

By: Representative Mims

To: Judiciary B

HOUSE BILL NO. 1064

1 AN ACT TO CREATE THE FORENSIC MENTAL HEALTH ACT OF 2019; TO
 2 ENSURE CONSTITUTIONAL PROTECTIONS FOR PEOPLE WITH MENTAL HEALTH
 3 CONCERNS WHO ARE INVOLVED WITH THE CRIMINAL JUSTICE SYSTEM; TO
 4 REQUIRE THE DEPARTMENT OF MENTAL HEALTH TO DEVELOP STANDARDS FOR
 5 CERTIFICATION OF PROVIDERS AUTHORIZED TO PERFORM MENTAL
 6 EXAMINATIONS FOR CRIMINAL DEFENDANTS AND TO PROVIDE TRAINING TO
 7 THE PROVIDERS; TO AMEND SECTION 99-13-11, MISSISSIPPI CODE OF
 8 1972, TO CLARIFY THE MENTAL EXAMINATION OF PERSONS CHARGED WITH A
 9 FELONY; TO AMEND SECTION 41-21-63, MISSISSIPPI CODE OF 1972, TO
 10 CLARIFY THE JURISDICTION OVER A PERSON WITH UNRESOLVED VIOLENT
 11 FELONY CHARGES WHOSE MENTAL COMPETENCY IS IN QUESTION; TO AMEND
 12 SECTION 41-21-65, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR
 13 RELATED PURPOSES.

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

15 **SECTION 1.** The Department of Mental Health shall develop
 16 standards for the training of psychiatrists and psychologists to
 17 perform mental examinations ordered under Section 99-13-11 and
 18 Rule 12 of the Rules of Criminal Procedure. The department shall
 19 provide training on the standards and maintain and publish a list
 20 of psychiatrists and psychologists who have completed training to
 21 perform such evaluations.

22 **SECTION 2.** Section 99-13-11, Mississippi Code of 1972, is
 23 amended as follows:



24 99-13-11. In any criminal action * * * in which the
25 mental * * * competency of a person * * * charged with a felony is
26 in question, the circuit or county court or judge in vacation on
27 motion duly made by the defendant * * * or the district attorney,
28 or on the motion of the court or judge, may order such person to
29 submit to a mental examination by a competent psychiatrist or
30 psychologist selected by the court to determine his ability to
31 make a defense; * * * any cost or expense in connection with such
32 mental examination shall be paid by the county in which such
33 criminal action is pending.

34 **SECTION 3.** Section 41-21-63, Mississippi Code of 1972, is
35 amended as follows:

36 41-21-63. (1) No person, other than persons charged with
37 crime, shall be committed to a public treatment facility except
38 under the provisions of Sections 41-21-61 through 41-21-107 or
39 43-21-611 or 43-21-315. However, nothing herein shall be
40 construed to repeal, alter or otherwise affect the provisions of
41 Section 35-5-31 or to affect or prevent the commitment of persons
42 to the Veterans Administration or other agency of the United
43 States under the provisions of and in the manner specified in
44 those sections.

45 (2) The chancery court, or the chancellor in vacation, shall
46 have jurisdiction under Sections 41-21-61 through 41-21-107 except
47 over persons with unresolved felony charges * * *. If a circuit
48 court with jurisdiction over unresolved felony charges enters an



49 order concluding that the person is incompetent to stand trial and
50 is not restorable to competency in the foreseeable future, the
51 matter should be referred to the chancery court to undergo civil
52 commitment procedures under Sections 41-21-61 through 41-21-107.
53 The chancery court shall have jurisdiction and shall proceed with
54 civil commitment procedures under Sections 41-21-61 through
55 41-21-107. Such an order of the circuit court shall be in lieu of
56 the affidavit for commitment provided for in Section 41-21-65.

57 (3) The circuit court shall have jurisdiction under Sections
58 99-13-7, 99-13-9 and 99-13-11.

59 (4) A person committed under Sections 41-21-61 through
60 41-21-107 after referral under subsection (2) of this section
61 shall not be discharged until the sheriff and the district
62 attorney of the county where the offense was committed, the
63 sheriff of the committed person's destination, and the crime
64 victim or a family member have been notified.

65 **SECTION 4.** Section 41-21-65, Mississippi Code of 1972, is
66 amended as follows:

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

72 (2) If any person is alleged to be in need of treatment, any
73 relative of the person, or any interested person, may make



74 affidavit of that fact and shall file the affidavit with the clerk
75 of the chancery court of the county in which the person alleged to
76 be in need of treatment resides; provided, however, that a
77 chancellor or duly appointed special master may, in his or her
78 discretion, hear the matter in the county in which the person may
79 be found. The chancellor is authorized to immediately transfer
80 the cause of a person alleged to be in need of treatment from the
81 county where the person was found to the person's county of
82 residence. The affidavit shall set forth the name and address of
83 the proposed patient's nearest relatives and whether the proposed
84 patient resides or has visitation rights with any minor children,
85 if known, and the reasons for the affidavit. The affidavit must
86 contain factual descriptions of the proposed patient's recent
87 behavior, including a description of the behavior, where it
88 occurred, and over what period of time it occurred, if known.
89 Each factual allegation may be supported by observations of
90 witnesses named in the affidavit. Because of the emergency nature
91 of those affidavits, at the affiant's request the chancery clerk
92 shall provide the affiant with the one-page affidavit form
93 developed by the Department of Mental Health, which the affiant
94 may complete and file without the need for consulting or retaining
95 an attorney. The Department of Mental Health, in consultation
96 with the Mississippi Chancery Clerks' Association, shall develop a
97 simple, one-page affidavit form for the use of affiants as
98 provided in this subsection, which shall be used in all counties



99 in the state. No chancery clerk shall require an affiant to
100 retain an attorney for the filing of an affidavit under this
101 section.

102 (3) The chancery clerk may charge the affiant a total fee
103 for all services equal to the amount set out in Section 25-7-9(o),
104 and the appropriate state and county assessments as required by
105 law.

106 (4) The prohibition against charging the affiant other fees,
107 expenses, or costs shall not preclude the imposition of monetary
108 criminal penalties under Section 41-21-107 or any other criminal
109 statute, or the imposition by the chancellor of monetary penalties
110 for contempt if the affiant is found to have filed an
111 intentionally false affidavit or filed the affidavit in bad faith
112 for a malicious purpose.

113 (5) Nothing in this section shall be construed so as to
114 conflict with Section 41-21-63.

115 **SECTION 5.** This act shall take effect and be in force from
116 and after its passage.

