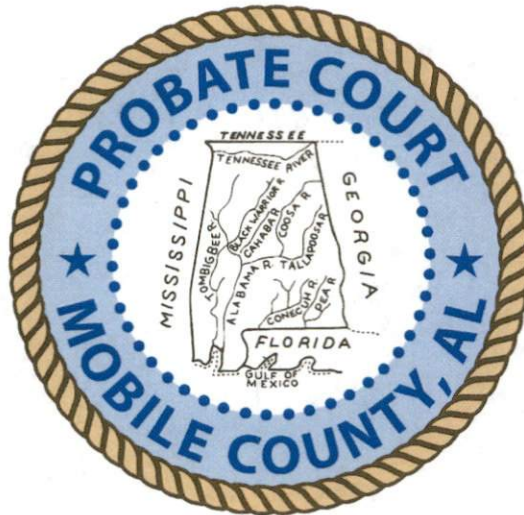


MOBILE COUNTY PROBATE COURT



Overview of Alabama Law Regarding Involuntary Commitment of Mentally Ill Persons Court Room Procedure

Don Davis ©
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Mobile County, Alabama

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I. Key Definitions

A. 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 specifically excludes the primary diagnosis of epilepsy, mental retardation, substance abuse, including alcoholism, or a developmental disability.

B. "Clear and Convincing" Evidence

"Clear and convincing evidence" is a higher standard of persuasion than required in many other types of civil matters. "Clear and convincing" evidence has been defined as "evidence, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion. Stated another way, the standard has been explained as that evidence which convinces the trier of fact that a proposition is "highly probable" as distinguished from "more probable than not." Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt." See, *Ala. Code § 6-11-20 (1975)*. See also, Schroeder and Hoffman, *Alabama Evidence* § 3:31 (3d Ed. 2008). The clear and convincing standard is met when the court is "clearly convinced of the affirmative of the proposition to be proved. This does not mean that there may not be contrary evidence. "Convincing" evidence by definition requires a weighing of the evidence. See, *D.C. v. C.O.*, 721 So.2d 195 (*Ala. Civ. App. 1998*).

C. 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 Alabama State Department of Mental Health for inpatient treatment.

E. Involuntary Commitment

Court ordered mental health services in either an outpatient or inpatient setting.

F. Outpatient Treatment

Treatment being provided to a person in a nonresidential setting (such as a "group home") or in the community (such as a "boarding home," residence or shelter) and who is not admitted for 24 hour-a-day inpatient care.

G. "Probable Cause"

"Probable cause" deals with probabilities, not legal technicalities. It is grounded upon those practical, factual considerations of everyday life upon which reasonable and prudent men act. *Brinegar v. United States*, 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1948). Stated in regards to a malicious prosecution action: "a party has probable cause for institution of a civil action which has reasonable grounds of suspicion, supported by circumstances sufficiently strong in themselves, to warrant a prudent man to believe that there is a possibility that he will win." *APJI* 24.11. In the criminal context it has been said that "the rule of reasonable or probable cause is a practical, nontechnical conception and the level of evidence needed for finding of probable cause is low." *State v. Johnson*, 862 So.2d 385 (Ala. 1996). Put another way, "probable cause is knowledge of circumstances that would lend a reasonable person of ordinary caution, acting impartially, to believe that the person arrested is guilty." *Stockwell, v. State*, 675 So.2d 4 (Ala. Crim. App. 1993). Only the probability, and not a prima facie showing, or criminal activity is the standard of probable cause. *State v. Johnson*, 682 So.2d 388 (Ala. Crim. App. 1979).

H. "Real And Present Threat Of Substantial Harm To Self Or Others"

A significant risk that an individual who is exhibiting behavior consistent with a mental illness, as a result of the mental illness, will do either of the following:

- A. By action or inaction, cause, allow, or inflict serious bodily harm upon himself, herself, or another individual.
- B. Be unable to satisfy his or her need for nourishment, medical care, shelter, or self protection so that there is a substantial likelihood of death, serious bodily harm, serious physical debilitation, serious mental debilitation, or life-threatening disease.

I. Respondent

A person for which a petition for commitment to mental health services has been filed.

II. Filing And Contents Of Petition Seeking Involuntary Commitment Of An Adult

- A. Any person may file a petition seeking the involuntary commitment of another person.
- B. The petition shall be filed in the probate court of the county in which the respondent is located.
- C. The petition shall be in writing, executed under oath, and shall include the following information:

1. The name and address, if known, of the respondent.
 2. The name and address, if known, of the respondent's spouse, legal counsel or next-of-kin.
 3. That the petitioner has reason to believe the respondent is mentally ill.
 4. That the beliefs of the petitioner are based upon specific behavior, acts, attempts, or threats, which shall be specified and described in detail.
 5. The names and address of other persons with knowledge of the respondent's mental illness who may be called as witnesses.
 6. Any other relevant information.
 7. The home address and telephone number of the petitioner shall be excluded from the copy of the petition seeking the involuntary commitment provided to the respondent, unless there is no other available address at which to contact the petitioner.
- D. The involuntary commitment proceeding is a hybrid of civil and criminal proceedings. The *Alabama Rules of Civil Procedure* apply, but curtailment of liberty occasioned by involuntary commitment requires that certain constitutional safeguards normally available only in criminal cases be provided. *Riley v. State*, 534 So.2d 322 (Ala. Civ. App. 1988).
- E. Due process requires that notice of involuntary commitment hearing be given so as to afford the respondent a reasonable opportunity to prepare a defense, and notice must include alleged factual basis for proposed commitment. *Riley v. State*, 534 So. 2nd 322 (Ala. Civ. App. 1988).
- F. A recent "overt act" is no longer required.

III. Review of Petition By Probate Judge

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. 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.

The usual custom and practice of the Court where a petition is not supported by a written recommendation of a medical doctor, is to request AltaPointe Health Systems, Inc. to assess the respondent and make a recommendation to the Court as to whether probable cause for detention and evaluation is believed to exist. Exceptions to this practice relate to extreme emergent community events involving law enforcement.

IV. Service of Petition On Respondent And Order Setting Petition For Hearing

When a petition has been filed and reviewed by the probate judge, the probate judge shall order the sheriff of the county in which the respondent is located to serve a copy of the petition, together with a copy of the order setting the petition for hearing, upon the respondent. Said notice shall include the date, time and place of the hearing, a clear statement of the purpose of the proceeding and the possible consequences to the subject thereof, the alleged factual basis for the proposed commitment, a statement of the legal standards upon which commitment is authorized, and a list of the names and addresses of the witnesses who may be called to testify in support of the petition. The hearing shall be preceded by adequate notice to the respondent.

In Mobile County, typically the petition and notice of hearing are served upon the respondent at the time the Mobile County Sheriff's Department is taking a respondent into custody on Wednesday mornings. The respondent is brought directly from the point the respondent is taken into custody to the Court.

V. Appointment Of Attorney and Guardian *Ad Litem* For Respondent

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 service of an attorney, the probate court shall appoint an attorney, who may be the same person as the guardian *ad litem*, to represent the respondent. The guardian *ad litem* is responsible for advocating the best interests of a respondent. The Court is also authorized to appoint a lawyer to represent the legal interests of a respondent.

VI. Statement By Respondent To Probate Judge Before Appointment of Attorney

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.

VII. Appointment By Probate Judge of Attorney To Appear In Support of Petition ("Advocate")

The probate judge shall appoint an attorney to serve as the advocate in support of the petition to commit. If the person(s) filing a petition desire to employ an attorney to appear in support of a petition, they may do so, and such attorney shall serve in lieu of the attorney appointed by the probate judge.

VIII. The Probate Judge Must Notify The Department of Mental Health and Mental Retardation Of Petitions To Commit And The Date Of The Final Hearing On The Petition

IX. Hearings

A. Emergency Detention Interview

1. When a petition has been filed seeking to have limitations placed upon the liberty of the respondent pending the outcome of the final hearing on the merits, the probate judge shall order the sheriff of the county in which the respondent is located to serve a copy of the petition upon the respondent and to bring the respondent before the probate judge *instantly*.
2. The probate judge shall determine from an interview with the respondent and with other available persons, what limitations, if any, shall be imposed upon the respondent's liberty and what temporary treatment, if any, shall be imposed upon the respondent pending further hearings. The probate judge may order the respondent detained at a designated mental health facility or a hospital.
3. No limitations shall be placed upon the respondent's liberty nor treatment imposed upon the respondent unless such limitations are necessary to prevent the respondent from doing substantial and immediate harm to himself or to others or to prevent the respondent from leaving the jurisdiction of the court.
4. No respondent shall be placed in a jail or other facility for persons accused of or convicted of committing crimes.
5. The probate judge shall order the respondent to appear for hearing the petition and may order the respondent to be examined by licensed medical doctors or qualified mental health professionals.
6. If the respondent does not appear as ordered, the probate judge may order the sheriff of the county in which the respondent is located to take the respondent into custody and compel the respondent's attendance as ordered by the probate judge.
7. If temporary treatment or admittance to a hospital is ordered for the respondent, such treatment shall be supervised by a licensed medical doctor or qualified mental health professional.

B. Probable Cause Hearing

1. 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 (7) days of the date of such imposition.
2. 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 the final hearing on the merits of such petition.
3. If probable cause is determined to exist by the Court, the evaluation approach to be utilized by AltaPointe Health Systems, Inc. is determined by AltaPointe Health Systems, Inc. because the evaluation-treatment approach utilized is clinical in nature - not legal. The options are: (A) inpatient evaluation at EastPointe Hospital, (B) "outpatient" evaluation where the respondent lives in the community and reports to a designated location of AltaPointe Health Systems, Inc. for evaluation, or (C) (applicable only when there is no bed available at EastPointe Hospital AND the hospital consents) the respondent is evaluated and treated at a hospital located in Mobile County.

C. Final Hearing On The Merits

1. 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.
2. Legal standard of evidence - clear and convincing.
3. If the probate judge determines that the respondent meets the criteria for involuntary commitment, an order shall be entered for: (a) outpatient treatment; or (b) inpatient treatment. The least restrictive alternative necessary and available for the treatment of the respondent's mental illness shall be ordered.

X. Rules Applying To Conduct of Hearings

- A. The respondent shall be present unless, prior to the hearing, the attorney for the respondent has filed in writing a waiver of the presence of the respondent on the ground that the presence of the respondent would be dangerous to the respondent's physical or mental health or that the respondent's conduct could be reasonably expected to prevent the hearing from being held in an orderly manner, and the

probate judge has judicially found and determined from evidence presented in an adversary hearing that the respondent is so mentally or physically ill as to be incapable of attending such proceeding. Another consideration is whether the respondent could aid his attorney or guardian ad litem in the respondent's defense, if the respondent was physically present. Upon such findings an order shall be entered approving the waiver.

- B. The respondent shall have the right to compel the attendance of any witness who may be located anywhere in the State of Alabama and to offer evidence, including the testimony of witnesses.
- C. The respondent shall have the right to be confronted with the witnesses in support of the petition and to cross-examine them.
- D. The respondent shall have the right to testify on his own behalf, but the respondent shall not be compelled to testify against himself.
- E. The attorney representing the respondent shall be vested with all of the rights of the respondent during all of the hearings if the respondent is not present in court to exercise his rights.
- F. The hearing shall be recorded stenographically, mechanically or electronically and such transcription shall be kept for at least three (3) years from the date the petition is denied or granted and not less than the duration of any commitment pursuant to such hearing.
- G. All hearings shall be heard by the probate judge without a jury and shall be open to the public unless the respondent or his attorney requests in writing that the hearings be closed to the public.
- H. The *Alabama Rules of Evidence* applicable in other judicial proceedings shall be followed and utilized.

XI. If Inpatient Or Outpatient Commitment Is Recommended By Attending Physician

When inpatient or outpatient commitment is recommended by the treating physician, the treating physician must provide evidence addressing the respondent's actions relating to the respondent's engagement with outpatient treatment during the two (2) year period preceding the hearing. *Notably, the treating physician must inform the Court of specific aspects of a respondent's clinical condition that significantly impair the respondent's ability to consistently make rational and informed decisions regarding participation in treatment.* The respondent's inability to maintain consistent engagement with outpatient treatment on a voluntary basis is demonstrated by either of the following:

- A. The respondent's actions occurring within the 2 year period immediately proceeding the hearing
- B. Specific aspects of the respondent's clinical condition that significantly impair the respondent's ability to consistently make rational and informed decisions as to whether to participate in treatment for mental illness

XII. Findings Necessary For Outpatient Treatment/Terms Of Outpatient Treatment

- A. Outpatient Treatment may be ordered if the probate judge finds:
 - 1. Respondent has a mental illness
 - 2. As a result of the mental illness, the Respondent will, if not treated, suffer mental distress and experience deterioration of the ability to function independently
 - 3. The respondent is unable to make a rational and informed decision as to whether treatment for mental illness would be desirable
 - 4. The proposed commitment is the least restrictive and available means of treatment available OR if no treatment is presently available, the proposed commitment is necessary to prevent harm to the respondent and/or others
 - 5. The respondent is unable to maintain consistent engagement with outpatient treatment on a voluntary basis as demonstrated by either of the following:
 - A. The respondent's actions occurring within the 2 year period immediately proceeding the hearing
 - B. Specific aspects of the respondent's clinical condition that significantly impair the respondent's ability to consistently make rational and informed decisions as to whether to participate in treatment for mental illness
 - 6. See Section XI above.
- B. The designated mental health facility must consent to treat the respondent on an outpatient basis on the terms and condition specified by the probate judge.

- C. 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. An order for outpatient treatment shall not exceed 150 days.
- E. Noncompliance by Respondent/Revocation
 - 1. The designated mental health facility shall immediately report to the probate court any material noncompliance with the outpatient treatment order. The report shall state the need for revocation of the outpatient treatment order and shall be verified and filed with the probate court.
 - 2. The probate court shall set a hearing to consider the motion for revocation of the outpatient treatment order.
 - 3. The hearing procedures and safeguards applicable to this article shall apply and be followed.
 - 4. If the probate court finds that the conditions of outpatient treatment have not been met and the respondent meets inpatient criteria, the probate court may order inpatient commitment.

XIII. Findings Necessary For Inpatient Treatment/Terms of Inpatient Treatment

- A. Inpatient Treatment may be ordered if the probate judge finds:
 - 1. Respondent has a mental illness
 - 2. As a result of the mental illness, the respondent poses a real and present threat of substantial harm to self and/or others
 - 3. As a result of the mental illness, the respondent will, if not treated, continue to suffer mental distress and experience deterioration of the ability to function independently
 - 4. The respondent is unable to make a rational and informed decision as to whether treatment for mental illness would be desirable
 - 5. The proposed commitment is the least restrictive and available means of treatment available OR if no treatment is presently available, the proposed commitment is necessary to prevent harm to the respondent and/or others
 - 6. See Section XI above.

- B. If the probate judge finds that no treatment is presently available for the respondent's mental illness, but that confinement is necessary to prevent the respondent from causing substantial harm to himself or to others, the order committing the respondent shall provide that should treatment for respondent's mental illness become available at any time during respondent's confinement, such treatment shall be immediately made available to the respondent.
- C. An order for inpatient treatment shall not exceed 150 days.
- D. A respondent committed to inpatient treatment may be transferred from any treatment facility to another treatment facility when deemed to be in the best interest of the respondent.
- E. The expense of transporting a respondent for inpatient treatment to a designated mental health facility shall be taxed as court costs.

XIV. Conversion of Inpatient Commitment Order to an Outpatient Commitment Order

The director of a mental health facility is required to assess the appropriateness of transferring a currently inpatient committed respondent to outpatient treatment, and allows for the director to *recommend*, to the probate court, a transfer to outpatient treatment of a respondent currently committed for inpatient treatment.

This assessment must be done no later than 30 days prior to the expiration of the existing-current inpatient commitment order. If the director determines that transfer to outpatient treatment is the least restrictive alternative for treatment of the respondent's mental illness and is appropriate, the director may recommend to the probate court, in writing, that the current commitment order be modified.

The recommendation must state the grounds for the director's determination that-outpatient treatment is the least restrictive alternative necessary AND it must identify the recommended outpatient facility.

Notice of the director's recommendation must be provided to both the respondent *and* the director of the outpatient facility identified in (b), unless the director of the outpatient facility is the same director making the recommendation.

When conversion to outpatient commitment is recommended by the treating physician, the treating physician must provide evidence addressing the respondent's actions relating to the respondent's engagement with outpatient treatment during the two (2) year period preceding the hearing. *Notably, the treating physician must inform the Court of specific aspects of a respondent's clinical condition that significantly impair the respondent's ability to consistently make rational and informed decisions regarding participation in treatment.* The respondent's inability to maintain consistent engagement with outpatient treatment on a voluntary basis is demonstrated by either of the

following:

- A. The respondent's actions occurring within the 2 year period immediately proceeding the hearing
- B. Specific aspects of the respondent's clinical condition that significantly impair the respondent's ability to consistently make rational and informed decisions as to whether to participate in treatment for mental illness

The probate court must conduct a hearing on the recommendation upon request of respondent or any other interested party, and appoint an attorney to represent the respondent. If no hearing is requested, *Ala. Code* § 22-52-10.1 l(e) allows the Court to make a decision based upon both the grounds stated in the recommendation and consultation with the director of the recommended outpatient facility (or his or her designee) concerning the availability of resources to treat respondent as an outpatient.

Should the Court determine that modification of the order is appropriate, *Ala. Code* § 22-52-10.11(f) directs that the modified commitment order must conform to *Ala. Code* § 22-52-10.3, except that it may not extend beyond the term of the original order by more than 60 days [unlike the 150 days or one year renewal limit as provided in 10.3(d)]. *It should be noted that the decision to transfer a respondent from inpatient treatment to outpatient treatment lies with the Court, not the mental health provider.*

XV. Out Patient Commitment Renewals/Extensions

Ala. Code § 22-52-10.2(b)(1975), describes the procedure for renewing (or extending) an outpatient commitment order. The Court is no longer focused on whether the mental distress and deterioration are already happening and will continue without treatment, but, the probative issue for consideration by the Court is whether the mental distress and deterioration will happen at all without treatment. The difference here, as compared with *Ala. Code* § 22-52-10.2(a)(2), is that the respondent is already committed, so the presumption exists that the respondent is already experiencing or has previously experienced such mental distress and deterioration. *Ala. Code* § 22- 52-10.2(b)(3), removes language regarding whether the respondent is able to make a rational informed decision regarding treatment, and simply requires an inability to maintain engagement with outpatient treatment in order to renew the outpatient treatment order: "The respondent remains unable to maintain consistent engagement with outpatient treatment on a voluntary basis."

XVI. The Mental Health Facility Shall Not Be Required To Accept A Committed Respondent If It Is Unable to Provide Proper Services and Treatment.

XVII. Retention of Jurisdiction

The probate court involuntarily committing a respondent shall retain jurisdiction over the respondent concurrently with the probate court of the county in which the respondent is subsequently located

for so long as the respondent is subject to the commitment order and the probate court committing the respondent may hold any hearings regarding the respondent at any place within the State of Alabama where the respondent may be located.

XVIII. Payment of Costs

- A. 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 for the respondent shall be set at the rates established by *Ala. Code* § 15-12-21.
- B. Any expert employed to offer expert testimony shall be compensated in such amounts as found to be reasonable by the probate judge.
- C. All other costs allowable by law shall be paid by the State's general fund upon order of the probate judge.
- D. If the petition is denied and the petitioner is not an indigent or law enforcement officer or other public official acting within the line and scope of his duties, all costs may be taxed against the petitioner.
- E. If the petition is granted and the respondent is not an indigent, the probate judge may order all costs paid from the estate of the person committed.

XIX. Appeals

- A. Any appeal from an order of the probate court granting a petition seeking to commit a respondent to the custody of the Alabama Department of Mental Health lies to the Circuit Court for trial *de novo*, *UNLESS* the probate judge who granted the petition was learned in the law, in which case the appeal lies to the Alabama Court of Civil Appeals on the record.
- B. Notice of appeal shall be given in writing to the probate judge within five (5) days after the respondent has received actual notice of the granting of the petition.
- C. The notice of appeal shall be accompanied by security for costs to be approved by the probate judge.
- D. If the probate judge finds that the respondent is indigent, no security for costs shall be required.
- E. Upon the filing of a notice of appeal, the probate judge shall determine and enter an order setting forth the limitations to be placed on the liberty of the respondent pending the appeal.

- F. The petition shall be set for hearing by the reviewing court within 60 days of the date the notice of appeal is filed with the probate court and such hearing shall not be continued except upon motion in writing by the respondent for good cause.
- G. The costs of the appeal shall be taxed in the same manner as in the probate court.
- H. All requirements relative to hearings in probate court shall apply to appeals heard in circuit court.

XX. Generally, No Public Facility Other Than The Alabama Department Of Mental Health May Be Required To Perform Any Mental Evaluation of A Person Sought To Be Committed For Use In Any Final Commitment Hearing. *Ala. Code § 22-52-17 (1997).* Exceptions Are Stated In Same Section.

XXI. Recommitment/Renewal Hearings - Inpatient Commitment

- A. A petition for renewal of an inpatient commitment order may be filed at least 30 days prior to expiration of the current commitment order.
- B. The petition, together with a copy of the original commitment order and copies of any subsequent renewal commitment orders, shall be filed with the probate judge of the county where the facility is located.
- C. The petition shall explain in detail why renewal of the order is being requested and shall further explain in detail why less restrictive conditions of treatment are not appropriate.
- D. Recommitment (extension of an existing order) may be ordered by the probate court if the following elements are proven:
 - 1.. Respondent has a mental illness
 - 2. As a result of the mental illness, the respondent poses a real and present threat of substantial harm to self and/or others
 - 3. As a result of the mental illness, the respondent will continue, if not treated, continue to suffer mental distress and experience deterioration of the ability to function independently
 - 4. The respondent continues to be unable to make a rational and informed decision as to whether treatment for mental illness would be desirable

5. The proposed commitment is the least restrictive and available means of treatment available OR if no treatment is presently available, the proposed commitment is necessary to prevent harm to the respondent and/or others
6. The respondent is unable to maintain consistent engagement with outpatient treatment on a voluntary basis as demonstrated by either of the following:
 - A. The respondent's actions occurring within the 2 year period immediately proceeding the hearing
 - B. Specific aspects of the respondent's clinical condition that significantly impair the respondent's ability to consistently make rational and informed decisions as to whether to participate in treatment for mental illness
- E. Any hearing conducted shall be conducted at facilities provided where the such person committed as patients are located.
- F. The probate court shall conduct a hearing on the petition within 30 days after the date of petition.
- G. A guardian ad litem shall be appointed to represent and to protect the rights of the respondent. Such appointment shall be in writing and acceptance of appointment shall be returned to the judge of probate at least five (5) days prior to the hearing.
- H. Adequate written notice shall be given to the respondent prior to the hearing.
- I. The Commissioner of the Alabama Department of Mental Health shall designate an attorney to serve as advocate in support of the petition.
- J. The hearing shall be conducted in accordance with *Ala. Code § 22-52-9*.
- K. A copy of the order shall be forwarded to the probate court having original jurisdiction.
- L. The burden of proof shall be to prove, based on clear and convincing evidence, the criteria prescribed in *Article 52 of Title 22 of the Code of Alabama*.
- M. Any order renewing an order for commitment to inpatient treatment shall not exceed a period of one (1) year.
- N. The Alabama Department of Mental Health shall provide the advocate in support of the petition and the expert witness at no cost to the State's General Fund and all other costs allowable by law shall be paid as prescribed in *Ala. Code § 22-52-14*.

XX. Stipulations (Agreements)

- A. "Probable cause" is a *legal conclusion and decision* made by the Court that a reasonably prudent person would conclude, *based upon the evidence presented to the Court*, that the respondent appears to be mentally ill and poses a threat of harm to himself and/or to others, such that detention and evaluation is appropriate and in the best interests of the respondent. There must be evidence presented to support the legal conclusion and determination of probable cause. ***Consequently, when parties are "stipulating" at a probable cause hearing, they are agreeing that the facts stated in the petition requesting commitment are true and correct.***
- B. Guardians *ad litem* are instructed to explain to their clients what a stipulation means and the legal effect of the same. If a respondent disputes the facts in the petition *and the guardian ad litem has assessed the respondent as having legal capacity* - a stipulation is *not* appropriate. If a respondent disputes the facts in the petition *and the guardian ad litem has assessed the respondent as not possessing legal capacity* - the guardian *ad litem* is directed to assess the totality of the circumstances and facts present and then determine if a stipulation is appropriate. Guardians *ad litem* are instructed that they should not stipulate to a finding of probable cause if there are any doubts, and the petitioner and the advocate should present their evidence and let the Court determine if probable cause exists.

XXI. Substance Abuse - Proper Usage of Mental Health Involuntary Commitment Procedure

The Alabama Legislature has defined "mental illness" and has expressly stated that "substance" abuse is not mental illness. See *Ala. Code* § 22-52-1.1(1)(1975). If a respondent's primary diagnosis is substance abuse - the mental health commitment process is not the appropriate legal process to be utilized. At times substance abuse is readily apparent from the statement in the petition. In other instances, the respondent may have been the subject of earlier commitment cases which were dismissed because no mental illness was diagnosed and only substance abuse was diagnosed. Practically speaking, having such a respondent detained at EastPointe Hospital for 6 days will benefit the respondent and let the respondent "dry out." But, again, the commitment procedure is a liberty deprivation legal matter and usage of the procedure is not appropriate to facilitate someone drying out when it is apparent that the respondent's primary problem is substance abuse and not a serious mental illness. Further, in this type of situation, a stipulation is not appropriate.