CHAPTER 23

Provisions Applicable to Both Mentally Ill Persons and Persons With Intellectual Disability

ARTICLE 1

Definitions and General Matter

**SECTION 44‑23‑10.** Definitions.

 When used in this chapter, Chapter 9, Chapter 11, Chapter 13, Articles 3, 5, 7, and 9 of Chapter 17, Chapter 24, Chapter 27, Chapter 48, and Chapter 52, unless the context clearly indicates a different meaning:

 (1) “Attending physician” means the staff physician charged with primary responsibility for the treatment of a patient.

 (2) “Conservator” means a person who legally has the care and management of the estate of one who is incapable of managing his own estate, whether or not he has been declared legally incompetent.

 (3) “Department” means the South Carolina Department of Mental Health.

 (4) “Designated examiner” means a physician licensed by the Board of Medical Examiners of this State or a person registered by the department as specially qualified, under standards established by the department, in the diagnosis of mental or related illnesses.

 (5) “Director” means the Director of the South Carolina Department of Mental Health.

 (6) “Discharge” means an absolute release or dismissal from an institution or a hospital.

 (7) “Gravely disabled” means a person who, due to mental illness, lacks sufficient insight or capacity to make responsible decisions with respect to his treatment and because of this condition is likely to cause harm to himself through neglect, inability to care for himself, personal injury, or otherwise.

 (8) “Guardian” or “legal guardian” means a person who legally has the care and management of the person of one who is not sui juris.

 (9) “Hospital” means a public or private hospital.

 (10) “Interested person” means a parent, guardian, spouse, adult next of kin, or nearest friend.

 (11) “Leave of absence” means a qualified release from an institution or a hospital.

 (12) “Licensed physician” means an individual licensed under the laws of this State to practice medicine or a medical officer of the government of the United States while in this State in the performance of official duties.

 (13) “Likelihood of serious harm” means because of mental illness there is:

 (a) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm;

 (b) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them; or

 (c) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that the person is gravely disabled and that reasonable provision for the person’s protection is not available in the community.

 (14) “Mental health clinic” means an institution, or part of an institution, maintained by the department for the treatment and care on an outpatient basis.

 (15) “Nearest friend” means any responsible person who, in the absence of a parent, guardian, or spouse, undertakes to act for and on behalf of another individual who is incapable of acting for himself for that individual’s benefit, whether or not the individual for whose benefit he acts is under legal disability.

 (16) “Nonresident licensed physician” means an individual licensed under the laws of another state to practice medicine or a medical officer of the government of the United States while performing official duties in that state.

 (17) “Observation” means diagnostic evaluation, medical, psychiatric and psychological examination, and care of a person for the purpose of determining his mental condition.

 (18) “Officer of the peace” means any state, county, or city police officer, officer of the State Highway Patrol, sheriff, or deputy sheriff.

 (19) “Parent” means natural parent, adoptive parent, stepparent, or person with legal custody.

 (20) “Patient” means a person who seeks hospitalization or treatment under the provisions of this chapter, Chapter 9, Chapter 11, Chapter 13, Article 1 of Chapter 15, Chapter 17, Chapter 27, Chapter 48, and Chapter 52 or any person for whom such hospitalization or treatment is sought.

 (21) “Person with a mental illness” means a person with a mental disease to such an extent that, for the person’s own welfare or the welfare of others or of the community, the person requires care, treatment, or hospitalization.

 (22) “Person with intellectual disability” means a person, other than a person with a mental illness primarily in need of mental health services, whose inadequately developed or impaired intelligence and adaptive level of behavior require for the person’s benefit, or that of the public, special training, education, supervision, treatment, care, or control in the person’s home or community or in a service facility or program under the control and management of the Department of Disabilities and Special Needs.

 (23) “State hospital” means a hospital, or part of a hospital, equipped to provide inpatient care and treatment and maintained by the department.

 (24) “State mental health facility” or “facility” means any hospital, clinic, or other institution maintained by the department.

 (25) “State of citizenship” means the last state in which a person resided for one or more consecutive years, exclusive of time spent in public or private hospitals and penal institutions or on parole or unauthorized absence from such hospitals and institutions and of time spent in service in any of the Armed Forces of the United States; the residence of a person must be determined by the actual physical presence, not by the expressed intent of the person.

 (26) “Treatment” means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient, including diagnostic evaluation and medical, psychiatric, psychological, and social service care and vocational rehabilitation and counseling.

HISTORY: 1962 Code Section 32‑911; 1952 (47) 2042; 1954 (48) 1732; 1958 (50) 1634; 1960 (51) 1701, 1944; 1961 (52) 110, 550; 1965 (54) 570; 1966 (54) 2259; 1969 (56) 653; 1974 (58) 2642; 1977 Act No. 99 Section 1; 1986 Act No. 539, Section 3(1)(G); 1993 Act No. 181, Section 1083; 2008 Act No. 266, Section 7, eff June 4, 2008; 2011 Act No. 47, Section 4, eff June 7, 2011; 2016 Act No. 225 (H.3952), Section 1, eff June 3, 2016.

CROSS REFERENCES

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

Department of Mental Health regulations, see S.C. Code of Regulations R. 87‑1 et seq.

Emergency admission of person likely to cause serious harm, procedures, court review, assessment by examiners, initiation of emergency commitment procedures, hearing, right to counsel, see Section 44‑17‑410.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 3, Definitions‑ Statutory Terms.

S.C. Jur. Mental Health Section 22, Overview.

S.C. Jur. Mental Health Section 30, Notice of Hearing.

Attorney General’s Opinions

The use of the word “examiners” as used in Code 1962 Section 32‑975 [Code 1976 Section 44‑23‑220] is limited to “designated examiners” as defined in Code 1962 Section 32‑911(7) [Code 1976 Section 44‑23‑10(7)] and includes only those listed by the Department of Mental Health as so qualified or licensed physicians. S.C. Op.Atty.Gen. (January 27, 1975) 1975 WL 22245.

One of the two designated examiners for Mental Health may be located at a Mental Health Center while the other may be located at the State Hospital. S.C. Op.Atty.Gen. (January 13, 1975) 1975 WL 22229.

NOTES OF DECISIONS

In general 1

Designated examiner 2

1. In general

This chapter outlines the procedure and remedies available in the State courts. Rikard v. South Carolina State Hospital, 1962, 202 F.Supp. 763.

Individuals determined to be unfit to stand trial due to intellectual disability from head injury or spinal cord injury can only be voluntarily committed to Department of Disabilities and Special Needs (DDSN). Ex Parte South Carolina Department of Disabilities and Special Needs v. Linkhorn (S.C. 2017) 420 S.C. 1, 800 S.E.2d 777. Statutes 1111

Statute governing involuntary commitment of person with intellectual disability, defined as person who developed intellectual disability during developmental period or related disability manifested before age of 22, did not apply to committee who suffered dementia caused by anoxic brain injury, and thus, Department of Disabilities and Special Needs (DDSN) was under no obligation to admit committee and provide services after he was determined incompetent to stand trial for various sex crimes and unlikely to become fit in foreseeable future. Ex Parte South Carolina Department of Disabilities and Special Needs v. Linkhorn (S.C. 2017) 420 S.C. 1, 800 S.E.2d 777. Mental Health 432

2. Designated examiner

Jail’s designated mental health examiner, who was threatened by defendant, was not a “public official” within meaning of statute prohibiting threatening the life of a public official, and instead, examiner was a “public employee;” State failed to prove that a designated examiner’s tenure, salary, bond, and oath were prescribed or required by law, examiner’s position did not require the exercise of sovereign power, and examiner’s duties were intermittent. State v. Bailey (S.C.App. 2016) 416 S.C. 344, 785 S.E.2d 622, rehearing denied, certiorari denied. Threats, Stalking, And Harassment 15

**SECTION 44‑23‑20.** Inapplicability to Whitten Center.

 The provisions of this chapter, Chapter 9, Chapter 11, Chapter 13, Article 1 of Chapter 15, Chapter 17 and Chapter 27, shall not be construed as applying to Whitten Center.

HISTORY: 1962 Code Section 32‑912; 1957 (50) 248; 1979 Act No. 60 Section 1.

Library References

Mental Health 40.1.

Westlaw Topic No. 257A.

**SECTION 44‑23‑40.** Appeal to court from rules and regulations.

 Any person affected by the rules and regulations of the Department adopted pursuant to Section 44‑9‑100 shall have the right to appeal therefrom to any court of record.

HISTORY: 1962 Code Section 32‑914; 1952 Code Section 32‑985; 1942 Code Section 6223; 1932 Code Section 6223; Civ. C. ‘22 Section 5074; Civ. C. ‘12 Section 3355; Civ. C. ‘02 Section 2248; G. S. 1585; R. S. 1780; 1827 (11) 322; 1871 (15) 672; 1915 (29) 147; 1920 (31) 704; 1938 (40) 1665; 1952 (47) 2042; 1958 (50) 1634.

CROSS REFERENCES

Appeals, generally, see Sections 18‑1‑10 et seq.

Courts, generally, see Sections 14‑1‑10 et seq.

Library References

Mental Health 45.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 86 to 91.

ARTICLE 3

Detention, Confinement, and Transfer of Confined Persons

**SECTION 44‑23‑210.** Transfer of confined persons to or between mental health or intellectual disability facility.

 A person confined in a state institution or a person confined in a state or private mental health or intellectual disability facility may be transferred to another mental health or intellectual disability facility if:

 (1) the director of a state institution not under the jurisdiction of the Department of Mental Health requests the admission of a person confined there to a state mental health facility if the person is suspected of having a mental illness. If after full examination by two designated examiners, one of whom must be a licensed physician, the director of the mental health facility is of the opinion that the person has a mental illness, the director shall notify the director of the institution or the facility to which the person was admitted who shall commence proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610;

 (2) the director of a facility in which the patient resides determines that it would be consistent with the medical needs of the person, the Department of Mental Health may transfer or authorize the transfer of the patient from one facility to another. If the transfer is from a less restricted facility to a substantially more secure facility and the patient objects to the transfer, a hearing to give the patient a reasonable opportunity to contest the transfer must be held pursuant to Sections 44‑17‑540 through 44‑17‑570. When a patient is transferred, written notice must be given to the patient’s legal guardian, attorney, parents, or spouse or, if none be known, to the patient’s nearest known relative or friend. This section may not be construed to apply to transfers of a patient within a mental health facility; or

 (3) the legal guardian, parent, spouse, relative, or friend of an involuntary patient submits a request for the transfer of the patient from one Department of Mental Health facility to another and the reasons for desiring the transfer and unless the Department of Mental Health reasonably determines that it would be inconsistent with the medical needs of the person, the transfer must be made. If the transfer is from a less restricted to a substantially more secure facility, item (2) governs.

HISTORY: 1962 Code Section 32‑974; 1974 (58) 2642; 1977 Act No. 99 Section 15; 1993 Act No. 34, Section 1; 1993 Act No. 181, Section 1084; 2008 Act No. 266, Section 8, eff June 4, 2008; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

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

Commitment of tuberculosis patients, see Sections 44‑31‑110 et seq.

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

Guardians ad litem, see SC Rules of Civil Procedure, Rule 17(c), (d).

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

Service of process on minors, incompetents and persons confined, see SC Rules of Civil Procedure, Rule 4(d).

Library References

Mental Health 56.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 99 to 100.

LAW REVIEW AND JOURNAL COMMENTARIES

Compulsory Legal Measures and the Concept of Illness. 19 S.C. L. Rev. 372.

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

Attorney General’s Opinions

Where the transfer to a state mental health facility results in a patient being moved from a less restricted facility to a substantially more secure facility, a hearing to contest that transfer is required, but for such provision to be applicable, a person must be confined to a state institution or a state or private mental health facility. S.C. Op.Atty.Gen. (February 9, 2004) 2004 WL 323945.

NOTES OF DECISIONS

Constitutional issues 1

Habeas corpus 2

1. Constitutional issues

The involuntary transfer of a state prisoner to a state mental hospital pursuant to state law implicates a liberty interest that is protected by the due process clause of the Fourteenth Amendment, where under the state law allowing for such transfers, a prisoner could reasonably expect that he would not be transferred to a mental hospital without a finding that he was suffering from a mental illness for which he could not secure adequate treatment in the correctional facility; independent of the state law, the stigmatizing consequences of a transfer to a mental hospital for involuntary psychiatric treatment, coupled with the subjection of the prisoner to mandatory behavior modification as a treatment for mental illness, constitute the kind of deprivations of liberty that require procedural protection. Vitek v. Jones, 1980, 100 S.Ct. 1254, 445 U.S. 480, 63 L.Ed.2d 552.

2. Habeas corpus

A person restrained of her liberty by State process cannot maintain habeas corpus action in a federal district court to determine whether such restraint constitutes a violation of the provisions of the United States Constitution and amendments thereto without first having exhausted every remedy available to her in the State courts. Rikard v. South Carolina State Hospital, 1962, 202 F.Supp. 763. Habeas Corpus 319.1

This section [Code 1962 Section 32‑915] does not purport, either expressly or by necessary implication, to broaden the scope of habeas corpus. It merely reaffirms that the writ is available, to test not the factual issue of the petitioner’s sanity but the legality of the proceedings or judgment under which he was committed and is being confined. Douglas v. Hall (S.C. 1956) 229 S.C. 550, 93 S.E.2d 891. Habeas Corpus 537.1

**SECTION 44‑23‑220.** Admission of persons in jail.

 No person who is mentally ill or who has an intellectual disability shall be confined for safekeeping in any jail. If it appears to the officer in charge of the jail that such a person is in prison, he shall immediately cause the person to be examined by two examiners designated by the Department of Mental Health or the Department of Disabilities and Special Needs, or both, and if in their opinion admission to a mental health or intellectual disability facility is warranted, the officer in charge of the jail shall commence proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610, or Section 44‑21‑90. If hospitalization is ordered, the person shall be discharged from the custody of the officer in charge of the jail and shall be admitted to an appropriate mental health or intellectual disability facility.

HISTORY: 1962 Code Section 32‑975; 1974 (58) 2642; 1993 Act No. 181, Section 1085; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

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

Commitment of tuberculosis patients, see Sections 44‑31‑110 et seq.

Guardians ad litem, see SC Rules of Civil Procedure, Rule 17(c), (d).

Prisoners, generally, see Chapter 13 of Title 24.

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

Service of process on minors, incompetents and persons confined, see SC Rules of Civil Procedure, Rule 4(d).

Library References

Mental Health 40.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 53.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 33, Transfer.

Attorney General’s Opinions

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 use of the word “examiners” as used in Code 1962 Section 32‑975 [Code 1976 Section 44‑23‑220] is limited to “designated examiners” as defined in Code 1962 Section 32‑911(7) [Code 1976 Section 44‑23‑10(7)] and includes only those listed by the Department of Mental Health as so qualified or licensed physicians. S.C. Op.Atty.Gen. (January 27, 1975) 1975 WL 22245.

NOTES OF DECISIONS

In general 1

1. In general

Jail’s designated mental health examiner, who was threatened by defendant, was not a “public official” within meaning of statute prohibiting threatening the life of a public official, and instead, examiner was a “public employee;” State failed to prove that a designated examiner’s tenure, salary, bond, and oath were prescribed or required by law, examiner’s position did not require the exercise of sovereign power, and examiner’s duties were intermittent. State v. Bailey (S.C.App. 2016) 416 S.C. 344, 785 S.E.2d 622, rehearing denied, certiorari denied. Threats, Stalking, And Harassment 15

**SECTION 44‑23‑240.** Causing unwarranted confinement.

 Any person who wilfully causes, or conspires with or assists another to cause the unwarranted confinement of any individual under the provisions of this chapter, Chapter 9, Chapter 11, Chapter 13, Article 1, of Chapter 15, Chapter 17, or Chapter 27, shall be fined not exceeding one thousand dollars or imprisoned for not exceeding one year, or both.

HISTORY: 1962 Code Section 32‑916; 1952 (47) 2042; 1974 (58) 2642; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

Commitment of tuberculosis patients, see Sections 44‑31‑110 et seq.

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

Guardians ad litem, see SC Rules of Civil Procedure, Rule 17(c), (d).

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

Service of process on minors, incompetents and persons confined, see SC Rules of Civil Procedure, Rule 4(d).

Library References

Mental Health 40.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 53.

**SECTION 44‑23‑250.** Signature of director of state mental health facility defined.

 Whenever reference is made requiring the signature of the director of any state mental health facility, the reference means the director of the facility or the director’s designee.

HISTORY: 1962 Code Section 32‑916.1; 1967 (55) 317; 2008 Act No. 266, Section 9, eff June 4, 2008; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

Commitment of tuberculosis patients, see Sections 44‑31‑110 et seq.

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

Guardians ad litem, see SC Rules of Civil Procedure, Rule 17(c), (d).

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

Service of process on minors, incompetents and persons confined, see SC Rules of Civil Procedure, Rule 4(d).

Library References

Mental Health 31.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 49, 51 to 52, 59.

ARTICLE 5

Fitness to Stand Trial

**SECTION 44‑23‑410.** Determining fitness to stand trial; time for conducting examination; extension; independent examination; competency distinguished.

 (A) Whenever a judge of the circuit court or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:

 (1) order examination of the person by two examiners designated by the Department of Mental Health if the person is suspected of having a mental illness or designated by the Department of Disabilities and Special Needs if the person is suspected of having intellectual disability or having a related disability or by both sets of examiners if the person is suspected of having both mental illness and intellectual disability or a related disability. The examination must be made within thirty days after the receipt of the court’s order and may be conducted in any suitable place unless otherwise designated by the court; or

 (2) order the person committed for examination and observation to an appropriate facility of the Department of Mental Health or the Department of Disabilities and Special Needs for a period not to exceed fifteen days.

 (B) Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen days to complete the examination or the examination and observation.

 (C) If the person or the person’s counsel requests, the court may authorize the person to be examined additionally by a designated examiner of the person’s choice. However, the court may prescribe the time and conditions under which the independent examination is conducted.

 (D) If the examiners designated by the Department of Mental Health find indications of intellectual disability or a related disability but not mental illness, the department shall not render an evaluation on the person’s mental capacity, but shall inform the court that the person is “not mentally ill” and recommend that the person should be evaluated for competency to stand trial by the Department of Disabilities and Special Needs. If the examiners designated by the Department of Disabilities and Special Needs find indications of mental illness but not intellectual disability or a related disability, the department shall not render an evaluation on the person’s mental capacity, but shall inform the court that the person does “not have intellectual disability or a related disability” and recommend that the person should be evaluated for competency to stand trial by the Department of Mental Health. If either the Department of Mental Health or the Department of Disabilities and Special Needs finds a preliminary indication of a dual diagnosis of mental illness and intellectual disability or a related disability, this preliminary finding must be reported to the court with the recommendation that one examiner from the Department of Mental Health and one examiner from the Department of Disabilities and Special Needs be designated to further evaluate the person and render a final report on the person’s mental capacity.

HISTORY: 1962 Code Section 32‑977; 1974 (58) 2642; 1990 Act No. 419, Section 1; 1990 Act No. 431, Section 1; 1993 Act No. 181, Section 1086; 2006 Act No. 400, Section 1, eff September 29, 2006; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

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

Pleading and trial in criminal cases, see Sections 17‑23‑10 et seq.

Library References

Mental Health 432, 434.

Westlaw Topic No. 257A.

C.J.S. Criminal Procedure and Rights of the Accused Sections 511 to 515, 518, 520 to 521, 529 to 531.

C.J.S. Mental Health Section 269.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 129, Trial Matters.

S.C. Jur. Constitutional Law Section 80, Criminal Proceedings.

S.C. Jur. Mental Health Section 3, Definitions‑ Statutory Terms.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: Criminal law; Competency to stand trial examination and hearing. 34 S.C. L. Rev. 93 (August 1982).

Attorney General’s Opinions

A Court may encompass in its original observation order a provision for continued hospitalization until such time as the hearing required by Code 1962 Section 32‑979 [Code 1976 Section 44‑23‑430] may be held. S.C. Op.Atty.Gen. (March 10, 1975) 1975 WL 22291.

Compulsory mental examination of criminal defendant under statutory procedure does not violate any constitutional right of the accused. S.C. Op.Atty.Gen. (June 2, 1970) 1970 WL 12193.

NOTES OF DECISIONS

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Waiver of right to hearing 5

1. In general

The test for determining competency to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him. State v. Weik (S.C. 2002) 356 S.C. 76, 587 S.E.2d 683, rehearing granted, adhered to on rehearing 354 S.C. 382, 581 S.E.2d 834, certiorari denied 123 S.Ct. 2580, 539 U.S. 930, 156 L.Ed.2d 609. Mental Health 432

2. Constitutional issues

Where insanity is interposed as a defense in a criminal prosecution, compulsory examination of the accused by experts for the purpose of determining his mental condition does not violate either the constitutional protection against self‑incrimination or the constitutional guaranty of due process of law. State v. Locklair (S.C. 2000) 341 S.C. 352, 535 S.E.2d 420, rehearing denied, certiorari denied 121 S.Ct. 817, 531 U.S. 1093, 148 L.Ed.2d 701. Constitutional Law 4783(1); Criminal Law 393(1)

Failure of judge to direct further examination and hearing to determine defendant’s competency to stand trial did not constitute violation of Section 44‑23‑410, nor deprive defendant of due process of law, where trial judge had before him finding of previous presiding judge that, defendant was fit to stand trial 2 1⁄2 months earlier, the record failed to show facts to warrant further examination or hearing, and defendant’s counsel clearly refused to demand further competency hearing. State v. Drayton (S.C. 1978) 270 S.C. 582, 243 S.E.2d 458. Constitutional Law 4783(1); Constitutional Law 4783(2); Mental Health 434

3. Examination

The ordering of a examination for competency to stand trial is within the discretion of the trial judge. State v. Colden (S.C.App. 2007) 372 S.C. 428, 641 S.E.2d 912. Criminal Law 625(2)

Great deference is given to trial judge’s decision on whether to order a examination of competency to stand trial, as the judge sits in a better position to ascertain the defendant’s faculties. State v. Colden (S.C.App. 2007) 372 S.C. 428, 641 S.E.2d 912. Criminal Law 1158.23

If the judge believes a person may be unfit to stand trial, a competency evaluation is compulsory. State v. Colden (S.C.App. 2007) 372 S.C. 428, 641 S.E.2d 912. Criminal Law 625.10(1)

Trial judge has the discretion to order a mental health evaluation where defendant indicates an intent to introduce evidence at trial that he lacked criminal responsibility. Monahan v. State (S.C. 2005) 365 S.C. 130, 616 S.E.2d 422, habeas corpus dismissed 2006 WL 2796390, appeal dismissed 275 Fed.Appx. 216, 2008 WL 1859496, certiorari denied 129 S.Ct. 244, 555 U.S. 907, 172 L.Ed.2d 185, denial of post‑conviction relief affirmed 2016 WL 245231. Mental Health 434

Factors to be considered in determining whether further inquiry into a defendant’s fitness to stand trial is warranted include evidence of his or her irrational behavior, his or her demeanor at trial, and any prior medical opinion on his or her competence to stand trial. State v. Burgess (S.C.App. 2003) 356 S.C. 572, 590 S.E.2d 42, rehearing denied. Criminal Law 625.10(2.1)

Trial court had the inherent, discretionary authority to order an independent psychiatric evaluation of defendant if court believed defendant was not fit to stand trial or if court believed defendant’s mental competency would be an issue at trial. State v. Locklair (S.C. 2000) 341 S.C. 352, 535 S.E.2d 420, rehearing denied, certiorari denied 121 S.Ct. 817, 531 U.S. 1093, 148 L.Ed.2d 701. Mental Health 434

Defendant’s failure to cite statute requiring judge to order competency examination if there is reason to believe that person charged with criminal offense is not fit to stand trial in motion to hold probation revocation hearing in abeyance pending mental evaluation did not relieve trial court of duty to order mental examination on its own motion, since statute ordered examination “whenever a Circuit Court . . . has reason to believe” defendant may lack mental capacity necessary to stand trial. State v. Singleton (S.C.App. 1996) 322 S.C. 480, 472 S.E.2d 640. Sentencing And Punishment 260

Under Section 44‑23‑410, an examination to determine a criminal defendant’s competency to stand trial is discretionary with the trial judge, and is mandated only upon his finding of its necessity. State v. Adams (S.C. 1983) 279 S.C. 228, 306 S.E.2d 208, certiorari denied 104 S.Ct. 558, 464 U.S. 1023, 78 L.Ed.2d 730, denial of habeas corpus affirmed 965 F.2d 1306, certiorari denied 113 S.Ct. 2966, 508 U.S. 974, 125 L.Ed.2d 666, vacated on rehearing 114 S.Ct. 1365, 511 U.S. 1001, 128 L.Ed.2d 42, on remand 41 F.3d 175.

Judge did not abuse discretion in refusing to grant motion for mental examination based upon defendant’s allegation that he did not recall anything of robbery and fact that defendant knew victims. State v. Bradshaw (S.C. 1977) 269 S.C. 642, 239 S.E.2d 652.

Trial judge retains discretion to determine whether defendant should be given mental examination under statute [Section 44‑23‑410] providing for mental examination whenever judge has reason to believe defendant lacks certain mental capacity. State v. Bradshaw (S.C. 1977) 269 S.C. 642, 239 S.E.2d 652.

4. Juvenile proceedings

In a juvenile delinquency proceeding, the Family Court erred in accepting the juvenile’s guilty plea without having ordered an examination of the juvenile where, at the dispositional hearing, the Family Court was aware that the juvenile had been found incompetent to stand trial less than one month earlier. In Interest of Antonio H. (S.C.App. 1995) 319 S.C. 395, 461 S.E.2d 825, reversed 324 S.C. 120, 477 S.E.2d 713.

5. Waiver of right to hearing

A defendant’s failure to request a hearing under Section 44‑23‑430 did not constitute a waiver of his right to such a hearing following an examination under Section 44‑23‑410 that reversed the finding of a prior examination which had found defendant incompetent to stand trial. State v. Blair (S.C. 1981) 275 S.C. 529, 273 S.E.2d 536, appeal decided 276 S.C. 644, 282 S.E.2d 596.

6. Determination of criminal responsibility

Issue of whether defendant is criminally responsible and whether he is competent to stand trial are separate mental health issues; test for criminal responsibility relates to the time of the alleged offense, while competency to stand trial relates to the time defendant is before the court for trial. Monahan v. State (S.C. 2005) 365 S.C. 130, 616 S.E.2d 422, habeas corpus dismissed 2006 WL 2796390, appeal dismissed 275 Fed.Appx. 216, 2008 WL 1859496, certiorari denied 129 S.Ct. 244, 555 U.S. 907, 172 L.Ed.2d 185, denial of post‑conviction relief affirmed 2016 WL 245231. Criminal Law 48; Mental Health 432

Statute governing determination of capacity of persons charged with crime to stand trial does not apply to evaluations for criminal responsibility, but only to evaluations to determine competency to stand trial. Monahan v. State (S.C. 2005) 365 S.C. 130, 616 S.E.2d 422, habeas corpus dismissed 2006 WL 2796390, appeal dismissed 275 Fed.Appx. 216, 2008 WL 1859496, certiorari denied 129 S.Ct. 244, 555 U.S. 907, 172 L.Ed.2d 185, denial of post‑conviction relief affirmed 2016 WL 245231. Mental Health 432

Trial court’s decision to allow state’s expert to examine murder defendant on issue of criminal responsibility after defendant had already undergone examination to determine his competency to stand trial was not abuse of discretion; even if statute governing determination of capacity of persons charged with crime to stand trial allowed only one examination, statute was not dispositive, as it applied only to evaluations to determine competency to stand trial, although defendant had been examined twice, only one examination was at state’s request after it became apparent that defendant intended to proceed with an insanity defense, and there was no evidence that state was engaging in opinion shopping by requesting another expert evaluation. Monahan v. State (S.C. 2005) 365 S.C. 130, 616 S.E.2d 422, habeas corpus dismissed 2006 WL 2796390, appeal dismissed 275 Fed.Appx. 216, 2008 WL 1859496, certiorari denied 129 S.Ct. 244, 555 U.S. 907, 172 L.Ed.2d 185, denial of post‑conviction relief affirmed 2016 WL 245231. Mental Health 434

7. Presumptions and burden of proof

The defendant bears the burden of proving his lack of competence to stand trial by a preponderance of the evidence. State v. Weik (S.C. 2002) 356 S.C. 76, 587 S.E.2d 683, rehearing granted, adhered to on rehearing 354 S.C. 382, 581 S.E.2d 834, certiorari denied 123 S.Ct. 2580, 539 U.S. 930, 156 L.Ed.2d 609. Criminal Law 625.15

8. Sufficiency of evidence

Trial judge did not abuse his discretion in trial for murder and related offenses by not ordering an mental examination to determine defendant’s competency to stand trial in prosecution for murder and related offenses; defendant’s voir dire with judge conclusively revealed defendant’s ability to answer questions rationally and appropriately, defendant demonstrated a manifest understanding of the proceedings, the roles of the various participants, and the charges he was facing, and pre‑existing evidence of audiotaped statement of defendant did not raise any mental health concerns. State v. Colden (S.C.App. 2007) 372 S.C. 428, 641 S.E.2d 912. Criminal Law 625.10(3)

Trial court was under no obligation to order mental examination of defendant prior to accepting her guilty plea to six counts of threatening a public official, even though physician testified that defendant’s neurological condition may have accounted for some of her behavior, and that defendant had received in‑patient psychiatric care on at least six occasions, where defendant’s counsel, aware of defendant’s previous mental health history, informed trial court that defendant had no difficulty in either understanding what she was facing or in relaying to him what she actually did with respect to charges, and physician also testified that he found defendant’s actions to be deliberate and calculated to perpetuate a comfortable situation, and opined that the guilty but mentally ill defense did not fit defendant’s situation. State v. White (S.C.App. 2005) 364 S.C. 143, 611 S.E.2d 927. Mental Health 434

Trial judge did not abuse his discretion in murder prosecution by not ordering a psychiatric examination to determine defendant’s fitness to stand trial; defendant had not previously been adjudicated incompetent to stand trial, trial judge observed that defendant’s demeanor during pretrial motion appeared to be “very appropriate,” and record indicated that during pretrial motion defendant seemed to understand the proceedings, the roles of the various participants, and the charges leveled against her. State v. Burgess (S.C.App. 2003) 356 S.C. 572, 590 S.E.2d 42, rehearing denied. Criminal Law 625.10(2.1)

It was within trial court’s discretion not to order further competency examination of burglary defendant by the Department of Disabilities and Special Needs (DDSN), though a Department of Mental Health (DMH) letter accompanying a mental evaluation recommended a DDSN evaluation of defendant’s mental retardation, where doctor who conducted DMH evaluation, and who did not write the accompanying letter, concluded that defendant was not mentally retarded and had average intelligence. State v. Bradley (S.C.App. 2000) 539 S.E.2d 720.

Trial court abused its discretion in failing to order competency examination in conjunction with probation revocation proceeding, where defendant’s counsel’s report indicated that defendant suffered from symptoms suggestive of schizophrenia and was under psychiatric care at time of hearing, defendant’s mother testified as to seriousness and duration of mental problems, and trial judge stated at conclusion of hearing that he believed defendant needed additional treatment for his mental condition. State v. Singleton (S.C.App. 1996) 322 S.C. 480, 472 S.E.2d 640. Sentencing And Punishment 2026

The ordering of a competency examination is within the discretion of the trial judge, and the refusal to grant such an examination will not be set aside unless there is a clear showing of abuse of discretion on the part of the trial judge. There was an abuse of discretion in the failure to comply with Section 44‑23‑410 where the defendant’s behavior was strange, a psychiatrist testified that his interview with the defendant was not long enough to make a decision about the defendant’s competency to stand trial, and the trial judge issued 2 orders directing that the defendant be examined to determine his mental capacity to stand trial. State v. Buchanan (S.C.App. 1990) 302 S.C. 83, 394 S.E.2d 1.

9. Review

The refusal to grant an examination for competency to stand trial will not be disturbed on appeal absent a clear showing of an abuse of that discretionbecause the determination of whether there is reason to believe a defendant lacks a certain mental capacity necessarily requires the exercise of discretion. State v. Colden (S.C.App. 2007) 372 S.C. 428, 641 S.E.2d 912. Criminal Law 1148

If there is any evidence to support a trial judge’s decision to grant an examination for competency to stand trial, an appellate court will affirm it. State v. Colden (S.C.App. 2007) 372 S.C. 428, 641 S.E.2d 912. Criminal Law 1158.23

Ordering a competency examination is within the discretion of the trial judge and a refusal to grant an examination will not be disturbed on appeal absent a clear showing of an abuse of discretion. State v. Locklair (S.C. 2000) 341 S.C. 352, 535 S.E.2d 420, rehearing denied, certiorari denied 121 S.Ct. 817, 531 U.S. 1093, 148 L.Ed.2d 701. Criminal Law 1148; Mental Health 434

Despite mandatory language of statute requiring judge to order competency examination if there is reason to believe that person charged with criminal offense is not fit to stand trial, ordering competency examination is within discretion of trial judge and refusal to grant examination will not be disturbed on appeal absent clear showing of abuse of discretion. State v. Singleton (S.C.App. 1996) 322 S.C. 480, 472 S.E.2d 640. Criminal Law 1148; Mental Health 434

In a murder prosecution, the trial court’s order committing defendant to the custody of the South Carolina Department of Mental Health pursuant to Section 44‑23‑410 was interlocutory in nature and thus not appealable. State v. Dingle (S.C. 1983) 279 S.C. 278, 306 S.E.2d 223. Criminal Law 1023(3)

Ordering competency examination is within discretion of trial judge, and refusal to grant such order will not be set aside unless there is clear showing of abuse of such discretion. State v. Drayton (S.C. 1978) 270 S.C. 582, 243 S.E.2d 458.

Whether to order an examination regarding defendant’s competency to stand trial rests in the trial judge’s discretion, and his decision will not be overturned on appeal absent a clear showing of an abuse of that discretion. State v. Weik (S.C. 2002) 356 S.C. 76, 587 S.E.2d 683, rehearing granted, adhered to on rehearing 354 S.C. 382, 581 S.E.2d 834, certiorari denied 123 S.Ct. 2580, 539 U.S. 930, 156 L.Ed.2d 609. Criminal Law 1035(2); Mental Health 434

**SECTION 44‑23‑420.** Designated examiners’ report.

 (A) Within ten days of examination under Section 44‑23‑410(A)(1) or at the conclusion of the observation period under Section 44‑23‑410(A)(2), the designated examiners shall make a written report to the court which shall include:

 (1) a diagnosis of the person’s mental condition; and

 (2) clinical findings bearing on the issues of whether or not the person is capable of understanding the proceedings against him and assisting in his own defense, and if there is a substantial probability that he will attain that capacity in the foreseeable future.

 (B) The report of the designated examiners shall not contain any findings nor shall the examiners testify on the question of insanity should it be raised as a defense unless further examination on the question of insanity is ordered by the court.

 (C) The report is admissible as evidence in subsequent hearings pursuant to Section 44‑23‑430.

HISTORY: 1962 Code Section 32‑978; 1974 (58) 2642; 2006 Act No. 400, Section 2, eff September 29, 2006; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

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

Pleading and trial in criminal cases, see Sections 17‑23‑10 et seq.

Library References

Criminal Law 625.15.

Westlaw Topic No. 110.

C.J.S. Criminal Procedure and Rights of the Accused Sections 526 to 527.

**SECTION 44‑23‑430.** Hearing on fitness to stand trial; effect of outcome.

 Upon receiving the report of the designated examiners, the court shall set a date for and notify the person and his counsel of a hearing on the issue of his fitness to stand trial. If, in the judgment of the designated examiners or the superintendent of the facility if the person has been detained, the person is in need of hospitalization, the court with criminal jurisdiction over the person may authorize his detention in a suitable facility until the hearing. The person shall be entitled to be present at the hearings and to be represented by counsel. If upon completion of the hearing and consideration of the evidence the court finds that:

 (1) the person is fit to stand trial, it shall order the criminal proceedings resumed; or

 (2) the person is unfit to stand trial for the reasons set forth in Section 44‑23‑410 and is unlikely to become fit to stand trial in the foreseeable future, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610 or Section 44‑20‑450 within fourteen days, excluding Saturdays, Sundays, and holidays, during which time the court may order the person hospitalized, may order the person to continue in detention if detained, or, if on bond, may permit the person to remain on bond; or

 (3) the person is unfit to stand trial but likely to become fit in the foreseeable future, the court shall order him hospitalized up to an additional sixty days. If the person is found to be unfit at the conclusion of the additional period of treatment, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610 or Section 44‑20‑450 within fourteen days, excluding Saturdays, Sundays, and holidays, during which time the person shall remain hospitalized.

 Subject to the provisions of Section 44‑23‑460, persons against whom criminal charges are pending shall have all the rights and privileges of other involuntarily hospitalized persons.

 Persons against whom criminal charges are pending but who are not involuntarily committed following judicial admission proceedings shall be released.

HISTORY: 1962 Code Section 32‑979; 1974 (58) 2642; 1977 Act No. 99, Section 16; 1997 Act No. 52, Section 2; 2006 Act No. 400, Section 3, eff September 29, 2006; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

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

NICS, Mental Health Adjudication and Commitment Reporting, hearing on fitness to stand trial, see Section 23‑31‑1060.

Pleading and trial in criminal cases, see Sections 17‑23‑10 et seq.

Library References

Criminal Law 625.20.

Westlaw Topic No. 110.

C.J.S. Criminal Procedure and Rights of the Accused Sections 525, 532.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 35, Patient Rights.

NOTES OF DECISIONS

In general 1

1. In general

A defendant’s failure to request a hearing under Section 44‑23‑430 did not constitute a waiver of his right to such a hearing following an examination under Section 44‑23‑410 that reversed the finding of a prior examination which had found defendant incompetent to stand trial. State v. Blair (S.C. 1981) 275 S.C. 529, 273 S.E.2d 536, appeal decided 276 S.C. 644, 282 S.E.2d 596.

A person who does not seek or desire a judicial or jury hearing as to his sanity is in no position to complain that the statute does not specifically provide therefor. Schneider v. State (S.C. 1971) 255 S.C. 594, 180 S.E.2d 340.

**SECTION 44‑23‑440.** Finding of unfitness to stand trial shall not preclude defense on merits.

 A finding of unfitness to stand trial under Section 44‑23‑430 does not preclude any legal objection to the prosecution of the individual which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

 If either the person found unfit to stand trial or his counsel believes he can establish a defense of not guilty to the charges other than the defense of insanity, he may request an opportunity to offer a defense on the merits to the court. The court may require affidavits and evidence in support of such request. If the court grants such request, the evidence of the State and the defendant shall be heard before the court sitting without a jury. If after hearing such petition the court finds the evidence is such as would entitle the defendant to a directed verdict of acquittal, it shall dismiss the indictment or other charges.

HISTORY: 1962 Code Section 32‑981; 1974 (58) 2642; 1977 Act No. 99, Section 17; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

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

Pleading and trial in criminal cases, see Sections 17‑23‑10 et seq.

Library References

Criminal Law 625.30.

Westlaw Topic No. 110.

**SECTION 44‑23‑450.** Reexamination of finding of unfitness.

 A finding of unfitness to stand trial under Section 44‑23‑430 may be reexamined by the court upon its own motion, or that of the prosecuting attorney, the person found unfit to stand trial, his legal guardian, or his counsel. Upon receipt of the petition, the court shall order an examination by two designated examiners whose report shall be submitted to the court and shall include underlying facts and conclusions. The court shall notify the individual, his legal guardian, and his counsel of a hearing at least ten days prior to such hearing. The court shall conduct the proceedings in accordance with Section 44‑23‑430, except that any petition that is filed within six months after the initial finding of unfitness or within six months after the filing of a previous petition under this section shall be dismissed by the court without a hearing.

HISTORY: 1962 Code Section 32‑982; 1974 (58) 2642; 1977 Act No. 99, Section 17; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

Pleading and trial in criminal cases, see Sections 17‑23‑10 et seq.

Library References

Criminal Law 625(3).

Westlaw Topic No. 110.

C.J.S. Criminal Procedure and Rights of the Accused Section 524.

**SECTION 44‑23‑460.** Procedure when superintendent believes person charged with crime no longer requires hospitalization.

 When the superintendent of a hospital or intellectual disability facility believes that a person against whom criminal charges are pending no longer requires hospitalization, the court in which criminal charges are pending shall be notified and shall set a date for and notify the person of a hearing on the issue of fitness pursuant to Section 44‑23‑430. At such time, the person shall be entitled to assistance of counsel:

 (1) if upon the completion of the hearing, the court finds the person unfit to stand trial, it shall order his release from the hospital; and

 (2) if such a person has been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged, the court shall order the charges dismissed and the person released; or

 (3) the court may order that criminal proceedings against a person who has been found fit to stand trial be resumed, or the court may dismiss criminal charges and order the person released if so much time has elapsed that prosecution would not be in the interest of justice.

HISTORY: 1962 Code Section 32‑983; 1974 (58) 2642; 1977 Act No. 99, Section 17; 2011 Act No. 47, Section 5, eff June 7, 2011.

CROSS REFERENCES

Pleading and trial in criminal cases, see Sections 17‑23‑10 et seq.

Library References

Criminal Law 625(3).

Westlaw Topic No. 110.

C.J.S. Criminal Procedure and Rights of the Accused Section 524.

NOTES OF DECISIONS

In general 1

1. In general

A criminal defendant, who had been committed to a mental facility but who had not been ruled unfit to stand trial, could not use Section 44‑23‑460 to require the Court of General Sessions to hold a competency hearing to determine whether it may exercise jurisdiction over him because Section 44‑23‑460 is limited to situations where a prior determination had been made that an individual was not fit to stand trial. Wilson v. State (S.C. 1993) 315 S.C. 158, 432 S.E.2d 477.

ARTICLE 11

Treatment, Rights, Privileges, and Expenses of Patients Generally

**SECTION 44‑23‑1080.** Patients and prisoners denied access to alcoholic beverages, firearms, dangerous weapons, and controlled substances.

 No patient or prisoner under the jurisdiction of the South Carolina Department of Mental Health is allowed access to alcoholic beverages, firearms, dangerous weapons, or controlled substances as defined by Section 44‑53‑110. Any person who intentionally or negligently allows patients or prisoners of the department access to these items or who attempts to furnish these items to patients or prisoners of the department is guilty:

 (1) in the case of alcoholic beverages or controlled substances, of a misdemeanor and, upon conviction, must be punished by a fine of not less than one hundred dollars nor more than ten thousand dollars or imprisonment for not less than thirty days nor more than ten years, or both; and

 (2) in the case of firearms or dangerous weapons, of a felony and, upon conviction, must be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or imprisonment for not less than one year nor more than ten years, or both.

HISTORY: 1962 Code Section 32‑1000.1; 1974 (58) 2642; 1984 Act No. 426, Section 1; 1988 Act No. 311, Section 1.

Library References

Mental Health 51.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 98, 102 to 118.

**SECTION 44‑23‑1100.** Disclosure of copies of completed forms retained by probate judges.

 Any copies of completed forms retained by judges of probate shall be safeguarded in a confidential file, and the information therein contained shall not be disclosed except pursuant to Section 44‑22‑100.

HISTORY: 1962 Code Section 32‑1023; 1952 (47) 2042; 1958 (50) 1634; 2000 Act No. 253, Section 10.

CROSS REFERENCES

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

Library References

Mental Health 21.

Westlaw Topic No. 257A.

**SECTION 44‑23‑1110.** Charges for maintenance, care, and services.

 The Department of Mental Health shall establish the charges for maintenance and medical care for patients, other than beneficiary, of State mental health facilities. These charges shall be based upon the per capita costs per day of the services rendered, which may include costs of operation, costs of depreciation, and all other elements of cost, which may be adjusted from time to time as the Department of Mental Health considers advisable. It shall establish a reasonable scale of fees to be charged patients, other than beneficiary, served by the mental health clinics and shall retain these fees for use in defraying the expenses of the clinics.

HISTORY: 1962 Code Section 32‑1026; 1952 Code Section 32‑954; 1942 Code Section 6223; 1932 Code Section 6223; Civ. C. ‘22 Section 5074; Civ. C. ‘12 Section 3355; Civ. C. ‘02 Section 2248; G. S. 1585; R. S. 1780; 1827 (11) 322; 1871 (15) 672; 1915 (29) 147; 1920 (31) 704; 1938 (40) 1665; 1952 (47) 2042.

Library References

Mental Health 71.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 229 to 231.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 36, Cost of Inpatient Care‑ Generally.

Attorney General’s Opinions

Deed conveying real property to the S.C. Department of Mental Health in satisfaction of debt owed the Department for patient care is not subject to documentary taxation. 1974‑75 Op.Atty.Gen. No. 4162, p. 224 (October 22, 1975) 1975 WL 22457.

The Department of Mental Retardation can collect maintenance and care fees for patients of institutions under its control and has the authority to use such maintenance and care fees of paying patients for capital improvement bonds and notes. 1968‑69 Op.Atty.Gen. No. 2747, p. 219 (October 17, 1969) 1969 WL 10743.

The fees of paying patients of institutions for which bonds or notes are issued are to be kept as a separate fund by the State Treasurer and these funds are to be used for the payment of principal, interest and redemption premiums, and for no other purposes. 1968‑69 Op.Atty.Gen. No. 2747, p. 219 (October 17, 1969) 1969 WL 10743.

NOTES OF DECISIONS

In general 1

1. In general

It was the intention of the legislature that the patient, when able, should reimburse the State for care and maintenance. Minter v. State, Dept. of Mental Health (S.C. 1972) 258 S.C. 186, 187 S.E.2d 890.

The maintenance and care by the State of one mentally ill is not unconditional charity but is based upon expectations of future reimbursement if the circumstances should thereafter permit. Minter v. State, Dept. of Mental Health (S.C. 1972) 258 S.C. 186, 187 S.E.2d 890. Mental Health 71

The executors or administrators of the estates of patients are required to ascertain from the proper authorities whether or not the deceased was supported while an inmate and the claim for such support or the balance due, in case less than the minimum rate had been paid, is required to be paid and allowed as other claims against the estate. Minter v. State, Dept. of Mental Health (S.C. 1972) 258 S.C. 186, 187 S.E.2d 890.

**SECTION 44‑23‑1120.** Liability of estate of deceased patient or trainee.

 Upon the death of a person who is or has been a patient or trainee of a State mental health facility the executor or administrator and the judge of probate shall notify the Department of Mental Health in writing. If the decedent was cared for at the expense of the State during his confinement, the Department of Mental Health shall present a claim for the amount due, and this claim shall be allowed and paid as other lawful claims against the estate. The Department of Mental Health may waive the presentation of any claim when, in its opinion, an otherwise dependent person would be directly benefited by waiver.

HISTORY: 1962 Code Section 32‑1027; 1952 Code Section 32‑975; 1942 Code Section 6249‑4; 1932 Code Section 2013; Cr. C. ‘22 Section 997; 1915 (29) 132; 1941 (42) 272; 1952 (47) 2042.

Library References

Mental Health 74.

Westlaw Topic No. 257A.

NOTES OF DECISIONS

In general 1

Claims against estate 3

Construction and application 2

Statute of limitations 4

1. In general

It was the intention of the legislature that the patient, when able, should reimburse the State for care and maintenance. Minter v. State, Dept. of Mental Health (S.C. 1972) 258 S.C. 186, 187 S.E.2d 890.

The maintenance and care of one mentally ill is not an unconditional charity but rather based upon the expectation of future reimbursement if the circumstances should thereafter permit. South Carolina Mental Health Com. v May (1954) 226 SC 108, 83 SE2d 713. Minter v. State, Dept. of Mental Health (S.C. 1972) 258 S.C. 186, 187 S.E.2d 890. Mental Health 71

The language of this section [Code 1962 Section 32‑1027] requiring a claim be filed upon the death of a person who is or has been a patient for the amount due was intended by the legislature to cover the period during which such care and treatment was received. South Carolina Mental Health Com. v May (1954) 226 SC 108, 83 SE2d 713. Minter v. State, Dept. of Mental Health (S.C. 1972) 258 S.C. 186, 187 S.E.2d 890.

2. Construction and application

Repeal and simultaneous re‑enactment of this section [Code 1962 Sections 32‑1027] did not void all claims which had become vested under the prior act or serve to abate proceedings instituted under the prior act. South Carolina Mental Health Commission v. May (S.C. 1954) 226 S.C. 108, 83 S.E.2d 713.

3. Claims against estate

The executors or administrators of the estates of patients are required to ascertain from the proper authorities whether or not the deceased was supported while an inmate and the claim for such support or the balance due, in case less than the minimum rate had been paid, is required to be paid and allowed as other claims against the estate. Minter v. State, Dept. of Mental Health (S.C. 1972) 258 S.C. 186, 187 S.E.2d 890.

4. Statute of limitations

Since Department of Mental Health had no right of action against administratrix during 6‑month period following testator’s death, that period should be added to the applicable 6 year statute of limitations in order to determine the period within which suit could be instituted. South Carolina Dept. of Mental Health v. Glass (S.C. 1977) 269 S.C. 91, 236 S.E.2d 412.

The legislature did not intend the six‑year statute of limitations under Code 1962 Section 10‑143 to apply to actions under this section [Code 1962 Section 32‑1027], (decided prior to the 1954 amendment of Code 1962 Section 10‑150). South Carolina Mental Health Commission v. May (S.C. 1954) 226 S.C. 108, 83 S.E.2d 713.

**SECTION 44‑23‑1130.** Contracts for care and treatment.

 The Department of Mental Health shall make investigations and ascertain which of the patients or trainees of State mental health facilities or which of the parents, guardians, trustees, committees or other persons legally responsible therefor are financially able to pay the expenses of the care and treatment, and it may contract with any of these persons for a patient’s or trainee’s care and treatment. The Department of Mental Health may require any county or State agency which might have or might be able to obtain information which would be helpful to it in making this investigation to furnish this information upon request. In arriving at the amount to be paid the Department of Mental Health shall have due regard for the financial condition and estate of the patient or trainee, his present and future needs and the present and future needs of his lawful dependents, and whenever considered necessary to protect him or his dependents may agree to accept a monthly sum less than the actual per capita cost.

HISTORY: 1962 Code Section 32‑1028; 1952 Code Section 32‑974; 1942 Code Section 6249‑4; 1932 Code Section 2013; Cr. C. ‘22 Section 997; 1915 (29) 132; 1941 (42) 272; 1952 (47) 2042.

Library References

Mental Health 71.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 229 to 231.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 36, Cost of Inpatient Care‑ Generally.

Attorney General’s Opinions

The Department of Mental Retardation can collect maintenance and care fees for patients of institutions under its control and has the authority to use such maintenance and care fees of paying patients for capital improvement bonds and notes. 1968‑69 Op.Atty.Gen. No. 2747, p. 219 (October 17, 1969) 1969 WL 10743.

The fees of paying patients of institutions for which bonds or notes are issued are to be kept as a separate fund by the State Treasurer and these funds are to be used for the payment of principal, interest and redemption premiums, and for no other purposes. 1968‑69 Op.Atty.Gen. No. 2747, p. 219 (October 17, 1969) 1969 WL 10743.

NOTES OF DECISIONS

In general 1

1. In general

A contract for payment for the care and maintenance of a patient in the State Hospital could apply only to her present and future needs. Minter v. State, Dept. of Mental Health (S.C. 1972) 258 S.C. 186, 187 S.E.2d 890.

**SECTION 44‑23‑1140.** Lien for care and treatment; filing statement; limitation of action for enforcement.

 There is hereby created a general lien upon the real and personal property of any person who is receiving or who has received care or treatment in a State mental health facility, to the extent of the total expense to the State in providing the care, training or treatment. The Department of Mental Health shall send to the clerk of court or the register of deeds in those counties having such officer and the judge of probate of the county of the patient’s or trainee’s known or last known residence a statement showing the name of the patient or trainee and the date upon which the lien attaches, which shall be filed in the offices of the clerk of court or the register of deeds in those counties having such officer and the judge of probate in each county in which the patient or trainee then owns or thereafter acquires property, real or personal, and no charge shall be made for this filing. From the time of filing in either office, the statement shall constitute due notice of the lien against all property then owned or thereafter acquired by the patient or trainee. No action to enforce the lien may be brought more than one year after the patient’s or trainee’s death. This lien shall in no way affect the right of homestead.

HISTORY: 1962 Code Section 32‑1029; 1952 (47) 2042; 1953 (48) 504; 1954 (48) 1732; 1956 (49) 1604; 1997 Act No. 34, Section 1.

CROSS REFERENCES

Running of limitations on actions by State for charges for care, etc., see Section 15‑3‑620.

Library References

Mental Health 82.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 37, Cost of Inpatient Care‑ Lien.

NOTES OF DECISIONS

In general 1

1. In general

The lien is created by the first sentence of this section [Code 1962 Section 32‑1029]. The following sentences provide a method by which the Department may, if it chooses, give notice to other lien holders or to interested parties that a lien is claimed. Clarendon Holding Co., Inc. v. Witherspoon (S.C. 1974) 262 S.C. 29, 201 S.E.2d 924.

The lien of the Mental Health Department under this section [Code 1962 Section 32‑1029] attaches when care and treatment in a State mental health facility is provided. Clarendon Holding Co., Inc. v. Witherspoon (S.C. 1974) 262 S.C. 29, 201 S.E.2d 924.

Prior to filing of the notice with the clerk of court, or the register of mesne conveyances, or the probate judge, the lien as between the department and the patient is somewhat like an unrecorded mortgage and binding between lienor and lienee. Clarendon Holding Co., Inc. v. Witherspoon (S.C. 1974) 262 S.C. 29, 201 S.E.2d 924.

After notice of the lien has been filed, the lien then becomes similar to a recorded mortgage. Clarendon Holding Co., Inc. v. Witherspoon (S.C. 1974) 262 S.C. 29, 201 S.E.2d 924.

**SECTION 44‑23‑1150.** Sexual misconduct with an inmate, patient, or offender.

 (A) As used in this section:

 (1) “Actor” means an employee, volunteer, agent, or contractor of a public entity that has statutory or contractual responsibility for inmates or patients confined in a prison, jail, or mental health facility. Actor includes individuals who supervise inmate labor details outside of an institution or who have supervisory responsibility for offenders on parole, probation, or other community supervision programs.

 (2) “Victim” means an inmate or patient who is confined in or lawfully or unlawfully absent from a prison, jail, or mental health facility, or who is an offender on parole, probation, or other community supervision programs. A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor.

 (B) An actor is guilty of sexual misconduct when the actor, knowing that the victim is an inmate, offender, or patient voluntarily engages with the victim in an act of sexual intercourse, whether vaginal, oral, or anal, or other sexual contact for the purpose of sexual gratification.

 (C)(1) When the sexual misconduct involves an act of sexual intercourse, whether vaginal, oral, or anal, the actor is guilty of the felony of sexual misconduct, first degree and, upon conviction, must be imprisoned for not more than ten years.

 (2) When the sexual misconduct does not involve sexual intercourse but involves other sexual contact which is engaged in for sexual gratification, the actor is guilty of the felony of sexual misconduct, second degree and, upon conviction, must be imprisoned for not more than five years. The term sexual contact, as used in this subsection, refers to an intrusion of any part of a person’s body or of any object into the “intimate parts”, as defined in Section 16‑3‑651(d), of another person’s body, or to the fondling of the “intimate parts” of another person’s body, which is done in a manner not required by professional duties, but instead is done to demonstrate affection, sexually stimulate that person or another person, or harass that person.

 (D) A person who knowingly or wilfully submits inaccurate or untruthful information concerning sexual misconduct as defined in this section is guilty of the misdemeanor of falsely reporting sexual misconduct and, upon conviction, must be imprisoned for not more than one year.

 (E) A person who has knowledge of sexual misconduct who has received information in the person’s professional capacity and fails to report it to the appropriate law enforcement authority, or a person who threatens or attempts to intimidate a witness is guilty of a misdemeanor and, upon conviction, must be fined not more then five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 1962 Code Section 32‑1030; 1952 (47) 2042; 1960 (51) 1602; 1993 Act No. 184, Section 71; 1997 Act No. 136, Section 9; 2001 Act No. 68, Section 1, eff July 11, 2001.

Editor’s Note

2001 Act No. 68, Section 2, provides, in pertinent part, as follows:

“A person arrested, charged, or indicted under the provision of law amended by this act must be tried and sentenced as provided by the law in force at the time of the commission of the offense.”

CROSS REFERENCES

Persons convicted under this section must register for sex offender registry, see Section 23‑3‑430.

Post‑conviction DNA procedures, see Sections 17‑28‑10 et seq.

Preservation of DNA evidence, see Sections 17‑28‑310 et seq.

Library References

Sex Offenses 29.

Westlaw Topic No. 352H.

C.J.S. Rape Sections 1, 28 to 30.

Attorney General’s Opinions

The following would be classified as Tier III sexual offenses pursuant to the Sex Offender Registration and Notification Act requirements: spousal sexual battery; criminal sexual conduct, where the victim is a spouse; incest, where the victim is under 16 years of age; and sexual misconduct with an inmate, patient, or offender, depending on the sexual misconduct involved and the age of the victim. S.C. Op.Atty.Gen. (July 7, 2011) 2011 WL 3346429.

The term “sexual intercourse” is broadly construed to encompass all forms of sexual contact, and the term “inmate” encompasses both pre‑ and post‑trial detainees. S.C. Op.Atty.Gen. (February 17, 1999) 1999 WL 397926.

NOTES OF DECISIONS

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1. In general

The same rationale which constitutionally supports the protection accorded to those tender in years is in this section [Code 1962 Section 32‑1030] properly employed to protect those individuals whose mental faculties are impaired to the extent of requiring institutional treatment and care. Guinyard v. State (S.C. 1973) 260 S.C. 220, 195 S.E.2d 392.

The legislature has determined, in effect, that persons who engage in the prohibited conduct of this section [Code 1962 Section 32‑1030] do so at their peril and will not be heard to plead in defense that they were ignorant of the fact that the person molested was a patient of a mental facility. This was within the constitutional powers of the legislature. Guinyard v. State (S.C. 1973) 260 S.C. 220, 195 S.E.2d 392.

2. Elements

Neither lack of consent, intent, nor knowledge were made elements of the offense. Under the terms of this section [Code 1962 Section 32‑1030], if a person engages in the prohibited conduct with a patient or trainee of a mental facility, whether the status of the person molested, as a patient or trainee, is known or unknown to the accused, the offense is committed. Guinyard v. State (S.C. 1973) 260 S.C. 220, 195 S.E.2d 392.

The legislature in failing to make knowledge of the institutional status of the person molested an element of the present offense is in harmony with the rule adopted by practically all of the courts that, under a charge of statutory rape, the honest belief of the accused that the complainant was of the age of consent when in fact she was not constitutes no defense. Guinyard v. State (S.C. 1973) 260 S.C. 220, 195 S.E.2d 392.

3. Construction with other laws

Section 16‑3‑654 does not overrule Section 44‑23‑1150 by implication. State v. Kirkland (S.C. 1984) 282 S.C. 14, 317 S.E.2d 444.