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CHAPTER 24.

COMMITMENT OF CHILDREN IN NEED OF MENTAL HEALTH TREATMENT

**SECTION 44‑24‑10.** Definitions.

As used in this chapter:

(1) “Child” means a person under the age of eighteen years.

(2) “Child in need of emergency admission” means a child who is in need of treatment, who poses an imminent danger of seriously harming himself or others if not immediately hospitalized, and for whom immediate hospitalization can be obtained only through an involuntary emergency admission.

(3) “Child in need of judicial admission” means a child who is in need of treatment and for whom treatment can be obtained only through an involuntary judicial admission.

(4) “Child in need of treatment” means a child in need of mental health treatment who manifests a substantial disorder of cognitive or emotional processes, which lessens or impairs to a marked degree that child’s capacity either to develop or to exercise age appropriate or age adequate behavior. The behavior includes, but is not limited to, marked disorders of mood or thought processes, severe difficulties with self‑control and judgment including behavior dangerous to self or others, or serious disturbances in the ability to care for and relate to others. The presence of epilepsy, mental retardation, organic brain syndrome, physical or sensory handicaps, or brief periods of intoxication caused by alcohol or other substances is not sufficient to meet the criteria for a child in need of treatment but does not exclude a child otherwise determined to fulfill the above criteria.

(5) “Court” means the probate court unless otherwise specified.

(6) “Crisis stabilization” means a short term placement to enable a child who has lost control to regain control in order to be returned to his previous placement or to an appropriate treatment facility or program.

(7) “Department” means the State Department of Mental Health.

(8) “Diagnostic evaluation” means the systematic appraisal of a child’s functional level in various domains such as educational, social, and psychological to determine the nature and extent of treatment or services which may be required to meet the needs of the child.

(9) “In‑home intervention” means comprehensive, individualized in‑home family services which are designed to intervene at times when there is a possibility that the child will have to be removed from the home to a more restrictive environment or to prepare a family for a child’s transition back into the home.

(10) “Law enforcement officer” means a state, county, or city police officer, officer of the South Carolina Highway Patrol, sheriff, or deputy sheriff.

(11) “Outpatient counseling” means a regularly scheduled goal‑oriented intervention by a competent professional responsive to the needs of the child, for the purposes of assisting the child in solving problems related to educational, vocational, emotional, familial, and social issues through cognitive and affective modes.

(12) “Psychiatric assessment and evaluation” means a systematic appraisal, in accordance with generally accepted medical practices, for the following purposes: specialized psychiatric review of physiological phenomena, psychiatric diagnostic evaluation, psychiatric therapeutic evaluative services, and assessment of the appropriateness of initiating or continuing the use of psychotropic medications in treatment of a child.

(13) “Residential treatment program or facility” means a structured, supportive, and therapeutic residential program for a child in need of treatment.

(14) “Treatment team” means persons drawn from or representing the professional disciplines or service areas included in the development and implementation of a treatment plan.

(15) “Twenty‑four hour emergency assessment” means diagnostic evaluation capabilities when necessary to determine a child’s clinical status and needs.

**SECTION 44‑24‑20.** Voluntary admission; notification of guardian ad litem.

(A) If a child is found to be a proper subject for voluntary admission, the director of a treatment program or facility shall admit for treatment an individual who is:

(1) sixteen years of age or older and who applies for admission;

(2) under sixteen years of age if his parent or legal guardian applies for admission on his behalf.

(B) A governmental agency, acting as legal guardian, admitting a child voluntarily, shall notify the child’s guardian ad litem within forty‑eight hours. If a guardian ad litem has not been appointed, the agency shall petition the court for appointment within seventy‑two hours.

**SECTION 44‑24‑30.** Admission of child sixteen or older as inpatient; determination of voluntariness; appointment of guardian ad litem.

When a child sixteen years of age or older is admitted to an inpatient facility at the department, the probate court of the county in which the child resides or where the child applied for admittance shall appoint a guardian ad litem. The guardian ad litem shall review the case and report to the court whether, in the guardian ad litem’s opinion, the child had applied voluntarily or if the application was involuntary. The review may not exceed seven days. During the review the guardian ad litem must have access to relevant information and must be able to interview the parents or guardian of the child. If the guardian ad litem suspects the application was involuntary, the guardian ad litem shall notify the court and facility where the child is held. After notification, the facility shall evaluate further the appropriateness of admission and report the findings to the court. After reviewing the opinion of the guardian ad litem and the facility, if the court determines the:

(1) application was voluntary or involuntary and no need for commitment exists, the child must be discharged immediately;

(2) application was voluntary and admission is necessary, there must be no further action before periodic review;

(3) application was involuntary and admission is necessary, the court shall order the facility to file, within three days exclusive of Saturdays, Sundays, and legal holidays after the date of the order, a petition for judicial admission and to retain the child pending a hearing which must be conducted within fifteen days of the filing of the petition;

(4) child is in need of alternative treatment other than admission to a facility, the local mental health center is responsible for coordinating appropriate services.

**SECTION 44‑24‑40.** Discharge of voluntarily admitted child; grounds for not effecting discharge.

The director of a treatment program or facility immediately shall discharge to the parent, legal guardian, or agency a voluntarily admitted child who:

(1) is no longer in need of that treatment program or facility; or

(2) requests his own discharge or whose discharge is requested, in writing, by his parent or legal guardian, or other interested person, unless at least one of the following exists:

(a) the child was admitted on his application if sixteen years of age or older, and the request for discharge is made by a person other than the child, in which case, discharge is conditioned upon agreement of the child;

(b) the child, by reason of age, was admitted on the application of another person, in which case, discharge, before becoming sixteen years of age, is conditioned upon three days’ notice, exclusive of Saturdays, Sundays, and legal holidays, being given to and consent being obtained from his parent or legal guardian;

(c) the director of the treatment program or facility, within three days, exclusive of Saturdays, Sundays, and legal holidays, after the child or other interested person requests the child’s discharge, files with the court of the county in which the child resided or was present immediately before his admission, a petition for judicial commitment pursuant to Section 44‑24‑90.

**SECTION 44‑24‑50.** Periodic notification to voluntarily admitted child, and parent or guardian, of right to release.

When admitted to the residential program or facility, thirty days after the date of admission, and every six months after, a voluntarily admitted child must be informed in writing of his right to release in language which is appropriate for his age. The child shall sign a statement to that effect which becomes a part of that child’s record. The child’s parent or legal guardian or other interested person must be informed also and shall sign a statement to that effect which becomes a part of the child’s record.

**SECTION 44‑24‑60.** Emergency admission of child to inpatient hospital.

(A) A child may be admitted to an inpatient hospital for emergency admission upon:

(1) written application under oath by an interested person stating:

(a) belief that the child is in need of treatment and in danger of harming himself or others as a result of his need for treatment;

(b) the specific type of serious harm thought probable if the child is not hospitalized immediately;

(c) the factual basis for this belief;

(d) the reason why the child cannot obtain treatment voluntarily.

(2) a certification in triplicate by a licensed physician stating that he has examined the child and is of the opinion that he is a child in need of treatment and in need of emergency admission. The certification must contain the grounds for the opinion.

(B) A child for whom a certificate has been issued must not be admitted on the basis of the certificate after the expiration of three calendar days after the date of his examination.

(C) Before the emergency admission of a child to a treatment program or facility of the department, the child must be examined by a licensed physician. The physician shall inform the mental health center in the county where the child resides or where the examination takes place of the mental and physical treatment needs of the child. The physician shall consult with the center regarding the commitment and admission process and the available treatment options and alternatives in lieu of hospitalization at a state psychiatric facility.

(D) The examining physician shall complete a statement that he has consulted with the local mental health center before the admission of the child to a state psychiatric facility. If the physician does not consult with the center, he shall state a clinical reason for his failure to do so. The statement must accompany the physician’s certificate and written application for emergency commitment. The department, in its discretion, may refuse to admit a child to its facility if the physician fails to complete the statement required by this chapter.

(E) Within twenty‑four hours after his admission, exclusive of Saturdays, Sundays, and legal holidays, the place of admission shall forward the application and certification to the court of the county in which the child resides or where the acts or conduct leading to his admission occurred.

(F) Within forty‑eight hours of receipt of the application and certification exclusive of Saturdays, Sundays, and legal holidays, the court shall conduct a preliminary review of the evidence to determine if probable cause exists to continue the emergency detention of the child. If the court finds that probable cause does not exist, it shall issue an order of release for the child. Upon a finding of probable cause, the court shall make a written order detailing its findings and may order the continued detention of the child. The court shall appoint counsel for the child if he has not retained counsel and fix a date for a full hearing to be held within fifteen days from the date of his admission.

(G) With each application and certification, the place of admission also shall provide the court with an examiner appointment form listing the names of two examiners.

(H) If the court appoints these two examiners, the examination must be performed at the place of admission and a report must be submitted to the court within seven days from the date of admission. The court may appoint independent examiners who shall submit a report to the court within five days. In the process of the examination by the examiners, available previous treatment records must be considered. At least one of the examiners appointed by the court must be a licensed physician.

(I) The examiner’s report must be available to the child’s counsel before the full hearing.

**SECTION 44‑24‑70.** Taking custody of child needing emergency admission.

If a child in need of emergency admission cannot be examined by a licensed physician pursuant to Section 44‑24‑60 because his whereabouts are unknown or for any other reason, the petitioner seeking commitment pursuant to Section 44‑24‑60 shall execute an affidavit stating that he believes the child is in need of emergency admission. The grounds for the belief must be included and a statement that the usual procedure for examination cannot be followed and the reason. Upon presentation of the affidavit, the court may require a law enforcement officer to take the child into custody and transport him for an examination by a licensed physician as provided for in Section 44‑24‑60. If within the twenty‑four hours the child is not examined by a licensed physician or, if upon examination, the physician does not execute the certification provided in Section 44‑24‑60, the proceedings must be terminated and the child immediately released. Otherwise, proceedings must be held pursuant to Section 44‑24‑60.

**SECTION 44‑24‑80.** Transportation of child to hospital; parent’s or guardian’s request to accompany child.

The certificate provided for in Section 44‑24‑60(A)(2) requires a law enforcement officer, preferably in civilian clothes, to take the child into custody and transport him to the hospital designated by the certification. Upon request, a law enforcement officer shall transport the child’s parent, legal guardian, or other adult family member to accompany the child to the hospital. No child may be taken into custody after the expiration of three days from the date of certification. A friend or relative may transport the individual to the hospital designated in the application, if the friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility of a law enforcement officer to provide timely transportation for the patient and that the friend or relative freely chooses to assume the responsibility. A friend or relative who chooses to transport the patient is not entitled to reimbursements from the State for the cost of the transportation. No child may be subjected to mechanical restraints during transportation except upon the determination by the law enforcement officer that restraints are necessary to prevent the child’s escape or harm to himself or others. An officer acting in accordance with this chapter is immune from civil liability.

**SECTION 44‑24‑90.** Notification to child and guardian of petition; contents of petition; right to counsel; examination and conclusions.

(A) Proceedings for judicial admission to a treatment program or facility begin by an interested person filing a written petition with the court of the county where the child is present or where the child is a resident. The petition must state the factual basis of the person’s belief that:

(1) the child is in need of treatment;

(2) treatment may be obtained only through an involuntary admission.

(B) The petition may be accompanied by a certificate of an examiner stating that he has examined the child and is of the opinion the child is a child in need of treatment. The certificate or written statement must contain the underlying facts upon which the examiner or petitioner bases his conclusions.

(C) Upon receiving a petition the court shall give the child and his legal guardian, the guardian ad litem, if one has been appointed, and other interested persons notice by certified mail of the petition and of the child’s right to counsel. Every reasonable effort must be made to notify the child’s natural parents of the petition.

(D) Within three days after a petition for judicial commitment is filed, exclusive of Saturdays, Sundays, and legal holidays, the court shall appoint counsel to represent the child if counsel has not been retained in the child’s behalf. The court shall appoint two examiners, one of whom must be a licensed physician, to examine the child and report to the court their findings as to the child’s mental condition and the need, if any, for treatment. If the child refuses examination, the court may require a law enforcement officer to take the child into custody and to transport him for examination by the two examiners. After the examination, the child must be released. A record of the examination must be made and offered to his counsel. If the conclusions of the examination are that the child is a child in need of treatment, the underlying facts must be recorded as well as the conclusion. The child or his guardian may request an additional examination by an independent examiner. The examination must be conducted at public expense.

**SECTION 44‑24‑100.** Notice of hearing for emergency or judicial admission.

Notice of the hearing for an emergency admission or a judicial admission must be given to the child or his guardian, his counsel, and other interested persons at least five days before the hearing, exclusive of Saturdays, Sundays, and legal holidays. The notice must include the time, date, and place of the hearing, a clear statement in plain and simple language of the purpose of the proceedings, and the possible consequences to the individual for whom involuntary admission is sought and a copy of the petition or affidavit and supporting certificates of the examining physician.

**SECTION 44‑24‑110.** Examiners’ reports; disposition of child where report does not recommend judicial admission, recommends judicial admission, or is divided.

(A) The written reports filed with the court by the designated examiners must include, but are not limited to, questions relating to whether or not the child poses an imminent danger to himself or others, whether or not recent overt acts are indicative of a child in need of treatment, and whether or not a less restrictive placement is recommended and available.

(B) If the report of the examiners is that the child is not in need of judicial admission, the court shall dismiss the petition and the child must be discharged immediately by the place of admission if the child has been admitted to a treatment facility or program.

(C) If the report of the examiners is that the child is a child in need of judicial admission, the court may order that the child be detained at the place of his admission or in another treatment facility or program.

(D) If the report of the examiners is divided, the court may terminate the proceedings or shall designate a third examiner, who must be a psychiatrist or psychologist trained or experienced in the treatment of children, and order that the three examiners render a majority opinion within three days exclusive of Saturdays, Sundays, and legal holidays.

**SECTION 44‑24‑120.** Removal of proceedings to another county.

The child or the child’s guardian may request removal of the proceedings to another county of the State when the convenience of witnesses and the ends of justice require it. When the place of the proceedings is changed, all other proceedings must be held in the county to which the place of hearing is changed, unless otherwise provided by the filed consent of the parties in writing or order of the court. The papers must be filed or transferred accordingly.

**SECTION 44‑24‑130.** Hearing; location; testimony; rules of evidence; transcript.

A person to whom notice is required may appear at the hearing, testify and, within the discretion of the court, present and cross‑examine witnesses, and the court may receive the testimony of other persons. The court may hold the hearing in a suitable location in the State, without regard to whether the location is in the county of the court conducting the hearing, when the judge is satisfied that the health and welfare of the child concerned is best served by conducting the hearing in a location other than the court. The hearing may be conducted in an informal manner consistent with orderly procedure. The court shall follow the rules of evidence applicable to the probate courts in receiving evidence. The child or his legal guardian may have a free transcript of the record of the proceedings.

**SECTION 44‑24‑140.** Determination after presentation of evidence.

(A) If the court finds, after presentation of all the evidence, that the child is not in need of judicial admission, the court shall order that he must be discharged if he has been hospitalized before the hearing.

(B) If upon completion of the hearing and consideration of the record the court finds upon clear and convincing evidence that the child is in need of judicial admission, the court may order treatment in the department or at another program or facility that agrees to accept the child.

**SECTION 44‑24‑150.** Psychiatric evaluations of children; notification of victims.

(A) A family court may order that a child, who is otherwise before the court on another matter, be given a psychiatric evaluation by the appropriate community mental health center. The community mental health center shall schedule the child for the ordered evaluation as soon as possible and shall provide the family court with a written report of the results of the evaluation within five working days following the evaluation.

(B) If the community mental health center reports to the family court that the child is in need of an inpatient psychiatric evaluation, the family court may commit the child to a hospital designated by the department for a psychiatric evaluation. An order of commitment for psychiatric evaluation may not exceed fifteen days. Upon written request by the department to the court, the evaluation period may be extended for no more than an additional fifteen days. Upon notification by the department to the court that the evaluation has been completed, the court shall issue an order to implement the immediate discharge of the child from the hospital.

(C) If a psychiatric evaluation indicates a child is in need of judicial admission, the family court may:

(1) defer to the probate court for purposes of commitment to a range of services; or

(2) commit to a range of services utilizing the procedures and forms applicable to the probate court pursuant to Chapter 23 and Sections 44‑24‑90 through 44‑24‑140.

(D) Any victim of a child charged with a crime and held in detention who is ordered to a mental health facility for a psychiatric evaluation must be notified pursuant to Article 15, Chapter 3, Title 16 of the child’s transfer to or discharge from a mental health facility.

**SECTION 44‑24‑160.** Examination and review of child admitted to inpatient program; program of care and treatment.

A child admitted to an inpatient treatment program must be examined by a member of the professional staff of the program promptly after his admission and must be reviewed by the treatment team within seven days after admission. Promptly after the treatment team review, a formal program of care and treatment designed to meet the needs of the child must be instigated. Results of all examinations and an outline of the child’s treatment program must be entered in his clinical record. Unless the child or his legal guardian consents in writing, no treatment may be given which is not recognized as standard mental health treatment.

**SECTION 44‑24‑170.** Right to reexamination; notice of right; proceedings upon petition for reexamination.

(A) A child is entitled to have a reexamination on his own petition or that of another interested person to the court of the county from which he was admitted. The treatment program must inform every child and the child’s guardian of the right to petition for reexamination. The notice must be given in writing upon admission to the program and once during the first month of treatment and six months thereafter during the treatment of the child in age appropriate language and in writing.

(B) Upon receipt of the petition the court shall conduct proceedings in accordance with applicable provisions of Sections 44‑24‑90 through 44‑24‑140. The proceedings are not required if the petition is filed sooner than six months after the issuance of the order for treatment or sooner than six months after the holding of a hearing pursuant to this section. The costs must be borne by the State.

**SECTION 44‑24‑180.** Court review of case of child involuntarily admitted.

(A) A child in need of treatment admitted involuntarily to a mental health service which removes him from home, must have his case reviewed by the court within twenty days of admission and every six months. If the review determines the child is no longer in need of mental health services or alternative services, he must be discharged immediately.

(B) A child in need of treatment admitted involuntarily to a mental health service where he remains at home, must have the case reviewed sixty days after admission and every six months. If the review determines the child is no longer in need of mental health services or in need of alternative services, the child must be discharged immediately, or, if necessary, the court shall request the mental health center in which the child is being treated to refer the child to the proper alternative services for the child.

(C) The treatment team may petition the court for review after the initial review.

**SECTION 44‑24‑190.** Notification to court when child moved to different program; court approval for move to more restrictive program; placement in crisis stabilization.

(A) No child who has been admitted involuntarily to a treatment facility or program may be moved from a less restrictive program to a more restrictive program without court approval. Court approval is not mandatory for moves from more restrictive to less restrictive programs. The court must be notified within twenty‑four hours when a child is moved from one program to another.

(B) A child who has been admitted involuntarily to a treatment facility or program may be placed in community crisis stabilization without court approval for not more than five days. The head of the facility in which the child is placed shall inform the court within three days of placement. Court approval is mandatory to extend the period of crisis stabilization beyond the five days and for each successive five‑ day extension.

(C) If the child has not been returned to an appropriate treatment program or facility within ten days of being placed in crisis stabilization, the court shall hold a review hearing within fifteen days of the crisis stabilization placement to determine and order the appropriate program for the child.

**SECTION 44‑24‑200.** Unauthorized absence of child from facility or residential program.

(A) If a child committed to an inpatient facility or a residential treatment program is absent without proper authorization, the facility or program director immediately shall notify the appropriate state and local law enforcement officials and the parent or legal guardian of the absence by telephone. The notice also must be confirmed in writing and mailed to the law enforcement officials, parent, or legal guardian within twenty‑four hours after the absence is discovered.

(B) A law enforcement officer, upon the request of the facility director or his designee and without necessity of a warrant or a court order, may take the child into custody and return him to the program or facility.

**SECTION 44‑24‑210.** Unlawful to remove child from inpatient facility or residential program without authorization.

It is unlawful for a person, without prior authorization from the child’s attending physician or his designee, to take a child away or cause him to be taken away from the grounds of an inpatient facility or residential treatment program. A person violating the provisions of this section, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

**SECTION 44‑24‑220.** Requirement of discharge planning and continuity of service in community.

No child may be discharged by the department or private hospital without appropriate discharge planning. A member of the child’s treatment team shall coordinate in advance with the child’s parent or legal guardian as well as other service providers to ensure continuity in service for the child in the community.

**SECTION 44‑24‑230.** Provision of community‑based treatment as alternative to hospitalization.

In order to provide community‑based treatment as an alternative to hospitalization, the department shall provide or cause to be provided a range of mental health programs for children in each mental health center recognized by the State. Based on available resources and to the extent funds are made available to the department by the General Assembly, the programs must include, but are not limited to:

(1) twenty‑four hour emergency assessment;

(2) crisis stabilization;

(3) in‑home intervention;

(4) therapeutic foster care;

(5) outpatient counseling, diagnostic evaluation, including psychological testing when required, and psychiatric assessment and evaluation;

(6) consultation with other agencies serving the child.

**SECTION 44‑24‑240.** Agencies to participate in planning and provision of services; exchange of records.

Agencies providing services to children or holding legal custody of children are accountable within their legislative mandate to participate in the planning and service provision to a child determined to be in need of treatment. Agencies shall exchange and share records of services to the child and the child’s background.

**SECTION 44‑24‑250.** Consultation with parent or guardian; participation in or cooperation with treatment.

A parent or guardian of a child admitted to a treatment program or facility is entitled and expected to confer at reasonable intervals with the treating physician, psychologist, or other members of the treatment team concerning the child’s condition, treatment, or diagnosis. The treatment facility may request that the parent or guardian of a child hospitalized or treated must be available for consultation and cooperation in connection with the treatment process. The treatment facility may request that the court, as part of the relief ordered in the commitment proceedings, order the guardian or parents to cooperate with the treatment process if they have been party to the action.

**SECTION 44‑24‑260.** Child’s right to communicate, consult, or visit with agency or person having custody, with counsel, or with private mental health service provider.

A child who is a patient of a treatment facility at all reasonable times may:

(1) communicate and consult with the agency or individual having legal custody of him;

(2) communicate, consult, and visit with legal counsel and private mental health service providers of his parent’s or guardian’s choice at his own expense. With the consent of the child, and upon request, legal counsel must be provided with copies of the child’s treatment records.

**SECTION 44‑24‑270.** Personal, civil, and property rights of child in treatment program.

(A) A child who is a patient of a treatment program has the right to:

(1) receive special education and vocational training in addition to other forms of treatment from the State Department of Education as required by law;

(2) participate in play, recreation, physical exercise, and outdoor activity on a regular basis, in accordance with his needs;

(3) keep and use his own clothing and personal possessions under appropriate supervision;

(4) participate in religious worship;

(5) receive assistance as needed in sending and receiving correspondence and in making telephone calls at his own expense;

(6) receive visitors, under appropriate supervision;

(7) have access to individual storage space for his own use.

(B) No right enumerated in subsection (A) may be restricted without a written statement in the child’s treatment record by a member of the child’s treatment team. This statement must indicate the detailed reason for the restrictions. A written restriction is effective for not more than sixty days and may be renewed only by the child’s attending physician. Reason for renewal must be entered in the child’s treatment records. Renewed restrictions may not exceed thirty days.

(C) Except as otherwise provided by law, no child may be denied the right to:

(1) hold a driver’s license;

(2) marry or divorce.

(D) Unless adjudicated incompetent, no child may be denied any other rights specified by law.

**SECTION 44‑24‑280.** Use of restraint, seclusion, or physical coercion; corporal punishment prohibited.

No child may be subjected to mechanical or chemical restraints, seclusion, or another form of physical coercion or restraint unless the action is authorized by a physician as being required to prevent a child from taking actions which are dangerous to himself or to others or prevent an imminent and substantial disruption of the therapeutic setting of the facility. The authorization for the action must be entered in the child’s record within one hour of the action. The authorizations are not valid for more than eight hours unless approved by the facility director or his designee. No child in an inpatient treatment facility of the department may be subjected to corporal punishment.