate judge; except, that if the petition is denied and the petitioner is not indigent and is not a law enforcement officer or other public official acting within the line and scope of his duties, all costs may be taxed against the petitioner, or if the petition is granted and the person sought to be committed is not indigent, the probate judge may order all costs paid from the estate of the person committed.

*(Acts 1975, No. 1226, p. 2562, §11; Acts 1977, No. 670, p. 1143; Acts 1984, 1st Ex. Sess., No. 84-833, §2.)*

**Section 22-52-16**

**Applicability of article.**

The provisions of this article shall not apply to commitment to the custody of the State Department of Mental Health of mentally ill minors or children.