CHAPTER 13

Admission, Detention and Removal of Patients at State Mental Health Facilities

**SECTION 44‑13‑05.** Protective custody; procedures.

 (A) Except as provided for in Sections 56‑5‑2930 and 56‑5‑2950, if a law enforcement officer observes a person conducting himself in a manner that causes the law enforcement officer to reasonably believe that the person is mentally ill or is suffering from chemical dependency and because of that condition poses a likelihood of serious harm to himself or others or if a criminal offense that carries a penalty of less than one year and that does not involve a victim who could seek a warrant for the person’s arrest has occurred, the law enforcement officer may take the person into protective custody and transport the person to the local mental health center or a crisis stabilization program, if available in their jurisdictions, for examination and pre‑admission screening and evaluation of psychiatric and chemical dependency emergencies.

 (B) Upon arrival at the mental health center or a crisis stabilization program, if available in their jurisdictions, the law enforcement officer who took the person into protective custody pursuant to this section shall complete a written affidavit under oath pursuant to Section 44‑17‑410(1). If the person is subsequently the subject of a hearing, and if the law enforcement officer who completed the affidavit is given notice of the hearing pursuant to Section 44‑17‑550, the officer may, but is not required to, appear at the hearing.

 (C) The local mental health center or a crisis stabilization program, if available in their jurisdictions, shall arrange for an examination of the person in protective custody by a licensed physician. The center or crisis stabilization program, if available in their jurisdictions, may detain the person for up to twenty‑four hours for the purpose of psychiatric evaluation and examination by a licensed physician. If within twenty‑four hours of being taken into protective custody the person is not examined by a licensed physician, or if upon examination the physician does not execute the certification provided for in Section 44‑17‑410(2), the person in protective custody must be released. If the physician examining the person completes the certification provided for in Section 44‑17‑410(2), the center or crisis stabilization program, if available in their jurisdictions, may continue to detain the person pending transportation by a law enforcement officer to the hospital designated by the certification, as provided for in Section 44‑17‑440.

 (D) The taking of a person into protective custody pursuant to this section is not an arrest. The officer shall inform the person that he or she is being held in protective custody and is not under arrest. However, a law enforcement officer taking an individual into protective custody may use that kind and degree of force necessary, including reasonable precautions for self‑protection.

 (E) Except when a person is injured as a result of intentional injury, gross negligence, or a wanton disregard for their personal safety, a law enforcement officer, examining physician, or staff person of a mental health center or a designated facility who acts in accordance with this section is immune from civil liability.

 (F) For purposes of this section, “crisis stabilization program” means a community‑based psychiatric program providing short‑term, intensive, mental health treatment in a nonhospital setting for persons who are experiencing a psychiatric crisis and who are either unable to safely function in their daily lives or are a potential threat to themselves or the community, with treatment available twenty‑four hours a day, seven days a week.

 (G) A law enforcement officer may transport a person as provided in this section to a local mental health center or a crisis stabilization program beyond the officer’s jurisdiction if the law enforcement agency employing the officer has a written memo of understanding with the local mental health center or crisis stabilization program receiving the person taken into custody.

 (H) For purposes of this section, “local mental health center or crisis stabilization program” includes such center or program in an adjoining county or if there is not such a center or program in an adjoining county, then such a center or program in the nearest location.

HISTORY: 2005 Act No. 120, Section 3, eff June 3, 2005.

Library References

Mental Health 40.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 53.

Attorney General’s Opinions

Discussion of whether a sheriff has the power to refuse the admission of a prisoner and, if so, what conditions allow such refusal and what can be done to override such refusal. S.C. Op.Atty.Gen. (November 3, 2006) 2006 WL 3522443.

**SECTION 44‑13‑10.** Detention of individual pending removal to facility.

 Pending his removal to a State mental health facility an individual taken into custody or ordered to be admitted may be temporarily detained in his home, a licensed foster home or any other suitable facility under such reasonable conditions as the county governing body, supervisor or manager may fix, but he shall not, except because of and during an extreme emergency, be detained in a nonmedical establishment used for the detention of individuals charged with or convicted of penal offenses. The county governing body, supervisor or manager shall take such reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained under this section.

HISTORY: 1962 Code Section 32‑1015; 1952 (47) 2042.

CROSS REFERENCES

Appointment of guardian ad litem for mentally incompetent person, see SC Rules of Civil Procedure, Rule 17.

Certificates, applications, records and reports made for purposes of this chapter to remain confidential, with certain exceptions, see Section 44‑22‑100.

Declaration of rights or legal relations in respect to trust and estate of lunatic, see Section 15‑53‑50.

Detention, confinement, and transfer of confined persons, see Sections 44‑23‑210 et seq.

Jurisdiction of persons mentally incompetent, generally, see SC Const Art. V, Section 12.

Release, discharge, and reconfinement of mentally ill persons, see Sections 44‑17‑810 et seq.

Service on persons confined and duties of superintendent of state mental health facility, see Section 15‑9‑510, SCRCP, Rule 4.

Library References

Mental Health 40.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 53.

LAW REVIEW AND JOURNAL COMMENTARIES

Involuntary Commitment of the Mentally Ill: A Proposal For Change in South Carolina. 25 S.C. L. Rev. 765.

Attorney General’s Opinions

Where a mental patient is being committed and a bed in an approved facility cannot be found, it is the responsibility of the hospital security force where he has been examined or the local law enforcement with jurisdiction to assist the facility in maintaining control of the patient. It is the responsibility of the facility where the patient is held pending any move to another facility to maintain custody and control of the individual. S.C. Op.Atty.Gen. (December 20, 2007) 2007 WL 4686610.

Where there is an extreme emergency, an individual pending transportation to a state mental health facility may be detained in a correctional facility, and the latter facility is responsible for the individual’s health and safety. S.C. Op.Atty.Gen. (August 10, 2004) 2004 WL 1879676.

The temporary detention or restraint of a dangerous individual, particularly one who is mentally ill, to initiate commitment proceedings, is lawful. S.C. Op.Atty.Gen. (March 29, 1995) 1995 WL 803350.

**SECTION 44‑13‑20.** Admission of resident ordered committed by foreign court.

 Any individual, legally a resident of this State, ordered to be admitted to any mental health facility under the laws of any other state, may be admitted, upon satisfactory proof of residence, to care and treatment in any State mental health facility of this State. The orders of any court of competent jurisdiction of another state or of the District of Columbia authorizing admittance of such individual to a mental health facility shall have the same force and effect upon his transfer to this State as a lawful order of any court of competent jurisdiction in this State. A certified copy of such order shall be furnished the Department of Mental Health prior to the issuance by the Department of Mental Health of any authorization of transfer of such patient. Jurisdiction in all further matters relating to such mentally ill person shall vest in the judge of probate of the county in which the mental health facility, to which such person is admitted, is located, during his confinement therein, or the judge of probate of the county in which he is legally resident.

HISTORY: 1962 Code Section 32‑1013; 1954 (48) 1732.

CROSS REFERENCES

Declaratory judgment in respect to estate of lunatic, see Section 15‑53‑50.

Probate courts, generally, see Sections 14‑23‑1010 et seq.

Library References

Mental Health 40.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 53.

Attorney General’s Opinions

Use of certified copies under Interstate Compact on Mental Health. This section [Code 1962 Section 32‑1013] does not authorize the use of certified copies under the Interstate Compact on Mental Health but is indicative of the legislative intent that such a procedure is contemplated. 1962‑63 Op.Atty.Gen. No. 1589, p. 162 (October 29, 1963) 1963 WL 8335.

**SECTION 44‑13‑30.** Removal of patient or trainee who is not a citizen of this State.

 Unless he was admitted pursuant to the Interstate Compact on Mental Health as set out in Section 44‑25‑20 or a supplementary agreement thereto, if any person admitted to a State mental health facility is not a citizen of this State, the superintendent of the facility concerned shall immediately notify the Department of Mental Health, and the Department of Mental Health shall notify the mental health commission or other appropriate agency of the state of which the patient or trainee is a citizen. If the state of his citizenship fails to provide for his removal within a reasonable time, the Department of Mental Health shall cause him to be delivered to the officials authorized by law to care for similar persons pending their commitment to state institutions of the state of his citizenship. The cost of these proceedings and conveyance from this State shall be borne by this State under reciprocity agreements made by the Department of Mental Health with the mental health authorities of other states. In entering upon such reciprocal agreements with other states, the Department of Mental Health shall provide that the requirements necessary to gain residence in this State shall not be less than those required for the acquisition of residence in the other contracting state. The Department of Mental Health may, however, in cases of undue hardship waive the requirements of residence, for cause.

HISTORY: 1962 Code Section 32‑1024; 1952 Code Sections 32‑972, 32‑1008; 1942 Code Sections 6232, 6233; 1932 Code Sections 6232, 6233; Civ. C. ‘22 Sections 5085, 5086; Civ. C. ‘12 Sections 3368, 3369; 1902 (23) 1026; 1920 (31) 704; 1932 (37) 1365; 1952 (47) 2042; 1954 (48) 1732; 1959 (51) 325.

CROSS REFERENCES

Detention, confinement and transfer of confined persons, see Sections 44‑23‑210 et seq.

Library References

Mental Health 35.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 82.

**SECTION 44‑13‑40.** Removal of alien patient or trainee.

 If any person admitted to a State mental health facility is not a citizen of the United States, the superintendent of the facility concerned shall immediately notify the Department of Mental Health of the name of the person and all ascertainable information as to race, nativity, date of last arrival in the United States, the name of the vessel on which he arrived, the port at which he landed and the name of the transporting company. The Department of Mental Health shall transmit this information to the appropriate United States authorities and shall continue to provide care and treatment for the patient or trainee pending arrangements for his deportation.

HISTORY: 1962 Code Section 32‑1025; 1952 Code Sections 32‑972, 32‑1009; 1942 Code Sections 6232, 6233; 1932 Code Sections 6232, 6233; Civ. C. ‘22 Sections 5085, 5086; Civ. C. ‘12 Sections 3368, 3369; 1902 (23) 1026; 1920 (31) 704; 1932 (37) 1365; 1952 (47) 2042.

Library References

Mental Health 35.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 82.

**SECTION 44‑13‑50.** Return of patient to out‑of‑state mental health facility.

 If a mentally ill patient from an out‑of‑State mental health facility is found to be in this State without permission and upon satisfactory identification of the patient and the request of such facility that the patient be returned, he may be taken into custody by proper public officials and transported directly to the out‑of‑State facility or may be detained in a State mental health facility until such time as transportation arrangements can be made or the patient’s health will permit his return. The state requesting the return of the patient shall pay all costs of, and incidental to, the transportation and detention of the patient.

HISTORY: 1962 Code Section 32‑1024.1; 1970 (56) 2496.

CROSS REFERENCES

Detention, confinement and transfer of confined persons, see Sections 44‑23‑210 et seq.

Library References

Mental Health 35.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 82.

**SECTION 44‑13‑60.** Transfer of custody of infirm or harmless patient or trainee.

 The Department of Mental Health shall investigate the case of each patient or trainee in a State mental health facility who is simply mentally or physically infirm or who is a harmless mental defective or harmless epileptic. When, in the opinion of the Department of Mental Health, the family, guardian, trustee, committee or other person legally responsible for the person is financially able to provide for his care, it shall, when in the opinion of the Department of Mental Health this is advisable, transfer the patient or trainee to the custody of that person. If all persons legally responsible for the patient or trainee are financially unable to provide for his care, the Department of Mental Health shall, when practicable, transfer the custody of the person to the county health authorities of the county of which the patient or trainee was a resident prior to admittance.

HISTORY: 1962 Code Section 32‑1031; 1952 Code Sections 32‑957, 32‑964, 32‑976; 1942 Code Sections 6226, 6249‑1, 6249‑3; 1932 Code Sections 1570, 1572, 6226; Civ. C. ‘22 Section 5078; Cr. C. ‘22 Sections 518, 520; Cr. C. ‘12 Sections 587, 589; Cr. C. ‘02 Sections 430, 432; R. S. 343, 345; 1884 (18) 827, 828; 1920 (31) 704; 1952 (47) 2042.

CROSS REFERENCES

Detention, confinement and transfer of confined persons, see Sections 44‑23‑210 et seq.

Library References

Mental Health 35.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 82.

**SECTION 44‑13‑70.** Admission forms to be kept by probate judges.

 The judge of probate in each county shall keep an adequate supply of forms necessary for the admission or commitment of persons under this chapter, Chapter 9, Chapter 11, Article 1 of Chapter 15, Chapter 17, Chapter 23, Chapter 24, Chapter 27, and Chapter 52.

HISTORY: 1962 Code Section 32‑1014; 1952 (47) 2042; 1958 (50) 1634; 1993 Act No. 20, Section 1.

CROSS REFERENCES

Certificates, applications, records and reports made for purposes of this chapter to remain confidential, with certain exceptions, see Section 44‑22‑100.

Probate courts, generally, see Sections 14‑23‑1010 et seq.

Library References

Mental Health 37.1.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 59 to 63.